
Commission Meeting

of

STATE HOUSE COMMISSION

LOCATION: Committee Room 16
State House Annex
Trenton, New Jersey

DATE: November 22, 2010
9:00 a.m.

MEMBERS OF COMMISSION PRESENT:

Peter J. Tober, Chair
Senator Bob Smith
Senator Gerald Cardinale
Assemblyman Joseph Cryan
Assemblyman Jon M. Bramnick
Charlene M. Holzbaur
David Ridolfino



ALSO PRESENT:

Robert J. Shaughnessy Jr., *Secretary*

Gary A. Kotler, *Counsel*

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PETER J. TOBER (Chair): I'd like to call the meeting to order please.

Could we have the Open Public Meetings Act reading please?

MR. SHAUGHNESSY (Secretary): Yes, sir.

In compliance with the Open Public Meetings Act, notice of this meeting was given by way of notice filed with the Secretary of State on November 16, delivered to the State House Press Corps, and posted at the Office of the State House Commission.

MR. TOBER: Roll call now.

MR. SHAUGHNESSY: Yes, I'm sorry.

With regard to the call to order, we'll have the roll call first.

Special Counsel Tober.

MR. TOBER: Here.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Here.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Here.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Here.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Here.

MR. SHAUGHNESSY: You have a quorum, sir.

MR. TOBER: All right, let's proceed then with the old business: approval of the July 15 minutes.

MR. SHAUGHNESSY: This is the matter of Item No. 1 on the agenda: approval of the July 15, 2010 State House Commission meeting minutes.

ASSEMBLYMAN BRAMNICK: So moved.

MR. TOBER: We have a motion by Assemblyman Bramnick. Do we have a second?

SENATOR CARDINALE: Second.

MR. TOBER: Seconded by Senator Cardinale.

MR. SHAUGHNESSY: Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: Those are approved.

Second: approval of the October 27, 2010 State House Commission meeting minutes.

Motion?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Motion made. Second?

DIRECTOR HOLZBAUR: I'll second.

MR. SHAUGHNESSY: Thank you.

Any discussion? (no response)

Okay. So let me go through the roll: Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Abstain.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: Okay. I guess onto No. 3 under old business. I believe we have a representative or representatives from EDA here. If not, we will hold that matter for the time being and come back to it.

No. 3 is temporarily held.

Item No. 4, under old business: RPR 10-16. Treasury, on behalf of the Juvenile Justice Commission, requests approval to grant an easement to Jersey Central Power and Light, Verizon New Jersey and Verizon Wireless, which all will complete various aspects of the work necessary for the installation of utilities to make cellular installation operational.

If you recall, on July 15, 2010, the State House Commission approved the granting of an easement to Jersey Central Power and Light for the installation and maintenance of electrical service necessary for the previously approved Verizon Wireless cellular tower. The easement will

consist of .41 plus or minus acres of vacant land located on the grounds of the New Jersey Training School for Boys, and will be granted for the appraised value of \$18,500.

Motion?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved.

Onto new business.

ASSEMBLYMAN CRYAN: Can I ask, before we do new business--

MR. SHAUGHNESSY: Yes, sir.

ASSEMBLYMAN CRYAN: On these agendas, we are moving today quite a bit of items that have land sales and things like that. I want to be clear: last meeting -- as a matter of fact, in the minutes we just approved -- we noted that there were some significant issues with the

appraisal processes here, as a matter of fact, to a point where DEP is actually undergoing a revision in terms of how that's done.

I have a problem because I don't get any listing here as to who has donated to who. I will just use 19 as an example, without bringing in anybody's name. But almost all of them are that way. I look up the fellow whose name is there, but it's part of an auto group. I have no idea whether they donated. I check his name. I don't know whether he donated to the State Committee, to my campaign. I want to be clear for everybody that we do -- we only get these things with four days notice. It's this thick. So you try as best you can to make sure you're not voting for something that appears unethical.

I think this Commission needs to-- When I was on the Utilization Committee -- Space and Utilization -- they had a form that the guy signed, at least, that said nobody donated.

I don't know, Jon, what you guys do at Reform New Jersey. I think I know the problem there -- is that you can't get even get your donors.

But I think we've got a problem overall. When I'm trying to search and figure out some of these-- We've agreed on a flawed appraisal process as a Commission. We've got land deals here that may or may not make sense in terms of the context but are certainly open for discussion. And I don't have any sense as to whether people donated anywhere or not, and I have a problem with that. I've looked as best I can. So in good faith, I'm going to vote the way I see them today.

But I, again, want to reiterate to the Commission: it's not the first time I brought this up on particular items. We should get a form, something, that lists donors so that there's public confidence that we're not

pulling any shenanigans here. And we're not. I'm not casting dispersions on anybody.

You guys know how this works. You're guilty until you're innocent in the public eye today, unfortunately. I think we're all innocent, but I just want to be sure. And I strongly, strongly request-- And I don't know how to -- I'll do it in the form of a motion -- whether we use the form, -- which I don't recall the name or the ID number from the Space Utilization Committee, which basically certified that people who are benefiting from anything we do here today didn't donate to an existing committee or election; or if they did, that's fine, but they note it so that we know. And I also amend that to say they ought to add whether it's a Democrat or Republican brand of Reform New Jersey -- that that's added as well. Because that stuff shouldn't be. I'm really bothered by that in this process. I really am. And I'm tired of trying to search through ELEC records -- which isn't the greatest web site in the world to figure out that somebody didn't donate to me -- so that I don't look like a crook because somebody donated to me eight years ago that I don't know about, to be perfectly blunt about it.

So I want to put that on the record. I guess I'll put it in the form of a motion that we ask for a form or certification from people who are purchasing property that they list their donations for the past six years -- any and all, which includes any political thing in New Jersey. That includes -- for the Republicans, it's Reform New Jersey -- if we have one -- any of that kind of stuff. Because I think it's wrong; I really do.

I put that in the form of a motion.

ASSEMBLYMAN BRAMNICK: I have a question. I don't know what procedure, rules-- May I ask a question before there is a second?

Chairman, let's assume for the purposes of this discussion that someone donated to my campaign or to the Republican State Committee three years ago, and now the State House Commission is voting for a transfer. First, I'd want to get a ruling from Marci Hochman, or that individual or person who makes the recommendation to us, whether that, in essence, is an ethical violation. Because I'm assuming that I vote on -- well, just so--

ASSEMBLYMAN CRYAN: My understanding is-- I'm sorry, I'm not--

ASSEMBLYMAN BRAMNICK: Go ahead.

ASSEMBLYMAN CRYAN: My understanding is that it's not. I want to be clear about that. I'm not casting-- I tried be very clear. I'm not casting-- I think we're all innocent here. I don't-- But my problem is: Let's face it. You can get a story -- not everybody in the journalistic world cares about both sides of the story -- that looks like you're something you're not. And I really have a problem with that here. And I don't mind saying, a little bit personally, as the Chairman of a State Committee, where there was a broad range, I'm tired of spending a bunch of time trying to look up on a lousy web site donations and stuff to make sure I don't have a problem when the certification ought to come from these folks.

We've agreed the appraisal process is flawed. We've heard the head of DEP come in here. We've seen public announcements. We just voted on it in the minutes. So we've agreed that the process is flawed at

some level. It's getting fixed; that's great. But I don't want-- I want some reinforcement of the public integrity.

And again, Jon, I don't know what you guys do for the Reform stuff, but they don't even list anything. How do you know whether any of these guys donated? I mean, how do you know how that looks? It's terrible. It's bad.

ASSEMBLYMAN BRAMNICK: I can't comment on Reform New Jersey.

ASSEMBLYMAN CRYAN: I didn't mean to go there. I mean, this looks terrible, and I don't want people in this audience to think so.

ASSEMBLYMAN BRAMNICK: But for purposes of passing a motion at this point--

ASSEMBLYMAN CRYAN: My request for a motion is to simply ask for disclosure of any political contributions, from people who are purchasing property from the State, for the past five years.

MR. TOBER: But by the applicant.

ASSEMBLYMAN CRYAN: By the applicant, yes, which is what we had in Space and Utilization.

ASSEMBLYMAN BRAMNICK: Before I support that motion, I'm simply asking two questions. One: whether it is an ethical violation, and to get a determination on that. I understand you say it's not.

ASSEMBLYMAN CRYAN: I'm voting today as if they're not, because that's my understanding.

ASSEMBLYMAN BRAMNICK: And two: Procedurally, I'd like to know what it will take to get that done. So before I support the motion-- The concept of knowing whether or not people donated and then

somehow got a benefit by the State transferring or buying land is an important issue. But before I-- I would like to understand from those who would have to seek that information how that would work, procedurally. Whether it can be done at the next meeting-- I'd be happy to have an open discussion on that issue. But I don't simply want to support a motion from the Administration or whoever does it that says, "Hey, here are the procedural obstacles," etc.

ASSEMBLYMAN CRYAN: Jon, I hear you. Let's be reasonable. Let's ask for the first meeting in 2011 to have that information, okay? I mean, that seems to be to be enough time for any reasonable standard.

ASSEMBLYMAN BRAMNICK: To put it on the discussion as to whether or not -- whether it be a perceived violation or possible ethical violation, and how it would get done. Then I'd be willing to surely debate it.

MR. TOBER: And, Assemblyman, in my experience as a local attorney, when you're bidding on public contracts and putting together the bid documents, there's a one-page form that comports with the pay to play laws from ELEC. And maybe that's something staff can look into, and Counsel to the Commission, to see whether or not it's practical to put one of those one-page forms -- that any applicant before our Commission list their donations in a certain time period.

ASSEMBLYMAN CRYAN: It works for me. I just want a reasonable solution.

SENATOR CARDINALE: Before the Judiciary Committee -- whenever we get nominees, there is a question on that questionnaire which

indicates, I think, pretty much what the Assemblyman is looking for. And so it's not unprecedented at all.

ASSEMBLYMAN CRYAN: I'm all for that format.

SENATOR CARDINALE: And it seems to me that it could be a rather routine thing to have done. I don't know how many-- We have 44 items on the agenda today. I don't know how many items are in the works where staff would have to go back and get additional information from the applicants for future meetings that are already planned. However, if they tell us it's not an awfully burdensome thing to do -- which I would guess it isn't an awfully burdensome thing to do -- there's no harm in having this kind of information.

I agree with the Assemblyman that there is no ethical violation. If we have to worry about everything we vote on being an ethical violation, everything we vote on could be perceived as an ethical violation because it affects us as well as it affects the rest of the people of the State of New Jersey. So we're voting, to an extent, in our self-interest.

ASSEMBLYMAN CRYAN: But, Jerry, here when we're moving land where we've agreed there's a flawed appraisal process, I think, makes it doubly important that we up this stuff. I mean, the DEP is ready. They commissioned a reform, based on our minutes, in terms of how they do the property--

Look, why don't we do this? Why don't I withdraw my motion but ask staff to review and, before the next meeting, ask us whether it's practical that they can add this form and when it's done. And if we have a general consensus that we want to do it, and ask-- I'll defer to staff as to

when it makes the most sense to do so and when you can add it on. Does that seem reasonable?

SENATOR CARDINALE: Yes, but I'd like to add one more thing for them to study.

SENATOR SMITH: Me too.

SENATOR CARDINALE: In some of the things that we have before us today, the recommended sale price is, in fact, an upset price where you're going to have an auction. Why don't we do that for everything? Even on the one that you mentioned there's probably only going to be one bidder. But if we make this an auction where someone else could conceivably come in and bid, it creates a feeling of transparency so that it doesn't look like we are negotiating a sale and maybe favoring somebody, because someone can object to the value that has been placed by an appraiser. And that's not an exact science. We all know that's not an exact science. So it would seem to me that if we adopted a policy whereby every sale is subject to a public auction, I think that would be something that the public would look on favorably.

SENATOR SMITH: Let me add one other concern. This is an ethical violation. I always worry, as an attorney -- especially one that does land use -- that somehow I'm going to vote on something where there's a client involved. And, right now, the burden is on me to do a client check on everything that's in front of us. And even there, I can't do it because, for example, with an LLC or a corporation, I may have represented an individual or whatever.

So I'd like to add one other form to the forms that we're considering, which is some certification from any applicant before the State

House Commission that they have not utilized the services, either as a corporation or the principal of a corporation, for any members of the State House Commission. Then the ball is in their court as opposed to me doing a conflict check, even though -- from a malpractice carrier I do it all the time. (laughter)

ASSEMBLYMAN BRAMNICK: Two ways.

SENATOR SMITH: Yes, at least. The ball is in their court, to some extent, to show that -- or to certify that no member of the State House Commission has been utilized to perform service for them or the principals of the corporation. And that one is an ethical (indiscernible). I don't know if the campaign contribution is, but that one is -- somehow we vote on something that -- somebody who is a client in front of us -- that would be a real problem. So that would be one other thing I would like the staff to take a look at when we institute, hopefully, these new procedures.

MR. TOBER: So is the consensus of the Commission that we do those three things: that we look at sales with a minimum upset price and done at public auction; that we look at an ethical disclosure form that applicants would make to the Commission to list their political contributions over a period -- an appropriate time; and that they do an adequate conflict check to see if they have engaged the professional services of any member of the Commission, either in a legal or other capacity?

ASSEMBLYMAN CRYAN: Do you need that in a motion, or is that -- can we just--

MR. TOBER: I think we can do it as a directive to staff.

Is staff comfortable with that?

MR. SHAUGHNESSY: Yes.

Okay, moving on the agenda -- actually back to the agenda -- we're going to return to No. 3 under old business. That's RPR 09-13. Treasury, on behalf of the Department of Corrections, requests approval to revise the Procedures for Disposition of Riverfront State Prison Property -- for the New Jersey EDA to undertake the disposal of Riverfront Prison. Treasury and EDA have determined that revisions are required to the disposition procedures approved by the State House Commission at its meeting of October 27, 2009. Specifically, approval is sought to eliminate any direct negotiated sale option; instead, requiring the EDA to dispose of the property by a formal request for qualifications -- request for proposal process.

So that matter is before the Commission. I don't know if there's a motion.

SENATOR SMITH: Whoa, whoa, whoa. How about a question?

MR. SHAUGHNESSY: Surely.

SENATOR SMITH: Why? Why would you want to get rid of a direct sale option?

CAREN FRANZINI: Good morning.

Senator, I think we-- By having an RFP process, it allows us to put the parameters in place. We want an experienced developer. So we get to review price and other factors through an RFP process. It's a very transparent and open process. So I think the change is a good change. And then we would still come back to the Commission for final approval of the sale.

MR. SHAUGHNESSY: Although it's probably not needed, please introduce yourself.

Thank you.

MS. FRANZINI: Thank you. I apologize.

Caren Franzini, with the New Jersey Economic Development Authority.

MR. SHAUGHNESSY: Thank you.

SENATOR SMITH: All right, the-- I'm looking at the reference documents in the package. And on the procedures for the disposition of the Riverfront State Prison property, at the bottom, the language changes stimulated the question: Why don't, at the end of the day, we still have an auction? If you're eliminating direct sale, you can't start the RFP process. You get yourself a great deal, but you don't really know it's a great deal until you have three or four companies or individuals bidding.

MS. FRANZINI: Senator, I think an RFP process in this instance is better than a direct auction. We want to have the land developed by an experienced developer who has background experience in taking urban sites-- Urban sites -- although it's waterfront -- are still very difficult to develop. So we want to have the evaluation criteria be both on price -- obviously get the best price for the State of New Jersey -- but also get the best developer who has a track record of experience. If we go to auction, we just get the highest price. We could have someone just sitting on that property for a long time. We could not see the best interest of having the highest value there for a mixed-use development. So I think this process gives us a competitive process in that we see proposals, but we're

very much focused on seeing the proposal for someone with an economic development focus.

SENATOR SMITH: Right, right, right. And we want to see the project be successful. But even if you go through an RFP or an RFQ process, and you now have what looks like a really good deal for everybody, why wouldn't you still put that on the auction block? Again, "These are the conditions of the sale. You have to do XYZ." It's stuff you've worked out through the process. You're still going to get whoever buys it to do that. So why not have a bidding process at the end of the day?

MS. FRANZINI: I think, in real estate development, to get a developer to come to Camden and do a mixed-used development, we'll get the same bottom line approach. We'll get the best value for the State if we're doing an RFP. It's more on the quality side that we're really looking for the background, and the track record, and experience of the developer. So I think that's the better way to go than the pure auction which is just price only, in terms of getting the best value. I think we're looking at both - - getting someone who can come in there who has the financial resources, the background and experience, to sell the site.

SENATOR SMITH: On the second page, first paragraph: At the end it says, "By eliminating the number of formal approvals required between bid and closing to one" -- that is the EDA board -- "the time required to schedule closing with the successful purchaser would be substantially reduced, increasing the attractiveness of the site to the private party." What approvals are being eliminated under this revision?

MS. FRANZINI: Senator, I don't think any other approvals are being eliminated per se. I think what we're talking about is going to

both the EDA Board for approval, as well as coming back to this Commission for final disposition of the property.

SENATOR SMITH: All right, well that sentence is confusing.

On the third page, at the top-- And this is a document that's been -- crossed out the language that's being changed and underlining the language that's new. I thought at the end of Item 2, disposition strategy, you have -- the EDA's Board will approve the final sale terms. And I think you want to put in there, "Contingent upon approval by the State House Commission," just so it's clear to the purchaser or qualified developer, whatever, that they still have to come back. There should not be any question about that. And as I-- If you put in, "Contingent upon approval by the State House Commission," it's clear that your contract is contingent until we sign on.

MS. FRANZINI: Senator, I'm fine with that. We also have that in Section 9.9, which is a new section, which makes it clear right at the end as well. But we'll add it in both sections. Nine point nine is the new section.

SENATOR SMITH: Right. And I was going to suggest language at the end of 9.9. Nine point nine says, "Prior to the disposition of the project cited, or any portion thereof, EDA shall obtain final approval of the sales terms from the State House Commission." And I would add, "And the contract with the developer shall reflect this contingency."

MS. FRANZINI: That's fine, Senator. Thank you.

SENATOR SMITH: All right?

MS. FRANZINI: We'll make that addition.

SENATOR SMITH: So those two minor changes.

ASSEMBLYMAN CRYAN: In the same thing -- on the RFQ process -- good morning -- 3.2, "Prior to the initiation, the EDA will determine the appropriate level of financial ability." You mentioned the special need because of an urban development. Are there any more stringent requirements that are considered being placed on the financial ability and development experience that is a part of this process that would not be a part of others?

MS. FRANZINI: Assemblyman, what we're looking for is for a developer to have the financial wherewithal -- both that he has equity -- he or she has equity to put in the transaction, as well as a track record of dealing on similar types of projects.

ASSEMBLYMAN CRYAN: That's not my question. My question is: Would these requirements be more stringent than any other -- than any project in any other area? Would they be?

MS. FRANZINI: EDA has a history of having very high standards, so I would say it's consistent with the other standards that the EDA has on doing redevelopment projects. I can't speak to other state standards. I'm not sure.

ASSEMBLYMAN CRYAN: I guess here's my confusion: The waterfront in Camden has been developed in certain areas, has it not?

MS. FRANZINI: Yes, it has.

ASSEMBLYMAN CRYAN: Okay. There are successful areas of redevelopment there to point to. Why then is there such a need to eliminate an option of financing here, and to create something that strikes me a little bit off, after we moved to actually get rid of this Prison, which we understood because of the prime real -- part of the reason -- for the prime

real estate location that this was -- the riverfront, right? That's my understanding. Is that correct? Part of the reason for moving this Prison was because of its desirable location?

MS. FRANZINI: Correct.

ASSEMBLYMAN CRYAN: So if the location is desirable, why then do we need to change the rules to make it -- to eliminate an option of financing and, perhaps, be more inclusive in terms of those members of the development community that could participate? I'm a little confused.

MS. FRANZINI: Assemblyman, I don't think we're-- I think what we're saying here is that we just want to ensure that the developer has the financial wherewithal, both in terms of equity and ability to borrow capital, to see a successful project. What we don't want to see is a project like Asbury Park, for instance, that sat for 10 years with no development occurring because of issues with the developer at that point in time. Now, it took a long time to get through the court system to have it redeveloped. I think all we're saying here is that we just want to ensure they have equity and have a history and ability to raise private capital.

ASSEMBLYMAN CRYAN: Thank you.

MR. TOBER: Senator.

SENATOR CARDINALE: Thank you.

I, as you know, disagree with this process, and I disagreed with this process last time it was before this committee in October of last year, and I disagree with it now.

Interestingly enough, subsequent to that last meeting, I got communications from a number of folks who are in the real estate auction business who pointed out that it is common that many of the objections

that you have been offering to an auction sale -- those objections can be resolved in the terms of bidding. For instance, you point out, rightly, that a project which was bid in, I think, Asbury Park, sat for 10 years. You can make a condition of sale so that that does not occur. You can qualify bidders: that bidders can only bid if they present certain financial qualification to bid.

So it would seem to me that all of the objections that have been offered in our private conversations, as well as here today, can be resolved, and we can still have a bidding process. The bidding process does not exclude dealing with those objections.

I can't support this as it is now. I will say that. I didn't support it last time, and I will not support it now unless we have the final step -- is a public bidding process. This project, in particular, is fraught with so much appearance of mischief. We tore down a facility worth somewhere between \$50 million and \$100 million. A large portion of our determination was made because of testimony from someone who has now been indicted, and he's going to end up in jail, I hope, in the very jail that he asked us to tear down -- he can't be put there. But maybe somewhere else in our prison system.

This is a very, very questionable project from day one. And the only way we can resolve at least some of the clouds surrounding this project is to have a really transparent process for the disposition of this property.

I can't emphasize enough, Ms. Franzini, how this looks. I know there was this neighborhood group which wanted it torn down. I know that we had an ex-governor who seems to have wanted a photo op -- that he was doing something for economic development. I know that they rushed the

tear down so that the change of administration could not reverse the decision to tear it down. All of those things make me feel that it is my duty as a member of this Commission to, at least in this final stage, see that we have a transparent process as the final step.

Now, just a few moments ago -- you weren't in the room -- we discussed in all of these things where we're going to have what is even -- in many cases it's only one likely purchaser -- that we would like the staff to look at the possibility of whatever appraised price we have -- that be an upset price in a sale. You could even do that with this property.

I've made my point.

MS. FRANZINI: Senator, just two things for the record. One, I was not involved, nor was EDA, in a policy decision to tear down the Prison. That was made by other parties. The EDA purely was asked, based on our economic development experience, to be responsible for the demolition and the redevelopment of this site.

We took very much -- listened fully to your comments last time, which is why the two major changes proposed today are: one, not to have a direct sale; two, to come back to this Commission. We completely agree with you that we need to have an open and transparent process. We're fully supportive and behind that. We believe the RFP process gives us the best of both worlds -- of having a very open, transparent process. We'll come back with every single result that we have. I would not want to be involved in anything that wasn't open and transparent, to provide both the best value to the State of New Jersey and also pick the best developer who's going to actually bring value to the site and bring in developments that can bring new tax ratables to the waterfront.

So I'm very much in concurrence with you and believe the two changes we made were directly in response to the changes that you asked for. So I totally agree with you, transparency is critical and important to bring the best value to the State. And we'll share everything. We have an open book at the EDA, and we'll ensure we continue to do so.

SENATOR CARDINALE: You've never actually answered my major point in the discussion here. You've talked about all these other things. What is so wrong, after all of the determination in terms of how it can be developed has been made; after you have a series of qualified, potential bidders; after you have established, as a condition of sale, the time within which the development may occur -- to have those last two or five -- maybe only one -- bidder actually bid at a public auction? Okay, bring it back to us. I think that's a very good idea. But why not have that final price determined in a public bidding process, which is done in the majority of cases where we are disposing of land, whether it be in a municipality, or in a county, or any other-- Why not have that bidding process?

MS. FRANZINI: Senator, I think we're talking about semantics. If I'm--

SENATOR CARDINALE: No, we're not, we're talking about--

MS. FRANZINI: Can I just--

SENATOR CARDINALE: --are you going to negotiate the sale and you pick someone, or are we talking about the process where the market on what people are willing to bid determines the price?

MS. FRANZINI: What I'm saying is I agree with you. If the committee prefers that we-- I really think our approach is the same -- that we would prequalify. If we prequalify, and then have an auction to get the

best price with a list of qualifications be on the experience of the developer and the developer is experienced in doing urban development, and having a financing authority -- we prequalify, and then auction, I'm totally in favor of that. I just didn't want to have -- to sell to just the highest price, with the property sitting idle. So I'm in total-- I think the proposal we're suggesting is that we prequalify, do an RFP, and then have the highest price. I'm indifferent as to what we call it. I just want to have a prequalification process to ensure that we have a qualified developer. If, at the end of the day, we prequalify and then auction off against the shorter list, I'm fine with that process.

SENATOR CARDINALE: In all the discussions that we've had on this property, there has never been an objection for prequalifying the potential developer. If that's your objective, we're in agreement. We're in agreement.

MS. FRANZINI: Yes, that's clearly my-- Perfect.

SENATOR CARDINALE: The only disagreement is: What is the final step before you bring it finally back to us for-- And if you are in agreement to have it auctioned, then you can get my vote on this.

SENATOR SMITH: With that modification, I move the resolution.

SENATOR CARDINALE: I would second it with that modification.

SENATOR SMITH: And those two little tweaks that I had in the language.

MR. SHAUGHNESSY: And the other two modifications proposed.

SENATOR SMITH: With the rest of the modifications.

ASSEMBLYMAN BRAMNICK: Just one comment, and that is: Since the final decision is by this committee, I suspect-- Is that correct?

MR. TOBER: It has to come back to us.

ASSEMBLYMAN BRAMNICK: It has to come back to the committee. Why would we let EDA go out and do the work, bring back those who are qualified? And if there is only one qualified-- I don't know how you have an auction unless you have a base price. So I can understand the concept of an auction, but they haven't gotten out -- they have not yet found those individuals interested. So I have no problem supporting a resolution that has an auction. But it seems to me there should be one more step when it comes back here to determine whether an auction is feasible or not. Because I think that's going to be an issue at the end of the day anyway.

SENATOR SMITH: That would be the part of that final decision anyway, I would think.

ASSEMBLYMAN BRAMNICK: Fine.

SENATOR CARDINALE: Well, if you get no bidders at the auction--

MS. FRANZINI: Can I just have a clarification? If we have multiple interests through an RFP process -- if we go to auction and then come back to this committee -- to this Commission for the final approval, as long as we have more than -- as long as we have multiple responses that are qualified bidders,- and then we auction it, and then come back to the committee for final approval?

SENATOR CARDINALE: Yes.

MS. FRANZINI: Thank you.

MR. TOBER: Does staff have enough to get that motion?

MR. SHAUGHNESSY: So it's also to include a public auction at the end.

MS. FRANZINI: I understand -- just make sure that I understand for the Commission -- that we will do an -- we will set up prequalifications that have to do with experience and financial ability of the developer. We will develop that list of -- advertise it publicly. Whoever is prequalified -- we'll develop a short list, and then we'll say we'll have an auction on a specific date. They will then submit their proposals. We will come back to this Commission for final approval of the highest price that was submitted through the auction process.

MR. SHAUGHNESSY: Yes, Mr. Ridolfino.

I was remiss before. Senator Smith has joined us, Mr. Ridolfino has joined us.

MR. RIDOLFINO: Thank you.

Caren, if it comes back-- Let's say there are only a couple of firms that are qualified, and we do a public auction, and it comes back and it's determined that the highest bid is well-below market -- I mean, you have the authority to reject that bid, or is it something that can be negotiated after the fact? I mean, how does that work?

MS. FRANZINI: I think I would come back to this Commission to-- Whatever we come in with as the result of the public auction, we will come back to this Commission for a final determination on how to proceed?

MR. RIDOLFINO: And do we have the authority to reject the bid if it's well-below market?

MR. SHAUGHNESSY: I would think it will return to the Commission. The Commission has the final bite at the apple.

SENATOR SMITH: Right.

ASSEMBLYMAN BRAMNICK: Everything is subject to the vote here, I suspect.

MR. TOBER: Correct.

SENATOR CARDINALE: Let me just ask the question: Is there any reason why you cannot establish an upset price before that bidding?

MS. FRANZINI: Our goal would be to have an appraised value as the minimum sell price.

SENATOR CARDINALE: I think that that's easily overcome in the terms -- the preconditions of the auction.

I would second that motion, if it is clear now to the staff what the motion is.

MR. SHAUGHNESSY: We have a motion and a second. Any more discussion on this matter? (no response)

Okay. I will call the roll.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: 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 motion is approved unanimously.

MS. FRANZINI: Thank you very much.

MR. SHAUGHNESSY: Thank you very much for your participation.

Okay, on to Commission new business.

Okay, under new business we have three annual Department of Human Services requests. Items No. 5, 6, and 7 are these -- and should the State House Commission members have any questions, we should have DHS representatives here to answer them.

Item No. 5 is the approval of the County Facility Rate Setting Methodology Revision.

SENATOR SMITH: What happened to No. 4?

MR. SHAUGHNESSY: Pardon me, did I miss that?

MR. TOBER: No, we did No. 4.

We held No. 3, Senator, until EDA representatives came. That was the Verizon easement.

SENATOR SMITH: So we've already done No. 4.

MR. TOBER: Yes, I'm sorry, that was before you were here.

SENATOR SMITH: Sorry.

MR. SHAUGHNESSY: So we're on Item No. 5 here.

The State of New Jersey budget for Fiscal Year 2011 requires the DHS to reduce the per diem rate used to reimburse county psychiatric hospitals where the individual county hospital rate is found to exceed the comparable State psychiatric hospital rate effective January 1, 2011.

The Department of Human Services is hereby recommending the following resolution for consideration by the Commission: Whereas, pursuant to N.J.S.A. 30:4-78, the State House Commission shall fix the rates to be charged to the State for clients residing in the county psychiatric hospitals. Therefore, be it resolved that the proposed revision to the County Psychiatric Hospital State Aid Reimbursement Methodology, resulting from the language provision included in the State of New Jersey budget for Fiscal Year 2011, be adopted by the Commission.

Do we have a motion?

SENATOR CARDINALE: I have some questions.

ASSEMBLYMAN CRYAN: Questions.

MR. SHAUGHNESSY: Fine.

SENATOR CARDINALE: Is there a representative from Human Services?

MR. SHAUGHNESSY: I'm sorry.

Yes, please, step up. Please identify yourself for the record, gentlemen.

J O E L T E B E E S T: Good morning.

I'm Joel Tebeest. I'm the Acting Finance Director for Human Services. This is Mark Stein. He's in charge of our Rate Setting office.

SENATOR CARDINALE: I noticed that in the subsequent approvals, there are specific rates to be approved with respect to various institutions. And it seems to me that there is a very large disparity in the rates to be approved from one institution to another. For instance, the Buttonwood Hospital of Burlington County is a \$470 per diem for in-patients, and the Essex County Hospital Center in-patient services is \$841. That's almost double from one institution to another.

Now, I understand there's a difference in costs for certain geographic considerations. But then I note that Bergen County, which is one of the highest cost areas in the state is much less again. Can you give us some explanation for this wide disparity in the per diems? Particularly, my concern is: Are we rewarding inefficient operations and thereby discouraging more efficient operations?

MR. TEBEEST: Thank you, Senator.

The difference in cost can be for a number of reasons. These are different sized facilities. They serve slightly different populations. In the case of Essex County, they have a quite new facility with higher costs involved. And there are a number of reasons why costs can differ.

In terms of efficiency, this year a cap was put in place for rate setting that suggests that the county hospital rate must be compared to the State -- the average State institutional rate. And to the extent that they exceed that rate, they will be limited.

Now, this is just one attempt to encourage efficiency. I don't think, so far, we have come up with a better way that might take a closer look at the individual needs of any one hospital. And certainly we're open to suggestions in that regard.

SENATOR CARDINALE: Does the Department evaluate the numbers that are given to you in terms of whether those numbers have to be what they are? Do you follow what I'm-- If you're dealing with a-- These are sort of public or semi-public facilities. Do you-- In what kind of depth do you evaluate these things? One county may decide to pay people at a higher rate than another county. One county may have two people doing a job that in another county is being done by one person. Do you evaluate to that degree, or do you simply take the numbers, add them up, and say, "Well, it comes out to this?"

MR. TEBEEST: Well, I will say that the starting point is Medicare cost reports from two years ago, using the actual costs of the facilities. And those cost reports demand a consistent structure and approach. There are costs that are not allowable according to the Federal government. That certainly helps level the playing field. And then beyond that, we do a careful review on our end to look at all cost categories, look for cost variances. We have a back-and-forth discussion with the county hospitals where we see unusual changes or things that concern us. I think it's a reasonable process to take a close look at what the counties are doing.

MARK STEIN: I just wanted to add one thing, Senator.

There is a process in place, annually, where the counties submit an annual financial and management plan to the Division of Mental Health Services, which includes a review of their staffing plans and plans for any changes in operations before they occur. So that is looked at in advance. And afterwards, when the actual costs are submitted, there's another desk review process at that point.

The costs are also audited through the Medicare intermediary, and the Department is advised of any audit findings. And they can also be reflected in these rates at a later date if they occur.

SENATOR CARDINALE: Can you give me any sort of rationale for why Burlington and Bergen seem to be very low by comparison with Camden, Hudson, Essex, and Union? There seems to be-- Now, I understand that Camden, perhaps, is a less expensive area. I'm sorry, Burlington might be a less expensive area to live in -- cost of living, etc. Bergen is very high, yet those two are fairly close to one another. Camden, which is also in South Jersey -- where I would expect it to be a little bit low -- jumps way the heck up. And it reaches the same level almost as Hudson. Essex and Union -- and almost the same as Union. And Essex is higher yet.

What creates that disparity? Is there some individual factor that you can point out that creates this dramatic difference? I mean, we're not talking about a \$50 a day difference. We're talking about hundreds of dollars a day.

MR. STEIN: Well, in addition to what was mentioned earlier, it's a combination of factors. Some of it is related to the overhead costs of the county governments for instance, where in the case of Essex County, for example, there are considerable county overhead costs that are allocated to the Essex County Hospital Center and the maintenance of that facility. Some of the facilities are larger than others, so they may have more efficiencies in their operations versus a smaller facility like Buttonwood Hospital with only 30 psychiatric beds -- still has to operate and have the -- maintain the certification. So there are still certain--

SENATOR CARDINALE: But they maintain the certification at \$470 a day. Is that because they're small? Do you mean large costs more?

MR. STEIN: Not necessarily. Well, in the case of Essex County, for example, they opened a brand new, state-of-the-art psychiatric facility in 2007.

SENATOR CARDINALE: I've been there, I've seen it.

MR. STEIN: Well, the depreciation, the interest expense related to that facility alone is approximately \$125 per day added to this per diem for their facility.

Another significant factor can be something called the *carry forward provision*, where prior-year costs are adjusted to actual, and that's rolled forward into the future period rate. That does tend to vary from year to year and causes some volatility in the rates.

MR. TEBEEST: In the case of Burlington -- one of the ones you noted as low -- they had a particularly large negative carry forward in this year. So, effectively, we overpaid Burlington in Calendar Year '09, and we're reclaiming that cost through a reduction to their reimbursement for this Calendar Year '11 rate. And that allows us to reimburse that cost gradually across Calendar Year '11 rather than approach Burlington and ask for an immediate reimbursement. It's an effort to work with the counties and their abilities to budget.

SENATOR CARDINALE: Thank you.

ASSEMBLYMAN CRYAN: Thank you.

I'm going to flip to item 7, the same page Senator Cardinale was one. How come-- Where are the old rates? Do you folks supply us the old rates, or are we on our own?

MR. TEBEEST: For the--

ASSEMBLYMAN CRYAN: I mean, you have the new rates here.

MR. TEBEEST: --county hospitals?

ASSEMBLYMAN CRYAN: The ones Senator Cardinale just referred to. Where are the old rates?

MR. TEBEEST: We can supply them for you.

MR. STEIN: I have those available here if you'd like me to read them off.

ASSEMBLYMAN CRYAN: Well, in a second. I would like to, for the members of the Commission -- whether it's in the form of a motion or not-- I understand this is an annual thing.

MR. TEBEEST: Yes.

MR. STEIN: That's right.

ASSEMBLYMAN CRYAN: As part of the annual document you should have the old rates. At least you'd have something to refer to in terms of what you're voting on. So keep that in mind.

Why don't we just go to-- Tell you what, just give me Union County, Runnells. I understand that's a \$75 a day decrease. Is that correct? Currently you're asking for us to vote for an in-patient rate of \$723. What's the old rate?

MR. STEIN: The Calendar Year 2010 rate for Runnells Hospital of Union County is \$841.33.

ASSEMBLYMAN CRYAN: As a matter of fact, are there any of these that we're giving an increased rate to?

MR. STEIN: Well, most of the rates across the board are lower for the counties this year, with the exception of two in Bergen County. The acute partial hospital rate is higher by \$2.61, and the out-patient psychiatric rate is higher by \$8.55.

ASSEMBLYMAN CRYAN: But here the in-patient rates are listed as N/A for that. Do I have that correct? Bergen County Regional is what you're talking about, acute partial psych. Do I have that correctly?

MR. STEIN: The N/A refers to out-patient just for those categories that it's not an out-patient rate.

ASSEMBLYMAN CRYAN: So these facilities which treat -- these are psychiatric facilities.

MR. STEIN: That's correct.

ASSEMBLYMAN CRYAN: And what we're talking about here is the care that we provide for those who are undergoing psychiatric needs that have been evaluated and are designated to these facilities. Is that correct?

MR. STEIN: Yes, sir.

ASSEMBLYMAN CRYAN: Okay. And so what we're doing here is, we are decreasing the amount of funding provided to provide those folks, no matter where you are in the state, some sort of level of care that has been designated, correct? Am I correct?

MR. STEIN: Yes.

ASSEMBLYMAN CRYAN: Okay. You folks said that these hospitals provide you with a financial plan of some sort. Is that correct that you do an evaluation?

MR. TEBEEST: Yes.

ASSEMBLYMAN CRYAN: Did any of them ask for a decrease?

MR. STEIN: It doesn't-- You mean specific to staffing for instance? It's not tied to--

ASSEMBLYMAN CRYAN: Tell you what, let me be direct and use an example. When the Union County -- Runnells Specialized Hospital provided their plan to use as a basis to this, did they ask you guys to cut the funding by \$75 a day per patient?

MR. STEIN: No, they did not.

ASSEMBLYMAN CRYAN: What did they ask for?

MR. STEIN: Well, they don't ask for, specifically, their rate to be adjusted one way or the other. There is a mechanism to do that if, during the process, when the rates are being developed, there is an anticipated change in their operations and they make us aware of it -- we can reflect an adjustment in the rate calculation to lower the rate.

ASSEMBLYMAN CRYAN: So can you provide for us and tell us now, before we vote, what the change in operations are for each of these that are receiving a decrease in terms of the care of the mentally ill?

MR. STEIN: Primarily, the reason for the reductions here across the board were because the reported costs for the current year were less than anticipated, and that's resulting in a negative adjustment for the prior year costs.

ASSEMBLYMAN CRYAN: So it's your view that these folks can eat this. Is that what you're saying to us?

MR. TEBEEST: Let me just say that in Calendar Year '09, Runnells Hospital was overpaid. We went through this process to set an estimate. You have to remember that the rates we're setting today are an estimate of what we believe the rate will be in the coming, future year.

ASSEMBLYMAN CRYAN: Really?

MR. TEBEEST: We went through this process a few years ago. That rate was overstated after actual data -- after actual year-end data came in.

ASSEMBLYMAN CRYAN: So if I hear you right, you're telling me -- because I did make a couple of phone calls Friday. Guess what? These folks don't think they were under paid. And guess what? They don't think, shockingly, that decreasing them by 10 percent, in terms of the care of the mentally and psychiatrically ill, is a good budgetary and good public policy -- at least the two I had the chance to speak to with only a couple days notice on this thing. As a matter of fact, they find it to be that they'll provide less care for those in need -- frankly, those among us who need the care, possibly, the most. How would you tell me that that is something different?

MR. TEBEEST: Well, we're following the methodology set by this Commission, and we're using actual cost data.

ASSEMBLYMAN CRYAN: Is that No. 5 here?

MR. TEBEEST: Yes.

ASSEMBLYMAN CRYAN: So the methodology is No. 5 here -- is that correct -- established by this Commission?

MR. TEBEEST: It's referred to in No. 5, yes.

ASSEMBLYMAN CRYAN: Referred to as Item 5. And 6 or 7 are your actual rates, which we get to guess at unless we ask. And then we get to find out what the impact of the care is later after the estimates are done. Is that essentially what you're telling me?

MR. TEBEEST: We're doing the best we can to be transparent and to provide whatever information you need.

ASSEMBLYMAN CRYAN: Okay. Well, this process is terrible. You don't need to answer that. I'm telling you it is, from somebody who gets this thing with four days notice and gets to read about rates that are going to deny the most vulnerable among us, in essence, important care. We're increasing rates, and you have to play musical question to find that out, which I think is terrible in terms of a process. And, frankly, I'm not going to vote for things that put folks -- psychiatric folks potentially out on the street when they need it the most. And I think you guys need to look at this process, because this is brutal and it just doesn't work.

So whatever that is, to the Commission, I'll just tell you now I'm voting no on 5, 6, and 7. And I think that this is a terrible, terrible way to handle the mentally ill among us and how we process and look at their evaluations and their care.

SENATOR SMITH: I have a question or two. The adoptions of these resolutions are for what budget year?

MR. TEBEEST: It's for Calendar Year '11.

SENATOR SMITH: Calendar Year '11.

MR. TEBEEST: Calendar Year '11.

MR. SHAUGHNESSY: If I may, Senator Smith, I think there is one typo in No. 7, just for the record. In the description of Item No. 7, under the terms provision, it says these rates are to be charged at 45 percent for January 1 through June 30 -- it should say 2011 there -- service; and 125 percent for June (*sic*) 1 through December 31, 2011. So just that '10 needs to be '11 in the first part of that sentence. With that, when the time comes, we'll vote as appropriate.

SENATOR SMITH: All right. Well, the reason I asked that question is that it seems that there's two different arguments here. One is that there is a reduction in rates because there was no justification for the rate, or whether there were less services provided than should have been paid for. I get that as an argument. And then I get the other argument that maybe this is a budget-cutting mechanism as opposed to following whatever our protocols are. In the resolutions there's a list of prior protocols that the State House Commission adopted on this.

And since this is a 2011 project, maybe we have a little -- before we take a vote on this issue, maybe we give the gentlemen an opportunity to justify the rate reductions. Tell us what it is that, specifically, resulted in the rate reductions. The concern you always have is that we're balancing the budget on the backs of the mentally ill, and I don't think we want to do that.

On the other hand, if you follow the protocols, prior procedures adopted by the committee, and this is the way the number ended up -- that would be my view of the situation. So one suggestion: Maybe we want to hold this until the next State House Commission meeting and get the backup.

The other comment I wanted to make on Resolution 7: At the top of the page in the summary document, it says failure to comply with any aspect of the Certificate of Need or its conditions, as determined by the Department of Health Services, may result in a reduction of the rate for the applicable period by 25 percent each month of such noncompliance. And I understand that the Department needs a hammer to make sure that the people, the institutions comply with the certificate of need. But the problem I have is that this -- the way that language reads, you can go backwards. I think that should be revised or a document should be revised such that you would say each month after notice of such noncompliance and failure to correct. You need a hammer to make sure they're doing what they should do. But going backwards only puts an institution at a greater risk, and then services to their patients at greater risk. So I make those two suggested revisions: after -- insertion of "after notice" and "of such noncompliance and failure to correct."

Other than that, if I had a proper -- if I had a justification about why the rates were dropped, other than budget balancing as opposed to actual cost of services, this might be the right thing to do.

But I need more information. I think Assemblyman Cryan is correct on that. We need better justification. And also, let's see last year's rates. Show us. You mentioned the protocol. I'd like to see the copy of the protocol for setting the rates and then show us how you set the rates using that protocol.

MR. TEBEEST: Do you want us to attempt this now, or do you--

SENATOR SMITH: I don't think you should try and do it now.

MR. TOBER: Let me just ask the representatives, is there a procedural impediment if we don't adopt this by the end of the year? I'm not sure if the Commission is going to meet again in December. I mean, we can, but--

SENATOR SMITH: We've only had three meetings in the last 45 days. (laughter)

MR. TOBER: Just for the record, is there a problem if this -- if action is not taken on these items before the end of the year?

MR. TEBEEST: These rates need to be utilized starting January 1 for reimbursement between the counties and us in both directions. So I will defer to Mark to let us know how problematic that would be if there was a delay.

MR. STEIN: Without the approved rates in place, for instance, we would not be able to advise the counties of their anticipated revenues from State aid until the rates-- And as far as the billing--

SENATOR SMITH: There's a need for certain. Why don't we just agree we're going to meet in March (*sic*) either telephonically or in person?

MR. TOBER: In December. I said March, and I don't know-- Long weekend reading this book.

It's an easy way to do it. It's an important issue. We should have justification.

MR. TOBER: Do the representatives from Human Services have a sufficient clarification as to what additional information is needed?

MR. TEBEEST: You would like to see a comparison to the previous rates, and would like to better understand our rate-setting process.

SENATOR SMITH: Give us a copy of the protocol.

MR. SHAUGHNESSY: Copy of the methodology.

MR. TEBEEST: Copy of the methodology.

SENATOR SMITH: And then show us how you actually calculated the rate on the--

MR. TEBEEST: And what we will be trying to demonstrate is that we're setting rates that are representative of actual costs at these facilities.

SENATOR SMITH: Right. The sooner you get us that information the better. Because I'm sure in the case of Assemblyman Cryan, the first thing he's going to do is go back to Runnells and say, "Validate, tell us if this information is correct."

MR. TOBER: Senator Cardinale.

SENATOR CARDINALE: I would like one more piece of information, and that is-- While I understand that you have a formula by which you come to different rates, where the rate is higher or lower than an average of the various facilities, tell us what factors-- Now, you started to tell us you had a higher interest in Essex County. Tell us what factors create that differential.

And the reason that this-- Just so you understand my concern, in Bergen County we have always felt that the Hospital was run pretty inefficiently and that it was using a lot of money. But now that I look at the statewide average, I find that it's much lower than the others. That

leads me to suspect that the others are even more inefficient. And I'd like you to take a look at these costs from that perspective.

From what you have said, you seem to be adjusting downward. So your formula has resulted in some differences, but they don't seem to reflect the perception -- which could be very, very far off, because the perception is only a perception that is created in the public mind from anecdotal observations, not from real formula-driven observations.

MR. TOBER: Can we have motion then to table Items 5, 6, and 7?

SENATOR SMITH: Table to December.

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Okay, motioned by Senator Smith.

A second to that motion?

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: Thank you.

Roll call.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Those three matters are tabled.

Next, onto the Department of the Treasury requests: The first is RPR 10-02. Treasury, on behalf of the Department of Education, requests approval to lease 31,800 square feet of space located on the grounds of the Marie H. Katzenbach School for the Deaf to HomeFront, Inc., a private agency that provides for homeless families in Mercer County.

The lease will be for a term of three years, with one, three year renewal. The annual rent shall be \$318,000, which is based upon an appraisal for the first year. The renewal options are to be determined by fair market appraisal. This lease is currently on a month-to-month basis, so a new lease is needed.

Do I have a motion?

SENATOR SMITH: So moved.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN CRYAN: Second.

MR. TOBER: Any discussion? (no response)

MR. SHAUGHNESSY: Okay, roll.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter passes.

No. 9: RPR 10-08, Treasury, on behalf of the Department of Human Services, requests approval to grant an easement to South Jersey Gas for the replacement of the existing underground gas lines to Ancora Psychiatric Hospital.

Since this easement directly benefits the State, it will be granted for \$1.00.

SENATOR CARDINALE: Move it.

MR. SHAUGHNESSY: Second?

SENATOR SMITH: Second.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Pardon me, Senator Smith, as well.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Approved.

Item No. 10-- Actually, if I may, with the Chair's permission, I would like to take Items 10 and 12 together because they both relate to Richard Stockton State College, and then Items 11 and 13 as they relate to Kean University.

Item No. 10: Treasury, on behalf of Richard Stockton State College, requests approval to grant an easement on vacant land located at the main entrance of the Richard Stockton State College to Atlantic County for the installation and maintenance of a traffic signal. This main entrance has been very hazardous for vehicular traffic entering and exiting the campus. Atlantic County will install and maintain the traffic signals at no cost to the State, but they require this easement. Since this action directly benefits the State, the easement will be granted for \$1.00.

SENATOR CARDINALE: Move it.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN CRYAN: Second.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The motion is approved.

Okay, so then we'll move to Item No. 12 (*sic*) -- pardon me, Item No. 13, thank you.

Another matter: RPR 10-19, Richard Stockton State College. Treasury, on behalf of Richard Stockton State College, requests approval to grant a utility easement on the grounds of Richard Stockton State College to Atlantic City Electric to provide electric service to the new athletic fields at the College. The easement area will consist of a 10-foot wide by 300-foot long parcel of vacant land. Since this easement directly benefits the State, the easement will be granted to Atlantic City Electric for \$1.00.

Motion?

SENATOR SMITH: So moved.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Assemblyman Cryan seconds.

Any discussion? (no response)

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter is approved.

Okay, we will just go back to the two items regarding Kean University.

Item No. 11: The New Jersey Department of the Treasury, on behalf of Kean University, requests approval to grant an easement across vacant land located on the grounds of Kean University to the City of Elizabeth. The easement actually spans across land located in both Union Township and the City of Elizabeth.

The easement is necessary for a storm sewer improvement project that will alleviate flooding in the area and will allow for the construction of a pumping station, control building, and appurtenances on Kean property to consist of approximately 0.43 plus or minus acres of vacant land. The easement will relieve flooding in a City of Elizabeth neighborhood that has plagued them for many years.

In lieu of payment, the City of Elizabeth will construct a much needed emergency access road, 15 feet wide by 240 feet long, with direct access to the dormitories on the University campus, which will immeasurably increase safety for the student body.

Do I have a motion for this matter?

SENATOR CARDINALE: So moved.

MR. SHAUGHNESSY: Second anyone?

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Thank you, Assemblyman.

Any discussion? (no response)

If not, I will call the roll.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That matter is approved.

And Item No. 12 also involving Kean: The New Jersey Department of the Treasury, on behalf of Kean University, requests approval to grant an easement across vacant land located on the grounds of Kean University to PSE&G.

The easement is necessary to provide electrical service for a storm sewer improvement project that will alleviate flooding in the area and that will provide electric service to the pumping station, control building, and appurtenances. Since this storm sewer improvement project directly benefits the State and its residents, the easement will be granted for \$1.00.

Motion?

ASSEMBLYMAN CRYAN: Motion.

MR. SHAUGHNESSY: Second?

SENATOR SMITH: Second.

MR. SHAUGHNESSY: Any discussion? (no response)

If not, Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Thank you, that motion is approved as well.

Okay, we're onto Item No. 14: RPR 11-03. Treasury, on behalf of the Department of Corrections, requests approval to sell by direct sale 4.3 plus or minus acres of vacant land to the Sansone Auto Dealership, the only adjacent property owner.

It will be used as a Lube Technician Building, to train eligible ex-offenders for the auto industry through a program that will operate from this site.

The property will be sold for fair market value, to be determined by an appraisal. And I would like to add that it would be subject to legislation, if necessary.

SENATOR SMITH: Question: The subject to legislation meaning that it may require a bill in order to effectuate it?

MR. SHAUGHNESSY: Yes, Senator Smith. The reason being is if the appraised value is over \$500,000, it will require another look by the Legislature.

SENATOR SMITH: Okay. And just to be clear, I think the offer of Sansone to provide that Lube Technician Building and train eligible ex-offenders-- That's actually not part of the consideration for the property. The property is being sold because it's surplus. And the only reason I put that on the record -- at least my view on the record -- is that 10 years from now, the lube technician training program may not exist. So let's be clear that we're not doing this because of the program, we're doing it because it's surplus property. And Sansone is going to do a mitzvah. They're going to do a good thing with the property and probably something that's a service to them from the point of view of profit and so on. That's not consideration for the sale.

MR. SHAUGHNESSY: You're absolutely correct.

SENATOR SMITH: Okay. I'm good with that.

SENATOR CARDINALE: It would seem to me that this is in line with the discussion that we had with respect to Item 19, which the Assemblyman brought up. It's a similar kind of situation.

Now, while this is a negotiated sale to the only adjacent property owner, it's four acres. It would seem to me that four acres is

enough to generate some bidding in what is apparently a valuable location. I'm not terribly familiar with this location. Perhaps Senator Smith is. It's in his county.

However, is there any appetite by anyone else on the Commission to have the fair market value, as determined by the appraisal, become the upset price in an auction? It would seem to me that's consistent with our prior action on Item 3.

SENATOR SMITH: That's the wonderful thing about being a legislator: you don't necessarily have to be consistent. But I think the distinction -- and maybe I (indiscernible) the distinction -- is that because the prison-- The prison is next door to this, right?

MR. SHAUGHNESSY: It is.

SENATOR SMITH: Yes. I mean, it seems to me they're offering to do this program as a synergistic interaction with the prison. And it's from that point of view they should have the racer's edge. If it's at fair market value, they don't have so much of a problem. If it was a request for proposal, request for qualifications around the only adjacent property owner, I'd have a bigger problem. As long as I know they're going to pay the fair market value -- and this program is kind of like the cherry on the sundae, but it's not a guaranteed cherry forever -- I don't have too much of a problem, which is a little bit inconsistent with the--

SENATOR CARDINALE: As you pointed out, there may be no need for that program at some time in the future.

SENATOR SMITH: Absolutely. It may be gone in 10 years.

SENATOR CARDINALE: And that property is going to be transferred forever.

SENATOR SMITH: That's true.

SENATOR CARDINALE: Now, there may be no one else capable of providing, at that location, a similar service; or willing to provide a similar service, so there may only be one bidder. But we have nothing to lose, as the State of New Jersey, if we take this fair market value appraisal and create an upset price. The net effect may be the same. And only if that upset price seems low to some other party would you get a second bidder.

My original question was: Again, is there any appetite by other members of the Commission for that kind of a process? Because then we could do this right down the line on all the others that are similarly suggested.

SENATOR SMITH: You're not hearing your appetite.

Jerry, you're not hearing appetite. (laughter) I think each case has to be evaluated on its individual merit. The prison program is a big plus, even though it's not a guarantee.

SENATOR CARDINALE: There are other members of the Commission. Does anybody else share my reservation?

MR. TOBER: Senator, if we're going to look at this for the next meeting and put it into procedures for the January meeting, I think we should do that. That's just this member's opinion. I understand your concern, but that's my two cents.

SENATOR SMITH: Let's raise it at the (indiscernible) with the resolution.

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Motion and second on this item.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Abstain.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Noting the abstention, the matter is approved.

Okay, we're on to the next matter, which I believe is Item No. 15: RPR 11-04. Treasury, on behalf of the Department of Human Services, Division of Addiction Services, requests approval to lease a former employee apartment building located on the grounds of the Hagedorn Psychiatric Hospital to Freedom House, Inc., a service provider currently under contract with the Division of Addiction Services.

The lease will be for a term of one year, with a one-year renewal option at an annual rent of \$1.00. In exchange, Freedom House will provide five beds for clients for the Division of Addiction Services and be responsible for all utilities associated with their use of the space.

Is there a motion on this matter?

SENATOR CARDINALE: I'll move it.

SENATOR SMITH: Second.

MR. SHAUGHNESSY: Any discussion? (no response)

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter is approved.

16: RPR 11-05. Treasury, on behalf of the Department of Environmental Protection, Site Remediation Program, requests approval to convey a small parcel of vacant land -- I believe it's 40 by 100 feet -- from the New Jersey DEP to the U.S. Environmental Protection Agency for \$1.00, to allow the U.S. Environmental Protection Agency to sell the property along with other contiguous lots owned by the U.S. EPA.

All of the lots were contaminated with radioactive waste and were cleaned up to meet residential unrestricted soil standards by U.S. EPA contractors, with the Federal government paying more than 90 percent of the testing and clean up costs and with the DEP paying under 10 percent of the costs.

DEP believes that it will receive a better return on its past costs by allowing the U.S. EPA to market the properties as a package as opposed to an individual sale of the 40 by 100 foot lot that is located between other vacant lots of similar size. DEP anticipates it will cost the State more to market and sell the property than it would make on the sale.

Do I have a motion on this one?

ASSEMBLYMAN CRYAN: Question.

MR. SHAUGHNESSY: Sure.

ASSEMBLYMAN CRYAN: Is somebody here to answer a question or no?

MR. SHAUGHNESSY: I believe there is.

ASSEMBLYMAN CRYAN: How do we get paid in the end for the dollar?

MR. SHAUGHNESSY: Please come up and identify yourself.

F R E D E R I C K M U M F O R D: Hi, my name is Fred Mumford. I'm a Superfund Coordinator for DEP Site Remediation.

We get paid through-- We have Superfund State contracts where we share the costs of these cleanups with EPA. And under those contracts, we have payment table schedules. And we-- When there's reimbursements made -- need to be made back to the State, they're adjusted. Our payments -- our future payments to the EPA on this ongoing cleanup project would be adjusted.

ASSEMBLYMAN CRYAN: All right, help me. I get it. I look at the map. The thing looks like it fits in a parcel. I get that.

MR. MUMFORD: Right.

ASSEMBLYMAN CRYAN: I get that we pay less than 10 percent of the cleanup costs, but I don't know how much that is and I don't know how many parcels we owned previously or didn't own.

MR. MUMFORD: This is the only one. This is the only parcel we own in Gloucester City.

ASSEMBLYMAN CRYAN: How much is the State of New Jersey in for in the cleanup?

MR. MUMFORD: In the cleanup on this individual property, I'd have to guesstimate, because we do large contracts. For this we paid probably -- there's \$25 million a year that EPA spends, and we pay about \$2.5 million of that. These are--

ASSEMBLYMAN CRYAN: So we're in for about a couple million. Is that what you're telling me?

MR. MUMFORD: I'm talking about each year for ongoing cleanup work at multiple properties. For this property itself, I can get you a figure specifically. I don't know that.

ASSEMBLYMAN CRYAN: Here is what I want to understand. We have this property. The State of New Jersey owns a parcel. We're in for a few quid at least on the cleanup. This thing says we're going to sell it back for a buck. I believe that's what this says. Where's our end? When do we get-- How do we get any other money back? This says that on a sale later we might see something. How does that work?

MR. MUMFORD: The Army Corps of Engineers, through their Baltimore district, sells property. They have a real estate arm. They will hire a realtor to sell these properties. When that sale is conducted, we'll get credit on future costs.

ASSEMBLYMAN CRYAN: Future costs of what?

MR. MUMFORD: This is an ongoing cleanup. This cleanup won't be done for another five years. There are multiple properties nearby.

ASSEMBLYMAN CRYAN: I understood it, from this document, to be that it was cleaned up. I mean, that's the way I interpreted it.

MR. MUMFORD: That area is cleaned up. There are other ongoing cleanup work in that same town that we're going to owe future moneys on. So we won't-- So if we owe \$2 million for that year, they'll take \$2 million minus what we get back on that property. They'll deduct that amount. So we'll get that money credited to us in a future payment to EPA.

SENATOR SMITH: The amount of money that's involved here is not really a dollar.

MR. MUMFORD: That's correct. That's just to allow the transfer.

SENATOR SMITH: That's just so that you have a consideration on the deed of transfer.

MR. MUMFORD: That's right.

SENATOR SMITH: When the parcel is sold, the State of New Jersey, as I understand what you're saying, will receive a prorated credit in the area of our parcel versus the total area. You multiply that fraction times whatever the purchase price is. That's now dollars on your side, on the credit side.

MR. MUMFORD: That's right.

SENATOR SMITH: And at some point, when you--

ASSEMBLYMAN CRYAN: Okay.

SENATOR SMITH: A number of years from now, when the EPA adjusts the books, you get a credit for that prorated portion.

MR. MUMFORD: That's correct.

SENATOR SMITH: Okay.

MR. MUMFORD: We do that each year on this site, because it's an ongoing project.

ASSEMBLYMAN CRYAN: That must be some accounting.

MR. MUMFORD: This is the largest Superfund site in terms of money. It's going to be the most expensive, at probably \$300 million.

ASSEMBLYMAN CRYAN: Wow. All right, thanks.

MR. TOBER: Any further discussion? (no response)

MR. SHAUGHNESSY: If not, is there a motion?

SENATOR SMITH: So moved.

MR. SHAUGHNESSY: Second?

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: I'll call the roll.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter is approved.

No. 17-- We now move to the Department of Transportation requests.

Item No. 17: New Jersey DOT requests approval to sell, by direct sale, to the adjoining property owner, Suiafan Ali Walid of Elmer (*sic*) Park, New Jersey, who currently operates a gas station on the adjoining property.

The parcel is approximately 0.198 acre and is encumbered in its entirety with a drainage easement. The recommended sale amount shall be \$79,000, the appraised value.

SENATOR SMITH: Mr. Shaughnessy, let the record reflect that I'm not participating in this discussion. I'm not certain whether this gentleman was or was not a client of our firm, but he sounds like he might have been. We represented a gentleman with that kind of name in a gas station matter. So I'm going to just respectfully stay out of this discussion.

MR. SHAUGHNESSY: That's clear, Senator Smith. Thank you.

SENATOR CARDINALE: Can someone clarify this: It says the parcel is encumbered with a subsurface drainage easement and cannot be built upon. But later it says that the property owner has a working gas station and small convenience store which he proposes to expand upon this acquisition. That seems to be a contradiction.

MR. SHAUGHNESSY: Please identify yourself. Thank you.

J A M E S D A R R A R: Yes, it's James Darrar from the DOT, property management supervisor.

When we say it can't be built on, you can't put a structure on it. We have subsurface drainage there. But they can add that to their build ratio if they want to expand their property. What he has is a gas station. He wants to be able to put, I think, a convenience store or something. You know how they have now these Gas and Go -- get a sandwich, get your coffee. Obviously he's not going to have a big enough property. If he buys this area that he can't build on, he has now a bigger lot. He can go back to the Township, and he's got space for a green (indiscernible) or, in this case, I think there's actually quite a large area between our right of way and the area where his pavement ends. So he can't physically put a structure on that would impede our drainage ability. And he can't-- So in that sense he doesn't get that benefit out of it. He does get the benefit of being able to put a larger facility on there. Right now, he can't accommodate the convenience aspect that he wants to have. We don't want him building on that subsurface -- impacting our subsurface drainage area.

SENATOR CARDINALE: I have no other questions.

MR. SHAUGHNESSY: Any other questions or discussions on this matter? (no response)

Motion?

ASSEMBLYMAN CRYAN: Motion.

MR. SHAUGHNESSY: Second? Motioned by Assemblyman Cryan. Second?

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: Senator Cardinale, thank you.

MR. DARRAR: Commission, if I could just have your attention, when you get to No. 19, there was a typo we noticed. It's actually VXR3I2.

MR. SHAUGHNESSY: Thank you, Mr. Darrar.

Okay, Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: And it is noted that there was an abstention -- recusal by Senator Smith in this matter.

That matter is approved.

The next is No. 18: The New Jersey Department of Transportation requests approval to sell, by direct sale to the adjacent property owner, Rothschild Realty I, LP -- Nathan Hellman of Monsey, New York, managing member -- 0.044 acres. The recommended sale amount shall be \$23,000, the appraised value.

Is there a motion on this matter?

SENATOR SMITH: So moved.

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Okay, motioned and seconded.

Any discussion? (no response)

Hearing none, Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter is approved.

No. 19 -- there is a typo apparently -- and I just, for the record--
Where is Mr. Darrar.

I'm sorry, I just want to make sure the agenda item is accurate
on No. 19, sir.

MR. DARRAR: Again, this is James Darrar from the DOT,
property management supervisor.

I'm just pointing out that that's Route 1, Section 5, Parcels
VXR3H2, VXR312, and VX71. And for the committee, when you see a V,
it just means that it's been vacated by the Department and declared excess.
That's when we throw the V in front of parcel numbers.

MR. SHAUGHNESSY: So, I'm sorry, the--

MR. DARRAR: On your agenda you have it down as BXR312.

MR. SHAUGHNESSY: Yes.

MR. DARRAR: It should be 3I2. It should be VXR3I2 -- not
B.

MR. SHAUGHNESSY: Okay, thank you.

This matter is approval to sell, by direct sale, parcels containing approximately 2,663 square feet to the adjoining property owner, Richard Malouf, to allow for assemblage to his adjoining commercial property, a new car dealership. The recommended sale price is \$18,600, the appraised value.

A motion on this matter.

SENATOR CARDINALE: So moved.

MR. SHAUGHNESSY: Senator Cardinale motioned.

Second by Senator Smith, thank you.

Any further discussion? (no response)

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter is approved by the Commission

No. 20: The New Jersey DOT requests approval to sell, by direct sale, a parcel containing approximately 3,650 square feet to the adjoining property owners, John and Kathryn Mellody, M-E-L-L-O-D-Y, to allow for assemblage to their adjoining residential property to resolve the issue of some of their background (*sic*) improvements encroaching on the subject property. The recommended sale price is \$13,500, the appraised value.

Is there a motion?

ASSEMBLYMAN CRYAN: Motion.

MR. SHAUGHNESSY: Second?

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: Any further discussion? (no response)
Hearing none, Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That matter is approved.

Onto No. 21: The New Jersey DOT requests approval to sell, by direct sale to the adjoining property owner, Joelin, Inc., for assemblage to their adjoining commercial property, Wall Liquors, to enable maintenance to their Wall Liquors sign that is encroaching on the property. The parcel contains approximately 1,434 square feet. The only principals of Joelin, Inc. are Joseph and Linda Falletta, F-A-L-L-E-T-T-A, Sea Girt, New Jersey. The recommended sale price is \$25,000, the appraised value.

Motion?

ASSEMBLYMAN CRYAN: Motion.

MR. SHAUGHNESSY: Second?

MR. DARRAR: Committee, if I can just point out, it's not for maintenance-- I'm sorry, James Darrar from the DOT, property management supervisor. It's not the maintenance, it's just basically to be able to keep their sign there. It's to maintain it.

MR. SHAUGHNESSY: Okay, to enable them to maintain their sign.

MR. DARRAR: Yes, if we don't sell it to them after we move the encroachment. It's been declared as excess. We can sell that area. I just wanted to point that out.

MR. SHAUGHNESSY: Okay. With that clarification, thank you.

Roll call on this matter, Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That matter is approved.

Okay, with regard to Items 22, 23, 24, 25, 26, 27, 28, 29, and 30-- With regard to these matters, we'd like to move them in one group, as they're similar, unless anyone has any particular questions, or concerns, or discussion about any of them individually or collectively.

ASSEMBLYMAN CRYAN: I make a motion to move them.

MR. SHAUGHNESSY: Okay, Assemblyman Cryan motioned to move them.

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: Senator Cardinale motioned to move them.

Any further discussion or comment? (no response)

Okay, great.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Ms. Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Those items are approved.

We're now onto Items 31, 32, 33, 34, and 35. They are similar Department of Transportation requests.

And just to briefly introduce them, the New Jersey Department of Transportation requests approval through either it's current MOA with NJ TRANSIT or an MOA to be negotiated with the New Jersey Turnpike, or through a new New Jersey Department of Transportation RFP, to utilize the services of an outside company to advertise and hold an auction for the purpose of leasing certain properties for the purpose of the winning bidder being able to construct a double-sided billboard, and then rent advertisement space on the billboard once all necessary municipal and State approvals have been obtained by the winning bidder.

All of these relate to separate tracks or parcels of property. All of them except the last one are requiring that the outside company will receive no more than 20 percent of the lease proceeds. If the lease is terminated by DOT for transportation purposes within the first 10 years, the winning bidder will receive a prorated refund of the one-time lump sum. There's a minimum guarantee of \$20,000 yearly rental, with a one-time lump sum payment of \$75,000 to be earned as income by the Department

of Transportation. The last one is different in the sense -- besides the property -- the last one is simply different by increased compensation. The last one has a minimum guarantee of \$34,000 yearly rental, with a one-time lump sum of \$99,000 to be earned as income by DOT over 10 years.

Is there any question or discussion?

SENATOR SMITH: Two questions.

MR. SHAUGHNESSY: Okay, Senator Smith.

SENATOR SMITH: Are there any -- in any of these items, are there any waivers requested from the established regulations concerning the erections of billboards?

MR. SHAUGHNESSY: Is someone from Transportation here to address the Senator's question? (affirmative response)

Kindly identify yourself for the record, sir.

DAVID KOOK: Good morning.

My name is Dave Kook. I'm with the Department of Transportation, Right of Way Division.

If I can answer your question: No, all the sites have to meet municipal requirements, have to be appropriate for the zone, and also have to meet the State billboard license requirements.

SENATOR SMITH: And number two: The 20 percent figure seems to be very generous, in my opinion. How will that contract be awarded?

MR. KOOK: At present, we have an MOA that was signed with NJ TRANSIT. They have a contract in place with a billboard company -- All Vision (phonetic spelling). And All Vision handles the entire process for, them from setting up the approvals to get the site ready,

serving as a general contractor to get the sign built, overseeing the maintenance of the sign to make sure it's an ongoing asset, and verifying the income that's actually produced by the winning bidder and collecting that money -- giving it to NJ TRANSIT. And if we continue through with this, then we, too, would participate. So the 20 percent that's obtained is for their services in terms of running the whole process.

SENATOR SMITH: It's a big number. You know, I don't even try to estimate what that number is. Do you know if NJ TRANSIT had a public bidding process for that contract?

MR. KOOK: Unfortunately I can't speak to that. The MOA was put in outside of our unit. We're not familiar with that.

SENATOR SMITH: Somebody is jumping up to answer the question.

MR. SHAUGHNESSY: Please step up and identify yourself.

M I C H A E L M U R P H Y: Michael Murphy, NJ TRANSIT. I'm the Manager of Property Development and Outdoor Advertising.

The firm All Vision was obtained through a request for proposal, public bidding process about four-and-a-half years ago.

SENATOR SMITH: Well, a request for proposal is not necessarily a public bidding process.

MR. MURPHY: It was put out for public bid.

SENATOR SMITH: It was put out for public bid?

MR. MURPHY: Oh, yes.

SENATOR SMITH: And they had the lowest bid?

MR. MURPHY: Yes, sir, I believe so.

SENATOR SMITH: All right.

All I can say is that's a pretty big number. Because all of the costs that you described are going to be paid by the person who wins the bid on the billboard.

MR. MURPHY: Correct.

SENATOR SMITH: They'll pay for the legal, construction, installation, whatever. And then for the company performing the service to receive 20 percent of the lease proceeds -- it's going to be a big number. These billboards are unbelievably lucrative and can be collateralized at huge numbers. But if you tell me you had a public bidding process--

MR. MURPHY: Yes.

SENATOR SMITH: And were there multiple entities involved bidding on it?

MR. MURPHY: I believe so. Yes, I believe so.

SENATOR SMITH: It wasn't just the one?

MR. MURPHY: No, I don't believe so. No, sir.

SENATOR SMITH: All right, then that answers my question.

MR. TOBER: Any other questions? (no response)

MR. SHAUGHNESSY: Is there a motion to move these items together? That's Items No. 31 through 35 inclusive.

SENATOR CARDINALE: So moved.

MR. SHAUGHNESSY: Second?

MR. TOBER: Yes.

MR. SHAUGHNESSY: Thank you.

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That group of matters is approved.

We're onto two other similar matters, also Department of Transportation requests, concerning waivers of outdoor advertising regulations.

I believe the Commission addressed this in a prior meeting and has the authority to do this if it deems appropriate. These are matters in which the Commissioner of Transportation deems it in the public interest to do so.

Item No. 36: The New Jersey Department of Transportation requests approval to waive certain outdoor advertising regulations and issue an outdoor advertising permit to Clear Channel Outdoor, on property located immediately adjacent to the entrance to the Lincoln Tunnel. In this instance, the regulations from which the waiver is sought is N.J.A.C. 16:41C-8.8(a)5. It states that no multiple message sign shall be located within 3,000 feet of another multiple message sign. The proposed sign will be approximately 2,071 feet from another sign.

With regard to the second matter, Item 37: The New Jersey Department of Transportation requests approval to allow the issuance of outdoor advertising permits for three existing signs at the Prudential Center to Devils Arena Entertainment, LLC, on property owned by the Housing Authority of the City of Newark.

The regulations from which the waiver is sought are, one, N.J.A.C. 16:41C-8.7(d)2: the maximum height of an advertising surface area shall be 30 feet and the maximum advertising surface area shall be 1,200 feet; and also N.J.A.C. 16:41C-8.8(a)5: no multiple message sign shall be located within 3,000 feet of another multiple message sign. The proposed sign will be approximately 175 feet from another such sign.

Any discussion or questions on these two items?

SENATOR SMITH: On 36.

MR. SHAUGHNESSY: Please step up, sir. Thank you.

For the record, would you identify yourself with your affiliation? Thank you.

S T U A R T B R O O K S: Good morning.

Stuart Brooks, New Jersey Department of Transportation.

I would like to offer a clarification on a typo in the agenda item for Item 37.

MR. SHAUGHNESSY: Item 37.

MR. BROOKS: Please note that the location of the sign is between Edison Place and Lafayette Street, rather than Essex Place and Lafayette Street.

MR. SHAUGHNESSY: Essex shall be amended to Edison. Thank you, sir.

MR. BROOKS: Thank you.

SENATOR SMITH: Question on Item 36: Is the sign already up?

MR. BROOKS: There is a static sign already up at the proposed location where the digital sign would be located.

SENATOR SMITH: Did the static sign require the waiver?

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

SENATOR SMITH: So this is only to make it digital and to have a variable message.

MR. BROOKS: That's correct.

SENATOR SMITH: Who is the recipient of the rents -- who is the recipient of the income from the sign?

MR. BROOKS: Rent will be paid to Weehawken.

Do I need to press the button? (referring to PA microphone)

SENATOR SMITH: Yes.

MR. BROOKS: Excuse me. Rent will be paid to the City of Weehawken.

SENATOR SMITH: Any idea what the amount of that rent is?

MR. BROOKS: There are representatives from Clear Channel here. I would ask them to clarify that.

MR. SHAUGHNESSY: Please step up.

R O B E R T K. D R A S H E F F: The question, Senator, was the amount of rent. The city is asking for an accelerated rental payment to -- over the term of the lease. We would accept, I believe, \$660,000 up front over a 20-year term.

SENATOR SMITH: Would that cover the whole 20 years?

K E V I N D O N O V A N: Kevin Donovan, with Clear Channel Outdoor.

The actual payment to the Township of Weehawken is \$2.6 million over 20 years.

SENATOR SMITH: It's very valuable property.

MR. DONOVAN: It's a very good location -- the Lincoln Tunnel.

SENATOR SMITH: I don't want to get in any trouble with Weehawken. The bottom line is that the Department of Transportation is supportive. And I assume there's been a sign there for a million years, or not?

MR. DONOVAN: Yes.

SENATOR SMITH: Pretty much?

MR. DONOVAN: Yes.

MR. DRASHEFF: Yes.

SENATOR SMITH: A question on 37: Who is receiving the rental from that side?

MR. BROOKS: Senator, again, there are representatives of the Devils organization. And I would ask that they step forward and answer that.

C H R I S T I N E S T E I N B E R G, E S Q.: Good morning.

My name is Christine Steinberg. I'm Senior Counsel for Devils Arena Entertainment, LLC.

And to your question, the revenue from the sign -- marquee sign on the exterior of the building -- to the extent that there is revenue

from it, is among the items that are factored into the payment of rent to the Housing Authority of the City of Newark.

SENATOR SMITH: Say that last sentence slowly. Among the items that are what?

MS. STEINBERG: It's among the items of arena revenue that are factored into rental payments to the Housing Authority of the City of Newark.

SENATOR SMITH: So you're saying the ultimate beneficiary is the Housing Authority.

MS. STEINBERG: Yes.

SENATOR SMITH: All right. And do you have any idea of what the rental-- What is the rental amount?

MS. STEINBERG: The rental amount on the sign?

SENATOR SMITH: Yes.

MS. STEINBERG: It varies with-- I don't have that information available. It varies with the period of time for the rental of a sponsorship agreement -- not a rental, but a sponsorship arrangement. And I would note that the sign also serves as the principal marquee for the building. So a good amount of what is displayed on the sign is actually featuring the events that are either coming or currently playing.

SENATOR SMITH: I have no question with the appropriateness of the sign.

MS. STEINBERG: Thank you.

SENATOR SMITH: My only question is whether the public entity is being fairly compensated. Weehawken has obviously cut a great

deal. And I would love to hear the details of the Housing Authority, and you really can't tell us that.

MS. STEINBERG: I cannot.

SENATOR SMITH: Would you mind-- And I'm not going to have a problem moving forward with this. But would you mind forwarding that information to the Chair? I'd like to see it. I'd like to know that the Housing Authority is being fairly compensated. Can you do that? Will you do that?

MS. STEINBERG: Yes.

SENATOR SMITH: Thank you.

MR. SHAUGHNESSY: Are there any other discussions or questions? (no response)

ASSEMBLYMAN CRYAN: Motion.

SENATOR CARDINALE: Move both items -- second.

MR. SHAUGHNESSY: This is a motion and a second on Item Nos. 36 and 37. Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Those matters are approved with the one stipulation Senator Smith has imposed.

Okay, the next item is the Department of Environmental Protection request. No. 38 is: DEP requests approval to convey an approximately 0.041 plus or minus acre of State property to Donald and Patricia Table, the owners of an adjacent lot, which is Block 34, Lot 5.

In exchange, the private landowners shall convey an acre of their vacant land to the DEP to become part of Stow Creek State Park. This land shall eliminate -- this exchange shall eliminate the encroachment of the main residence on Block 34, Lot 5, onto the State property.

Any discussion of that matter? (no response)

SENATOR SMITH: So moved.

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Okay a motion and second.

On Item No. 38, roll call. Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That matter is approved.

The next one, 39: The DEP seeks approval to enter into a 20-year lease with the New Jersey Audubon Society. The Society is a nonprofit organization which has leased DEP property in Rancocas State Park since 1977 for the purposes of providing interpretative programming. The Society operates a nature center, maintains trails, and sponsors wildlife programs on the leased park property.

The payment will be a one-time payment of \$20. When a nonprofit seeks to lease land for the purpose of providing public services, the DEP charges a nominal fee for rent in light of the value of the public services provided through programming, volunteering, and funds invested by the nonprofit, including improvements, maintenance, and operation of the leased facility, and payment of the utilities.

This is Item No. 39.

SENATOR CARDINALE: Move it.

MR. SHAUGHNESSY: Second?

SENATOR SMITH: Second.

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

Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: The matter is approved.

The next two matters, I believe, relate to airports and aviation. Those are Item Nos. 40 and 41. Since they're similar, unless there is independent questions or comments, we'll move them together.

Item No. 40: The DEP seeks approval to enter into a 5-year lease, with an option to renew for an additional 5 years, with Stillwater Aviation and Maintenance, Inc., at the Andover-Aeroplex Airport. The rental will be \$13,800 per year, which was the minimum bid in the request for proposal.

Similarly, Item No. 41: The New Jersey DEP requests approval to enter into a 5-year lease, with an option to renew for an additional 5 years, with Andover Flight Academy at the Andover-Aeroplex Airport for the operation of a fixed wing flight instruction and pilot ground school.

Likewise, that rent will be \$13,800 per year, which was the minimum bid in the request for proposal.

Do I have a motion on these two items, and second?

SENATOR SMITH: So moved.

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Motion and a second.

Any further discussion or consideration? (no response)

If not, Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Those two items, 40 and 41, are approved.

Onto 42: DEP, on behalf of Colts Neck Township, requests approval to legalize the inadvertent diversion of 0.95 acre of open space located within the town's core area for the construction of the Colts Neck municipal library in 2000.

To compensate, Colts Neck has agreed to dedicate, for recreation and conservation purposes in perpetuity, 4.75 acres of vacant land within its core area and adjacent to other municipal open space lands.

Motion?

SENATOR SMITH: Whoa, whoa, whoa.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Question here: Do I read this that they built the library on Green Acres property?

MR. SHAUGHNESSY: I believe so.

And if anyone can confirm that.

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

Yes, they did build the library on a property that turned out to have been purchased with Green Acres funds in 1967.

ASSEMBLYMAN CRYAN: How does that happen?

SENATOR SMITH: Well, not to beat up on lawyers and title companies, but somebody wasn't doing their job. No offense. And that's not a crack on the DEP. Obviously, there's a very large public purpose associated with this. I understand it and am going to vote for it. But it's a shame.

Number two on this: The 4.75 acres of vacant land in its core area and adjacent to other municipal open space lands -- that is new land, correct? That's not currently Green Acres?

MS. PICCININI YEANY: Correct. That's part of what took so long to resolve with this issue -- was finding land that was unencumbered. But the Town does have a large core area that's essentially a mixed-use area. And we pretty thoroughly vetted that the land that they ended up offering us as compensation was not considered to be encumbered. We did a delineation within that parcel of which uses were Green Acres related and which were not.

SENATOR SMITH: Okay. Thank you.

I have no other questions.

MR. SHAUGHNESSY: Okay, motion?

SENATOR SMITH: So moved.

MR. SHAUGHNESSY: Second?

SENATOR CARDINALE: Second.

MR. SHAUGHNESSY: Roll call. Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Director Holzbaur.

DIRECTOR HOLZBAUR: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That matter is approved.

Thank you very much.

We're onto No. 43 on the agenda. This is a Stafford Business Park Open Space Area, Block 25, Lot 39 -- or a portion of Lot 39 -- Stafford Township, Ocean County.

The NJ DEP, on behalf of Stafford Township, requests approval to allow the diversion of approximately 46.8 acres of land by the Walters Group, the Township's designated redeveloper for the Stafford Business Park project, for the installation of a solar facility to serve the redevelopment area. The diversion involves a 30-year lease between the Township and Walters for the use of the site.

As compensation for the lease, Walters will pay the Township annual rent ranging from \$75,000, if only the first phase of the project is

built; to \$150,000 if both phases of the project are built; along with a 6th and 11th year 10 percent escalator and other provisions, allowing upward adjustment of the rental in response to market conditions. The Township is required to use the lease proceeds for its operating, maintenance, or capital expenses related to its funded parkland or to its recreation program as a whole.

It's noted, the Township passed a resolution affirming its support for the diversion and requesting approval of its diversion application.

I just will note also that the members have a couple of items in their packet, one being a letter from a Mr. Peter Ferwerda, F-E-R-W-E-R-D-A, and one from and on behalf of Stafford Township in the packets.

Additionally, I'd like to point out that there were two items submitted as well, one from a Mr. Salvatore J. Sorce, S-O-R-C-E, dated November 22 to the State House Commission. And last, there is also a fax dated November 19 from the New Jersey Appleseed Group to the members of the State House Commission. With those items -- move this matter -- ask for a motion on this matter.

SENATOR SMITH: I'd like to ask some questions.

MR. SHAUGHNESSY: Yes, Senator Smith.

SENATOR SMITH: In the DEP response to some of the issues raised, apparently there was some -- it was a fairly contentious matter. But under the issue of "inadequate compensation," it says second from the bottom paragraph, "The Department staff economist has reviewed the proposed lease terms and has determined them to be 'fair and appropriate' under the circumstances." Is the Department staff economist here?

MS. PICCININI YEANY: No, he is not.

SENATOR SMITH: What was the basis, if you know, for the staff economist determining this to be fair and appropriate compensation.

MR. SHAUGHNESSY: I believe it's Ms. Yeany, again, from DEP.

MS. PICCININI YEANY: I'm sorry.

MR. SHAUGHNESSY: Pardon me.

MS. PICCININI YEANY: Judeth Yeany, from the DEP, Green Acres Program.

We provided the performa, that the company and the Township had provided to us, to the economist. They did an analysis comparing the anticipated revenues and the expenses. We note in the summary that if you look at it on a net basis, the rental to the Township -- when you consider the whole 30-year term -- comes out to something in the neighborhood of 20 to 22 percent of the net revenue. We also noted in there that if you just look at the rental on a per-acre basis -- and I'm assuming that both phases in the project are built -- it comes out to approximately \$1,600 per acre. And just based on our own acquisitions in that area, we normally pay \$1,000 or less for land that's considered to be undevelopable in the Pinelands, either because it's an undersized lot or it has constraints. So certainly this landfill is not available for much else other than a project of this nature.

So we're still working our way through some of these issues as far as what is appropriate for these projects. But at the end of the term, the revenue to the Township -- again, assuming both phases are built as we reasonably think they will be -- is a minimum of \$4.5 million. And it will be escalated in the 6th and the 11th year, and possibly go higher than that depending on market conditions.

The Township is here also, if you want to hear from them about the lease negotiations.

SENATOR SMITH: Just before we hear from the Township, this was a landfill, right?

MS. PICCININI YEANY: Yes.

SENATOR SMITH: Okay. Do you know if State money was used to close the landfill?

MS. PICCININI YEANY: The Township can confirm, but my understanding is it was not. That was the whole--

SENATOR SMITH: No State money was involved?

MS. PICCININI YEANY: That was the whole purpose of setting this up as a redevelopment project -- was to bring private money into the landfill closure.

SENATOR SMITH: All right, I'd like to hear from the Township.

Would the Township representative come forward?

MR. TOBER: Representatives from the Township.

J A M E S M O R A N: Good morning.

I'm James Moran. I'm the Administrator for Stafford Township.

K E V I N S T A R K E Y, E S Q.: Good morning.

Kevin Starkey, Township Attorney for Stafford Township.

SENATOR SMITH: Gentlemen, two things: Do you feel you've been fairly compensated?

MR. MORAN: Yes, Senator Smith, I do. We've been working with the redeveloper for a number of years on this project. Our initial vetting of the perma left us with some questions. We worked it through with our

own financial people, as well as our engineers, to ensure that the yield was accurately calculated as far as the total gross revenue, and then also to evaluate the deductions to come to a net value for the property.

In doing so, we maintained between a 22 and 24 percent ratio as far as our percentage of the net return on the investment. And we're able to maintain that throughout the entire 30-year period.

SENATOR SMITH: Can you confirm that no State money was used in closing this landfill?

MR. MORAN: No State money was used in the closing of the landfill. It was done entirely as part of the redevelopment project. There were actually two separate landfills on the site. Some of you may be aware of the fact that the '62 storm on Long Beach Island -- there was one landfill on the eastern side of the property, and there was a much larger municipal landfill that took trash from all of the surrounding towns on the western side of the site. Both of those landfills were closed and capped. Actually, one was completely dug out and removed, and the other was capped.

SENATOR SMITH: Right.

Back to Ms. Yeany, at this point does the DEP consider the landfills properly closed, properly monitored, properly everything?

MS. PICCININI YEANY: My understanding is that our Solid Waste Program did issue the appropriate certifications as far as the closure of the landfill.

MR. MORAN: And we are -- we do have the certifications, and we are currently in the air monitoring and soil monitoring process. The first 10 years of that process are more intensive, obviously, than the back end of

that process. However, we are -- we have gone through each of those without incident in the last five.

SENATOR SMITH: The electricity that's generated -- is it going into the grid or is it going to an adjacent property?

MR. MORAN: The whole purpose of this, and what makes this primarily economically viable, is the fact that it's a large business park. It has a residential component, it has an -- not an industrial, but a retail component. And almost 100 percent -- I believe, actually, 100 percent initially of the power will go to the business park. In addition to the compensation that we are receiving, they are also going to supply power to the County facility, which is substantial on the site, and power to our public works garage and our water treatment plant; and the million-gallon water tank and pump system on the site as well. Our discount for that power will be 20 percent below market rate.

SENATOR SMITH: You're not getting enough, but go ahead.
(laughter)

MR. MORAN: And the County gets a discount at 10 percent below market rate.

SENATOR SMITH: The numbers that I heard -- and the way our laws are written, if you're not contiguous or a part of the property when you generate power, you have to put it into the grid, and that adds a whole bunch of costs to everything. But if you're on-site, I'm hearing that you can produce solar energy -- solar electrical energy at \$0.06 per kilowatt hour. And in New Jersey, utilities are selling it to us at \$0.12 to \$0.14 per kilowatt hour. So I just want to ask you one more time, are you sure that you know exactly what their net revenues are? Because as long as SRECs remain where they are, there's a lot of money in this.

MR. MORAN: First of all, I am fairly certain, yes, of their net revenue. That's been vetted by two separate engineers to ensure that we are working off the same numbers. We did make some adjustments. In addition to that, I'm sure you're aware that SRECs in a project of this nature -- whether it was us or-- Well, if it were us, we'd have to put up about \$40 million in bonds in order to build the project. If it is the private developer, he is going to put up something near \$30 million in bonds -- or loans to build the project. In doing that, they're looking at SREC contracts that are 10-year contracts, in all likelihood.

SENATOR SMITH: Good.

MR. MORAN: Good, yes; but the price instead of being \$675 an SREC is \$350 or \$325 an SREC, and that is, obviously-- The bank wants that for their guarantee, but it substantially impacts the financials of the project. You can't base it on \$675 an SREC when, in fact, their long-term is going to be \$350.

SENATOR SMITH: Pass this information on to the BPU when you get a chance -- (indiscernible) Solomon. He needs to hear what happens when you have long-term contracts. We have legislation in now to require 15-year contracts on any SRECs, because it will do exactly (indiscernible) moderate the price.

MR. MORAN: And my understanding is, the utility companies are looking to do just that.

SENATOR SMITH: Great. Thank you, sir.

ASSEMBLYMAN CRYAN: Question.

MR. SHAUGHNESSY: Yes, sir. Assemblyman Cryan, question?

ASSEMBLYMAN CRYAN: So you have a deal with solar on a former landfill.

MR. MORAN: Pardon me, sir?

ASSEMBLYMAN CRYAN: In essence, you have a deal to put renewable energy on a former landfill.

MR. MORAN: Yes, sir.

ASSEMBLYMAN CRYAN: And that makes money for the town and for others.

Is the opposition here, as I understand it -- and I just want you guys -- since you're the--

MR. MORAN: I don't know whether the opposition is here or not. I believe there may be some people.

ASSEMBLYMAN CRYAN: No, your objections from town.

MR. MORAN: We've only had three actual residents, or four residents, that have raised an issue in public forum on this matter.

ASSEMBLYMAN CRYAN: Is the nature of the objection the replaceable land?

MR. MORAN: Yes, that has been the nature of the objection.

One in particular, in all honesty, I would characterize as an individual who has a problem with the redevelopment project, has had a problem with the redevelopment project--

ASSEMBLYMAN CRYAN: I'm not worried about that.

Do we have replaceable land available? Why can't we do it?

MR. MORAN: We don't have replaceable -- the Town does not have replacement land available. In fact, the Town just recently -- within this year -- spent \$2 million -- far in excess of the value of this property -- on land

in the Pinelands for the acquisition of open space. We probably are one of the leaders in the County, maybe in the State, for the acquisition of open space. We did a significant purchase with the County with the lands trust back at the beginning of last year, and we bought -- I believe it's 50 acres immediately to the west of this site.

ASSEMBLYMAN CRYAN: Just so I understand, the Town's position is you've made significant investments in open space, been a good-faith actor all along, have an issue here on this project, which is a renewable energy project on a site of a former landfill.

MR. MORAN: Yes, sir.

ASSEMBLYMAN CRYAN: And that's the issue, right?

MR. MORAN: Yes, sir.

ASSEMBLYMAN CRYAN: Okay. I just want to understand.

Thank you.

MR. TOBER: Are there any more questions for these witnesses?

SENATOR SMITH: No, but I know there are some folks here who are in opposition. We should give them an opportunity to speak.

MR. TOBER: Absolutely, Senator. Anybody who signed up to testify or anybody in the audience -- we will give them an opportunity.

MS. PICCININI YEANY: May I make a comment before you take additional testimony?

MR. TOBER: Please.

MS. PICCININI YEANY: One of the things we tried to explain in our summary is that we didn't see the standard for this project -- the compensation standard in our rules as requiring replacement land. What the rules say is that for a project involving a lease, that we evaluate the

appropriateness of the lease payment. But the theory is that at the end of the lease the site is still parkland. Although this is a 30-year lease, we consider this to be something that, at the end of the term, the facilities can be removed, the site will remain parkland. I know that several months ago we were before you on Tennessee Gas, and we chose, for State property, to require the company to come up with four-to-one replacement. But that was because the installation of that pipeline involved blasting and other activities we thought were so invasive as to mean that the company was not going to be able to completely restore the property at the end. My understanding is that especially with a capped landfill, where you can't breach the cap, that this really is a surface use and that these facilities can be removed.

I don't know if the Township has additional comment on that.

MR. MORAN: Well, the facilities absolutely can be removed. The system is designed in such a way that it sits atop the landfill on concrete blocks. It is not driven into the landfill, it will not penetrate the landfill. It is removable with a crane if that should be determined at some later date. And there are provisions in the lease that protect us for that.

I would like to add, as well though, that as part of this entire redevelopment effort, the Township paid through -- not with the redeveloper, but through the redeveloper -- \$1 million for the acquisition of replacement land, at a previous time, into the lands trust. And in addition to that, as the Pinelands Commission noted at its hearing I guess about six or eight weeks -- not the most recent full Commission hearing -- the entire site, 15 acres of which is currently a compost facility for the County -- the entire site would have been granted permission when the original work was done as a compost facility. The objectors at the time that this work was done insisted, on the

record, that this is not habitat, that this is not truly open space. It's a landfill. Now their position is that it's open space. The environmental work that we've had done at this point for both flora and fauna have indicated that the solar panels will have little to no affect on either. The landfill, because of a three-foot cap, is not a habitation for pine snakes. It's too shallow. It's impenetrable. They need to go five to six feet down. And as far as the grasses go, they will grow in between the blocks. Well, it's about two-and-a-half acres, I believe, is what's being covered of the 50 acres.

MR. TOBER: Any other questions or comments for these witnesses? (no response)

Seeing none, I'd like to call up the next witnesses: Mr. Tittel, from the New Jersey Sierra Club.

J E F F T I T T E L: Thank you.

And I just wanted to start out and say normally we would be here supporting a project like this. We are very strong believers in solar on landfills. In fact, we support legislation to change zones to allow that.

What's sort of missing from this argument is that when the Stafford Business Park Redevelopment Plan came forward, it was a major change in the zoning and the comprehensive management plan of the Pinelands. This was supposed to be a business park and fairly low-intensity use. The plan was changed for 500-plus units of housing, a quarter of a million square feet of commercial, and a very intense use. And as part of that agreement, lands were set aside for open space, including this.

And now we're coming back just a couple of years later and changing part of that dedicated open space for a commercial venture being a solar farm. Even though it is a beneficial use, it is still a diversion of public

land. And in an area where you're going to be seeing such a large development, having open space for the people who are going to be living there is important. Landfills, many times, are developed into parks. They're developed into very nice open space areas for passive recreation as well. So this property is a diversion, no matter how you look at it. And under the Green Acres rules, you need to replace this type of land.

We also are very concerned that it is a 30-plus year lease, so that triggers -- when you look at both the lease and any diversion, it triggers -- you have to look at the intended use of the property, which is commercial. So therefore you have to base any diversion on that commercial use. So we strongly believe that in an area that has seen a tremendous amount of development, in a project that's had a lot of people questioning the validity of this project -- including the Sierra Club and the other environmental groups -- for that major zone change, we believe the least the State House Commission can do is uphold the integrity of the original zone change and comprehensive management plan -- was to have an open space buffer around this project.

If you're going to take it, then you need to come up with replacement land. And that's what we believe. And if we do it here, we're going to be doing it in a lot of other places.

The other point I wanted to make -- and this is separate, but since you raised the issue on leases for solar -- what PSEG does on private lands is, they pay the property owner the wholesale cost of electricity. The wholesale cost is what they-- If PSEG is going to put a solar farm on private land, they pay -- the lease per land is the wholesale cost of electricity. So it's \$0.06 a kilowatt, approximately. I mean, it's a separate thing, but that's just so you know what PSEG does.

But going back to this, again we believe that there has been a lot of problems with this site. It's dedicated open space. It's next to a major subdivision. If you're going to divert it for another use, come up with replacement land of greater or equal value. That's what the statute says.

Thank you.

MR. TOBER: Are there any questions for the witness? (no response)

Are there any other witnesses in the audience who would like to testify? (affirmative responses)

Sir, when you come up, would you state your name and organization for the record?

C A R L E T O N M O N T G O M E R Y: Hello, I'm Carleton Montgomery. I'm Executive Director of the Pinelands Preservation Alliance.

With me is Alison Mitchell, who is Conservation Policy Director for New Jersey Conservation Foundation. We come together because we've been providing analysis and testimony jointly.

The question, I think, as Jeff Tittel tried to point out, is not whether New Jersey supports solar power as opposed to fossil fuel. The question is only whether to build a solar facility on this particular piece of land on these terms. Solar power is growing in New Jersey. It's going to continue to grow whether or not this project, as proposed, goes forward in these terms. So it's not a choice between liking solar and not liking solar.

The choice here that really does exist is between respecting a legally valid conservation deed restriction -- which everyone concedes forbids this type of development on this particular piece of land, so the land can

continue its current course of becoming habitat for a variety of native Pinelands species.

The Township proposes diversion without compensation. It proposes to permanently limit or remove the conservation deed restriction -- that's a permanent piece, that's not a 30-year lease; that's forever -- to limit the land's development as a solar -- to permit, rather, its development of a solar facility and not provide a single acre of replacement land.

The DEP Commissioner's recommendation says lease payments the Township receives from the developer will have to go into its recreation and parks program. But that does not mean it will buy another acre of land as compensation for this loss. In absence of other evidence, I think we have to assume it simply displaces other municipal spending within its recreation program. So you're being asked to approve the breaking of a clear promise by State and local government to preserve this land unmolested and in perpetuity -- those are the terms of the deed restriction -- and to do so without compensating the public with any consolation of other land. So it's a net loss of open space.

We believe this proposal violates the Green Acres diversion rules. That argument is set out in detail in the letter you have from the Appleseed legal (indiscernible), which is representing us in this matter. And I'm not going to go through all those details. But I do want to highlight a couple of the key points.

First, the Green Acres rules say that diversions are only to be used in very limited circumstances, as a last resort where there is a genuine necessity for the diversion, not in cases such as this one where a local government would like to generate money -- a perfectly laudable goal in other

respects -- by having a commercial development of the land through a commercial lease.

And second, the rules say that the primary objective of these rules is that there should be no net loss of parkland. The proponents seek to avoid providing compensating parkland by saying this is just a lease. One day it might, could be restored to parkland. But note that there is no requirement to do so. And the deed restriction is being permanently either lifted or altered. We don't know what the Commissioner is going to do because he hasn't done it yet. But he has said in the press release and in these documents he is going to change that deed restriction. So it's more than just a temporary lease, it's a very long-term lease that is tantamount to essentially selling it, and it's a permanent removal of the deed restriction that would protect this land as habitat. In all fairness, this has to be treated as a permanent elimination of the conservation restriction and, in effect, as an easement.

The recommendation also makes arguments about the benefits of having closed the landfill through the commercial deal where the developer got to build houses and a shopping center in exchange for financing the closure of the landfill. But all of that is irrelevant. That's already done. This land was protected as part of the mitigation because the developer was permitted to develop land that was supposed to be protected by the comprehensive management plan in the Pinelands, because it was habitat for threatened and endangered species. This is a violation of a violation if you then let them do this conversion without providing compensation.

The Township has suggested two points that I want to correct. One is that they've paid a million dollars towards other open space. What they're talking about was a commitment to pay a million dollars -- a prior

litigation -- where we objected to the Pinelands deal that was done. That's a different issue. And in any case, they've defaulted twice on those payments, so they haven't happened. Part of it's happened, but not all of it.

And we never claimed in prior testimony that the landfill could not be restored to habitat. In fact, that's exactly what we have argued for and stressed -- that it can be and should be. I'm not saying it makes up for what was lost in the development deal, but it's still valuable and it's still parkland.

So the benefits of the deal in the first place, and all the good things the developer might be doing with respect to stormwater or solar on other pieces, doesn't go to this issue about this land. That's part of the prior deal. Our letter also identifies a number of procedural, informational problems that we think resulted from rushing this process through and that fatally undermine its validity. For example, there has been no competitive bidding process and there is no appraisal. Apparently a DEP economist looked at it and says it looks good, but that's not an appraisal and the rules require that.

So we just want to suggest, in its current form, this proposal violates the Green Acres rules. We think you should deny it in its current form or, at an absolute minimum, seek a formal opinion from the Attorney General's Office as to the legalities of DEP lifting that deed restriction, providing a 30-year commercial lease, and not providing compensation (indiscernible) land.

Thank you.

A L I S O N M I T C H E L L: I just wanted to add a couple of quick points or emphasize some of the things that Carleton was saying.

This is a restored grassland habitat right now. Clearly it's not going to provide the same kind of habitat for the next 30 years if it's covered with solar panels. And that is why, really, there should be compensation, even if it's for a limited term.

The other point I wanted to make is that my understanding of the argument by Green Acres -- why this wouldn't require compensation land -- is because there is a provision in their rules that talks about leases where compensation land isn't required. But I would submit that that provision envisions concessions and preexisting uses that are on property that's acquired for parkland or uses that take up a portion -- a small, relative -- probably relatively small portion of an overall preserved site; not, as is the case here, a commercial use that actually occupies basically the entire restricted area for a stretch as long as 30 years. And to us that is really much more akin to a permanent diversion in terms of its impact, than to a small concession stand lease or something like that.

So I just wanted to add that. Thank you very much for the opportunity to come before you and talk about this issue today.

MR. TOBER: Questions for the witness?

SENATOR SMITH: Questions for Mr. Shaughnessy: The legal issue raised by Pinelands Preservation -- namely that we're violating our own rule (indiscernible) diversions and the other points that were made. Do you have any concerns in that regard as our attorney?

MR. SHAUGHNESSY: As the Secretary, I'm no longer serving in that capacity, Senator.

SENATOR SMITH: So who is our attorney now, Mr. Kotler?

MR. KOTLER (Counsel): Yes.

SENATOR SMITH: Mr. Kotler, same question.

MR. KOTLER: I don't not have the knowledge to say whether they've violated their own rules.

SENATOR SMITH: That's not a comforting answer. (laughter)
How long would it take you to find that out?

MR. KOTLER: It wouldn't be during this meeting.

SENATOR SMITH: I can't hear you.

MR. KOTLER: It wouldn't be during this meeting.

SENATOR SMITH: No, of course.

MR. KOTLER: It would be in discussion with DEP attorneys.

SENATOR SMITH: Can I ask the Stafford Township people to come back up?

MR. TOBER: Certainly, Senator.

SENATOR SMITH: All right.

UNIDENTIFIED SPEAKER FROM AUDIENCE: (Indiscernible)

MR. TOBER: We'll give everybody an opportunity to-- The discretion of the Chair will determine the order of the witnesses.

SENATOR SMITH: I know nothing about the redevelopment proposal: the change in zoning or the promise to pay or not to pay for open space. But as I listen to the deal, it sounds like it's a decent deal for everybody. We're going to get solar, a good thing -- less demand on the grid. It's clean energy. The people in the park are going to pay lower rates and Stafford is going to make some money. And I'm a pro-solar guy. I'm a pro-solar guy.

Is it true that the rental -- the annual rental -- which is going to be used for "park" issues will replace what would normally be in the budget and

would allow you to use funds in other locations, or is it some new park activity that's going to be paid for with this money?

MR. MORAN: Senator, this year in our budget -- in our capital budget -- we put \$100,000 -- and we have a commitment that, annually, for the next several years we'll be putting \$100,000 on a rotating basis into our parks for renovation and restoration of our parks. In addition to that, we also put another \$250,000 into specific recreation facilities out of our bond budget, and we continue to do that on an annual basis.

SENATOR SMITH: Will this money replace that?

MR. MORAN: That money doesn't exist as part of the regular budget. So if you're asking me if it's a replacement of the regular budget, it is not. It is a way to fund our capital improvements at a later time, yes. Otherwise, we would not do them. If we did not have a means to fund these capital improvements other than tax levy, we would not, in all likelihood, be able to continue the capital program that we've embarked on over the last several years.

SENATOR SMITH: What is the annual revenue again?

MR. MORAN: The annual revenue from Phase 1 is \$75,000 a year. The annual revenue from both phases is \$150,000 a year. And it is our hope -- and there have been a number of studies conducted on the site -- that there may eventually be some wind towers on that site as well, although they're not the subject of approval today. They will be adjoining the site. And that will also generate another \$75,000. So hopefully something on the order of \$225,000. But I would expect that \$225,000 is 10 years out at best; \$150,000 is probably 4 years out at best.

SENATOR SMITH: By the way, if we move forward on this today, will we also be approving the use on the landfill for the wind facilities, or would you have to come back to us?

MR. MORAN: No, we would have to come back for the wind. That is something that we made provisions in the lease for, because it's something that's been studied out there for the last two years with engineers from Rutgers, Drexel, University of Delaware, and I forget -- there's a fourth university involved -- but they've been running wind towers out there for study purposes.

SENATOR SMITH: I admit it reluctantly that I'm an attorney.

MR. MORAN: Pardon me, Senator?

SENATOR SMITH: I admit it reluctantly, but I am an attorney. And when I see people who are getting cued up to fight with each other -- and it sounds like the Pinelands Preservation Alliance may be in court on this issue; and we have Counsel saying they really need to study this a little bit further, I always try to counsel a little piece (indiscernible) and try to come up with a satisfactory resolution. Perhaps a way to come to a resolution would be to dedicate a portion of the rental toward the acquisition of new open space within your township.

MR. MORAN: Well, we dedicate-- Just by way of example, we spent \$2 million for the acquisition of open space this year. That's more revenue than we're going to generate in the first 15 years of this project. We spent that out of our open space for this purpose.

SENATOR SMITH: All your money.

MR. MORAN: Pardon me?

SENATOR SMITH: All your money.

MR. MORAN: All our money.

SENATOR SMITH: Not Green Acres money.

MR. MORAN: All our money, 100 percent, \$2 million.

SENATOR SMITH: Do you have an open space tax in Stafford?

MR. MORAN: We do. We have an open space tax -- a \$0.01 open space tax. And we spent \$2 million this year for the acquisition of, I believe it was, 50 acres, although I'm not absolutely certain.

SENATOR SMITH: And my question is: Why didn't you hold that card in your hand until this project came up?

MR. MORAN: In all honesty?

SENATOR SMITH: Yes.

MR. MORAN: This project came in the chute right after the acquisition. And we did acquire, I think, \$6 million worth of open space adjoining the Parkway two years prior, and another \$3 million through the County Open Lands Trust.

SENATOR SMITH: Okay. That's all my questions for this witness.

Thank you.

MR. TOBER: Any other question for this witness, these witnesses while they're up? (no response)

MR. MORAN: Thank you.

MR. TOBER: I think there's one more witness. Is there anybody else besides this witness? (no response)

Please come up, sir.

MICHAEL L. PISAURO JR., ESQ.: Good morning.

My name is Mike Pisauero, and I represent the New Jersey Environmental Lobby.

I just want to take a few minutes. I'm not going to repeat those comments made by the Sierra Club and the New Jersey Conservation Foundation or the PPA. But I just wanted to point out, under the statute, any lease over 25 years is considered a conveyance under the-- And that's 13:86-3. Under the regulations for a disposal, whether it's minor or major, a conveyance -- a lease of 25 years or more is considered a conveyance or disposal. And under N.J.A.C. 7:36-25.7, it prohibits the construction of buildings on open space. And under N.J.A.C. 7:36-26.2, only a half-acre would be considered as a minor conveyance. This would be considered a major conveyance. And under a major conveyance, there are certain requirements, including the finding of replacement property that has to happen, and that would be N.J.A.C. 7:36-26.4 -- including an environmental assessment report, which describes the existing environmental features of both the land proposed for disposal or diversion and the proposed replacement land. I think it's clear under our regulations and statutes, a lease of 25 years of this amount of acreage is considered a major diversion and requires the finding of replacement land. And even though-- All leases are temporary, so the argument that this would be a temporary action, frankly-- Again, by the definition, a *lease* is a temporary action and, therefore, we urge you not to allow this diversion at this time.

Thank you.

MR. TOBER: Any questions for the witness? (no response)

DEP wants to add something, and then we'll close the questioning part of this. Any of the members have anymore--

MR. SHAUGHNESSY: Again, Ms. Yeany.

MS. PICCININI YEANY: Okay, Judeth Yeany from the Green Acres Program with DEP.

I just want to respond to a couple of the points that were raised in the other testimony. First of all, we do believe that we followed the applicable rules for this application. We attempted to explain in the summary the areas where people were concerned that we had not; and to address those points. We believe that the Commissioner's signature on the summary, is an indication that the agency believes it followed its rules, and that if the commenters disagree -- I think they've already indicated that we might see them in an appeal later on. But we do believe that there's a reasonable argument that we followed the procedures we were supposed to follow for this application.

I also wanted to point out that this, for us, was a pretty unique situation. The whole reason that the Green Acres Program has jurisdiction over this easement is because the easement was created as a condition of the MOA, that you heard someone mention, with the Pinelands Commission. It was a negotiation between the Pinelands Commission, the Township, the County, and the developer. Actually, the developer wasn't in the picture at the time of the original negotiation. But there was a negotiation about this project with a finding by the Pinelands Commission about -- certain aspects of the comprehensive management plan would be violated if this project were constructed. So the purpose of the MOA was to define mitigation and other conditions that needed to be met in order for balance there to be protection of the Pinelands if this project were built. So as the result of that MOA, the easement on the landfill was created and it was held by the Township.

The whole reason the Green Acres Program has jurisdiction and that this even became a diversion application is that, as a result of Stafford Township taking money from Green Acres on other projects, this parcel -- this easement interest ended up on their recreation and open space inventory.

So this is not a Green Acres-funded easement. It's not one that the Department had any role in creating. It's one that, as a condition -- as the strings to the funding associated with another project -- ended up on their inventory. And when it came time to evaluate this diversion request, we gave a great deal of deference to the Pinelands Commission, as far as their view of whether the easement could reasonably be amended. And we included in our package, and as an attachment to our summary, the recommendation of the Pinelands Commission staff where they evaluated the ecological impact of what was being proposed, and they evaluated the request to release the easement in the context of the larger negotiation that had happened in 2006. So we really, more than most other applications, were taking our cue from a sister agency as to their view of the easement that they had required to be created in the first place.

I don't know that we'd be sitting up here in front of you if the Commission felt strongly that that easement couldn't reasonably be released for the amount of time that it takes for this project to occur.

I also need to point out that we did indicate in the summary that the conservation easement release would be a partial release, not a permanent release. Our view is that, in releasing it for the term of the 30-year lease to allow these specific activities to happen and none other-- They're not going to be able to build anything out there or do anything not related to this solar

project. We're not allowing any other uses. And in our view, the property will stay on the inventory with a notation that this lease has been authorized.

There is no public access to this area under the current easement. I don't know if that was something that the Township had contemplated allowing in the future. But because of concerns that they had about the security of the landfill cap once the area was cleaned up, they did not require -- and the Pinelands Commission didn't require -- public access to this 55-acre landfill area as part of the original transaction. So that was certainly another consideration -- that we were not actively depriving the public of any area that they're entitled to use now.

And just one more point: I understand the point about how we view diversions and then needing to meet certain threshold tests. But although there is a private benefit associated with this project, fundamentally they're providing electricity for this project and possibly for surrounding areas. And we do see that as something that benefits the public in the long-term.

So I'd be happy to answer any other questions.

MR. TOBER: Thank you.

Are there any questions? (no response)

Seeing none, I will close the discussion and ask the Secretary to call for a motion.

MR. SHAUGHNESSY: Thank you, sir.

With regard to this Item 43, I'll call the roll.

MR. TOBER: We need a motion.

MR. SHAUGHNESSY: Pardon me. Motion on this matter?

SENATOR CARDINALE: I'll move it.

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

MR. TOBER: I'll second it.

MR. SHAUGHNESSY: Okay. I will take the roll. Special Counsel Tober.

MR. TOBER: Yes.

MR. SHAUGHNESSY: Mr. Ridolfino.

MR. RIDOLFINO: Yes.

MR. SHAUGHNESSY: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: I have to vote yes. I don't see another way to do it. The overwhelming-- When you look at the environmental considerations, this is solar energy that we're promoting -- take a little pressure off the grid. Stafford Township sounds to me like it's been a relatively good actor in the open space side of it. It is a lease; it is 30 years. Judeth Yeany has convinced me that proper procedures have been followed. The Stafford Township people have indicated to me that they're being fairly compensated, which was my major issue with this. I wanted to make sure that they were being properly compensated. And I think all the other comments that Judeth made, especially the fact that this was not a Green Acres acquisition. Stafford put it into the inventory for whatever reasons, but it was their land. We, the State of New Jersey, haven't provided money for the cleanup of the landfill.

I mean, it appears to me, after listening to all the facts, that this is the appropriate thing to do. I vote yes.

MR. SHAUGHNESSY: Thank you, Senator.
Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: That motion is approved.
The last item--

MR. TOBER: I think we lost a quorum for the last item.

MR. SHAUGHNESSY: Pension.

MR. TOBER: Well, if we're going to do a December meeting--
Just for the benefit-- Thank you to all the legislators. I know it
was a long meeting. And at the request to revisit items 5, 6, and 7, we'll try to
schedule a December meeting telephonically if that's better for the legislative
members.

MR. SHAUGHNESSY: Okay, with that being said, is there a
motion to adjourn?

SENATOR SMITH: So moved.

MR. SHAUGHNESSY: Second?

MR. TOBER: Second.

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

(MEETING CONCLUDED)