

Public Hearing

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before

SENATE SUBCOMMITTEE ON URBAN ENTERPRISE ZONE AUTHORITY PROCEDURES

of the

SENATE COMMERCE COMMITTEE

"Conduct and proceedings of the New Jersey Urban
Enterprise Zone Authority in regard to the
recent granting of sales tax benefits to Kearny"

LOCATION: North Arlington Borough Hall
214 Ridge Road
North Arlington, New Jersey

DATE: July 24, 1992
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator John P. Scott, Chairman
Senator Gerald Cardinale



ALSO PRESENT:

Dale C. Davis, Jr.
Aide, Senate Subcommittee on Urban Enterprise
Zone Authority Procedures
Office of Legislative Services

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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New Jersey State Legislature

SENATE COMMERCE COMMITTEE
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NOTICE OF PUBLIC HEARING

The Subcommittee on Urban Enterprise Zone Authority Procedures of the Senate Commerce Committee will hold a public hearing on the conduct and proceedings of the New Jersey Urban Enterprise Zone Authority in regard to the recent granting of sales tax benefits to Kearny.

The hearing will be held on Friday, July 24, 1992 at 2:00 P.M. in the North Arlington Borough Hall, 214 Ridge Road, North Arlington, New Jersey.

The public may address comments and questions to Dale Davis, Committee Aide, or make bill status and scheduling inquiries to Arlene H. Bezek, secretary, at (609) 984-0445. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

Members of the Subcommittee are:

Senator John P. Scott, Chairman
Senator Gerald Cardinale
Senator Edward T. O' Connor, Jr.

Directions to Borough Hall, 214 Ridge Road, North Arlington, New Jersey:

**FROM NEW JERSEY TURNPIKE EXIT AT 16W "SPORTS COMPLEX";
TAKE ROUTE 3 WEST; EXIT AT RIDGE ROAD; AT END OF EXIT
RAMP TURN LEFT ONTO RIDGE ROAD; CONTINUE ON RIDGE ROAD
UNTIL YOU REACH THE NORTH ARLINGTON BOROUGH HALL
WHICH IS ON YOUR LEFT DIRECTLY AFTER A HIGH SCHOOL.**

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SENATOR JOHN P. SCOTT (Chairman): I'd like to get the meeting to come to order. Senator Cardinale will be a few minutes late. He's still suffering from vacation pangs, so therefore he will be a couple of minutes late. Senator O'Connor could not make, it but we have his legislative aide, Rob McGuire. Thank you for coming, Rob. And, of course, I'm Senator John Scott.

I want to thank the Borough of North Arlington for providing the chambers today so that we can have this hearing. I'd also like to thank everyone who is here.

This Committee was created by Senator Cardinale, Chairman of the Senate Commerce Committee, at my request. I, along with many others, am very concerned regarding the procedures of the Urban Enterprise Zone Authority in the granting of a 50 percent sales tax reduction, to benefit the town of Kearny. There are many questions concerning Kearny's application, and the Authority's responsibilities and regulations that must be answered; thus, this Subcommittee has been organized to investigate the matter, and I have been appointed Chairman.

First, I would like to generally go over what has transpired during the last four or five months. On April 1 of this year, Kearny made an application to the Urban Enterprise Zone Authority for the 50 percent sales tax benefit. According to UEZ regulations, the Authority had 120 days to approve, deny, or postpone the application. Some testimony for and against the granting of this benefit was made during the Authority's April 8 meeting. It was determined by the Chairman of the Authority at that time, and I quote, "Because of the gravity of the situation, the testimony of today, the feelings of some of the members of the Authority, that we will take this matter under advisement." To my knowledge, there were no further public hearings by the Authority where this issue was discussed. In the meantime, I was receiving complaints from North Arlington businesses regarding Kearny's application.

Kearny and North Arlington have happily shared a business district for decades. Constituents wanted to know why a 6 percent sales tax would be charged on one side of the Belleville Turnpike, and a 3 percent sales tax on the other side.

After much research I decided to attend the Authority's meeting to testify on behalf of my constituents. Unfortunately, I was denied this right. I asked my staff assistants to find out when the Authority would act on Kearny's application. My staff was told on several occasions that the Kearny application would not be on the July 8 meeting. In fact, the UEZ Authority even faxed a copy of the agenda to me. There was no indication, whatsoever, that the Kearny issue would be brought up at the July meeting.

Nevertheless, the Kearny issue was brought up at the July 8 meeting under old business, and the Authority voted in favor of the application.

As I have previously stated, this meeting is being held to investigate the policies and procedures of the Authority's granting of the 50 percent sales tax benefit to the town of Kearny. The Authority had been notified by the Office of Legislative Services and Senator Gerry Cardinale to appear to answer our questions. It was our understanding, up until 11:30 a.m. this morning, that the Authority was sending three representatives. Once again, we have been denied direct communication with the Authority because they have refused to appear. According to our Office of Legislative Services staff officials, the Authority claims that they cannot send a representative because of the pending lawsuit filed by North Arlington against the Authority.

It is my understanding that the lawsuit between North Arlington and the Authority has nothing to do with the matters being considered by the Senate Committee. This is nothing but another dodge by the Authority, and proves further that this is

another authority that has gotten out of control. It is totally uncooperative and nonresponsive to the people of this State and to their elected officials.

This Committee will meet again, and the Authority will appear. So that the record is perfectly clear, this Subcommittee was formed to investigate the procedures and policies of the Authority in regard to the application submitted by Kearny for the 50 percent sales tax benefit. This is a legitimate concern of the Legislature and has nothing to do with the legal actions taken by the Borough of North Arlington.

We will take testimony this afternoon from those who have signed up. If there is anyone else, in addition, who would like to sign up to testify and has not, please let us know.

Do we have forms there? (affirmative response from aides) There's a sign-up sheet on the desk.

This is being recorded. We will take the testimony, and then we will review the testimony prior to our next meeting. But I think right now we should get the testimony going.

Without further ado, we will move this along and see if we can't-- I would ask this, keep it relevant to the UEZ -- the Urban Enterprise Zone. There are a lot of issues that a lot of people would like to speak on, but we'll be here for four or five weeks trying to get it all in if we start going on our interests. So we are here for the Urban Enterprise Zone information. We appreciate if you could maintain the level that keeps to the point and the impact on the particular town, business, or whatever it may be.

I- would like to call first, Robert Landolfi, the Borough Administrator of North Arlington. Robert, if you would, state your name for the record?

R O B E R T M. L A N D O L F I: Robert Landolfi.

SENATOR SCOTT: Talk into the microphone, if you will.

MR. LANDOLFI: Robert Landolfi, L-A-N-D-O-L-F-I. I'm the Borough Administrator for the Borough of North Arlington. I'm appearing today on behalf of Mayor Leonard R. Kaiser and the Municipal Council.

If I could, Senator, first let me give you a North Arlington welcome--

SENATOR SCOTT: Thank you.

MR. LANDOLFI: --and say that we really appreciate the Subcommittee coming to North Arlington. We truly feel we're the most affected community by the actions of the Urban Enterprise Zone Authority, and we truly appreciate the fact that you have chosen to come here and conduct this Committee hearing.

SENATOR SCOTT: We appreciate that.

MR. LANDOLFI: I would also like to extend the apologies of Mayor Kaiser, who wished he could be here. He's on vacation, and he told me to note that he is at the Jersey Shore, enjoying the ice cold waters there that we have at the moment. But he does send his apologies.

If I could, in following your remarks, I will try to be brief, but I think there are several areas that we have to discuss in terms of impact, in terms of process, in terms of contrasting the Authority's actions with those that you would expect from a public agency.

So let me start by saying that, in fairness, everyone should understand this: North Arlington has and does oppose the granting of the sales tax reduction to the town of Kearny. Our opposition -- and we did make this opposition, we think, very forcefully at the April 8 hearing -- is based on one primary simple fact; and that is, that there is no difference between the Kearny business district and the North Arlington business district.

I'm sure as you traveled to the meeting today, if you were able to travel on Belleville Pike, or on Kearny Avenue, or Ridge Road, it's difficult to differentiate between Kearny

Avenue and Ridge Road. The business districts, in effect, are one and the same. We share some common parking up there. It's a North Arlington municipal lot, but it's utilized by patrons of the Kearny business district.

We encourage and hope that the Kearny business district thrives. We here in North Arlington have always felt, particularly, the North Kearny business area shares common interests with our business district. Frankly, we don't differentiate. Our merchants belong to the West Hudson/South Bergen Chamber of Commerce, which is the Chamber of Commerce jointly shared by Kearny.

The simple fact is, the business districts are one in the same. The granting of the sales tax reduction benefit, in effect, would simply bifurcate the business district, greatly to the advantage of Kearny and to the disadvantage of North Arlington.

I think it's also fair to say that we do not have a border war nor real feelings, nor do we wish to engage in any type of home rule territorial battles with the town of Kearny. We've had a very good working relationship. I think our emergency services respond when needed by the town of Kearny. Their emergency services reciprocate when required in North Arlington. We have very good working relationships at the staff level as well as at the governing body level. Certainly, we don't wish to impact those relationships.

We do think that an unfair action has been taken here. Hopefully as a result of this Subcommittee and further actions, perhaps it can be remedied.

A couple of facts-- And I'll be brief here. And again, most of this was in the record at the April 8 hearing. When we talked the same, we did enter photographs -- which I won't do again today -- but we did enter photographs taken from both sides of the Belleville Turnpike, looking north and south, which clearly show that it's very, very difficult to

differentiate between the two business districts. If it weren't for the Belleville Pike literally bisecting there, you couldn't tell the difference. The storefronts are primarily the same; the businesses are primarily the same; the shoppers are primarily the same. Again, those photographs were submitted.

A couple of other factors, just in general, in terms of the communities: We both have A ratings. Our bond issues are both rated at A. Our median per capita income is within \$2000 of one another. Home prices both average in the mid- to upper-\$100,000 range -- \$145,000, \$150,000, \$160,000, \$170,000 -- they're within \$20,000 of one another. The communities -- Kearny is obviously a large community -- but by and large we not only feel the business districts are the same, but we feel we share some common characteristics with the town of Kearny, as does all of South Bergen. So again, our primary objection at that time was that the sales tax reduction was greatly to the disadvantage of North Arlington, when you are primarily dealing with very similar areas.

I said I was going to talk about contrasts. What I would like to do, if you would bear with me for a few moments, is to give a little municipal perspective on how we treat public information, how we treat our concern for the public to be aware, to be involved in the decision making process, and I would contrast them to the actions of the Urban Enterprise Zone Authority. I think that will go to the heart of your deliberations.

I'm going to take two examples. The first is a zoning variance. We're going to use the most mundane zoning variance imaginable, a one-foot variance for an encroachment on a side yard. For a one-foot variance, the zoning ordinance would require a 15-foot side yard. If an individual wants to do an addition, and he would only have a 14-foot side yard, he now requires a variance for that 12 inches. If that variance

application was for a property that was within 200 feet of another municipality -- in this case the town of Kearny -- the town of Kearny -- by statute; by law -- would be notified. For 12 inches on an addition, they would statutorily be notified, either by personal service or by certified mail. They would be given opportunity to appear at the public hearing and to give their input. I seriously doubt for a one-foot variance that they would, but the opportunity is presented.

Another example of the way public input is treated at the municipal level: We have a Redevelopment Authority in North Arlington. It encompasses approximately 90 acres in the Porete Avenue area. Pursuant to the statutes governing redevelopment, a redevelopment plan must be prepared, and there are various stages of approval of that plan. It commences with the Redevelopment Authority itself. They must adopt a plan. That is done pursuant to public hearing. It is then forwarded to the Planning Board of the municipality. It is then, ultimately, forwarded to the Mayor and Council of the municipality, who must adopt the plan by ordinance.

What we have done in the Redevelopment Authority, and have followed this plan through to its recent adoption by the Mayor and Council, has sought to include the public in every step of the process. Before the plan was introduced, we notified every affected property owner and solicited their input at both a public meeting and in private individual meetings held with our planners, our legal staff, and our administrative staff.

Prior to any public action being taken on that plan, we notified, again, every property owner who was affected. I should also say that we notified every party who had expressed an interest in the plan and who requested notification. In addition to that, prior to any public action being taken, we notified all the local newspapers on at least two separate occasions. When I say the local newspapers, I'm talking about

the weeklies. We have three weeklies in the area, they were notified. Notices were published on two separate occasions. We notified and published in The Star-Ledger and the Bergen Record on two occasions, at any point in time the plan was being acted upon.

That process continued when it went to the Planning Board. Again, every property owner was notified. All the papers were notified. We solicited as much public comment as possible. When the plan went before the Mayor and Council, although it was not required by law, we again notified every affected property owner on the introduction of the ordinance. We notified the newspapers on the introduction of the ordinance.

SENATOR SCOTT: Bob, if I may? I understand what your point is, and it's well taken. You're basically trying to get us to realize that what you do here in North Arlington is to notify if something is going to happen to change anything that's going to impact on the town, and also the town of Kearny, I guess, with this 100 feet -- or within 100 feet of the Borough of North Arlington. We appreciate that, and like I say, I want to hear this, but I think we have enough on that.

I understand the procedures you go through, and it is important. I'll tell you why it's important. This is exactly what they didn't do. They didn't notify, versus the towns, who are required by law in most cases to do just that. You, obviously, take that one step beyond. But we do want--

MR. LANDOLFI: Let me jump in, Senator, to the actions of the UEZ -- in effect, the nonactions of the UEZ in this matter. I don't think it starts with the granting of the sales tax reduction. I think it starts with the original application to expand the zone. I think, if you look where the original zone was, -there's no question that South Kearny is a valid urban enterprise zone. I think you have to look at the extension of that zone to Kearny Avenue, and the rationale that was used to get there. I think you have to question that.

It is quite difficult for us to imagine that Kearny Avenue, in the spirit of the Urban Enterprise Zone Act, should be qualified as part of that zone. But more to the point, subsequent to receiving the application from Kearny to expand the zone, the Borough of North Arlington was not notified. We were not notified of the hearing or of the public action that would take place on the extension of the zone. We weren't notified subject to the passage--

SENATOR SCOTT: Welcome, Senator Cardinale.

MR. LANDOLFI: Senator, on behalf of the Borough of North Arlington, we extend a hearty welcome to you, and we appreciate your appearance with the Subcommittee today.

SENATOR CARDINALE: Thank you. Sorry to be late.

MR. LANDOLFI: We were never notified, ultimately, of the passage or the extension of the zone. We only inadvertently became aware of the UEZA's pending action on the granting of the sales tax reduction, which is a separate benefit, and we understand that.

I think it is important that this Committee understand that on several occasions we attempted to determine, prior to the action being taken, when that action would be taken. On at least two occasions prior to April 8, meetings were canceled without any notification being given. It wasn't until the day of April 7, in effect one day prior to the April 8 hearing, that we were able to verify that a meeting would take place, and that action on the sales tax benefit would be taken.

Prior to that time we had attempted to obtain a copy of the Kearny application. We were advised by staff of the Urban Enterprise Authority, that if we wished to review the Kearny application, we would have to come to Trenton to review that application. We offered to pay for it. We offered to send someone to Trenton to literally pick up the application. We were told this was not possible, that to review it we must be present in Trenton with Authority staff members.

We did schedule a meeting. Our staff was willing to go there. One day prior to that meeting, we were advised that as opposed to coming to Trenton, perhaps the Kearny UEZ Chairman could forward a copy of the plan to us, and that was done. So ultimately we did receive a copy; the point there being, it was with great difficulty and only after we had been told we literally had to appear in Trenton.

We did appear at the April 8 meeting, and we did give testimony. Frankly, our opposition still stands, as I had said.

Subsequent to that, we attempted to determine when the plan would be acted upon. We were unable to determine whether the plan would be acted upon at the May meeting. At that time, frankly through frustration, we requested the intervention of our local legislators to help us in ascertaining when the plan would be acted upon. It was our intention to reappear before the Urban Enterprise Zone Authority to present additional testimony, and to again, strenuously oppose the granting of the sales tax reduction. Again, that was done from May on, not so much directly, but indirectly, through the local legislators.

As late as July 7 -- Senator, I think you alluded to that earlier -- we were advised that the matter was not on the public agenda for discussion at the July 8 meeting. Therefore, we made no plans to be present, although we would appreciate the opportunity, again, to present additional testimony. We made no plans to be present, and much to our surprise, on July 9 we learned that the sales tax reduction benefit had been acted upon.

And I should say, and although it is not for you to discuss here, we have entered suit against the Urban Enterprise Zone Authority specifically regarding their actions of July 8 and their failure, as we believe, to properly follow the letter of the law concerning their Sunshine Law obligations. That suit has been filed, and a competent court will determine whether those actions, specifically, were appropriate.

But in a broad stroke, the actions of the Urban Enterprise Zone Authority from day one as it pertains specifically to this application, the extension of the zone, the granting of the sales tax benefit, is a picture of a public agency run amok; no concern for public input; no concern, quite frankly, for the legislative process; no concern for its obligations, whether they be literal or in the spirit of the Sunshine Law. An agency that, frankly, again, has proven its disregard for the process by its failure to appear here.

I think in summary, our testimony and our position is that the actions of the Urban Enterprise Zone Authority concerning Kearny should be undone. The process should go to step one. The application should be reviewed with some true scrutiny, and public input should be permitted.

Regardless of the decisions regarding Kearny, ultimately, the public policy of the Urban Enterprise Zone Authority concerning public input, its requirements to notify and solicit public comment, must be addressed, must be changed -- brought much more in line with the way municipalities and other public agencies govern themselves and conduct themselves in public matters.

I believe that's all, Senator, unless the Committee has any questions.

SENATOR SCOTT: Thank you very much, Mr. Landolfi. I understand that July 8 was the day when they had the meeting? Is that right, July 8?

MR. LANDOLFI: That's correct, sir.

SENATOR SCOTT: All right. I just wanted to determine--

Senator Cardinale, do you have any questions?

SENATOR CARDINALE: In what form did you inquire about the meeting of July 8? During the course of your testimony you said that--

MR. LANDOLFI: We did it in two forms. In effect, we had made numerous phone calls to the Urban Enterprise Authority. We also had constant contact with Senator Scott's office, and we were working jointly on it.

Again, I said that we had become frustrated with our inability to receive timely information from UEZA. At that time we turned to all of our legislators and asked for some support, and if they would keep us advised of the actions of the UEZA, feeling that as legislators, they would get a better response than we did. Unfortunately, it appears that perhaps that wasn't the case. So that, in effect, we were in conversation with the Senator's staff, and in phone conversation with the UEZ staff.

SENATOR CARDINALE: When was the last call that you made to the UEZ staff?

MR. LANDOLFI: Sometime in early July, Senator. I'm not exactly sure on that.

SENATOR CARDINALE: It wasn't a few months ago? It was days before the meeting?

MR. LANDOLFI: Oh, no. Absolutely. We've had some ongoing conversation there.

SENATOR CARDINALE: And they told you clearly that it was not to be on their agenda?

MR. LANDOLFI: Not on the agenda. I think the Authority differentiates between not on the agenda and not subject to public action. We don't, but I think they do.

SENATOR CARDINALE: Thank you.

SENATOR SCOTT: All right. Thank you, Mr. Landolfi. We appreciate your testimony.

I'd like to call Joseph Skelly. Is Mr. Skelly here, the Kearny-Urban Enterprise Zone Director? If you would repeat your name for the record?

J O S E P H P. S K E L L Y: My name is Joseph Skelly, S-K-E-L-L-Y.

SENATOR SCOTT: And you're the Executive Director of the Kearny Urban Enterprise Zone, is that correct?

MR. SKELLY: The Coordinator of the Kearny Urban Enterprise Zone.

SENATOR SCOTT: The Coordinator. Okay, Mr. Skelly, do you have testimony?

MR. SKELLY: I was prepared to take questions at one point in time. However, I've been advised that legal action has been taken. I'm not at all sure whether the town or my agency has been attached to that legal action, and that does preclude my ability to make any statements that might jeopardize our position.

SENATOR SCOTT: So basically, you're here, but you feel you are unable to answer any of the questions?

MR. SKELLY: At this point, yes.

SENATOR SCOTT: Were you advised by counsel?

MR. SKELLY: I was advised by the Division of Commerce. I wasn't advised by town counsel. I've been trying to reach them, but I haven't had the opportunity to do so.

SENATOR SCOTT: Who advised you, in the Division of Commerce?

MR. SKELLY: I was made aware of their statement. They have made one statement, I believe it's on file here, somewhere. I'm not really sure. But they advised me that they would not attend, and--

SENATOR SCOTT: All right. When you say, "They," though, is there someone specifically who called and told you not to--

MR. SKELLY: Initially, Mr. Scarry -- Dr. Scarry -- myself, and Tom Ahern were to appear, but that has been-- No one in particular. No, I can't recall who exactly at the Division said they weren't going to attend.

SENATOR SCOTT: Oh. All right. So then somebody from the Division of Commerce called, and you took their word for it, whoever it may have been. Was it a clerk?

MR. SKELLY: They told us that they were not going to attend. That was the final statement.

SENATOR SCOTT: Okay. What I'm trying to get at, Mr. Skelly, is this: Somebody called, made a phone call, and when you spoke--

MR. SKELLY: I called them. I believe it was Mr. Hern.

SENATOR SCOTT: Mr. Hern?

MR. SKELLY: The Public Relations Director, I believe. I'm not quite sure of his title.

SENATOR SCOTT: But it was a Mr. Hern that you spoke to?

MR. SKELLY: Yes.

SENATOR SCOTT: And he is the one who advised you that due to the lawsuit that North Arlington has filed against their Division, the Urban Enterprise Zone Authority-- Now, remember, the lawsuit is against the Urban Enterprise Zone Authority. I don't think that you're a part of that.

MR. SKELLY: That I'm not sure of.

SENATOR SCOTT: And the Borough of Kearny-- Really, you're not a State agency, you know. They're a State agency, okay? So there's a big difference there.

MR. SKELLY: To the extent that I would be representing them, I suppose that was the advice.

SENATOR SCOTT: All right. So, actually, you're not prepared at this time to answer any questions?

MR. SKELLY: No.

SENATOR CARDINALE: Can I ask you, then, why you came?

MR. SKELLY: Basically, I came to observe.

SENATOR CARDINALE: Did you request being on the witness list?

MR. SKELLY: No.

SENATOR SCOTT: Your name is here.

SENATOR CARDINALE: Your name appears on the witness list.

MR. SKELLY: Okay. Initially, we, as part of the presentation that we were planning to make, prior to the lawsuit, my name probably appeared on it. But as of now, that has changed, and we're in a position right now where we do not want to jeopardize any legal position we might have.

SENATOR CARDINALE: Just a comment to you, Mr. Skelly. I've been in the Legislature for 13 years. This is the first time a witness has come before a legislative committee on which I've served and said, "I'm on the witness list, but I don't want to testify."

MR. SKELLY: I have to make it clear, I wasn't aware that I was going to be called as a witness until I came in. I had expected we would be making a presentation with everyone involved, and I just came up to observe. Sorry.

SENATOR SCOTT: All right. Well, you're certainly excused.

MR. SKELLY: Thank you. Sorry for the confusion.

SENATOR SCOTT: We will revisit, I'm sure.

MR. SKELLY: I hope so.

SENATOR SCOTT: All right. Mr. Thomas Ahern, Coordinator for the Jersey City Urban Enterprise Zone? (no response) Thomas Ahern? (no response)

SENATOR CARDINALE: Is this the fellow that you spoke to?

MR. SKELLY: (speaking from audience) Yes. They won't be present.

SENATOR CARDINALE: So he's not going to be present either?

SENATOR SCOTT: Well, wait.

SENATOR CARDINALE: He's the one who--

SENATOR SCOTT: He called you, Thomas Ahern? He's the one who suggested you not--

MR. SKELLY: No. I just happened to speak to him, and I'm aware that he's not--

SENATOR SCOTT: No, but a Mr. Hern-- You gave me a Mr. Hern, the P.R. Department of the Division of Commerce.

MR. SKELLY: Hern, right. Different people.

SENATOR SCOTT: Okay, fine. This is Thomas Ahern.

MR. SKELLY: Right.

SENATOR SCOTT: Okay, fine.

Well, we're moving right along. Mayor Rutkowski, Richard Rutkowski, Mayor of Bayonne? Welcome Mayor. I'm sure you're going to be available to testify today.

MAYOR RICHARD A. RUTKOWSKI: Anything you want to hear, Senator.

SENATOR SCOTT: Okay. All right. At your pleasure.

MAYOR RUTKOWSKI: Thank you. Mr. Chairman and members of the Committee, my name is Richard A. Rutkowski, Mayor of the City of Bayonne.

Since last December I've been leading the fight to have the UEZ Authority in Trenton delay the sales tax amenity application of Jersey City, Kearny, Elizabeth, and Orange. It's not that I do not want to see these cities get additional economic assistance. My fight was waged because of the devastation that would occur in Bayonne and in other communities when those favored UEZ communities start charging only 3 percent sales tax, while our local business people have charge the full 6 percent.

In case you hadn't noticed, that's conveniently timed to occur on November 27, just in time for the holidays. Local merchants, who depend on holiday profits to get them through the rest of the year, will see their regular customers shopping in UEZs for Christmas and Hanukkah.

Shoppers from neighboring Staten Island who regularly cross the Bayonne Bridge to save 2 percent on the New Jersey Sales Tax and pay no tax on clothing purchases, will now instead continue along the newly opened Route 169 to Jersey City, where they will be able to save 5 percent off the New

York State Sales Tax. Or they may just cross the Goethals Bridge and shop in Elizabeth, which may even be closer. Either way, those are customers and profits that Bayonne stores will now be losing. The same applies to North Arlington.

Like most other urban centers in New Jersey and the nation, our residents and our businesses have been hurt by the national recession. In the interests of time I'll spare you the list of our economic woes and difficulties. Instead, I'll just point out that the vast majority of our businesses are mom and pop type establishments, struggling day to day to stay open. Many already had to close. That's why we fought so hard to delay those four sales tax amenity applications. Yet the UEZ Authority chose to make its decision in a manner that was not aboveboard.

Bayonne and other communities that were in opposition to the application were not informed as interested parties that a UEZ Authority meeting was scheduled for July 8, even though the applicants were apparently told, since they were present for their favorable decision. We hadn't overly worried about the July meeting because all along we were reassured the Authority's decision would be rendered in August. Finally, the spokesman for the UEZ Authority confirmed for us that the four applications were not even listed on the July meeting's agenda. He said Commissioner Scarry brought the matter up under old business.

I hardly think proper procedures were employed by the UEZ Commissioners and I urge you to investigate further. It seems Bayonne's hopes now rest with a bill introduced by Senator Edward T. O'Connor that would extend these UEZs into the peninsula of Bayonne. Without its passage, we're virtually an island, surrounded on three sides by water, and the urban enterprise zones of Elizabeth, Newark, Kearny, and Jersey City on our northern border.

Bayonne can fully empathize with North Arlington since we also have stores on one side of the street that would have to charge the full 6 percent sales tax, while those on the other side in Jersey City would be giving their customers a 3 percent break.

The basic concept of urban enterprise zones and the economic benefits they bring are good, even the 50 percent sales tax amenity. However, they cannot be awarded indiscriminately without consideration of neighboring communities and the possible negative impact they will cause on these municipalities, their businesses, and their economies.

Senators, Bayonne is worried. If it does not become a UE zone, like all its neighbors, it will succumb to these financial nooses placed around all the cities involved, including North Arlington.

I urge you to reexamine the procedures used to award these UEZ amenities, and to institute protective measures so that an isolated non-UEZ city like Bayonne need not be economically devastated by those UEZ communities surrounding it.

Thank you very much for hearing me this afternoon. And in case you'd care to have a Subcommittee meeting in Bayonne, we'd be glad to host it for the Committee.

SENATOR SCOTT: Thank you very much, Mayor Rutkowski. We may be over there.

I have one question in particular: I believe you were constantly trying to be appraised of when this issue would be brought up before the Urban Enterprise Zone Authority in order to testify. Am I correct in saying that you called and were told that it would not be on the agenda?

MAYOR RUTKOWSKI: Not exactly, Senator. I read in the paper that you called -- that your group called -- and that it would not be on the agenda so I did not take any further steps, except that morning of the meeting, my secretary did call to find out about what's taking place at the meeting. There was a

lot of hemming and hawing by whoever spoke to my secretary. Finally, they did give my secretary an answer that, "Yes, it was going to be placed on as old business by Commissioner Scarry," I believe.

SENATOR SCOTT: And that was sometime on that--

MAYOR RUTKOWSKI: That morning.

SENATOR SCOTT: Was it Wednesday morning, I believe, the 8th?

MAYOR RUTKOWSKI: Yes.

SENATOR SCOTT: And the meeting was held shortly thereafter.

MAYOR RUTKOWSKI: Correct. And as I stated in my brief summary, I think since I was involved back in December, that they should have shown some courtesy to me, a Mayor of a city, the second largest city in Hudson County, at least to be informed that it could be on the agenda.

SENATOR SCOTT: And you mentioned the fact that we did discuss with Senator O'Connor his bill which would have protected Bayonne?

MAYOR RUTKOWSKI: Yes.

SENATOR SCOTT: Which since Jersey City does-- You're landlocked as far as Jersey City. I know you cannot get out of Bayonne without going through Jersey City--

MAYOR RUTKOWSKI: That's correct.

SENATOR SCOTT: --unless you go over the bridges somehow. So you are landlocked as far as that's concerned. Not landlocked, sorry. You're being the peninsula.

Senator Cardinale?

SENATOR CARDINALE: Yes. You say that the hope for your community lies with Senator O'Connor's bill. Have you asked him to have that bill posted?

MAYOR RUTKOWSKI: Yes, sir.

SENATOR CARDINALE: As you know, the main Committee, the Commerce Committee, has released that bill. You were at the meeting.

MAYOR RUTKOWSKI: Yes, sir.

SENATOR CARDINALE: And we have released it.

MAYOR RUTKOWSKI: Yes, sir.

SENATOR CARDINALE: Have you asked Senator O'Connor to request that the bill be posted?

MAYOR RUTKOWSKI: Yes.

SENATOR CARDINALE: To my knowledge, there has been no request for posting of that bill at this point in time.

MAYOR RUTKOWSKI: I'll double-check on that when I get back.

SENATOR CARDINALE: Have you asked Senator O'Connor, who represents you, to do anything specific with respect to this present action?

MAYOR RUTKOWSKI: In regard--

SENATOR CARDINALE: You know he is a member of this Subcommittee? I appointed him as a member of this Subcommittee as well.

MAYOR RUTKOWSKI: In regards to the approval of the sales tax reduction?

SENATOR CARDINALE: Yes, yes.

MAYOR RUTKOWSKI: I made him aware of it, but beyond that, that's why I came to the Subcommittee meeting here: to voice my objection to what took place at the Urban Enterprise Zone hearing on July 8.

SENATOR CARDINALE: What do you think would be a fair resolution to this problem that the Subcommittee ought to direct its attention to?

MAYOR RUTKOWSKI: The way things are going now, it seems that they are site specific, especially with the four municipalities involved. As I spoke, I believe, at the hearing down in Trenton before your Committee, Senator, I believe that if this keeps up, either everyone gets it or no one. Let the merchants be competitive. Let them raise or lower their prices. When, in this case, North Arlington or Kearny or

Bayonne or Jersey City-- Say Bayonne and North Arlington have one arm tied -- the merchants do -- one arm tied behind their backs because by State regulation of the Urban Enterprise Zone regulations the Kearny or Jersey City, they are allowed to reduce their prices, in one sense, by 3 percent -- the 3 percent sales tax reduction. And the way the economy is today, the margin of profit is very small, and that 3 percent is very critical.

Whereas, if they are going to compete -- and that's what America has always been made of, competition -- compete at least on an equal basis--

SENATOR CARDINALE: Would you think it would be fair to say that while the urban enterprise zone concept seems to have a great deal of appeal, that unless you make the whole State an urban enterprise zone, you're going to have these problems almost no matter what? Someone always has another town on its border.

MAYOR RUTKOWSKI: Basically, I agree with you, Senator, because besides the sales tax reduction -- going back to Jersey City now, and as the Business Administrator of North Arlington mentioned, because he says, South Kearny-- He says, basically he had no problem with South Kearny being part of the zone or being a zone, but the expansion of the zone--

Well I have a problem. Basically put, Jersey City right now is an urban enterprise zone. Forgetting about the sales tax reduction, they also have other amenities because of being an urban enterprise zone, which Bayonne does not have.

If a corporation wants to build in Bayonne or Jersey City-- In fact, right now, the Bayonne Economic Development Corporation, they get calls from various corporations, "Are we an urban enterprise zone?" And when they say, "No," that ends all discussion. So when a plant builds in Jersey City, say if they buy \$1 million worth of equipment, and they have a 6 percent reduction -- that 6 percent no sales tax -- that's \$60,000.

So where are you going to build your plant, in Jersey City or across the border 100 feet in Bayonne, where you're going to save this type of money and the other amenities as far as the payroll tax reduction or whatever? I'm not sure what the exact amenities are, but there are other things which I think aren't fair in competition when you're so close, borderwise. Now, if you're 20 or 30 miles away from other municipalities, maybe. But when you're contiguous such as Bayonne/Jersey City, or North Arlington/Kearny, I see a big problem.

SENATOR CARDINALE: Thank you, Mayor.

SENATOR SCOTT: If I may, Mayor, one other thing: Have you commissioned or done a fiscal impact study, with the 3 percent sales tax in Jersey City versus what's going to have?

MAYOR RUTKOWSKI: No, we have not done one locally, Senator. But even without a study, being a businessman--

SENATOR SCOTT: I know. It's common sense--

MAYOR RUTKOWSKI: --I can tell you-- I mean, I'm in business. I'm a businessman. So, if another operation, the same type business opens in Bayonne, they're going to take a certain amount of money away from me, whether it's 1 percent, 5 percent, or 10 percent, and that may be the cream -- the profit margin -- to keep a business going.

SENATOR SCOTT: May I make a suggestion? For your own safety and would help with the presentation of the problem as it exists, when you apply for the UEZ and so on, there is a lot of criteria that must be met and in order to meet that you have to provide a lot of information. It may behoove you to do that for Bayonne and the impact that it's going to be with the 3 percent sales tax in Jersey City.

A selling point: You're in business, we're always looking for that selling point or marketing tool. As you know the UEZ Authority and the legislation provides that they do not have to take into account the impact on other than another

UEZ. So a Jersey City's impact only on Kearny is considered; nothing to do with Bayonne or any other town.

MAYOR RUTKOWSKI: Which I think is unfair, by the way, Senator.

SENATOR SCOTT: I couldn't agree with you more. It's terribly unfair. But thank you, and if you ever do that, I would certainly be interested in getting a copy of it so we can take a look at the whole problem as it exists.

MAYOR RUTKOWSKI: Thank you for hearing me this afternoon. And the offer still holds, if you care to have a Subcommittee meeting in Bayonne.

SENATOR SCOTT: Thank you very much, Mayor.

I'd like to call Lou Paraboschi, President of the Belleville Chamber of Commerce. Lou, how are you?

L O U I S P A R A B O S C H I: Mr. Chairman and members of the Committee: On making a few notes while people were speaking just previous: When you go from North Arlington to Kearny there is not a profound difference. When you go from North Arlington or Kearny to Belleville, there is a profound difference. It's a difference that we've been trying to overcome these past few years. We've got a facade program in place, and we're trying to attract business back to the town. We're not trying just to hold onto what we have. We don't have that much there at this point. We're trying to bring new business in, and we feel an undue advantage that Kearny would have with this 50 percent reduction in sales tax, whether it's on small-ticket items or big-ticket items, the perception is there that the savings are there. And if we can't keep the people on sharing that business back and forth across the river, it's not only going to hurt the business we have, it's going to stop the business from growing at all, or from coming back in to Belleville.

We find it very difficult to understand how Kearny, who has actually maintained a relatively decent and well

established, well maintained business area over these past years with the recession and the different economic problems, could expect to double the business, to double the revenue to give to the State. We just find that just a little bit unbelievable.

We want to know where the 500 new jobs are coming from? If they're going to come from Belleville, it's going to hurt us tremendously. We just feel that there's just a total inequality there. It won't hurt us in Belleville as much as-- It will hurt us to the extent that it will stop the rebirth that we're experiencing right now.

Thank you.

SENATOR SCOTT: Well, Lou, if I may, on the map, one of the things I tried to do is to show the proximity, especially of Washington Avenue to the bridge and to Kearny Avenue, to show the difference, because you're not that far away, and you're directly impacted.

MR. PARABOSCHI: (demonstrating at map) The bridge is maintained. If the bridge was closed, it wouldn't matter.

SENATOR SCOTT: It wouldn't matter.

MR. PARABOSCHI: But the bridge has been maintained, and maintained well. Even the local newspapers, the Kearny Observer and the Belleville Times will do across-the-bridge advertising. So we share shopping back and forth. And the business we're trying to attract into Belleville, we always use Kearny and North Arlington-- We always take them into consideration. We know competition is good, but we don't want to necessarily take away from anyone who already has an established business. We'd like to do something new and something different so we can draw from both ends, back and forth.

SENATOR SCOTT: And actually, that bridge, as you say, is in excellent repair.

MR. PARABOSCHI: Yes.

SENATOR SCOTT: I have gone over it many times to go into Belleville, and you really travel just not too far at all, and you're right smack on Washington Avenue.

MR. PARABOSCHI: You're right there.

This is the main thrust of our renovating in the town -- Washington Avenue.

SENATOR SCOTT: I believe you have a program designed to develop Washington Avenue and are looking for help from Economic Development and so on and so forth. Hopefully, they will be able to help you with that. This is definitely going to have an adverse impact.

MR. PARABOSCHI: Tremendous.

SENATOR SCOTT: Even though there is a river there, it's crossed pretty easily these days.

Any questions, Senator?

SENATOR CARDINALE: Yes. A number of things occur to me. Were you aware that these items were under consideration by the State agency?

MR. PARABOSCHI: Not at all.

SENATOR CARDINALE: You were not aware?

MR. PARABOSCHI: Not at all.

SENATOR CARDINALE: From what you know now with respect to these urban enterprise zones, they present quite a dilemma -- let me say that -- to legislators, people like myself, people like Senator Scott, people like Senator O'Connor, because there is an obvious benefit to those who are so designated, and there is an obvious detriment to those who are not so designated.

Given the choices, from your perspective, would you prefer to see the status quo remain, or urban enterprise zones of all kinds eliminated by the Legislature?

MR. PARABOSCHI: I don't know if I know enough about it completely to make the correct judgment on that?

SENATOR CARDINALE: I'm only asking, from your perspective.

MR. PARABOSCHI: From my perspective, I would like to see it eliminated in total, because that puts us all back in an equal position again.

Back into perceptions again, and my own feeling has always been perception is reality: Bloomfield Avenue in Newark has always benefited from this reduction in sales tax, but perception being reality, if the people in Belleville or Kearny, or Bloomfield, or Nutley, their perception was that, "There is no reason for me to go to Bloomfield Avenue. It doesn't matter."

We've always respected and looked up to Kearny's business area and shopping area as being prime, as being maintained very well. If it's managed to do it at this point through the years, with everyone else having problems, we can't see why they should be given this advantage right now, just holding it over everyone else's head.

It's like saying, "Belleville, get lost. We don't need you anymore. There's no reason to cross the river. Everything now, we're self-contained. We're either South Bergen or West Hudson, and Essex County can go hang."

SENATOR CARDINALE: So from the perception you have as a local businessman of the Kearny business district, you believe that the Kearny business district was prospering--

MR. PARABOSCHI: Yes.

SENATOR CARDINALE: --prior to this action?

MR. PARABOSCHI: It's been prospering right along. And like I said, we've always used it as the example, and a good example.

SENATOR CARDINALE: Thank you very much.

SENATOR SCOTT: Thank you very much, Lou. We appreciate-that.

I'd like to call Richard Donato of Arlington Jewelers.
R I C H A R D F. D O N A T O: My name is Richard Donato, and I own Arlington Jewelers in North Arlington.

I feel that I don't know everything there is to know about what an enterprise zone is supposed to be, but of the enterprise zones that had been in existence before, I was always under the understanding that it was granted in a blighted area, an area that was a disaster area. And people really weren't interested in shopping too much in an urban enterprise zone because of fear of personal safety. They didn't want to go to areas of Newark to save three cents on a dollar. It wasn't worth it.

In this case we have a thriving community -- business community -- because Kearny's business is the same as North Arlington's business community, if not even stronger, because they have many more merchants and much more diversity of merchants and better parking facilities. It's a very bustling avenue, Kearny Avenue. To grant a bustling, thriving area this advantage, all it seems to me to do is to blight all the neighboring areas.

Now, if the purpose of the enterprise zone is to make one favored community prosperous and ravage all neighboring areas, then I think they're on their way to trying to accomplish that. But to me it doesn't make sense, the entire thing.

First of all, the State of New Jersey is in dire straights to begin with, and they're telling us that revenues are way off, sales tax coming in is way off, everything is way off. So, what do we do? We reduce the sales tax to 3 percent and ravage the surrounding areas so that the business can go to a more prosperous area, and they can pay 50 percent of the sales tax. It just doesn't seem to make sense to me. Now, maybe I'm not filled with all the wisdom of the world, but if somebody could explain it to me, I would be happy to try to understand what's going on.

SENATOR SCOTT: Well, Mr. Donato, you're filled with common sense. You may not know the law here, but common sense

dictates exactly what you said. As a jeweler, I'm sure you would be impacted considerably with your merchandise.

MR. DONATO: Yes.

SENATOR SCOTT: Shopping for jewelry-- You're in a highly, extremely competitive business. So I'm sure you need every edge, and if somebody gets a 3 percent edge on you, you're in trouble then.

How many jewelers are-- Do you know of jewelers immediately in the area?

MR. DONATO: Well, we have Vary Jewelers, also, on the same strip as I am -- near me, near myself.

SENATOR SCOTT: How about on the Kearny side?

MR. DONATO: Oh, in Kearny, there are about four or five of them.

SENATOR SCOTT: Four or five?

MR. DONATO: Four or five in Kearny. But what's interesting about this situation is that as you know, we have Fourth Street in Harrison that then becomes Kearny Avenue in Kearny, and then becomes Ridge Road in North Arlington.

SENATOR SCOTT: Right.

MR. DONATO: So we have one contiguous strip, and right in the middle of it, that's going to be the enterprise area where you get a tax break, and the other people on either side are in trouble, because you can't give them the tax break.

SENATOR SCOTT: Let me ask you this: Are you a member of the West Hudson Chamber of Commerce?

MR. DONATO: Yes.

SENATOR SCOTT: Would Harrison be in that, too?

MR. DONATO: Yes.

SENATOR SCOTT: Okay. So in other words, what we've done to the West Hudson Chamber of Commerce is--

MR. DONATO: They're divided.

SENATOR SCOTT: --there's a whole group in the middle there who are going to say, "Well, we've got 3 percent. We don't really want to talk to you fellows."

MR. DONATO: Yes, yes. Now the other insanity of the whole thing is that certain blocks in Kearny are granted this reward. We have Kearny Avenue, we have Passaic Avenue, and we have Schuyler Avenue.

SENATOR SCOTT: And you have the Belleville Pike.

MR. DONATO: Yes, and Midland Avenue. Now, if you happen to be a big merchant, let's say you have a furniture store on Davis Avenue, which is also a main drag in Kearny, but for some reason was not granted this blessing, then you would die, because you're in the middle of an enterprise zone, but your street doesn't count. So now I guess you're out of business because everybody will go shopping at the other store that's on Kearny Avenue.

The entire concept of this enterprise zone, in general, statewide, to me seems-- I don't follow it. I mean, I think it would be better if the State has all this money to help out certain businesses, they should then grant it somehow in the way of a fund.

SENATOR SCOTT: Mr. Donato, I don't think the State has a lot of money. We've been cutting back. That's been one of our big problems, as I'm sure you are aware.

MR. DONATO: Absolutely. But to grant a 50 percent tax advantage to a bustling town that is not blighted, I mean, we might as well make Summit then an enterprise zone, or Westfield. A beautiful area, you like to go there, and at the same time you save 3 percent. It's great.

SENATOR SCOTT: Senator Cardinale may insist on having Alpine and Upper Saddle River, since they're in his district.

MR. DONATO: Absolutely. Because if we're going to make nice areas enterprise zones, then people have no compunction then to shop there. But if you talk about making an enterprise zone an area that is truly blighted, to try and revitalize it a little bit, that's one thing. But this is a completely different ball game.

SENATOR SCOTT: Do you have any questions? (no response)

All right, Mr. Donato, as I say, don't feel bad that you don't know the law, because here's the information. (provides written information about urban enterprise zones to the witness)

MR. DONATO: Thank you, sir.

SENATOR SCOTT: I refuse to read all that myself. I have to, but I rely on staff people to break it down and make it simple for me, so you understand the problem, believe me.

MR. DONATO: Yes, thank you very much, Senator.

SENATOR SCOTT: Thank you.

I'd like to call Mr. Buddy Filippone of Melray's Furniture in North Arlington.

M. "BUDDY" FILIPPONE: Senator Scott, my name is Buddy Filippone from Melray's.

I would just like to say in front of this Committee that I went to the meeting on April 8, and spoke before the Authority that was there. So just to speed things up, if somebody would like to read that testimony that was given then, I think it would speed things up here.

But my questions are directed toward not necessarily going into the enterprise zone, what should be and shouldn't be approved by the Authority, but more so with the specific actions that this Authority took with regard to these four applications. I find it amazing that everyone surrounding, at least the Kearny application, had no idea this was going on to begin with. If something is such good news-- Good news, I think, travels fast. This seems to have been kept in the back offices and closets someplace.

The second point is that it's my understanding that South Kearny was already an enterprise zone, so they were looking to expand the zone. I understand that this expansion has to be done in a contiguous manner. If that's the case, I

would like to know how you get from South Kearny to Schuyler Avenue, to Midland Avenue, to Kearny Avenue -- I mean, reasonably, anyhow? We know how we can drive it. We know we can either take the Belleville Pike through the Meadowlands, and then all of a sudden it goes very residential, and then all of a sudden it becomes a business district. But practically speaking, the way you continue this zone, to me you had to set out to absolutely circumvent the requirements of the law, just purposely to get this matter done.

There are a couple of other things. When an authority is looking into an application, to me one of the keys as far as whether the area warrants this designation or not -- because the word was brought up that it's a blighted, depressed area-- I think some way the Authority could look into what are the rents in that area. I mean, when it becomes business property, assessments and appraisals, all of that business is usually done on the basis of the rents collected per square foot.

I would submit to you today that the rents per square foot that are collected in Kearny are either equal to, if not higher, than the rents in North Arlington. So much, then, for who is the more prosperous business area.

I also am a home owner -- property owner -- in Kearny, and I am as upset in that regard, because I don't think that the property owners of Kearny recognize this distinction now, that they are an enterprise zone. I quite frankly feel that my home has decreased substantially in value because they have labeled my town, now, an enterprise zone. I think if more people recognize that in the town of Kearny, they will object.

As my friend Mr. Donato brought up, you are going to have squabbling in the same town with regard to one business being on an approved street and a similar business being on a nonapproved street. How do they compete?

So what I'm saying is that all of the actions of this UEZ with regard to the April 8 meeting and with regard to the

July 8 meeting, I guess, they seem to smack of trying to circumvent the laws established to rule them, and rule everyone else. So I think before even discussing whether something should be a zone or not, it's more important that we really zero in on the specific actions of this Authority with regard to this matter, these four applications, and then maybe go on and say, "Does this State really need a UEZ or don't they?"

It seems to be a very fashionable thing today, doesn't it? You hear it on a Federal level and all of that. But what I think they're talking about on a Federal level, and what these people are doing on a State level, are night and day.

That's all I have to say.

SENATOR SCOTT: Thank you very much, Buddy. You're correct in your assessment. There are many problems with it. Once again, the concept of the UEZ was fine. The implementation went wrong. That's where we usually end up when we put legislation in and the legislative intent is distorted after a few years, and you don't quite get what you start out looking for.

You're a furniture dealer, and I imagine you're going to be impacted considerably, since people do come in and spend a few thousand dollars at a clip when they buy furniture. Do you have any competitors in Kearny who are going to have an advantage over you now?

MR. FILIPPONE: Yes. I would say our major competitor is in the UEZ.

SENATOR SCOTT: They are? So you will feel the weight of this immediately, as soon as it comes into effect. I'm sure he'll advertise 3 percent versus your 6.

MR. FILIPPONE: There is no question about it. We also have a facility on Schuyler Avenue in the UEZ zoning. So, I mean, there are, obviously, some ways, I guess, which I can attempt to combat this thing. But I don't know whether that is the spirit of the Authority. To me, if the thing is really

going to work, its ultimate desire or goal is to expand, not feed off of someone else, and if you have expansion, then the thing is working correctly. But if you're just going to take from someone else, you're just playing checkers.

SENATOR SCOTT: Senator?

SENATOR CARDINALE: How will you cope with this?

MR. FILIPPONE: Well, I will investigate the law, Senator. Like I say, we also have an installation that is on Schuyler Avenue in Kearny that we can operate from. Another thing is, I will look into the law more specifically. I have a friend of mine that has a business in the enterprise zone of Newark on Frelinghuysen Avenue. I noticed something on his front counter that said, "Pick ups, 3 percent; deliveries, 6 percent." Now, I have to look into that more closely.

It was told to me -- I have not checked it out yet -- but it was told to me that if you operate a business in the UEZ, and you deliver in the UEZ, you're allowed 3 percent. If someone comes from outside the UEZ and picks up in the UEZ, 3 percent. But if you operate a business in the UEZ and deliver outside of the zone, I'm told that you're supposed to collect 6 percent.

Now, I'm asking for clarification of that, which would make sense, too. Otherwise, major, major purchases of consumer products will all be flocking to the UEZ. It's very interesting that the automobile dealers are exempt from this. So it makes a lot of sense why, but that I have to look into further. If that be the case, that is some help for the situation. If that's not the case, then fairly or unfairly, you have to look for some way to survive.

SENATOR CARDINALE: Would one of your options be to just move to Kearny and close down your operations elsewhere?

MR. FILIPPONE: Not necessarily close down, expand into the zone, yes.

SENATOR CARDINALE: And then really direct your sales to within the zone?

MR. FILIPPONE: What it creates is a monster. You start spending more time looking for ways to circumvent certain laws rather than pay attention to your business and trying to expand it that way.

SENATOR CARDINALE: If you were a businessman-- You may not be involved in the real estate business at all, but as a person who goes out and rents locations, obviously, from people -- or buys locations from people who are in the real estate business -- would you think this would enhance the property values in Kearny?

MR. FILIPPONE: Well, it depends on the property. In other words, if you're dealing with residential property or if you're dealing with commercial property. I think there's a major difference there.

SENATOR CARDINALE: I'm referring to the commercial property.

MR. FILIPPONE: You're referring to the commercial property. I am really not sure of the impact on it. There are pros and cons to it.

Well, I'll tell you what: It would also depend on the type of business you were in. If I happen to be in, say, an up-scale clothing business, and the enterprise zone would not affect me because clothing is not taxed, then I would not be looking into establishing myself in that zone. I would be looking to establish myself, quite frankly, out of the zone. But if it happens to be a product that is either a high-ticket item, or taxed in any way, then maybe you would look to locate there. So I think it depends on the product that you speak of.

SENATOR CARDINALE: You're generally familiar with the area of Kearny that has been impacted with this change?

MR. FILIPPONE: Very much so.

SENATOR CARDINALE: I'm not, and I would like to just ask you, for my own personal information, are there lots of businesses currently located there which would benefit from this and which are already doing well?

MR. FILIPPONE: If we're going to speak in numbers, I think, no. You see, if you take Kearny Avenue, as I stated down at the meeting on April 8, most of the-- Because one of their contentions is that a lot of commercial space on Kearny Avenue is vacant, and my contention is there is no benefit because of sales-- Somebody is not going to open up on Kearny Avenue because of a discount in the sales tax, you know, simply because of that. The shops that are remaining in Kearny now, unrented, are very small -- probably 500 square feet -- very old shops, that are only going to attract very mom and pop type operations, which in most cases are probably exempt from collecting sales tax.

So that there isn't any benefit in that respect to the community. I don't see these mom and pop type operations benefiting the community. They're not going to go out and hire 10 people. They're lucky if they keep themselves busy.

So some of the input that was in the record there I believe was already in place, and it was used to bolster their position, meaning, that I think Pathmark is coming down on Passaic Avenue and is going to open up in the old Two Guys from Harrison plot. That was already in place before this enterprise zone business. I don't see anybody flocking to this community.

Another excuse, for lack of a better term, is that property values go up in enterprise zones. I'll go back a couple of steps. The reason, I think, that property values tend to go up in enterprise zones is, before they establish them as an enterprise zone, they are such blighted, depressed areas. There is no place else for them to go. They have bottomed; so anything is an improvement. But if you're already in a mid range, I can't possibly see how you would improve on that with this designation. I think it's not feasible.

SENATOR CARDINALE: Thank you.

SENATOR SCOTT: To answer your question, the Department of Commerce puts this out about the UEZs: (indicates pamphlet) "For a reduced sales tax purchase, there must be a face-to-face transaction. Either the buyer must order in person or pick up the property in person at the qualified vendor's place of business." So you can call in and go pick it up. You can't call in and have it delivered. That's the answer.

Do we have an extra one of these?

UNIDENTIFIED STAFF MEMBER: You can give him that one.

SENATOR SCOTT: If you'd like to have that?

MR. FILIPPONE: I'm very happy to hear that, Senator.

SENATOR SCOTT: There's one thing that you do have to change. It says 3 and-a-half percent. It is now 3 percent because the Legislature, in its infinite wisdom, reduced the sales tax to 6 percent.

MR. FILIPPONE: I would like to make one other statement in front of this Subcommittee here. When I got wind of this action taking place, I kind of ran around a little bit like a chicken without a head. After speaking with Mr. Landolfi and Mayor Kaiser and Mayor Rogers, I had the good pleasure of going to Senator Scott, your office, and unannounced, in about 10 minutes time, you agreed to see me. I really was very impressed by that, and actually, the behind the scenes work that has been taking place between that time that we met and now.

SENATOR SCOTT: Thank you.

MR. FILIPPONE: I was very impressed by that.

SENATOR SCOTT: I think that's what I'm here for.

MR. FILIPPONE: Well, thank you.

SENATOR SCOTT: If you would like to have that? (provides witness with pamphlet) Thank you very much, Mr. Filippone.

MR. FILIPPONE: Thank you.

SENATOR SCOTT: All right. Senator Cardinale?

SENATOR CARDINALE: Yes. Mr. Skelly, I've been given, since you were here, a copy of the filing in the Superior Court with respect to this matter. For your information, it's an action in lieu of prerogative writ. That's specifically what it is. The plaintiffs are the Borough of North Arlington, and the only named defendants are the New Jersey Urban Enterprise Zone Authority.

I don't know if that would make any difference to you. You've obviously been given at least some cause for concern that your community was a named defendant. But I do have a copy of that if you would like to look at that, if that would make a change in your decision not to speak. You certainly can look at this and make up your mind whether you would like to speak or not. But you are in no sense in this lawsuit, or before this Committee, in any way a defendant or charged with having done anything that is improper.

MR. SKELLY: (speaking from audience) For the record, I think I'd prefer to wait until perhaps a later meeting of the Subcommittee before making any further comments.

SENATOR CARDINALE: Thank you.

SENATOR SCOTT: Thank you.

I'd like to call Mr. Torciello. (phonetic spelling)
Is Mr. Torciello here, C and J? (no response) Okay.

Jay Malanga of Gema Variety?

J A Y M A L A N G A: Mr. Chairman, thank you for the opportunity to appear before you and your Committee. My name is Jay Malanga. My wife and I are proprietors of Gema Variety Stores, and I am pseudo representative for the North Arlington Businessmen's Association, in that our President is not available..

I've listened to a great deal of testimony, and when you get to the bottom of a list of testimony, most of your thunder is gone. However, rather than address the enterprise

zone, what I would like to address is the fact that there are 30-some odd members of our Association. The Association is made up of everyone from the Belleville Pike down through past the cemetery to the Lyndhurst border. Most of our business people are on the Ridge Road line. You've heard from two of our members today, both major factors within our business community.

I don't have to tell you about the economic climate today. It, at best, is survival and when we get hit with the fact that we are now going to face an additional 3 percent thrust taken away from us to fight an adjacent town, who for years and years has been, literally, a good business partner-- Most importantly to me is that I sell a commodity within 25 feet of our store, and our customer can walk right across the street, the Belleville Pike, and buy the same commodity for 3 percent less. The most important thing that I find, and unfortunately or fortunately--

A situation arose today, a customer came in who read the Observer and asked, "When is the 3 percent sales tax going to take place?" I'm on the North Arlington side, unfortunately from a standpoint of being put at a disadvantage, fortunately because it happens to be a magnificent business district, well-maintained, well-run, and prosperous because of the types of businesses that are here.

We are small businesses. There are no major businesses here. I have reduced the staff in our store from five at max, to we're down to two. I am sure that other people within our business district have anywhere from two to five, ten, twelve people, mostly businesses run by ownership, proprietors, husbands and wives.

They are here for survival. And I'm here today to tell you, Senator, that we're begging for our survival. Our survival to the extent that if this flies, I predict, with good conviction, that you will see storefronts empty on Ridge Road.

You will see an area that will turn into -- and the gentleman was here from Belleville, and I'm very familiar with the location -- what used to be a Washington Avenue, a thriving business district, will go down the tubes.

Then what happens? Then we face Lyndhurst. Then we face East Rutherford. The basic problem, I feel, and I hate to use the term clandestine, but this thing appears to me that it was done in a clandestine manner because obviously, they didn't want anybody to know what was happening. On several occasions, several members of our organization, several business people, wanted to attend. One meeting was postponed, another meeting was held. We were told-- I only made one phone call, and I was told that the Kearny EZ was not going to be on the agenda that day, and I just sat back and took it for granted that I was receiving the truth.

I am concerned. I am making an impassioned plea. Let North Arlington survive. Let the business district survive. It's been a magnificent business district for several years. Don't put us at a disadvantage. Don't let us fight while we're on the ground. Give us an equal opportunity to protect our interests, to protect our business, to do well for the town, and contribute that 6 percent sales tax to a State that sorely needs it, to a State that is in desperate straits right now.

We need an ongoing business, Senator, and I would hope, rather than me addressing all the technicalities -- and I spent a great deal of time going through it, and everyone addressed what I was going to say. I have to say for you and for our Association, we're begging: Don't throw us to the wind. Get something done so that we can fight on an equal basis.

I don't know what else I can say to you. I can say to you, other than that, that you will see empty storefronts, and I can assure you that will happen.

If there are any questions, I'll be more than happy to answer them.

SENATOR SCOTT: All right. Thank you very much, Mr. Malanga.

Senator, do you have any--

SENATOR CARDINALE: Yes. What would you have us do?

MR. MALANGA: Well, put me 'on an equal footing, Senator. Let me combat my enemy, if you will -- and I hate to use the term, but that's where we're at -- on an equal footing. Let me fight my competitor on an equal footing. What it's going to turn out being, and I can envision it happening, is that you're going to see huge signs go up in windows, "We will meet the 3 percent." And that will happen for a while, and those people will take the 3 percent out of their pockets and out of their profits, and then within six months to a year you will see storefronts empty; you'll see stores closing.

Now, going back in April, I read in the Observer when I first became aware of this situation, that Newark being an enterprise zone was not impacting on Kearny because Newark residents used to cross the bridge and go into the southern section of Kearny -- the southwestern section; there are several major stores located in two shopping centers -- and that it didn't impact on Kearny. Those customers still came across the river.

Well, I present to you, sir, that in the entire City of Newark there's only one supermarket, and that only opened in 1991, and that's in the Central Ward. There are several bodegas, several small mom and pop shops. By choice, those people had none in Newark. They had to come across that river to shop because they have no discount department stores. They have no supermarkets. And by way of some of the research that I did, supermarket sales, there are only 14 percent that are taxable commodities. In the discount variety stores, the K-Mart's, etc., most of those commodities are taxable. I'm saying to you, by the nature of what they presented, that it

didn't impact on Kearny, and those Newark customers in the enterprise zone came across the river, came across because they had no choice, sir. They had no place else to go, so they come to Kearny.

I'm saying that you're going to create the same situation as we go along and it will be like a cancer. A year from now, two years from now, North Arlington will have to apply to EZ. And then from there we will live for two years and Lyndhurst and Belleville-- My best bet is that either it's stopped and put in the proper perspective for what it was intended, or we're going to see this thing spread and you will have Subcommittee hearings all over the State -- all over the State.

SENATOR CARDINALE: Would you suggest, if you were in our place, would you be moving toward a total repeal of enterprise zones?

MR. MALANGA: I would have to qualify that by saying no, because I think there are some benefits to enterprise zones. And I say that in terms of the meaning of -- and we've heard blighted, distressed, etc. I venture to say that if you drove up and down Kearny Avenue from Harrison Avenue through the Lyndhurst border, that you don't see that. I would also venture to say that if you went into Newark you would see it, and I'm saying that I don't think that the 3 percent sales tax is going to justify destroying other surrounding towns, number one. Number two, there are other vehicles to help these communities that I'm sure would be found. I think that the EZ might possibly, within the confines of its present existence, have that vehicle. But to justify a 3 percent sales tax to the detriment of surrounding towns is very disturbing, and I think, counterproductive.

SENATOR CARDINALE: Here's the problem that I have with what you say, and maybe I'm not understanding you totally. If you left it in Newark, or you left it at South Kearny, there is someplace where you have a border.

I attended a hearing something like this. It was not a Subcommittee hearing. It was somebody else's hearing that I just went to in Jersey City. I heard people there saying, "Half of Jersey City has it, the other half of Jersey City should have it because the half that has it has an unfair competitive advantage to the half that doesn't have it." And I said, "That makes sense. If it's one entity, they should all have it."

Now you heard the Mayor of Bayonne here a little while ago. He came to a Committee hearing of ours, and made the statement that if you give this to Jersey City in its entirety, that it's going to have a real problem for Bayonne. But they really are an island unto themselves, and they don't really impact on anybody else. Bayonne and Jersey City sort of -- at least in his view -- operate kind of together.

Now, could we give it to Jersey City and leave Jersey City alone, in your view from what you know of business and what you know of this kind of concept, and leave Bayonne out? Could we give it to Jersey City and South Kearny and leave the rest of Kearny out? Is there not the same kind of sort of invidious comparison that gets made once you do it anywhere to whatever the border is? Aren't you always going to have a situation where on one side of the street you have a competitive advantage over the other side of the street, and pretty much, when you get to these border areas, they're kind of similar? I don't think you have blight on one side of the street and prosperity on the other side of the street in too many places that I've noticed.

To listen to your complaint, I get the impression the only solution to your complaint is to eliminate it everywhere, or to grant it everywhere, one or the other. I don't see any in-between situation.

MR. MALANGA: Well--

SENATOR CARDINALE: If there is an in-between situation in your mind, tell me what it is.

MR. MALANGA: I don't know what the in-between situation would be, Senator. What I'm saying to you is that if you take the Bayonne situation, they're literally landlocked and riverlocked, and there is no place to go.

SENATOR CARDINALE: Are they blighted?

MR. MALANGA: I don't know that much about Bayonne.

SENATOR SCOTT: I do. They're not blighted.

MR. MALANGA: I don't know that much about Bayonne. But I could ask the same question: If you go to any municipality, you're going to find something, somewhere that can be considered blighted, or not pleasing to the eye. I'm sure that I could find that situation in North Arlington. I'm sure I could find it in Kearny.

What I'm saying to you is that I'm dealing with 25 feet, a wall supposedly that is built down the middle of the Belleville Pike separating North Arlington from Kearny. The only thing I can tell you is that when we run our sidewalk sales, Kearny benefits sufficiently by them, and when they run their sales, we benefit because traffic is out. The towns are contiguous. It's a bus lane, and people get on the bus at the loop, and they'll ride into the center of Kearny, and if that 3 percent benefit is there, I'm never going to see that walk-in customer.

I don't have to tell you that the lifeline of small businesses in local districts like this is the walk-in consumer, up and down the street, the impulse customer walking into the stores to pick up something because she was out for a day or she went to a certain store. I envision them getting on our bus loop in North Arlington, traveling down the bus lane into the center of Kearny and doing their shopping, get back on the bus, get off the bus loop, and we will never ever see those people again in this town.

I am saying to you there must be an answer somewhere. To give you a specific answer I would say to you, "I don't know

how to break it down." If I had to make a hard-nosed decision right now, I would tell you I would rather see the whole thing eliminated than to deal with it on a piecemeal basis. To look at it from a reasonable standpoint, I would say to you there may be some merit to it, again. But it would have to be pursued, and I would think that if we were going to look at it, and if the enterprise zone was going to continue, and the Commission was going to continue, then some hard looking would have to be done in terms of their procedures, the information flow--

I've seen words bandied about with the Sunshine Act and the Right to Know, etc. The biggest problem I find is that I didn't know, and had I known sooner, I would have been fighting sooner. Through the auspices of Senator Scott's office and our office here with Bob Landolfi and our Mayor, we became a very active group, because we are fighting for our survival.

That's the bottom line. I wish I had an answer for you on whether I would want to see the zone, or fragment up the Commission in some way that would be beneficial, because I think our ultimate benefit -- all of us here -- are to see that our county, our municipality, and our State thrives and prospers. But don't do it at the expense of other people. Don't put one business out that is paying 6 percent sales tax to the Treasury, to make another business thrive at 3 percent.

That's bottom line. We want to survive, nothing more.

Thank you very much, sir.

SENATOR SCOTT: Thank you, Mr. Malanga.

I think the testimony we heard today-- Is there anyone else who wishes to testify? (no response)

Based on that, with the testimony we heard today, I think it's apparent there are problems with the UEZ Authority. To answer Senator Cardinale's question on Jersey City: Having

grown up in Jersey City, I can tell you, there is a separation there -- downtown versus uptown, there's a Central Avenue, the Journal Square section, and things like that.

Bayonne is truly impacted by anything happening in Jersey City, because in order to get out of Bayonne, if you don't go over the bridge, you have to go through Jersey City.

But I think the original intent -- the legislative intent -- of the urban enterprise zone, quite frankly, recognized this, and did give spot zoning. That's where South Kearny came in. They were specifically designed for an area that was blighted to an extent; that lost its business. It was thought that it could be helped with the job creations and so on.

We also had areas of Newark, and it was really pinpointed very precisely on the areas of the urban enterprise zone because, I think, they recognized at that time you could have an immense adverse effect on the contiguous towns.

So right now we have to visit. We saw the problem today. We have a copy of the lawsuit that was filed. It has to do with the Urban Enterprise Zone Authority. Mr. Skelly came over and was nice enough, at least, to get up there and tell us why he couldn't testify. We will definitely have to revisit this. I'll be talking to Senator Cardinale. It's his call. We'll take a look at what we have to do from here. But we will definitely revisit this issue as quickly as possible.

We have until November 27, at which time, I'm afraid as you mentioned -- I believe it was Lou, or someone mentioned -- we're going to have the Christmas holiday season. We all know, merchants, I guess maybe 50 percent of your income probably hits on the Christmas holidays. So it's critical that we do something for the protection of not only the one zone, North Arlington, but for Belleville, the City of Bayonne, places that will be impacted. Hopefully we can resolve that issue.

I want to thank everyone for being here today and for the testimony that was given.

Thank you, Senator. If you will tell Senator O'Connor, hopefully he will be able to be with us. I know he's right smack in the middle of this, having Jersey City and Bayonne together. So he has a unique problem on that. But tell him, of course, we'll see him in Trenton, and hopefully we'll be able to get him updated as to what happened today. You'll advise him as to who was here.

Staff, I want to thank you for being here. They traveled a long way -- I guess from Cherry Hill and from places around Princeton. So they've traveled enough, and we really appreciate you're coming up here today so that we could put this on the record, and hopefully we'll be able to get it resolved to everyone's satisfaction.

Senator, would you like to make any comment?

SENATOR CARDINALE: Just that at the next Committee meeting, I would suggest that we ask these members of the Authority to come again. Mr. Skelly is representing an individual community and doesn't really-- While his community is impacted, I don't think that he is going to be reluctant to come back. But I think with respect to the members of the Authority, at least, we ought to be requesting subpoena power from the Senate President, and bring them before us if they do not choose to come voluntarily to the next meeting of this Committee.

SENATOR SCOTT: And that will be done. Thank you. I'd like to adjourn the meeting.

Thank you very much.

(HEARING CONCLUDED)