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PUBLIC HEARING

before

ASSEMBLY COUNTY GOVERNMENT AND REGIONAL AUTHORITIES COMMITTEE

ASSEMBLY BILL NO. 4365

(Concerns the ownership of water supply utilities, and would specifically prohibit water supply utilities from being corporately related to companies which are in the real estate business.)

July 31, 1989  
Freeholder Meeting Room  
Court Plaza South  
Hackensack, New Jersey

MEMBER OF COMMITTEE PRESENT:

Assemblyman John E. Rooney, Chairman

ALSO PRESENT:

Assemblywoman Elizabeth Randall, District 39  
Assemblyman Patrick J. Roma, District 38  
Assemblyman William J. Pascrell, Jr., District 35  
Assemblyman Nicholas R. Felice, District 40

Cindy A. Lombardi  
Office of Legislative Services  
Aide, Assembly County Government and  
Regional Authorities Committee

\* \* \* \* \*

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ASSEMBLY, No. 4365

STATE OF NEW JERSEY

INTRODUCED MARCH 2, 1989

By Assemblymen ROONEY, ROMA, Schuber, Mazur,  
Duch, Baer, Gill, and Kern

1 AN ACT concerning the ownership of water supply public utilities  
and supplementing chapter 19 of Title 48 of the Revised  
3 Statutes.

5 BE IT ENACTED by the Senate and General Assembly of the  
State of New Jersey:

7 1. The Legislature finds and declares that in an effort to  
foster efficiency in the delivery of public utilities, government  
9 has granted certain protections to corporations which engage in  
this delivery; that recent developments in the public utility  
11 industry, notably the establishment of large holding companies  
owning public utilities as well as non-utility businesses, have the  
13 potential to change the manner in which the industry operates  
and which have not been subject to careful public examination;  
15 that the potential for conflicts of interest arising from these new  
corporate relationship is too great to permit these relationships  
17 to continue; and that it is necessary to require that public  
utilities disassociate themselves from certain non-utility  
19 companies while the Board of Public Utilities prepares an analysis  
of, and makes recommendations concerning, the regulation of  
21 these relationships.

2. As used in this act:

23 "Non-complying water utility" means a water utility which is a  
subsidiary of a real estate enterprise, has been merged with a  
25 subsidiary real estate enterprise, or is part of, or associated with,  
a holding company which also owns a real estate enterprise.

27 "Real estate enterprise" means any individual, sole  
proprietorship, partnership, business, association, or corporation,  
29 the principal function of which is the buying, selling, or  
development of real estate.

31 "Water utility" means a public utility which owns or operates a  
public water system as defined in section 3 of P.L.1977, c.224  
33 (C.58:12A-3).

35 3. a. Notwithstanding the provisions of chapter 10 of Title  
14A of the New Jersey Statutes or any other law to the contrary,

1 a water utility operating in this State shall not merge another  
corporation or corporations into itself, nor merge itself, or itself  
3 and any subsidiary corporation into another corporation if the  
other or subsidiary corporation is, or is part of, or associated  
5 with, a real estate enterprise.

b. A non-complying water utility shall take appropriate action  
7 to divest itself of any association with a real estate enterprise.

c. The Board of Public Utilities shall, pursuant to the  
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
seq.), take appropriate action to revoke the license, certificate of  
11 public convenience and necessity, permit, franchise, or other  
approval necessary to operate in this State of a non-complying  
13 water utility, petition pursuant to section 4 of this act for the  
appointment of a conservator for the non-complying water  
15 utility, and transfer that license, certificate of public  
convenience and necessity, permit, franchise, or other approval  
17 to the conservator appointed.

d. The board may delay for up to one year the revocation and  
19 petition if it determines that a non-complying water utility is, or  
will be, taking appropriate action to comply with this section  
21 within a reasonable amount of time.

4. a. A conservator may be appointed pursuant to section 5 of  
23 this act to assume the operation, maintenance, or improvement,  
or any combination thereof, of a non-complying water utility if  
25 the board makes a written finding of deficiency that: (1) the  
public utility is associated with another corporation in violation  
27 of subsection a. of section 3 of this act; and (2) the public utility  
has not made a good faith attempt to comply with the provisions  
29 of subsection b. of section 3 of this act.

b. Upon making a written finding pursuant to section 4 of this  
31 act, the board shall transmit a written notification of deficiency  
to the non-complying water utility. This notification of  
33 deficiency shall set forth in detail a proposed schedule for the  
compliance with the provisions of this act.

c. Within 30 days of receipt of a notification of deficiency  
35 pursuant to subsection b. of this section, the non-complying  
water utility shall prepare and submit to the board, for review  
37 and approval, a compliance schedule and financial plan for the  
severing of any association in violation of section 3 of this act  
39

1 with another corporation. Within 15 days of receipt of a  
2 compliance schedule and plan submitted pursuant to this  
3 subsection, the board shall either approve the schedule and plan  
4 or notify the non-complying water utility of the changes  
5 necessary for approval. If the board notifies a non-complying  
6 water utility that changes in the schedule and plan are necessary  
7 to receive the board's approval, the non-complying water utility  
8 shall have 15 days in which to resubmit the amended compliance  
9 schedule and financial plan to the board.

10 d. If a non-complying water utility does not submit a  
11 compliance schedule and plan to the board pursuant to the  
12 provisions of subsection c. of this section, or does not make any  
13 required amendments thereto when required by the board  
14 pursuant to the provisions of subsection c. of this section, or fails  
15 to execute the compliance schedule and financial plan, the board  
16 shall adopt the compliance schedule and financial plan on behalf  
17 of the non-complying water utility, and shall petition the  
18 Superior Court for appointment of a conservator to implement  
19 the compliance schedule and financial plan, and to otherwise  
20 assume the operation, maintenance, or improvement, or any  
21 combination thereof, of the public water system pursuant to the  
22 provisions of this act.

23 5. a. The provisions of any other law, rule or regulation to the  
24 contrary notwithstanding, one year after the effective date of  
25 this act and upon petition by the board a conservator may be  
26 appointed by the Superior Court to assume the operation,  
27 maintenance, or improvement, or any combination thereof, of any  
28 non-complying water utility.

29 b. The Superior Court may proceed in a conservatorship action  
30 in a summary manner or otherwise and shall have the power to  
31 appoint and remove one or more conservators and to enjoin the  
32 non-complying water utility from exercising any of its privileges,  
33 from collecting or receiving any charges or rates, and from  
34 paying out, selling, assigning or transferring any of its property to  
35 other than a conservator, except as the court may otherwise  
36 order.

37 c. Any conservator appointed by the court shall be qualified by  
38 experience and training to assume the operation, maintenance, or  
39 improvement, or any combination thereof, of the non-complying

1 water utility for which the appointment is made.

2 d. Every conservator shall, before assuming the duties of  
3 conservator, execute and file a bond for the faithful performance  
4 of the duties thereof, payable to the board, and with any surety,  
5 for an amount and in a form the appointing court shall prescribe.

6 e. When more than one conservator is appointed pursuant to  
7 this section, the provisions of this act applicable to one  
8 conservator shall be applicable to all; the debts and property of  
9 the non-complying water utility may be collected and received by  
10 any of them; and the powers and rights conferred upon them shall  
11 be exercised by a majority of them.

12 f. A conservator appointed by the court pursuant to this act  
13 shall have the authority, with the approval of the board, to  
14 increase the rates or charges imposed for the service provided by  
15 the non-complying water utility in an amount necessary to pay  
16 for all costs associated with the appointment and implementation  
17 of a conservatorship pursuant to this act, including, but not  
18 necessarily limited to, the cost of implementing the compliance  
19 schedule approved by the board, and the cost of the services  
20 provided by the conservator.

21 g. Any person employed by the non-complying water utility for  
22 which a conservator has been appointed pursuant to this act who  
23 is serving under tenure or permanent civil service status shall  
24 retain all tenure rights and may continue in the employment of  
25 the non-complying water utility; except that all employees of the  
26 non-complying water utility shall perform only those duties  
27 prescribed or delegated by the conservator.

28 6. A conservatorship established pursuant to this act shall  
29 continue for a period of not less than one year. At any time  
30 thereafter the water utility may petition the appointing court to  
31 terminate the conservatorship and return control of the public  
32 water system to the water utility. The court shall terminate the  
33 conservatorship, and return control of the public water system to  
34 a water utility only after the board holds a public hearing on the  
35 petition at a location within the area served by the public water  
36 system, and makes a written finding that the water utility has  
37 provided all assurances deemed necessary by the board that the  
38 deficiency is corrected and the water utility is in compliance  
39 with the provisions of this act.

1       7. a. The board shall undertake a study concerning the types  
of business relationships and associations that public utilities are  
3 authorized to, or not prohibited from, entering with other  
corporations which have the potential to create conflicts of  
5 interest among related corporations.

b. Within two years of the effective date of this act, the board  
7 shall submit to the Governor and the Legislature a report  
detailing the findings of the study and recommend legislative and  
9 administrative actions necessary to further curb potential  
conflicts of interest consistent with the study.

11       8. The board may, pursuant to the provisions of the  
"Administrative Procedure Act," adopt rules and regulations  
13 necessary to carry out the provisions of this act.

9. This act shall take effect immediately.

15

17

#### STATEMENT

19       This bill would prohibit public utilities operating public water  
systems from being associated with other corporations which are  
21 principally engaged in the buying, selling, or development of real  
estate. The bill would also require that public utilities operating  
23 public water systems and associated with companies that are  
principally engaged in the buying, selling, or development of real  
25 estate, sever their relationship with those companies. The  
underlying assumption is that there are too many opportunities  
27 for potential conflicts of interest among the related companies,  
especially with respect to the selling of land by the public utility  
29 to the real estate company.

The bill would also authorize the Board of Public Utilities to  
31 take action against a water utility which did not take reasonable  
action to divest itself from any association with a real estate  
33 company. This action could include the petitioning of the  
Superior Court to appoint a conservator of the public utility to  
35 carry out the divestiture, and to operate the public utility until  
such time as the public utility conforms with the provisions of the  
37 bill.

Finally, the bill directs the Board of Public Utilities to  
39 undertake a study of the different corporate associations which

1 may lead to similar conflicts of interest, and recommend  
3 appropriate legislative and administrative actions to prevent  
5 them.

7 PUBLIC UTILITIES

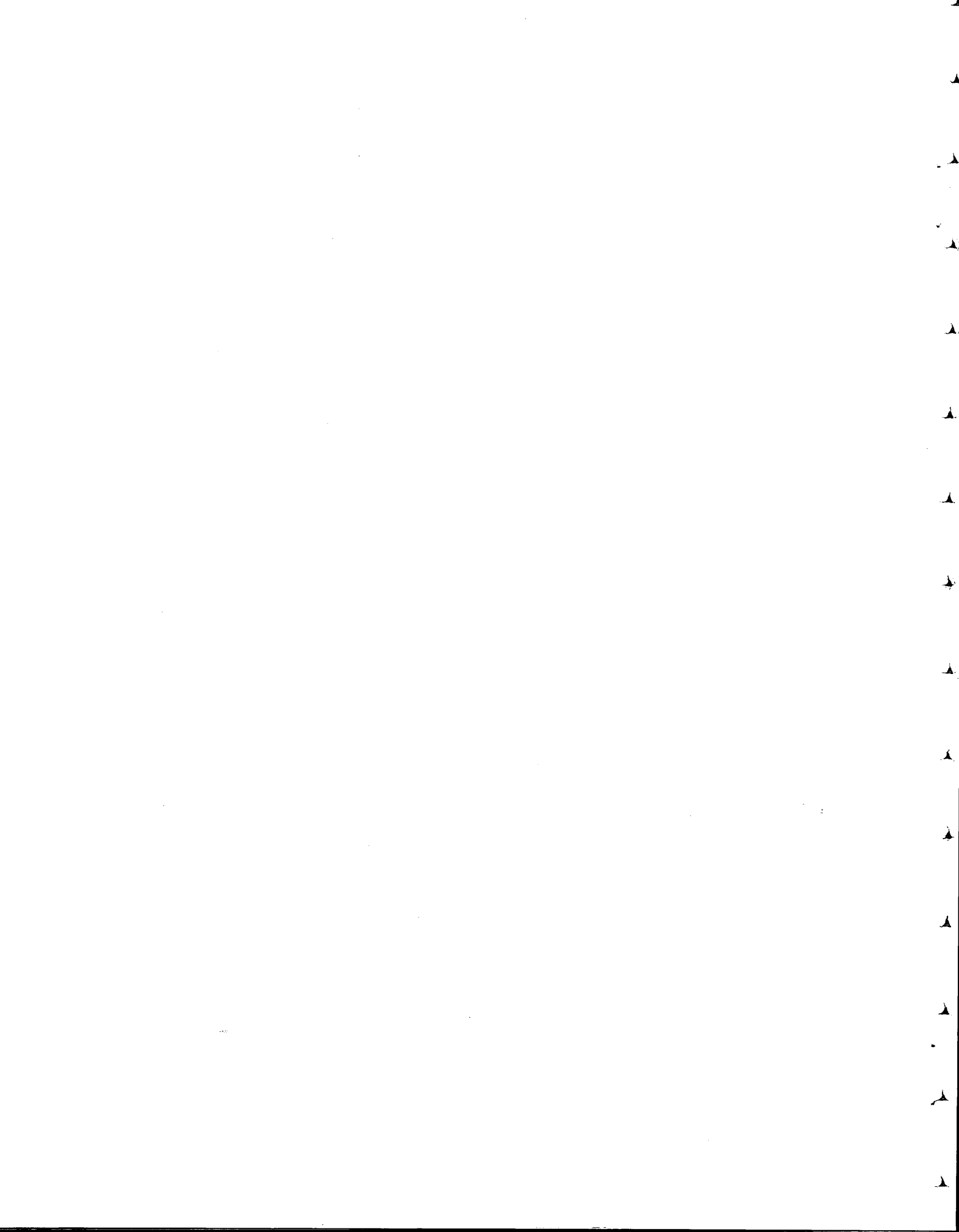
Corporations

9 Prohibits water supply public utilities from being corporately  
11 related to companies in real estate business.

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**ASSEMBLYMAN JOHN E. ROONEY (Chairman):** I'd like to call this meeting to order. This is the Assembly County Government and Regional Authorities Committee. It's a special hearing for the one bill A-4365. This is a bill dealing with the ownership of water supply utilities, public utilities, supplementing Chapter 19 of Title 48. There are some amendments prepared that we'll discuss at this meeting. We will not be able to vote on the amendments this evening. We will vote on them in Trenton when we continue the hearing with our regular membership.

The purpose of this meeting basically is to go further into the activities of United Water Resources, Hackensack Water Company, the transfer of lands dealing in 1984 with 700 acres, and recent transfer -- or the attempt to transfer -- of the 300 acres known as the golf course land.

We've addressed the transfer of the golf course land in the moratorium. There is a moratorium imposed at this time which addresses the environmental issues. We've asked the Department, or the Division of Water Resources under the DEP, to analyze the properties and to find out what is necessary for watershed. We've given them a period of time. This Committee has also voted out at our last regular meeting an extension of that to allow as much time as necessary by the DEP for that particular purpose. And that deals with the environmental aspect. That was compliments of Senator Contillo and Assemblymen Roma and Schuber. Assemblyman Schuber has told me that he'd be here later this evening.

This bill I kind of think of as the economic aspects of the bill or of the issue of the transfers of the lands. I kind of compare it with the environmental issue to the runoff and the economic issue to the ripoff. I firmly believe that when the lands that were transferred from Hackensack Water Company to Hackensack Water Company's holding company or their real estate partnership, that they were transferred at far

below market value. They were transferred at approximately 10% of the true market value at that time, and the ratepayer was supposed to receive a benefit. The ratepayer was supposed to receive half of those profits of the transfer. What really occurred was the ratepayer received less than 10% of the real value of the property. We received approximately \$17 or \$18 per household, and it should have been in the neighborhood of possibly \$200 per household.

So we're looking at the economics of it. We're also looking at some of the-- Some of the things that we have found have been absolutely amazing. In fact, we will recommend after this hearing tonight that certain materials be turned over to the Attorney General's Office for further investigation as to the proprieties or improprieties, or whatever have may occurred as a result of some of the evidence that we found.

We have found certain individuals working in concert with each other that possibly present conflicts of interest. We've also found in other areas that there was some creative accounting, to say the least, that did not accrue to the benefit of the ratepayer. What we're looking at here is that the public did not receive real benefit when it came down to these transfers of land, and that's what was supposed to be in the original BPU order. The order said that these transfers of land were to reduce the rate base to benefit the ratepayer. We're finding out that the cost to those ratepayers for maintaining and retaining those lands within the rate base would have been pennies per year; pennies per year. And the actual \$18 did nothing to benefit the ratepayer.

So we're going to go into some testimony. At this point in time I believe we have-- Let's see, do we have a list of people who signed in for testimony? Yes, we do. Okay. We have Bill Healey from the New Jersey State Chamber of Commerce. Bill, we'd like to hear from the State Chamber.

W I L L I A M H E A L E Y: Thank you for the opportunity to start the hearing off tonight. Is this-- (referring to mike) Can everyone hear me?

ASSEMBLYMAN ROONEY: That will be the transcribe--

MR. HEALEY: Okay.

ASSEMBLYMAN ROONEY: The other one is the--

MR. HEALEY: Okay.

ASSEMBLYMAN ROONEY: If you want to pull it closer, fine.

MR. HEALEY: I guess that's on now.

ASSEMBLYMAN ROONEY: Yeah, there you go.

MR. HEALEY: Thanks for the opportunity to start off the hearing tonight and offer some comments on A-4365. My name is Bill Healey, the Director of Government Relations for the State Chamber of Commerce.

You may wonder why we're here to speak on a water bill tonight. Well, obviously New Jersey businesses are some of the largest consumers of water. I may add, on a personal note that prior to joining the State Chamber last year, I served as a Legislative Agent for the National Association of Water Companies for six years. So I feel somewhat qualified to offer some comments on this. However, I may add I am not representing NAWC in any way, shape, or form this evening. I'm solely speaking on behalf of the State Chamber of Commerce.

Talking about water supply and talking about the current preservation of open space, obviously, are some of the greatest concerns of New Jerseyans, and I think certainly here in Bergen County the concern is even more acute.

However, we do feel that A-4365 is not the vehicle to accomplish a well-intentioned goal, though it may be. Certainly it's in the venue of the State BPU to provide the regulatory environmental oversight that this bill attempts to accomplish legislatively.

Structuring of real estate entities and water companies under the arm of a parent holding company is a facet that's been adopted by several of the State's major private water suppliers. That's not necessarily a bad thing. The State Chamber of Commerce believes that the structure has been effective for meeting both the financial capital needs of the water utilities and the goal of keeping down water rates to consumers. The goal should not be mutually exclusive although I think the wording of this legislation does make that impression.

Corporate structuring of this type has been adopted, and I think has really benefited the public. The tightly regulated nature of private water purveyors in and of itself as public utilities, leaves little attraction initially to investors. It's, of course, the same investors who help provide the working capital necessary for the infrastructure maintenance, expansion, and improvements that water supply systems do require. And it's that same investment capital that enables the private water purveyors to hold down rates to their customers.

I think the corporate presence of a real estate arm considerably improves the financial attractiveness of such an overall organization and allows the above scenario that I've shown, to continue to benefit New Jersey water consumers. And obviously the business communities, as I mentioned earlier, are some of the largest consumers of that water.

I think I mentioned earlier the concern of New Jerseyans have with regard to open space. I think probably an even greater concern among Garden State residents is the presence and availability of plentiful, clean, supplies of water. It's certainly one of the most important ongoing issues being tackled by the State Chamber, particularly our environment committee. I think just about every environmental

issue surveyed, the legislators, or our organization or other organizations would see, water supply is always at the top of the list, so to speak.

I think it's the private water utilities of the State that are being looked to every day to provide supplies that would be required for the future. I think we feel the beneficial structuring of private companies of real estate subsidiaries under the banner of a parent company will continue to provide necessary capital to help make new supplies and infrastructure needs a reality. And I think none of us can deny that those needs will continue to grow. I think this is now being achieved at a lower cost to the consumer than would normally be possible under the strict setup under a public utility.

The State Chamber of Commerce believes that the regulatory structure, to protect the environmental concerns about watershed property, is already in place. The BPU should rightly be the advocate for safeguards in this case, and I think they are doing that job.

This bill, with all due respect, though laudable in its intentions, may have the unintended effect of hampering needed growth of critical infrastructure, the State's private water utilities at a time when new and greater demands are being placed upon those purveyors. Obviously the expansion of business and economic development in this State is also going to depend on plentiful water supplies.

That, in a nutshell, are some of my comments. I know there will be other experts who certainly have a lot more knowledge on this subject. But on behalf of the business community, the State Chamber, and our regional local chambers, we, combined, represent about 45,000 business enterprises, and we felt it was important to come to Hackensack this evening and offer some comments.

ASSEMBLYMAN ROONEY: Thank you, Bill.

MR. HEALEY: Sure.

ASSEMBLYMAN ROONEY: Before I go into the questioning, I neglected to introduce my colleagues up here tonight, and I'd like to start with my own colleague in my district, District 39, Assemblywoman Lisa Randall to my right. Right next to her is Assemblyman Nick Felice from District 40. We have Assemblyman Pat Roma from here in District 38, and Assemblyman Pascrell from Passaic County who's representing Tom Duch tonight. So, just what I'd also like to do is have any one of them at this time say something. I would like to have you stay because I have some questions for you, but I'd like to start with Lisa for any comments.

ASSEMBLYWOMAN RANDALL: Thanks.

ASSEMBLYMAN ROONEY: I apologize for overlooking that.

ASSEMBLYWOMAN RANDALL: Mr. Healey, maybe you can help me out a little bit. What do you mean by "necessary infrastructure"? What is it that these funds are needed for to preserve, or protect, or enhance? What infrastructure of the utility? What do you mean by that?

MR. HEALEY: What I'm talking about is everything that's needed to deliver water to a customer.

ASSEMBLYWOMAN RANDALL: So--

MR. HEALEY: I'm certainly not an expert on infrastructure. I'm sure there are other representatives here tonight.

ASSEMBLYWOMAN RANDALL: But, in other words, your premise is that a real estate arm or subsidiary is a good thing so that necessary capital can be raised to be put back into supporting infrastructure needs?

MR. HEALEY: Yes, I think that was the gist of my comments.

ASSEMBLYWOMAN RANDALL: All right. And assuming that is the case and that's where the money goes, you're supportive

of the status quo. But what if the monies so raised don't go to support infrastructure needs, but go elsewhere. Would you be as supportive of the status quo?

MR. HEALEY: I'm probably not really qualified to comment on any particular situation, but obviously I think the premise I'm working on would certainly make the utility more attractive to investors, enable them to raise the money that's needed, and better serve the consumers. Yes, that is the premise of my statement without commenting on a particular situation. I'm obviously aware of some of the background of this bill and why it was introduced.

ASSEMBLYWOMAN RANDALL: And likewise if some of the benefits, the profit which is derived were not to go back to benefit the ratepayers, would you be equally supportive of the status quo?

MR. HEALEY: When you say--

ASSEMBLYWOMAN RANDALL: In other words, is your premise also that monies that were raised and profits that were made are going back to benefit the ratepayers? Is that the premise of your remarks tonight as well?

MR. HEALEY: Well certainly anything that would benefit the person who -- obviously the consumer of the water.

ASSEMBLYWOMAN RANDALL: Might not your opinion change if it were shown in certain circumstances that the profits that are derived don't go to the ratepayers as an entire class, but go to a certain segment of persons, a smaller segment other than the ratepayers?

MR. HEALEY: Assemblywoman, with all due respect, I know what your line of questioning is going to. I'm speaking about the bill. I'm speaking about the concerns of hand-tying the setup, in general, and I don't really think it's my place to comment on the particular situation. We have an overriding, overall concern on the -- what this proposed legislation intends to set up.

ASSEMBLYWOMAN RANDALL: All right. But just to get a feel then for not the specifics of what may be going on in Bergen County, but as a general position: It's your feeling that a regulated public utility ought to have the latitude to make investments, via a real estate subsidiary?

MR. HEALEY: Yes, I think that's a reasonable premise.

ASSEMBLYWOMAN RANDALL: In other words, that would hold true for all public utilities? All regulated public utilities under the jurisdiction of the BPU, in your view, ought to be able to engage in these types of private arrangements?

MR. HEALEY: If it helps them deliver their services better to their customers, yes indeed.

ASSEMBLYWOMAN RANDALL: Very well. Thank you. Thank you very much.

ASSEMBLYMAN ROONEY: Just as an aside to Lisa's comments, the money or the benefit did not accrue to the ratepayers -- would not accrue to the ratepayers because the \$18 per homeowner was the only accrual that would have been received. The rest of it went to the shareholders.

As far as any benefit accruing to the ratepayers after these transfers are done, it is nonexistent. It's really not a benefit. That's the purpose of this bill; that economically the citizens and the ratepayers were deprived of a benefit and probably were robbed of a benefit to the tune of only 10% of the real value of the land. So, I have a lot of problems with this. It really didn't keep down the water rates. What it did was give us \$18 per household back. That's all it did.

You have the State Board of Public Utilities had said-- I have the transcript from the original hearing that we had, and Ms. Fox says that when the land was appraised, "We called our appraiser in, the one the Board hired, the independent appraiser -- we had no contact at all with the Company or the Company's appraiser -- and we asked him about

that. He said, for Bergen County, because of the lack of open space, the highest and best use would be recreational open space. That is what he told us. We questioned him for a half-hour on that. He was very clear about it. An MAI man-- I mean, he is one of the best appraisers."

So this was originally put down by the BPU. The BPU is saying that they were told the best use for this land would be open space. That was the reason the appraisals were so low; because they were told it would be open space, recreational open space.

Now this issue, Bill-- I just don't want you to go down the garden path. This issue is not the environmental issue. That's going to be handled. And I disagree with your statement in here also that the BPU is the one to determine environmental aspects of land. That's not the agency. Never has been and never will be an environmental agency. That's why we have a DEP. And we should be referring this matter as does the Watershed Protection Bill, the moratorium-- It refers it to the DEP.

This is the economic -- and that's where the BPU comes in -- the economic aspects. Were the ratepayers sufficiently compensated for the loss of this land, the value of this land? What we're saying and what we're finding is, absolutely no way were they compensated.

I wish that I could be in a business where I could take public money -- regulated public money that gave me a percentage of profit guaranteed every month, every year -- take that and give me the right of eminent domain to go out and condemn any piece of land that I wanted, for next to nothing, And then turn around and say under some pretense, "Well, we're going to develop this in an environmentally safe manner to protect the watershed, and I'm going to transfer this land to a private development company at 10% of its real value."

You and every other businessman in this community would love to have that benefit. It's not right, and this is what we're trying to say with this bill. That's not the way that you should do business. You're not supposed to take advantage of the public: To be able to get this special category of a public utility to take this land out of the public domain and then turn around and transfer it and put that money in your own pocket. And that's what happened. And this is what we've seen.

You know, I said it before. When we saw the original transfer of 700 acres in 1983-84, it was one of these things where we didn't know what was happening. It was like, "Fool me once, shame on you. Fool me twice, shame on me." That's what happened the second time. We found out the second time that these weren't really nice people at the Water Company. These people weren't interested in the best interests of the ratepayer. What they were interested in was the best interests of them -- themselves and their shareholders. That's why we are saying, "We got ripped off."

And I firmly believe that, and we will prove that. We have an auditor that will testify later tonight. He's gone over the 10K forms. There's a lot of creative accounting. Maybe you should take some of this to your members and say, "Would they like to have some of these auditors or these accountants that the Water Company had?" because believe me, there's some tax consequences that we want to turn over to the Attorney General's Office also, some of the things.

So, I'm very disappointed at the State Chamber that they hadn't come to me previously and discuss it. Because we never heard. I was with Jim Morford last week, or two weeks ago, and hadn't heard a thing about this. And believe me, I'm disappointed with the Chamber that you haven't really done your homework, because this is not an anti business bill. It's basically a public interest bill, and that's what we're trying to do: protect all of us.

MR. HEALEY: Well, we obviously have a difference of opinion on this, and I respect your opinion, and I hope you will respect mine. We have some overriding concerns about the broad implications of this, so perhaps that's where we differ.

ASSEMBLYMAN ROONEY: Bill, the other thing that you have to look at is that the public utilities, in every case through the BPU history -- we'll document that tonight -- that all public utilities had gone out on bid, public auction of any surplus properties in the past. That guaranteed that we were going to get fair market value for the ratepayers. It didn't happen here. Why didn't it happen?

The BPU tells us because they trusted the Hackensack Water Company to do the environmentally sound thing. Is environmentally sound taking Emerson, New Jersey and putting 900 office units right next to the reservoir? Is it putting all these condos right up against the reservoir and putting the most dense development that I've seen in a long time, in that particular area that's already overdeveloped, and has more traffic than it could possibly handle?

This, by far, is not an environmental bill. This is not talking about the environmental aspect. We've done that on the other bill. The DEP will determine whether the environmental issues are going to be met or not. This is an economic bill.

If this happened, I just don't want to see the Water Company put us off any further, and that's what I've seen so far. We'll hear additional testimony, and we intend to prove that.

MR. HEALEY: Yes, and I'll certainly stay and listen to that. I haven't come up here tonight just to say my piece and leave.

ASSEMBLYMAN ROONEY: It's a long ways from Trenton.

MR. HEALEY: But again, I think we have a difference of opinion on this. And thanks for listening to my position. I look forward to hearing the rest of the comments.

ASSEMBLYMAN ROONEY: Thank you.

MR. HEALEY: Thank you.

ASSEMBLYMAN ROONEY: Any other member--

ASSEMBLYMAN FELICE: Yeah, before you go, Bill. Just briefly.

ASSEMBLYMAN ROONEY: Assemblyman Felice. Sorry.

ASSEMBLYMAN FELICE: If the Chamber feels that A-4365 is not the vehicle and direction to go, it seems that the Chamber feels that the State BPU is the one to really be the one to watch over. Yet, there is really no direction when that fine line of conflict of interest -- that there really is a safeguard to make sure that, yes, they need that revenue to help finance future projects, but the direction in how they go about it, that direction of the fine line of conflict of interest-- I think they need direction to really spell it out; that this is not something that's a gray area as far as the BPU or anything else is concerned. You feel, evidently, that the BPU is the one that should really be regulating any of this type of conflict.

MR. HEALEY: Assemblyman, we always have kind of a grave overriding concern about the setting up of yet additional regulations. Maybe that's something that is the core of our philosophy on behalf of the business community. And again, I look forward to listening to the rest of the comments tonight on this piece of legislation. We had some broader, I think, overriding concerns on it as to it's intended to fix something, if it might not to do more or have an unintended side effect-- Again, we have a difference of opinion on it, and I appreciate the opportunity to let our concerns be known. Thank you very much.

ASSEMBLYMAN ROONEY: Anyone else have any questions?  
Assemblyman Roma?

ASSEMBLYMAN ROMA: Yes, Mr. Chairman, thank you. Thank you for the opportunity to be here for this hearing.

Bill, I don't mean to put you on the spot, but when we talk about economic impact, we talk about the BPU or the DEP. We have a situation here, if it were not for the moratorium bill we wouldn't have a DEP, wouldn't have them looking into the situation.

Quite frankly, I spoke to the BPU people, and they said that they welcome the guidelines. Unfortunately, we do not have this direction in the State. So obviously, we're not against business. But at the same time we hear from a number of people -- talk to our constituents -- and they're very concerned about some of these issues. And while I understand this is economic in nature, it does have other implications that are economic; namely the congestion, the pesticides, and all the other things that we've heard at the prior hearings.

But as far as economic aspects, when a newspaper starts talking about profit-- And it's like a dog chasing a cat. I think they missed the boat. I think what we're talking about is a conflict of interest. And I think what we're talking about is being held to a standard of care; perhaps, a higher standard of care. That's really the point of what we're trying to do this evening.

While I appreciate your input, believe me, as far as business legislation, we have been very much tuned in to helping business, but at the same time, we're just as concerned with the environment and perhaps in some cases such as this, with sensitive watershed land, more sensitive and more in tune.

So, I appreciate you being here but I just want to make sure that the record is clear.

ASSEMBLYMAN ROONEY: Thank you, Pat. Assemblyman Pascrell.

ASSEMBLYMAN PASCARELL: Yes, I have an interest in utilities, as you know, and I'd like to ask some questions. I'm from Passaic County although part of my district extends

into Bergen County. And in Passaic County we like to get to the simple facts by asking some very simple elemental questions so that it clears the air.

Let me start off with a specific question about the bill itself. We've been straying somewhat. Do you think that the threat of losing a license to be a utility in the first place -- because the bill speaks to that issue -- is too severe if the utility doesn't comply to what is asked for in A-4365?

MR. HEALEY: I'm probably not familiar with that aspect of it. Let me add something, I know there's a representative from Hackensack here tonight, and I kind of wrongly feel that I'm being grilled on their behalf, and there's a frustration that shows but--

ASSEMBLYMAN ROONEY: You're first so you get bear the brunt of it.

ASSEMBLYMAN PASCRELL: Then let me withdraw that question if it's too specific, since it's in the bill. But let me ask a little more general question. I read the two pages that you presented to us, and I have to ask this question. I think it's a fair question and is not meant to grill you.

MR. HEALEY: Sure.

ASSEMBLYMAN PASCRELL: Do you condone the transfer of land to a holding company without bidding or auction?

MR. HEALEY: Assemblyman, on that aspect I don't know enough about that subject to make any kind of comment on it. I came here tonight to speak on what we saw as a potential problem with A-4365. I don't feel myself qualified to comment on any specific situation. And again, I know there are representatives and other people who will speak more directly on that tonight. We had some broad overriding concerns on the bill, and that's probably about as simply as I can put the gist of my statement.

ASSEMBLYMAN PASCRELL: Well, you've questioned in general terms the very nature of the relationship of the Board

of Public Utilities to water -- to any utility for that matter. And what you've said in your statement is that we don't really need this bill-- You correct me if this is not what you're saying.

MR. HEALEY: No, that's--

ASSEMBLYMAN PASCRELL: We don't really need this bill because the Board of Public Utility has within its auspices right now, under statute, the abilities to address the very problems that the bill addresses.

MR. HEALEY: We feel they do.

ASSEMBLYMAN PASCRELL: You feel they do. But was that basically a capsule sentence of what these two pages say.

MR. HEALEY: That is a fair assessment.

ASSEMBLYMAN PASCRELL: Who would you say though -- and I know the Chamber is very interested in protecting the public because the public pays the bill, pays the shareholders, pays the officers of the utility -- who protects the public in a transfer of land or in transfers of lands that we've seen in the past five or six years? Who does the public turn to in order to get just compensation or just reduction of its own utility bills? Who speaks for the public?

MR. HEALEY: Assemblyman, going back to my original statement, I know where this line of questioning is going. I don't feel qualified to address it. I came here to speak on the bill not on a particular situation.

ASSEMBLYMAN PASCRELL: I have no other questions. Thank you.

ASSEMBLYMAN ROONEY: Thank you, Bill. Just as an aside, I have to spread the blame on some of this. The BPU was involved, but the Public Advocate was also involved in this, and they are apparently more concerned with other issues, other than the protection of the ratepayer.

I find that objectionable because there was no real effort on the Public Adovcate's part to advocate for the

public. Although, you know, I know where the Public Advocate's going and where he's been and the issues that they've been involved in. They have not been involved in land value issues whatsoever, and they probably don't have the foggiest idea what land values are in Bergen County, especially in this particular area.

I make that vague excuse for them. But there is a Public Advocate in the State, much to some of our-- Well, I won't go into that. Thank you very much, Bill.

MR. HEALEY: Thank you for the chance to comment on the bill.

ASSEMBLYMAN ROONEY: Enjoyed having you here. Are you going to come back to Trenton for us? (laughter)

MR. HEALEY: Oh, absolutely.

ASSEMBLYMAN ROONEY: Okay.

MR. HEALEY: I take my lumps in every corner of the State.

ASSEMBLYMAN ROONEY: All right. What I'd like to do at this time is ask Mayor Hague-- Mayor Hague is the Mayor of Oradell, has been very graciously the host of previous Committee meetings, both of the Independent Authorities Committee for the moratorium bill and for this bill in the Borough of Oradell, and we welcome you here again tonight. She has been very outspoken with the Water Company properties in her backyard. And as she has noted before, is a stockholder in the Water Company. Mayor, thank you very much for coming.

MAYOR CAROLYN HAGUE: Thank you for asking me here. I certainly endorse your bill A-4365 because I feel that it's a very necessary one. As you introduced me, I'm the Mayor of Oradell who is very closely associated with the Water Company, having a good part of the lake within our boundaries, and also, as you said, we're stockholders, and we're users of water from the Hackensack Water Company.

And I must say, the Hackensack Water Company-- We not only bought stock in the Hackensack Water Company because it was a good company and still is, as far as a water dispenser is concerned-- And it has always -- thanks to the help of the State -- been able to pay their dividends and keep afloat. But I must say that I am not really in favor of their real estate dealings.

On July 6, my husband and I, with several other people, members of SWAN and several other people that were very involved in the Hackensack Water Company problem, attended a public hearing of Evergreen II at the Freeholders' meeting. They were endorsing Evergreen II of the Rivervale Realty, or shall I call it-- It's called United Water Resources. They have so many names that they confuse me somewhat. However, they said in Evergreen II that they plan to keep the golf clubs as golf clubs. And that's a fine thing too. That's a step in the right direction because it provides open space and it remains on the tax rolls, but it's a very small step in a very large picture of the impact of the future of this development on this area.

The golf clubs, as Mr. Laurino and Mr. Gerber assured me, were a great enhancement for them, too, as they plan to develop all the other lands using the golf clubs as an enhancement, because they feel that it would add to their monetary value, which is true.

But we have experienced in Oradell many, many other things that have upset us by this future development. I did have a personal meeting with Mr. Gerber and Mr. Laurino a few weeks ago, and I felt at that time that perhaps they were two deperate men in a desperate situation, because it seems that since they have pushed this Rivervale Realty operation, they have at the same time depressed the stock because of it, and also have caused their wonderful reputation that the Hackensack Water Company has enjoyed for many years, to be, perhaps, the

lowest it's ever been in recent history, which is a 100-year history. And really its public relations at this point is at a very low point. So I have a feeling they were trying to enhance not only their own reputations but the Company's reputation.

One of the things that bothers us in Oradell is not only the fact that they're using good watershed land which as Mr. Rooney has pointed out, was acquired by condemnation or threat of condemnation at a very low rate of pay, two, because they felt it was necessary for watershed. But now, with all of their development they planned beyond saving of the golf clubs, we're worried downstream of the flooding that it can cause.

We had a recent experience just a few weeks ago when we had serious flooding, not only in Oradell but in New Milford and River Edge due to the fact that they kept their lake at 100% filled this spring, before we expected the spring rains, by siphoning off water from the Wanaque Reservoir. They have been boasting that it doesn't make any difference how great a drought we may have because at that time New York State as well as the Delaware area were having drought alerts, but they assured us that no matter what happens we'd never be bothered with a drought.

So they were siphoning all this water off. The Wanaque Reservoir entrance to the lake is very close to the dam, so they filled the lake to capacity, then we had the spring rains, and there was no place for the water except downstream. Really, we were inundated, and I have pictures here I'd like to show you of the devastation. And since I live within a couple hundred feet of the Hackensack River, I'm very experienced in what happened when we've had rains in the past. And although we've had very heavy storms and rains in the past, we've seen the river come out of its bed a bit, but never to the extent that has happened twice in the last three or four years.

We're worried about what may happen from here on in because also two weeks ago on a Friday, I took a walk through the area that they plan to develop in Emerson which I had never been through before, and I was absolutely enthralled by the beauty of it to begin with, but then my husband and I were fearful of the flooding before. But when we went in and saw the size of the trees, and the huge trees-- They had cottonwood trees that to me were just this side of a redwood in size. They were huge. And all those trees and all that growth there has to come down for these 200 condos and 900 square feet of office space in Emerson.

And so we ended up not being afraid of future flooding, but terrified of it because the area was very wet. It was a beautiful clear day, yet mud was the word. We also forded little streams throughout it and there were huge -- you couldn't call them ponds -- but very large puddles throughout the place.

So we were really very concerned, and we are very concerned today with the possibility of flooding. I know Assemblywoman Randall has heard from one of our people that lives in New Milford, of her distress, and I have known her home since I was a child, because we used to walk in the brook near her home when we were little kids. But she had told me that she's never experienced the flooding that she's had this last time. If it weren't for the New Milford Fire Company pumping out constantly, she's sure it would have reached her living room floor -- come right through the house.

We saw boats and canoes on River Edge Road which is an important east/west road, and Madison Avenue to Bergenfield and DuMont was closed due to the flooding. New Milford Avenue was closed due to the flooding. The only east/west road open for traffic was Oradell Avenue, and you know how it's been punished in the last few years with digging up from sewers and water pipes and whatnot. So it's in a bumpy condition but we had

absolutely stop and go traffic all day on Oradell Avenue. All this is due to the flooding conditions. And we are very, very concerned.

That night at the Freeholders' meeting I showed them pictures of the floods, but they seemed to be totally uninterested. And the county traffic right now is a nightmare in this area, but because Emerson -- Rivervale Realty wants to develop so much and get money in their pockets, they say, for their stockholders-- Because when we attended the two stockholders' meetings, Mr. Gerber assured everybody present that the prime interest of the United Water Resources was to its stockholders; to make sure they had good profit out of their investment. And I feel that the Water Company is a more important part of that.

As a stockholder, we may get money, and I must say, I don't mind money. We need money. But on the other hand it's not enhancing our way of living. If we're going to be flooded out and over-trafficed and all the other things that come with overdevelopment, money is hardly the answer to it. The only basic things we need to live are water and air, both of which they're going to rob us of in the future for our future generations if they continue this development.

At the Freeholders' meeting, we pleaded for them not to vote that night but look at it for a longer period. However, our asking for a postponement of a hasty vote was just overlooked. Apparently they had made up their minds before, because in spite of the fact that everyone who spoke was against their acting that night on Evergreen II and no one spoke that night for it from the public, they went ahead and voted, which rather shocked us a little bit and destroyed our confidence.

I feel that Rivervale Realty seems totally confident that the 18-month moratorium will soon be a thing of the past, and the Watershed Advisory Committee will give them that assurance rapidly.

I personally spoke to a member of the BPU, and this week I heard from them, too, that the Watershed Committee is going to have its first public hearing in this room on August 17, so I hope we have a good turnout for that.

I feel in some ways that the Water Company is so confident of what they're going to receive as a decision from the BPU that it makes us all a little -- we the public -- it makes us all a bit nervous because we wonder just who is being listened to? Is it the public or just the Company that has a great deal of power?

And as I told Assemblyman Roma, Assemblyman Schuber, Assemblywoman Randall, Senator Contillo, and Assemblyman Rooney, in my letter that I wrote to you about that meeting, I told them that we'd do everything. We're so grateful for all the work you've done for us. You've really, to me, acted in a nonpartisan way with the people in mind. We're willing to help you, no matter what happens, to try to preserve this last vestige of open space; to preserve us from having more floods than we have, because it is truly a sponge area for this area. But please help us try to make that a possibility, and not just fill the pockets of a few, and as I said, save the necks of the two.

I certainly am grateful to you for all you've done, and if there's anything I can add to what I've said, why I'd be glad to -- any questions you have.

ASSEMBLYMAN ROONEY: Thank you very much, Mayor Hague. One of the issues-- You know, we're saying this is the economic portion of the issue, but I'm glad you brought up the Evergreen Plan because Greg Gage will probably testify next on the Evergreen Plan as a part of this legislation because the Hackensack Water Company has tied that Evergreen Formula directly into any other legislation.

It says specifically in that Evergreen Formula that if anything happens, if a bear moves in the woods, that that

Evergreen Formula is null and void. There is so big a loophole in there for the Water Company to nullify that Evergreen Formula that it is very important that we bring that into this hearing at this time and put it on the record that yes, we as a group are opposed to the Evergreen Formula.

I think I sent a letter saying that I never even heard of that meeting -- that public meeting -- or I would have been there personally to object. I think many members of this Committee would have been there to object to that particular agreement by the Freeholders or the recommendation by the Freeholders of the acceptance of it. I think it's a sellout to the Water Company. I think that it's totally not in the best interest, and we had other things that we are looking at.

The moratorium bill gives a second bite of the apple, you know, to look at it. This Evergreen Formula really negates the moratorium bill, which is absolutely wrong.

MAYOR HAGUE: Right. Exactly.

ASSEMBLYMAN ROONEY: We want to have a full hearing, environmentally, to find out what the DEP, Division on Water Resources, say is required for buffers, because as we've heard in this hearing and in the moratorium hearing, the development that has already been proposed by the Water Company violates even their standards on the setbacks from the reservoir.

They originally-- Their own engineer recommended 500 foot setbacks. The Emerson properties are as close as 200 feet, and that's a definite objection that we have and why we're looking at the rest of this, the total situation, the total scenario. So we have to let the DEP complete the process. We have to give them as long as they possibly need, in order to ensure we're going to have clean water, as you said in your presentation here tonight.

That's the most important thing that we assure the public that we're going to have a clean, pure drinking water

supply, not something that's chemically processed water which is, I think, what they're proposing. But I really appreciate your testimony, and if anyone has any comments-- Pat Roma.

ASSEMBLYMAN ROMA: It really is in the form of a comment. We're all aware that we do have a moratorium. I serve also on the Appropriations Committee, and painfully I have to say, John, that the Governor has not included the carry forth language that would cover the moratorium.

While we're doing the inventorying right now, we have put in a second bill to extend the moratorium until such time as we have that funding in place. So there are some practical problems that we have.

At the beginning of what we were talking about, we were keying in on the fact that we needed to have that inventory. We need to finish that work. So it's thought that if we had a supplemental appropriation passed by the Assembly and the Senate, that we can be back where we were before with the moratorium. True, we have the moratorium in place, but we're looking ahead as to that time when we don't have it in place.

Certainly, if DEP has not completed that work by that time, we're going to be in a vastly different position. A lot of the other legislation that we have been working on with respect to bond issues are additional ways of trying to accomplish the same goal, and certainly, whichever way we put all these bills together, this is one good attempt to keep that land and preserve it for everybody. So I thank you for everything that you've been doing, Mayor.

MAYOR HAGUE: Thank you. Another thing, when I met with Mr. Gerber and Mr. Laurino, and a couple of the other mayors, there was some members of the Hackensack River Coalition. We were all shocked by the fact that for the money, they were going to transfer the properties.

The \$6 million-- They were going to divide that up between Bergen and Hudson County. But when we spoke of using money of any description -- either that or money that a county, the State, or a municipality could amass in any way -- if that money was used to buy in all the other thousands of acres they planned to fill up with houses.

Mr. Laurino and Mr. Gerber assured us that part of the Evergreen Formula was that if such a thing took effect, the whole thing would be canceled out; the whole deal would be canceled out. They'd void the whole thing if anyone attempted to buy any of their other lands to save for open space.

So that rather shocked us. And I realize, as Mr. Laurino said, "I'd be a fool," he said, "if I want to make money on property, to let anyone buy it in for open space because by saving the golf clubs, it's going to enhance the value of the other properties," so they would have a lot more money. But that's one of the other things that bothered us very much.

ASSEMBLYMAN ROONEY: Thank you very much, Mayor.

MAYOR HAGUE: So thank you very much, and I'll be glad to show you these flood pictures so you have-- (witness gives photos to Committee)

ASSEMBLYMAN ROONEY: Okay. I have someone else here by the name of Hague. Bob Hague would you like to say a few words from the spouses' side. It just happens to be coincidence, same name here. Bob Hague from Oradell, concerned citizen.

R O B E R T Z. H A G U E: Yes, a lifelong resident of the Hackensack Valley, number of generations-- I have a little different approach on one of these problems that I'd like to present. Recent flooding of the Hackensack River downstream of the New Milford spillways points out a serious shortcoming of the Havens and Emerson report funded by the Hackensack Water Company on which the Hackensack Water Company has relied in its

request that the BPU allow it to transfer watershed lands to Rivervale Realty for real estate development. The report does not recognize the changes brought about by the transfer of water from the Wanaque system to the Hackensack; a condition further aggravated by the fact that the water is introduced into the low point of the storage system, Oradell Reservoir, rather than the more desirable condition which would result if it were introduced into the DeForest Reservoir. Let's look at the factors involved.

In order to increase its available water supply, the Hackensack Water Company pumps water from Twin Bridges to the Oradell Reservoir. This must be done when supply is adequate and results in the Oradell Reservoir being filled to capacity during the spring months, a time when we historically experience heavy rainfall. If, as happened this spring, prolonged rains fall when the reservoir is already full, the reservoir provides no storage, and flooding below the Oradell dam results.

Over the years this condition has been more noticeable -- see Mrs. Maxwell's letter to Assemblywoman Randall. Particularly now, with additional water from the Wanaque system, these flooding conditions would be further aggravated if the Hackensack Water Company is allowed to transfer land for development. Inspection of land along the Oradell Reservoir shows that it has the capacity to hold back rainfall, delaying its flow into the reservoir, thus tending to retard the flooding described above. When this land becomes streets, parking lots, and roofs, floods south of the New Milford spillway will be even worse than those just experienced.

Should homeowners be subject to deeper water in their yards and homes due to development by United Water Resources, detrimental in all ways, but profitable to the greedy? The answer is, "No." We clearly have a conflict of interest.

Officers of the United Water Resources are given stock options as an incentive, worth nothing unless the stock advances in price. Thus, they are in a position of making decisions to sell land detrimental to the residents of the area and to the water quality, but lucrative to their personal fortunes. It is fundamental that development of these watershed lands, any of them, will make the future floods more severe. Assembly Bill 4365 should lead to separating these conflicting interests. Thank you.

ASSEMBLYMAN ROONEY: Thank you, Mr. Hague. I appreciate your comments and also your previous comments at other Committee meetings. Greg Gage from Bergen SWAN, another familiar figure to our hearings. I want to again acknowledge Greg and thank him for a lot of the research work that he's done for my legislative office and for the staff here. He's been responsible for a lot of the legwork. And again, on the record, thank you very much. We couldn't have done it without you.

G R E G O R Y G A G E: Well, thank you very much there. I guess for the record, my name is Gregory Gage, Bergen SWAN. I'm a representative of Bergen SWAN, Save the Watershed Action Network. And in order to be fair to everyone else who has worked on this issue, it has been done by quite a few people, as far as pulling this information out of various files and bringing it forth.

I'm going to be brief tonight and talk more about the Evergreen Formula. I testified extensively at the prior hearing on the undervalue of the land and how the public was ripped off when the lands were transferred from Hackensack Water Company to Rivervale Realty. And inherent in that and how it relates to the particular bill that is before us, is the conflict of interest between these two companies: One, whose prime focus is to provide clean, clear water to the public at the lowest cost, and then the second company whose prime goal

is to be a watershed buffer development corporation. There's an inherent conflict of interest between these two companies. I brought several of these conflicts out at the prior hearing, and they are included in the testimony from that.

Tonight I wanted to talk about the Evergreen Formula, or the Evergreen Formula II, or the return of Evergreen Formula, whatever it is referred to at the present time. There are several things that make it of interest to this hearing and to this Committee and to the public, in general, that needs to be brought out. Some of these have been already mentioned tonight, so I'll be brief here.

But one of the most important ones is the clause in the deed restriction which I have before me and I've shared with the Committee, that is going to ride with the land. This is the latest deed restriction as sent to me by Martha Green from the Hackensack Water Company. And in its text-- I'll read verbatim this one paragraph.

And it says, "Moreover in the order to further assure the perpetuity of this deed restriction and to sustain the economic balance and synergy which helps secure and preserve the economic efficiency of the restriction, the condition of this covenant is also such that in the event that future governmental action, which takes or condemns all or part of the property herein conveyed, or takes or condemns or challenges the ownership by Rivervale Realty Company, its successors and/or its assigns of all or any part of the properties, which are the subject of docket, BPU docket number 8312-1096," which is in essence the 1984 docket that allowed the transfer of the 700 acres-- And to continue, "or determines that the property which was a subject of that docket are subject to the operation of Chapter 163 of the Public Laws of 1988," which for the record is the moratorium legislation, "then this restriction and each and every part thereof shall be deemed void ab initio."

The problems that are inherent and evident in this part of the deed restriction, and what to me this says in common talk, is that everybody should lay their hands off the original 700 acres, and you can have the golf courses as open space.

As you read further, and other parts of this deed restriction, it mentions that they will remain as golf courses until such time as Rivervale Realty Corporation, its successors and/or its assigns are no longer willing or able to continue as such use.

And here we enter the conflict again, and the issue where what is inherent here is Rivervale Realty is trying to get the land transferred from Hackensack Water Company to Rivervale Realty for the purposes of them owning it. Then at some future point-- They have right now the Evergreen Formula which they are touting before the public that says it's going to be saved forever. But obviously the language does not speak the same. And once it's under their possession, and a few years down the line, they are all of the sudden going to come to the conclusion that they are no longer willing to maintain its present use at which time they will sell it at the fair market value to the county, State, or the towns.

It is my position and SWAN's position that the fair market value in the future is going to be something that no town, county, or State is going to be able to afford. The best price of this land is the land as it's presently appraised by the Hackensack Water Company for its transfer to its own sister company, and that would be our best deal to-- I think it would be a shame to allow this to pass through now and have it come up 10, 20 years from now when the fair market value of the land is going to be something that no one can afford.

The other aspect, which I read before, as far as tying into the original 700 acres-- The problem with that is we are

going to do-- And you know a lot of various governmental agencies, yourselves included, are doing everything we can to save that original 700 acres.

According to the Evergreen Formula, we'd throw the land underneath Rivervale Realty. In the future we are going to, I hope, condemn some of this land, not all of it, to prove that some of that land is owned in common between Hackensack Water Company and Rivervale Realty and therefore falls under the moratorium legislation. These things I'm confident will happen, and if they do, then the Evergreen Formula is doomed, according to its own writing. Then Rivervale Realty will be free to develop it. So, it's in all essence, a ruse to transfer the land and try to rescue a favorable public opinion of the Hackensack Water Company. But under intense scrutiny, I think we can see right through their plans and understand what it is they're trying to do. They are trying to buy time.

And so I hope that the Evergreen Formula in its present state does not pass the Watershed Review Board. I feel that the Watershed Review Board was created to allow time to look at this issue and these lands in particular. It was to give the DEP time to map and determine what were necessary buffer lands around reservoirs -- something that we don't presently have any statute that states that we even need one foot of buffer around our reservoirs.

So the moratorium legislation calls for time. Something that's basic common sense in light of the circumstances, and it allows for the DEP to map out and draw up regulations.

I don't think that the Rivervale Realty and these lands should be exempt from that. If the Water Company is looking out for the best interests of the land and the water quality, as it's supposed to, it should have no problem with the DEP determining what are use and useful lands, and waiting until those studies come in.

And that's all I have to say. Any questions though?

ASSEMBLYMAN ROONEY: Greg, we appreciate your comments. We've looked at this before. For the record, the 300 acres were appraised at \$12 million, and that broke out to about \$44,000 per acre, which was last year. Right now we're looking at values in Bergen County of \$400,000 per acre, which is 10%. And it seems this is the typical formula for Rivervale Realty. Hackensack Water, United Water Resources has assessed the land for their transfer at 10% of its real value. So that we give half of that -- or 5% to the ratepayer -- and we pocket the difference when it's sold. So it's important that we keep in focus that, again, it's another, you know, shell game and smoke and mirrors evaluation.

When, at the last hearing -- and we have it in testimony -- I asked Mr. Capece, who is here tonight, if he would sell it to the State, the county, or the municipalities at that level, he said unequivocally, "No." And he's shaking his head, "No," again tonight. I don't know why they wouldn't sell it to us for the same price that they assessed it at. I mean, that's fair. If it's not fair for us to buy it at the price that they had it assessed at, then this is not a good deal. It never has been, and never will be. And it's again a sham by the Water Company to line their pockets. The Evergreen Formula is an evergreen dollars formula to put evergreen more money into the pockets of the United Water Resources. I will make that statement without any fear or trepidation--

MR. GAGE: I will second that.

ASSEMBLYMAN ROONEY: --at all, continually on the record.

The other thing that we have to go back to is that we'll have testimony later tonight that if they really wanted to reduce the rate base there's the sale. We had 700 acres at \$10.68 million. That was 1984. The transfer of \$10.68 million for 700 acres. They took 23 of those acres in 1977 and sold

them to the Emerald Hill Realty Company at \$7.2 million; a very small fraction of the total land. They made up 70% of the value that they transferred it at. Now who's kidding whom? This is a ripoff of the umpteenth magnitude, and it's unfair to the ratepayers and the public at large. That's what this bill is all about.

MR. GAGE: It's unfair to the public in terms of the monetary equilibrium between the two companies and the fact that we're being ripped off. And it's also unfair that our water is going to be degraded because of this.

ASSEMBLYMAN ROONEY: Absolutely.

MR. GAGE: We're going to lose our open space. And for this we're, you know, we were given \$18 at one time to--

ASSEMBLYMAN ROONEY: Right, to keep our mouths shut.

MR. GAGE: --to keep our mouths shut.

ASSEMBLYMAN ROONEY: And as I said before, the environmental issue is being addressed by the DEP. That's the moratorium, bill and I'll continue to support that. I was one of the cosponsors. I sat on the committee hearings. I support it. I introduced the bill for the extension. Passed it in my Committee. The last hearing that we had-- It's ready for a floor vote to extend the moratorium. That's the environmental aspect and runoff problem, and this is the economic. It's the ripoff, and that's what we're looking at here. It's a major ripoff of just immense proportions.

I don't know who dreamed up the scheme, but believe me, the guy whoever dreamed it up has got to be in--

MR. GAGE: A shareholder.

ASSEMBLYMAN ROONEY: One of the board members, obviously. But whoever sat over a beer or whatever it was to dream up this scheme really ripped off the public in no uncertain terms. And I'll continue to say that, Mr. Capece. You can write all the notes.

All right. I noticed that I have a very special guest in the audience. A good friend of mine, who happens to be my Senator from my district. Senator Gerry Cardinale is in the audience. I believe he would like to say a few words on the issue of this bill. So Senator Cardinale, I'll ask for you to come up next, and welcome. I appreciate your coming.

**S E N A T O R   G E R A L D   C A R D I N A L E:** Thank you, Mr. Chairman and members of the Committee. Thank you for the invitation. I came because I wanted to express my compliments to the Committee on the work that you're doing. While it is very clear, I'm sure, to everyone where the public interest lies in matters of this type, it is also very clear that we must make a record of where that public interest lies, and that's what you're doing. Without that record, the actions that you subsequently take are probably not going to stand up as well, nor will they be as effective.

I want you also to be assured that the work that you're doing is going to be supported when this bill gets into our house. And without any further ado, I cannot add any technical information or any information this Committee has not already gotten, will not continue to get tonight. I'm not an engineer, I'm not an expert. But speaking now, not as a Senator, but as a member of the public, let me just say that it's obvious if you take a look at what's happening up in the Pascack Valley, it's becoming overcrowded.

The time for massive development in that area has long since passed, and we must devise ways where we can keep some open space, not only for the protection of the water -- that's one aspect; a very important aspect -- but for the protection of the quality of life that the people in that area deserve and have come to enjoy. We do not all need to live in New York City, nor must every portion of this world become New York City. And the work that you're doing -- again, as a private citizen -- the work that you're doing is something that I

personally appreciate. I wanted to say that and I'll be around to listen to some of the things the rest of the people have to say. Thank you very much.

ASSEMBLYMAN ROONEY: Thank you very much, Senator. And coming from New York City, as you do, and having moved out of New York City as you did, I can appreciate your comments very much so because that's what we try to get away from. That's what we moved to Bergen County for; because of its quality of life. And we're hoping to keep it that way. Let's see if we can do it on this. Thank you, again. The next speaker I have is Mr. Stephen Gusto.

S T E P H E N G U S T O: You want to take about a five minute recess so I can--

ASSEMBLYMAN ROONEY: Can we have a five minute recess?

MR. GUSTO: --get my stuff out.

ASSEMBLYMAN ROONEY: Okay. Steve has-- Just to give you a brief introduction, Steve is an accountant, basically an auditor. He has been working on many, many aspects of the transactions of the United Water Resources and the subsidiary companies. He has been doing a yeoman's job in my office. He is on my staff, part-time staff, making a very minimal amount of money. I'm going to have to give him a big raise after this is over because he has spent just about full-time in the last few weeks because of the things that we found.

In the last couple of weeks I've felt as if I've had a tiger by the tail. We never dreamed of what we would find in our investigation into the Water Company. And we have been totally shocked, totally surprised. As I said earlier, there will be certain aspects of our very cursory examination that will be referred to the Attorney General's Office, and we will hopefully get some results back.

But Mr. Gusto has been -- along with Greg Gage from Bergen SWAN -- have been the two people that have really done

all the research. I don't want to take any credit for any of it. They've done the work. I just wanted to acknowledge that. Yes?

ASSEMBLYWOMAN RANDALL: While we're taking this recess I just wanted to note for the record that we've all had a chance to look at the flooding pictures which Mayor Hague was kind enough to bring along showing the tremendous flooding at the Oradell and New Milford borders. I'm sorry, Mayor Hague, I didn't invite you to a meeting I had Thursday of last week with Martha Green, Jim Butler, and, I believe it's Tom McKeon, of Hackensack Water Company with regard to the flooding problems that we've had. And it's somewhat of a tangential issue to what we're talking about tonight, but it's been rather important because not only were New Milford and Oradell severely affected by the flooding we've had this spring, also Hillside and Westwood. People had to actually be evacuated from their homes due to the flooding there, and Rivervale has been adversely affected.

And in the course of this meeting I was actually told by Mr. McKeon that with regard to flood control management, that in his opinion, Hackensack Water Company had neither a legal nor a moral obligation to deal with flood problems in the Pascack Valley area. He actually said that to me, and I said, "Well, perhaps you ought to consider it."

ASSEMBLYMAN ROONEY: Not even a moral obligation?

ASSEMBLYWOMAN RANDALL: Neither-- That's--

ASSEMBLYMAN ROONEY: Legally he may not have an obligation.

ASSEMBLYWOMAN RANDALL: Neither a legal nor a moral obligation to address the problems of flood control in this region.

ASSEMBLYMAN ROONEY: That's on the record. Mr. Capece can report back to Mr. McKeon. That shocks me. I had thought that they were at least a little more sensitive to the people

problems. In fact, it's probably more indicative of their current attitude; that they're in the real estate business and really not in the water business or in the public utility business. They're in the private interest, private land development business. Mr. Gusto, I gave a little brief background.

MR. GUSTO: Yes, Mr.--

ASSEMBLYMAN ROONEY: If you'd like to embellish a little bit on your background?

Mr. GUSTO: What did you say in your--

ASSEMBLYMAN ROONEY: I said you were on my staff for a very minimal amount. You are an auditor.

MR. GUSTO: It's already been spent. (laughter)

ASSEMBLYMAN ROONEY: And I already said that I owe you a raise. So, it's on the record too.

MR. GUSTO: I don't think, considering the deficit, that's going to do me much good. I guess John told you that I'm on his staff to look into financial affairs that come before John's office. I am a public accountant who has been in practice for 17 years. And for 10 years before that I worked for the J.C. Penney Company and a firm called Harwood Manufacturing, which is a large diversified clothing manufacturer.

The reason really I'm testifying tonight is that the Hackensack Water Company declined the staff's request for a number of professionals to come down to answer questions about consolidated financial statements of United Water Resources and the effect of the real estate company which they formed. In regard to the BPU -- series of three BPU orders running from '83 through to '85 which I think you are all familiar with--

I have just handed out to you what is an analysis of a series of journal entries which we received from the Board of Public Utilites. But the one we have may not actually be the

exact one that was used. I am told by Mr. Lombardy, of Supervising Rate, that there are a number of them. But we are in a close area.

And what you are looking at is not a sale of property, but a hypothetical hypothesis of what would happen if you sold these properties in order to gain permission to stop being a regulated utility traded on the New York Stock Exchange and becoming a holding company traded on the New York Stock Exchange with unregulated divisions.

The \$10.68 million is the appraisal. Whether you agree with it or disagree with it in this context is irrelevant, and the explanation of this calculation of how the ratepayer was reimbursed-- The order issued-- The second order issued, which is docket 8312-1096 set out the formula you see in front of you, that they were allowed to deduct their book value, which they say this land was on the books for \$1,083,000. That left a net profit of \$9,546,000.

ASSEMBLYMAN ROONEY: Steve, if I can interrupt you just for emphasis. When the Board of Public Utilities considered the request of the Hackensack Water Company then becoming United Water Resources to divest themselves of this land, the stated purpose was to reduce the land value from the rate base and then basically have the ratepayers benefit. Now what we're talking about, and this is what I alluded to earlier, was the actual historical cost that was carried on the rate base was only \$1,083,000.

MR. GUSTO: And in some reports it's lower than that, John.

ASSEMBLYMAN ROONEY: And what actually then accrues, as far as each ratepayer, each household, we're talking about pennies per household in order to maintain this as part of the watershed.

MR. GUSTO: Well, one of the questions I asked of the Rate Regulating Office at the BPU was what section of the

financial statement would indicate the amount that is used for rate setting purposes? And they told me that it was the section called Plant and Utilities and Service. And at any time during the period of time from 1984 to the present, this piece of property represents less than one-half of 1% of the rate base. If the information that I received-- And again, I am not an expert in utility accounting. That's the reason we requested witnesses from the Water Company and they denied unless we sent the questions in.

ASSEMBLYMAN ROONEY: All right, so in reality the request by the Water Company to take this land and take it out of the rate base, to reduce the ratepayers' amount, or to reduce the monthly bill to the ratepayer is really fictitious. There's really no relativity to a reduction.

MR. GUSTO: In accounting, we call it minimus. It would have no effect.

ASSEMBLYMAN ROONEY: No effect whatsoever. So that's the first premise that we're looking at: Is the BPU allowing this under the guise of rate reduction that really it is no rate reduction whatsoever?

MR. GUSTO: Because it was carried at book value.

ASSEMBLYMAN ROONEY: Okay.

MR. GUSTO: Then for some reason in this order, they decided to come up with a series of expenses that were allowed to be deducted before the 50% -- before the profit that was to be divided 50%. One of those is something called a 5% charge for marketing costs. I didn't understand that, so I asked the Rate -- Mr. Lombardy in the Rate Office what that was. And he said, "Well it was something like a commission." And this is the first time in my accounting experience I have ever heard of someone paying themselves a commission to transfer property between themselves. I don't know whether there are other substantiations of that \$531,000. That's the question we wanted to ask the financial officers from United Water Resources.

ASSEMBLYMAN ROONEY: I hope Mr. Capece is writing these questions down because he said any questions that were--

MR. GUSTO: Well, he can have them in transcript.

ASSEMBLYMAN ROONEY: Any questions that come up he will be happy to answer.

F R A N K C A P E C E, J R., E S Q.: (speaking from audience) Mr. Chairman, I'm taking notes, as well as the allegations tonight. I'm listening very carefully to the allegations.

ASSEMBLYMAN ROONEY: Very good.

MR. GUSTO: Then they had other expenses of approximately \$800,000 which were to be a whole series of expenses including the Havens and Emerson's report, certain legal fees, and certain fees for the Public Advocate's Office. The fee is a very substantial amount of money for a simple transaction, that in reality was really \$1. And then there is a phrase for estimated taxes. There is a provision that allows them to accrue taxes from October 31, '83 to the time of transfer. And there is, in a later opinion, a question about the tax -- Federal tax impact on the 1120 return of the consolidated corporation. I don't-- All of those are in the \$2.8 million, or part of them are in there. The financial statement seems to indicate that the transfer of property had no effect on the taxes.

ASSEMBLYMAN ROONEY: So, so far we're looking at \$10,600,000 was the appraised value. They deduct the book value--

MR. GUSTO: Book value.

ASSEMBLYMAN ROONEY: --one million, and they get a net of nine-and-a-half--

MR. GUSTO: Which is what the property is derived from, the nine million.

ASSEMBLYMAN ROONEY: Then they took off costs, supposed costs of a half-million dollars -- a little

over a half-million for marketing -- commission, 800,000 for other estimated taxes of \$2.8 million, and then they deduct that from the 9 million book value and they come up with 5.3 million.

So basically they've taken \$4.2 million in costs. And I think you'll say in a later statement that these never were--

MR. GUSTO: Well, we don't know.

ASSEMBLYMAN ROONEY: We can't find them.

MR. GUSTO: We're asking.

ASSEMBLYMAN ROONEY: We've never--

MR. GUSTO: One of the things that's listed is the Real Estate Transfer Tax. We have already been told by the Treasurer's Office that no Real Estate Transfer Tax was ever paid on this transaction, so I don't know what makes up that \$2.8 million. We would like to know that.

ASSEMBLYMAN ROONEY: All right. Then we're down to a profit now of 5.3 million--

MR. GUSTO: Five point three million.

ASSEMBLYMAN ROONEY: --of which they take half of that and so generously give it to the ratepayers for \$18 a month.

MR. GUSTO: That's right.

ASSEMBLYMAN ROONEY: Eighteen dollars per household.

MR. GUSTO: That's right.

ASSEMBLYMAN ROONEY: I just wanted all this on the record. These figures will be entered into the record. They will also be given to the interested parties and subject to their audit or their correction if-- We still have not been able to get the Water Company to testify as to any of these values. We've been trying to get their people here.

MR. GUSTO: But there appears not to be-- There are statements-- We have their financial statements from 1985 which also shows the activities of '84 through 1988. And their 10K -- that is their submission of supposed inter-company

transfers and disclosures on file -- there does not seem to be a recognition of the 10.3 million -- \$10.6 million. Nor does the third order from the BPU, number docket 8312-1096 specifically state that the Board has decided not to recognize that over the recommendation their -- I want to get the title correctly -- their Rate Counsel who thought that a totally different formulation with the net effect of these transactions on the corporation should be given to the figure, so that most of the \$10 million would have accrued to the profit area and the 50% would have been much higher than the \$2.6 million.

ASSEMBLYMAN ROONEY: And there's also further indication that the BPU Rate Counsel originally recommended that 100% of this transaction be returned.

MR. GUSTO: Well, the net effect of recognizing taxes differently and expenses differently would have put almost 100%. And the Board states that in its order and states that it decided not to do that because of the concept of equity between the shareholders and the ratepayers. The problem is that the inequity occurred when the property was transferred, and now the rateholders had no part of the \$10 million in property. And the shareholders had all of the \$10 million in property.

The thesis that the accepted appraisals were rational, of course, was destroyed by some evidence you've already taken in tonight which is the transfer of the property to Emerald Hills for \$7 million. That represented approximately 4% of the 700 acres but represented 75% of the appraised value and three times what appears to be the actual cash laid out by Rivervale Realty -- Hackensack Water Company.

ASSEMBLYMAN ROONEY: So just one transaction in 1987 which we have documents. Anyone can get that. We will enter this into evidence. We have a transfer or a sale? Now it's a sale from United Water Resources? No, Rivervale Realty.

MR. GUSTO: Rivervale Realty to--

ASSEMBLYMAN ROONEY: To?

MR. GUSTO: I corrected myself, John. I said that to you before. It's not true. The actual deed transfers for \$1 are from Hackensack Water to Rivervale Realty.

ASSEMBLYMAN ROONEY: All right. So those are the actual transactions that--

MR. GUSTO: The actual deed transfers were for \$1. There were two transactions in there for \$1 each.

ASSEMBLYMAN ROONEY: All right. And there was no value. Now--

MR. GUSTO: Now they did establish values on the books. All right? They appeared to have capitalized at United Water Resources this property for \$4,174,000. Again, that's a supposition we're making from looking at the journal entries which they submitted to the BPU, and the results which appear in their financial statements. Again, because they're consolidated financial statements, we cannot see it.

ASSEMBLYMAN ROONEY: All right, but the--

MR. GUSTO: They continue-- Okay.

ASSEMBLYMAN ROONEY: The transfer on Rivervale Realty to Emerald Hills was 1987. Now we're talking 23 acres out of the original 700.

MR. GUSTO: Slightly over 4% of the property.

ASSEMBLYMAN ROONEY: And that was transferred at seven point--

MR. GUSTO: Seven point two million, approximately 24 or 25 months after the original sale. A 600%--

ASSEMBLYMAN ROONEY: It's amazing how the land values--

MR. GUSTO: Well, the appraisal was 1.1 million, so it's approximately 600 times the appraisal or a 500% return on the appraisal.

ASSEMBLYMAN ROONEY: It's amazing how land values increase that much in such a short period of time.

MR. GUSTO: Well they didn't. That's really the tragic part of this. Land values in Bergen County did not increase.

ASSEMBLYMAN ROONEY: And it's also interesting to note that if the Water Company was really interested in reducing the rate, they just could have sold this parcel of land and made 75% of the value, the rest of the land could have still been in watershed.

MR. GUSTO: Well, the other part that's interesting is the supposed concept was that this was to benefit the ratepayers, and at the same time they were transferring land that they said was worth 10 million, and there have been disputes of its value from \$30 million to \$100 million. In order to facilitate the expansion of their facilities they went out and borrowed between their two water producing companies about \$110 million and refinanced a very high bond issue that they had for another \$10 million.

In theory they could have paid for a very large percentage of the capital improvement by utilizing this capital within Hackensack Water Company and have borrowed less, so that the ratepayer was not paying off \$110,000 (sic) in notes.

ASSEMBLYMAN ROONEY: One-hundred-and-ten million in notes.

MR. GUSTO: One-hundred-and-ten million in notes, right.

ASSEMBLYMAN ROONEY: It was probably 110,000 in interest.

MR. GUSTO: Well, it's-- There were all three--

ASSEMBLYMAN ROONEY: Or a million in interest.

MR. GUSTO: They apparently have three major indebtednesses, all of which are arranged through EDA functions in both New York and New Jersey. One of them apparently was taken out quite a while ago and was refinanced at half of the interest cost.

ASSEMBLYMAN ROONEY: One of the things that-- They have a Spring Valley Water Company which is in New York and they are regulated by the PUC in New York which is the equivalent of the BPU. Isn't it true that you found the PUC in New York requires that 100% of the value of any of these lands be taken back to the ratepayer?

MR. GUSTO: Not only do we find in there, we also-- Legislative Services' Legal Division did very extensive research through a document called-- They did a lot of legal citations which are still being researched by the legal staff. But they did an exhaustive research through two documents. One is called the "New Jersey Digest of Public Utility Decisions," and they also sent us one which is a national survey like that. That is so large we haven't finished that. That's about 900 pages, and we're still going through that.

But in here there are numerous decisions in which capital assets were distributed by utilities of all kinds, and in almost every case -- and every case that we found here that we found similarly relevant to the facts -- the land was put up for public bid. And there are even some examples here where no bids were ridded -- received, and they were rebid or only one bid was received and they were rebid, all at the order of the same public utility. So this was a major departure in the process of realizing the value of supposedly public properties.

ASSEMBLYMAN ROONEY: One other-- I think you checked with the PUC in New York, that there was a sale of land -- a similar transfer of land from Rivervale Realty -- or from Spring Valley Water to Rivervale Realty. And it was, I believe--

MR. GUSTO: It was part of the same proposal.

ASSEMBLYMAN ROONEY: Excuse me.

MR. GUSTO: It was part of the original proposal.

ASSEMBLYMAN ROONEY: All right, it was part of this.

This original transfer. But since it came under Spring Valley Water, it had to be part of that. And I think it was-- Do you have the numbers that--

MR. GUSTO: John, I'm sorry I don't.

ASSEMBLYMAN ROONEY: I think Greg has the numbers. But it was \$320,000.

MR. GUSTO: Twenty thousand sticks in my mind, but I don't want to put that on the record.

MR. GAGE: Three-hundred-and-four-thousand.

ASSEMBLYMAN ROONEY: Three-hundred-and-four-thousand was what the transfer value was and they sold it within two months for one point--

MR. GAGE: Eight.

ASSEMBLYMAN ROONEY: --eight million dollars within two months. Again, a very, very good two months of appreciation in land values even in New York. But that 300,000 was-- One-hundred percent of that went to the ratepayers in New York. And I understand that the PUC in New York is still investigating that particular transaction. So I would like to get additional information when we get back. Susie's here somewhere. (referring to aide) Susie, if we can get the PUC in New York to find out any additional up-to-date information on that transaction and how that transfer was made? Because New York State is also concerned about the under evaluation of the properties that are concerned here.

MR. GUSTO: Well, I think as general practice in the distribution of assets, whether it be public or private, when you deal with a hypothetical case, which you do in many proceedings, especially involving real estate, there is usually a provision which allows the realization of a gain or loss. The PUC did not do that. They could certainly have ordered that this is the estimating, and this is the formula that will be applied. The ratepayer will receive an appropriate amount. If we get 50 million, then we will take the formula of expenses

away, use the same formula, but deal with real figures rather than a hypothetical sale which never existed at those figures. It was a hypothetical assertion.

And the Board uses as its defense in that matter a citation in which Chief Justice Vanderbilt said that they had the power to use reasonable judgment. I question whether \$10 million for 700 acres anywhere in New Jersey would have been reasonable judgment. But that's the defense of their breakdown.

We would be very thrilled if we could get members of the financial department of United Water Resources to answer the questions that we have regarding these transactions and the implementation on their books. There is a possibility that they have capitalized that expense. That is that they will be depreciating: the \$2,600,000. Their entries are slightly unusual. They don't follow GAS or GAP. Those are the two rules that we general-- They are bizarre in their presentation.

ASSEMBLYMAN ROONEY: For the novices, please explain GAS, G-A-S.

MR. GUSTO: GAS and GAP are the generally accepted accounting principles, and generally accepted accounting standards. And I really-- If this is the methodology that paperwork is done in a modern mega corporation, it's the only one that I have worked with in the last four years that has anything like this. And I have just been involved in the audit of three leveraged buyouts through the last two years. So, I'm astounded. I don't know where this came from, and I would be very interested in knowing.

But I think a great deal of the blame, rather than the blame belonging with United Water Resources, belongs with the Board of Public Utilities in its responsibility to see that we are protected from opportunists. And I really question-- I don't know if this is a question for the legal department. I really question whether the bad work can be undone that has been done because now it is clear this property is in the hands of an unregulated entity called Rivervale Realty.

ASSEMBLYMAN ROONEY: Well, there is question on whether it's in the hands or not because the transfers in a lot of cases have not been made. We've been-- Part of it is part of the moratorium, even the 700 acres.

MR. GUSTO: One of the problems we have had in trying to define this is that the two deed title transfers don't match exactly the appraisal descriptions. So it's been mix or match, and with the extensive staff we have. We haven't had time to go through every single solitary part.

ASSEMBLYMAN ROONEY: You and Greg and Susan.

MR. GUSTO: Well, there are two or three thousand pages. So we have not been able to do that.

ASSEMBLYMAN ROONEY: You've also looked into some of the subsidiary companies of United Water Resources.

MR. GUSTO: Yes, they now have numerous subsidiary companies. It's not just three companies. It's now nine or-- There have been numerous amounts. They have gone up. They are all related to the providing of water services in some way at the present time, with the exception of Rivervale Realty which is a development company. As of '88 they have -- one, two, three, four, five, six, seven -- wholly owned subsidiaries of United Water Resources. And Spring Valley is a wholly owned subsidiary of Hackensack Water.

One of the wholly owned subsidiaries -- activities-- One of these is a firm called Laboratory Resources which works on the development of technology and water purification. They have a couple of others that we haven't had time to extensively research, even though we have pulled their documents. Their latest addition is Meter Servicing, Inc. which is the vehicle by which they will be installing their computerized home reading device that will go through telephone lines rather than the fellow coming knocking on your door and running down into your basement, which they are in the process of implementing.

And then we had some reports that they have relationships-- They stayed in there; that there was a relationship with another company, but because its equity is of such low value, they don't have to declare it in their 10Ks. We would love to know what the name of that company is, also.

ASSEMBLYMAN ROONEY: Maybe we could have Mr. Capece get the names of these companies. Any other unusual items that you found in their accounting practices or their corporate liaisons?

MR. GUSTO: No, their accounting practices are-- It's very difficult from a consolidated standpoint when you don't have work papers to pull out, especially in something as large as this. And you must realize that Rivervale Realty is a very small part of this very large entity. Though I can state that they now carry-- Before 1985 they did not carry a separate category for real estate because the real estate was part of the physical plant and use base. In 1985 they started carrying it and it is presently being carried at a value of \$37 million. And it still states in the description, in both the 10K and the annual statement, that they have between 1000 and 1100 acres. So the acreage-- They have not announced that they have purchased large quantities of acres, but they have raised the value from originally \$2 million when it was first entered in 1984 to something in excess of \$38 million in 1988.

ASSEMBLYMAN ROONEY: Anything else?

ASSEMBLYWOMAN RANDALL: I have one question.

ASSEMBLYMAN ROONEY: Yes, go right ahead.

ASSEMBLYWOMAN RANDALL: I find your testimony startling, to say the least. I have a question about the original-- If the calculations used to arrive at the 50% which was due to ratepayers, this is based on the 1984 transfer from Hackensack Water to Rivervale Realty. Am I correct?

MR. GUSTO: Yes, let me see if that's the-- The copy I have, Assemblywoman, doesn't have the exact date on it, but

that's my understanding; that that's the date of this order 8312-1096.

ASSEMBLYWOMAN RANDALL: And those were the two entities. Hackensack Water Company as the seller and the buyer being Rivervale Realty. And we start off with a questionable appraisal but a figure which for accounting purposes, as you say, is really irrelevant, of 10,600,000, and through various deductions, we wind up with a 50% figure of the profit which was ultimately returned to ratepayers, which was 2,600,000. I'm concerned about the item which you have described here as 5% marketing costs. I know that in New Jersey there is a 6% -- maximum of 6% commission on any real estate transaction if there's a broker or an agent involved. I think many of us know that.

Also, with public entities, whether it's the State, the county, or a municipality, want to sell lands and use the services, somehow with a broker to assist, there's a maximum 5% commission payable by law in the State of New Jersey.

\$531,500 is exactly 5% of the appraised value here.

MR. GUSTO: Well, the 5% was noted in the PUC order. I read exactly what they said it was going to be, "The amount equal to 5% of the fair market value of the subject properties as an allowance for standard fees and other expenses generally incurred in the realization of fair market value." You're the attorney, ma'am.

ASSEMBLYWOMAN RANDALL: And that doesn't help me, I'm afraid.

MR. GUSTO: I know. It didn't help me, and that's the reason I asked Mr. Lombardy. And he said to me, "Well, it's kind of like a commission."

ASSEMBLYWOMAN RANDALL: And it's exactly 5%.

MR. GUSTO: Yes.

ASSEMBLYWOMAN RANDALL: Now, ordinarily I also know, in my experience, that the seller pays commissions when

commissions are paid. In your research, is there any indication of whether or not, number one, this half-million dollar commission was ever paid, and if so, who paid it? Did the seller in this case pay it, and was it ever paid? We don't know.

MR. GUSTO: It does not appear to be paid. The entry which appears to capitalize, does not include the 500,000. It includes the half of the 800,000, it includes the book value of the land, and it includes the half of the profits. It does not include that 5% figure.

ASSEMBLYWOMAN RANDALL: All right. Thank you.

MR. GUSTO: The only place the 5% figure--

ASSEMBLYWOMAN RANDALL: Mr. Chairman, I certainly would like to find out a little bit more about whether or not it was paid, and if so, who paid it?

MR. GUSTO: That's one of the questions we had. We would have asked that tonight of the Office of Treasurer.

ASSEMBLYWOMAN RANDALL: It's a nice commission.

MR. GUSTO: Very pleasant.

ASSEMBLYMAN ROONEY: The other thing is that there's no indication it's ever been paid. Neither have the taxes been paid. Neither has--

MR. GUSTO: The taxes are indicated for allowance for taxes in other periods, okay, which again, is an unusual stipulation. And I don't know whether that tax figure is strictly a tax effect figure from transactions for their 1120 Federal return or whether that also includes the first part of the real estate taxes which they may charge to this cost from the period of October 1, '83 forward. It just says tax allowance on the entry explanation.

ASSEMBLYMAN ROONEY: But you didn't find anything that indicated that these fees were paid, or they have been carried over as income on any other statements?

MR. GUSTO: No, there definitely-- The order does not allow them to be-- In the difference between the Rate Counsel's opinion and the Board's opinion, it is clear that the 10 -- \$6.6 million is not to be taken as gain by the Hackensack Water Company. Hackensack Water Company got a receivable of \$4,174,000.

ASSEMBLYMAN ROONEY: All right. Any other recommendations you might have, Steve, on this as far as--

MR. GUSTO: Well, as I told you, I would hope that we would not allow them to divest themselves of these properties. I would hope we would make provisions so that the Public Utility Commission had to be more responsive to the marketplace. They don't ever name anybody in these decisions. They just keep saying special assistants and special counsel and advice of experts, but no one is listed.

One of the disturbing things that came to our attention was in one of the SWAN attorneys who went to the PUC. He disclosed there were some documents he was not allowed to have. And when I asked Mr. Lombardy about that--

ASSEMBLYMAN ROONEY: The BPU.

MR. GUSTO: Pardon?

ASSEMBLYMAN ROONEY: The BPU. You're back in New York.

MR. GUSTO: The BPU, I'm sorry. I was told that those were internal documents and that they really should never have been in the file that was shown to SWAN's counsel. And I asked them, "How internal were they?" And he said, "They're not usually shown to anyone." And I found that unusual. They were documents between executives of the Board of Public Utilities regarding the procedures that were established to issue these orders. We haven't had time to go down there and read the files ourselves yet.

ASSEMBLYMAN ROONEY: We will, though.

MR. GUSTO: Yes, there's no question about that.

ASSEMBLYMAN ROONEY: I just-- As long as we're on the record as far as the other agencies, I've asked the SCI -- State Commission on Investigations -- if they would like to monitor this. And I was told that the Chairman of that authority is Mr. Patterson, who is an employee, a board member of the Elizabethtown Water Company who is associated with the Hackensack Water Company and United Water Resources. So there would be a conflict of interest there. We mentioned one of the previous commissioners being involved with the BPU. And I found out that the Director of the SCI was a staff aide to that particular commissioner. So he had a conflict of interest. So we had major problems with the SCI ever looking into this. But I believe it involves -- it possibly involves -- past employees of the government -- governmental agents, so it doesn't really come under SCI. I think it does-- We were directed, however, to the Attorney General's Office. And this is where we have been asked to forward our inquiries and our information. I don't know, tonight--

MR. GUSTO: I don't think we should give the impression, John, that we have asked the AG's Office to look into any of the financial questions.

ASSEMBLYMAN ROONEY: No.

MR. GUSTO: Those questions are still open and we would like those responses from United Water Resources.

ASSEMBLYMAN ROONEY: But there are other matters that the AG's Office should be looking into. I had hoped there would be someone here monitoring it tonight. Anyone here from the AG's Office? Just indicate-- (no response) We will forward the transcript down. They said they would try to get someone here but it was short notice because we'd only found out a lot of these items last week when we started getting into, you know, some of the cast of characters, so to speak.

MR. GUSTO: I certainly think that from a standpoint of finance it would be-- Your bill is incredibly germane in

whether or not there becomes an intrinsic conflict when we allow the 50% ratepayer, 50% stockholder position, which is a thesis of the Board of Public Utilities, to be liquidated or to be diluted by forming a holding company and then having a lot of competing companies which are not regulated by the Board of Public Utilities.

ASSEMBLYMAN ROONEY: It's almost akin to the oil companies years ago when we had the oil shortages; that they had oil coming in, and they would sell it from one division to the next, reaping a profit on each one until finally it was sold because they were regulated as to the amount of profit that they could get. So they would take all of these intermediate sales and then accumulate all the profits, and then still say that they only had whatever the profit was that was allowed under the antitrust Federal legislation that we have. So I feel it's akin to that, you know. Kind of laundering the price as it's going on, watering the price down.

MR. GUSTO: Well, the net effect was an enormous windfall for the stockholders of what used to be Hackensack Water Company and Spring Valley Water Company. And the new trading entity, the stockholders are in a much stronger position than they ever were when this was exclusively a public utility.

ASSEMBLYMAN ROONEY: Well, as we're showing, at a cost of \$2.7 million is all they gave to the ratepayers. At \$2.7 million they acquired in excess of \$100 million worth of land. Now to me, there's something wrong with that. That to me is the ultimate ripoff. It's 2% or 3% of what the value of the land is. Something is drastically wrong. And I think we have to-- All -- you know, down the line, the BPU, the Public Advocate -- all of the systems failed to protect the public, failed to protect the ratepayer. And that's where we're at right now.

MR. GUSTO: I have referred to this as the worst land deal since the Louisiana Purchase. The only difference is that the people of Bergen County and the New Jersey ratepayers are Napoleon and United Water Resources is Thomas Jefferson.

ASSEMBLYMAN ROONEY: Right.

MR. GUSTO: I don't know of anything else in the same magnitude in anything I've ever seen in land speculation.

ASSEMBLYMAN ROONEY: Seward's Folly would also compare. The purchase of Alaska.

MR. GUSTO: It's in the same league.

ASSEMBLYMAN ROONEY: Same league.

MR. GUSTO: But it makes people like Mr. Buckley and Mr. Rockefeller look like amateurs.

ASSEMBLYMAN ROONEY: Right. Steve, I can't thank you enough for the kind of work you've done. I really appreciate it. You've done full-time work on this for the last few weeks, and you've really done a yeoman's job.

MR. GUSTO: It was my pleasure.

ASSEMBLYMAN ROONEY: We're still working on it, I know.

MR. GUSTO: We're still working on it, and I was very pleased to see Dr. Cardinale here because he and I have been working on a land preservation now for 15 years. I think we all have a cognizance. You and Gerry are from New York. I'm not. I was born physically in New York but that's because that's where my mother's doctor is.

I've spent my entire life here in Bergen County and obviously I have seen incredible changes. And one of the things I would like to bring out is that the Water Company, in one of its decision in one of these activities, stated to its stockholders that it had only two options; and that was either to sell it for either someone else to develop or sell it for them to develop.

I think that is an incredibly naive attitude. New Jersey is in the forefront of other options for land

preservation and transfer and so does the internal revenue code. So if they were really interested in helping us deal with the environment, they could have found a number of ways to preserve a good part of this 1000 acres and still receive financial benefit for themselves on their 1120 return.

ASSEMBLYMAN ROONEY: Thank you again, Steve.

MR. GUSTO: You're welcome.

ASSEMBLYMAN ROONEY: Anyone have any more questions for Steve? (no response) We have two other speakers. Kathryn Brenington from Harrington Park, interested citizen. Kathryn has testified before us before. We appreciate your testimony always.

KATHRYN BRENINGTON: Well, I appreciate your listening to me. I'd like to compliment that gentleman that just spoke. I said to Mayor Hague, I feel like applauding his testimony. We're all indebted to him.

I forgot my notes. I have just a couple of comments to make. Did any of you read the letter to the editor called, "The Bulls, the Bears, and the Pigs"? It was beautiful. I should have brought it. It was a couple of weeks ago. I cut it out. Lucy Markham (phonetic spelling) -- I hope she doesn't mind if I quote her -- from Mahwah. And she, in that letter to the editor said so much. And I feel a little-- Even though I've heard administrative hearings in Newark, in front of the BPU -- testimony from the Hackensack Water Company executives who called on their witnesses, and they exclaim and reveled in the fact that they were practicing BMPs, which are called better management practices-- And I think it's really rather ludicrous, isn't it, when we hear how they have manipulated so much that has been given to them way back years ago, which they acquired in a rightful way to protect the land for the purpose of providing pure, clear, clean water. So there are so many factors here.

I was going down to Atlantic City on the top level of a bus and I looked at the Atlantic City water supply. Has anybody passed there? It's verdant green and for miles all you see is green. There is no great development. It is protected watershed. We are losing our protected watershed, and that is unfortunate. And it is perhaps a very sad thing that greed seems to be more important to this whole -- maybe this nation, maybe this world -- more important than anything.

I compliment all of you because I know that you are taking a very deep look into something that might be politically volatile or politically difficult for you. And I applaud you and I say there are many people that are thankful and appreciate what you're doing. Thank you.

ASSEMBLYMAN ROONEY: Thank you very much. Appreciate your--

MS. BREMINGTON: I mean, I'm sure there are no questions.

ASSEMBLYMAN ROONEY: We also have Dorothy Romaine, and she's the Chairman of the Emerson Environmental Committee, and an old and dear friend.

D O R O T H Y P. R O M A I N E: Thank you. Thank you, Mr. Chairman. I don't have a prepared statement, but having listened so much tonight, I feel like I need to say something. I agree with Mayor Hague about the magnificence of the environment at the site of the proposed townhouses in Emerson. Presently the Emerson Environmental Commission is having conversations with Rivervale Realty seeking its commitment to constructing and maintain a nature trail proposed by the Environmental Commission.

On a rather irregular basis the Commission receives biweekly results of water sampling, and those water samples show a high level of lead content. Since receiving those reports, I've stopped drinking Hackensack Water, and I buy bottled water for my home consumption.

But I also have a personal interest in the proposed townhouse development, because my home is less than four blocks from the area where the building will take place, and the area already has seen increased traffic just since the opening of the Shop-Rite at the corner of Main Street and Old Hook Road. I think that the traffic survey was ludicrous. They came up with some minimal amount of cars per area. And the Environmental Commission is very concerned with the air quality as well as the water quality.

So I just want to reiterate what a lot of other people have said tonight, but I certainly do favor your bill.

ASSEMBLYMAN ROONEY: I've got one question.

MS. ROMAINE: Yes.

ASSEMBLYMAN ROONEY: Rumors are running amuck. I'll just lay it out for you. I understand that the engineer that you had on the Emerson Environmental Committee gave his report and then I think within weeks later was working for the Water Company. Is that fact?

MS. ROMAINE: When I first was appointed to the Water Company -- to the Water Company -- to the Commission -- my memory, the first thing to go -- the Chair of the Commission, I believe, had some relationship to one of the, perhaps, research companies, and I believe he is now working for them. I've heard that, but I can't document it.

ASSEMBLYMAN ROONEY: I had heard that, that there was a favorable report--

MS. ROMAINE: Worked for Dr. Hordon, perhaps?

ASSEMBLYMAN ROONEY: Sounds familiar. But I heard that there was a favorable report on that development.

MS. ROMAINE: Well he was the Chair of the Commission. I'm not too sure he was an engineer who did some work.

ASSEMBLYMAN ROONEY: And then a couple of weeks later wound up being the engineer for the Water Company.

MS. ROMAINE: And resigned from the Commission.

ASSEMBLYMAN ROONEY: An interesting set of circumstances; purely coincidental, of course.

MS. ROMAINE: Yes.

ASSEMBLYMAN ROONEY: Yes, I just wanted to check.

MS. ROMAINE: Any more questions?

ASSEMBLYMAN ROONEY: I know the-- Well, my office happens to be on Kinderkamack Road, and it's going to be opposite the golf course property so I know that it will affect me with the Old Hook Road traffic because I have to go through there in order to get home.

MS. ROMAINE: Well, I think one of the traffic surveys that was done is that all the traffic will come from Old Hook Road. And you know yourself from where your office is, that all the traffic goes down Main Street, particularly since it's been improved.

ASSEMBLYMAN ROONEY: And it took me three years to get the Department of Transportation to put a decent railroad crossing bed in there, that rubberized crossing. Three years I worked on that and had the ambulance corps in every town because they have to go through from the Northern Valley over to the Pascack -- well Pascack Valley Hospital. They had to take patients over there and it was a disaster as you remember. We finally got it done. The bridge there is still narrow. I know it's on the county's list to be repaired, but it's four lanes going into two.

MS. ROMAINE: I know, that's very dangerous.

ASSEMBLYMAN ROONEY: And that bottleneck is terrible. Now that bridge has been on the docket for two or three years that I've been asking for it for the county to do it. And it still hasn't been done. So if you start putting in the kind of development that they're talking about, we are in a major traffic disaster in the Northern Valley and the Pascack Valley, because Old Hook Road links the two valleys. It's one of the

most important roads that link the two sections of our district, and to have that kind of development right there is just criminal, absolutely criminal.

MS. ROMAINE: Well, don't you wonder how it can accept any more traffic? I mean, it's a bottleneck now.

ASSEMBLYMAN ROONEY: There's no way that it can. There's absolutely no way that it can. So, I appreciate you coming and testifying, and you were a volunteer on my staff several years ago, too.

MS. ROMAINE: Many years ago.

ASSEMBLYMAN ROONEY: Many years ago.

ASSEMBLYMAN FELICE: Let us check your staff here. See if they're going to go work for the Water Company. (laughter)

ASSEMBLYMAN ROONEY: I have nothing but professional people on my staff. That seems to be the only people we had sign in to testify. If anyone else would like to testify at this time, please raise your hand. Mr. Capece? Gee, I didn't think you were going to testify, Mr. Capece.

MR. CAPECE: Oh, I think tonight will be enlightening in a lot of ways for you, Assemblyman.

ASSEMBLYMAN ROONEY: Okay.

MR. CAPECE: Assemblyman, as you know, my name is Frank Capece. I'm a partner in the firm of Waters, McPherson and McNeill in Seacausus, and I do represent the Water Company on some matters. What I wanted to do this evening, with your permission, was to briefly summarize some of my concerns during the bill, at the fear of being repetitious. And then secondly, to respond to some of the comments tonight, closing up with what I will call, the Gusto statements and would close because I think those are very specific and require a great deal of scrutiny.

First, concerning the bill, Mr. Chairman, I just wanted to be brief. You know my opposition to the bill. I've

stated that. I urge you very strongly to read the 12-page letter that was sent to your Committee on April 25, to each member of that Committee. I tried not to make that a legal document, but I must emphasize to you that this is a matter with significant legal ramifications so I'm somewhat hamstrung in that effort.

I would point out to you tonight that I was struck most of all, I think, by the comment by Senator Cardinale regarding the record. I think Senator Cardinale is correct. But I would urge you again, and it seems to fall on deaf ears to this point, that in preparing this record, I think there's a need, not only for some objectivity, but a need for some expert testimony. I think it's significant, and I think you are to be praised for drawing out as much public sentiment as you could, Mr. Chairman. But I urge you that you should not be seen, and I know you wouldn't want to be seen, as substituting your judgment or that of the BPU.

And more importantly for some of the very complex corporate areas I have tried with a minimum amount of success to impress on Assemblyman Schuber, who is extremely vocal on these subjects, the necessity for examining these transactions and all activities in light of the corporate requirements of Title 14A, for which you as legislators are equally responsible. I urge you to bring forth those who can bring testimony regarding the obligations of a private company; the obligation to shareholders of that company, and the risk that any director would take in attempting to substitute his own judgment for those wishes of the corporate entity. I urge you to bring forth testimony to that effect.

Regarding the bill, I believe my statement goes on at great length and I hope with some clarity, regarding the confiscatory nature of this bill. I believe, in fact, that a fiscal note may be required.

I think the bill is confiscatory. I think the bill is constitutionally deficient in that it attempts to retroactively turn back the clock. I think the constitutional implications of that require some review by you. Certainly I may not be seen as a bastion of objectivity as may some of my other previous speakers here this evening, but I urge you to examine the bill from that aspect. I think it's significant.

And I would also point out to you the special interest aspect of the bill. Holding companies are well known in this State, as in the country. I -- to the best of my knowledge -- am not aware of any state which has attempted to ban or to hamstring holding companies to the extent you have. That notwithstanding, I would point out to you that my reading of the bill seems to limit it only to holding companies regarding water companies. I think that's a curious distinction, and I don't think that's a distinction that would stand the test of time. But rather than my giving you free legal advice here tonight, which is neither, I think, solicited nor requested, I would point out to you though, that I think those subjects require your examination.

Regarding some of the comments tonight -- and it's always difficult when you're sitting back there and things are coming at you awfully quickly here this evening, both from up front and from the audience -- but I would require, I think, on behalf of the Company, to respond to just a few of them.

Number one, I want to make reference, because I've never done it before, because I think I'm polite and I'm a pretty good politician, but I do think that it is time tonight to address some of the comments which have been made with great frequency by Mayor Hague. I think Mayor Hague is entitled to her opinion regarding whether or not executives of the Water Company are, quote, using her expression, "Desperate men in a desperate situation." I don't agree with that comment, but I think she's entitled to that comment.

I don't think she's entitled to make representations regarding the decline in the stock which to my judgment and to the representations of other people from the Water Company, has not declined, which was Mrs. Hague's testimony this evening. I note that Mrs. Hague has frequently told us that she is a shareholder of the Company. But I would submit that she does not speak for the shareholders of that Company. And that brings me back to my comment before regarding, I believe, the necessity of this body to examine the corporate responsibilities of a company to the shareholders.

Secondly, the comment tonight regarding the criticism of the BPU -- be it not I, there are two groups, Mr. Chairman, for no client will I ever defend, and that is the BPU and the DEP -- but I would point out to you, Mr. Chairman, that I think we do a disservice tonight when we are critical of the BPU and we quote the BPU and we don't have the BPU here to answer those questions. Now I know the BPU, and Mr. Zarillo was here, and gave great testimony. And I've got to tell you, most times I'm on the opposite side from Mr. Zarillo, but I've never found him to be anything-- I use the expression, "He's like a Bob Turley fast ball." He's right down the middle and I've never found him to be anything but candid. And I think that it was unfortunate tonight during Mr. Gusto's testimony that there was not a BPU person available for that. I urge you in the future to do that.

Certainly the assertions and allegations regarding the Hackensack Water Company, Rivervale Realty, and connected entities were significant. I'm reluctant tonight to get into a lot of detail on that: A) because I didn't do that well in accounting in college -- I went to law school -- but I think they do require some comment.

But it appears to me that Mr. Gusto, also, did not go to law school, and his comments regarding the sale of excess property and who should benefit in that sale, I think, is not telling you the full story.

To the best of my knowledge, and I must tell you, when this first came up, I was not a senior partner in Water, McPherson, McNeil, but only an associate, so I did the research of part of it. I must point out to you that to the best of my knowledge, the decisions by utility companies around the country -- and we all read the utilities report; you can go right down to Seton Hall Law School, and they've got tons of them -- are mixed. But the basis of the court decisions that have come down have been uniformly in favor of the shareholder and not the ratepayer.

I'm not saying that's right. I'm not saying that's wrong. No one has appointed me to any judgeships in this State. But I'm submitting to you, if in fact, you're going to give that kind of testimony, it's not just enough to pull out something from Legislative Services. I would submit to this Committee that if you're going to consider that kind of testimony, that it is an obligation, in my opinion, that you do make reference to, in fact, what the law was at that time.

I would also point out to you that much of the testimony tonight regarding the BPU, deals with decisions that they already made. We've talked about this before -- about a legislative body substituting their judgment for the BPU. I guess there are times when I appear before the BPU when I really wish somebody would substitute their judgment. But I must submit to you that to do so opens up a dangerous Pandora's Box, and if you're going to go backwards in time and attempt to review them, then I'm back again to my point regarding the BPU ought to be present.

I would also point out to you, as regarding accounting assertions, it is my understanding -- from a guy who did not do well in graduate school in accounting -- that the Hackensack Water Company and related entities have always been in strict conformance with the uniform system of accounts, which is a system by which they have to operate. I would submit to you

that they have been in conformance with that. It was hard. It's hard, and that's not critical of Mr. Gusto in that respect. I have to read it carefully. I have to convey that.

I was told this evening regarding the so-called invitation and Mr. Gusto's disappointment that they did not attend this evening, that the Hackensack Water Company wasn't even-- The call was not received until Thursday and the response was not made until Friday of this week inviting them. That's short notice for anyone. Mr. Gusto says that he would be thrilled. Well, I'm going to try to fulfill his needs. I'm going to make sure that the Water Company certainly responds. I think we've done that. It's not easy to come here and to do this. We understand the obvious sentiment of everyone, but that's okay. I've always been treated politely.

Next, regarding the pristine Atlantic City-- Well, Mr. Schuber's not here. He and I go around and around on interest in Atlantic City at great length. But I am informed that when you're going down on one of those buses, you are not -- repeat -- you are not seeing the water supply for Atlantic City. The Atlantic City water supply, in fact, is housed in a reservoir.

Finally, I don't want to get into debating the merits of previous legislation because I don't think that that's really applicable to Assembly Bill 4365. I think I've set forth my concerns, or some of them, for that bill, and I think I set them forth in my letter.

I would point out to you that a reference was made this evening by you, Mr. Chairman, about a 200 foot -- construction within 200 feet of the reservoir. To the best of my knowledge it has never been less than 250 feet. I would point out to you, again, to the best of my knowledge -- and I think that our firm has done a pretty good research job on that -- that the 250 foot buffer which is found in the State of Connecticut is the toughest buffer found anywhere in the United

States, and I believe that -- I was going to say Assemblyman Zarillo -- that Mr. Zarillo from the BPU has also brought forth that.

Regarding the clean water, that's always a difficult and emotional issue. I would point out to you that, again, I'm told by the Company that they have not yet failed any tests at all regarding water, and met every standard set by the DEP; the same body for which this Committee has been so effusive in their praise as of recently, regarding their review of the matter. I just don't think, Mr. Chairman, and my respect for you goes beyond this bill-- But I've got to tell you, Mr. Chairman, you can't have it both ways with the DEP. And I would submit to you, that if the DEP standards have been as grand as everyone's told me regarding the water supply, then that's something that you also should take reference to.

What I'd ask tonight, Mr. Chairman, is that you please take into account what I said regarding the fiscal note, the economic deprivation, and finally the rate stabilization. I wish-- I guess my father made me go to law school; all I really wanted to do was be a journalist. But I wish I had the skills -- and I don't think I do -- regarding this issue of economic deprivation.

I understand how easy it is to beat up on shareholders of companies, and profit for shareholders -- getting-- But it's a unique situation in this kind of a matter. If, in fact, shareholders are not actively pursued and invest in the company -- and they don't have to invest in the United Water Resources or Bally's Park Place or General Motors -- I would submit to you that I wish we could bring forth someone -- and hopefully that will come out in the testimony -- someone who is able to show the economic link. And in fact, if the situation of investment is not made positive to a utility by a shareholder, those shareholders won't go there. And I would submit to you

that in the end, the ratepayer will be paying that ultimately. But that's not my area of expertise, so it is somewhat presumptuous of me to do that.

You know my requests, Mr. Chairman. My requests are that as this goes on, and as we get down to Trenton, which is really our nitty-gritty, I just felt an obligation not to be cute tonight and say that I was going to wait until you got to Trenton to respond. I think I did that last time, and I think I was right doing it last time. I don't think it would have been proper or cute to do it this time.

But I do submit to you, Mr. Chairman, that there is a need to seek out a balanced view. And the balanced view requires the corporate responsibilities of 14A, BPU responding to the extensive report tonight of your aide and analyst, Mr. Gusto, regarding the supposed improprieties that he saw fit to report on. I think if you do that, then you've given a balanced picture, and then, as Senator Cardinale said, you have achieved your goal of a record. And that record may be subject to challenge. That's up to the Company, and that's always up to lawyers. But I think if you do that you've served everyone more fairly. I thank you.

ASSEMBLYMAN ROONEY: Thank you, Frank. Just to answer some of your comments. Just to go back and take it in piecemeal because I don't know what order that you answered it. It's a lot of information that you've thrown at us, a lot of questions back.

The 200 foot buffer, I believe, that I heard it was in Emerson as part of the properties. If it's 250 feet, I apologize. However--

MR. CAPECE: I think it's B5, is what I'm told by the--

ASSEMBLYMAN ROONEY: All right, however your own engineering company, Havens and Emerson, in their report that was the basis of the transfers, recommended a buffer of 500

feet. You're now saying that this 500 feet is not acceptable, and you're developing within 250 feet of the reservoir. Now I find that objectionable.

I don't care what Connecticut does. I don't think Connecticut is a good example of government. They don't have a county government. They have a State government. It's a totally different situation up there. The land is different in Connecticut. They have a different type of soil. Watershed land is very dependent on the soil.

I don't believe -- as much as I respect Mr. Zarillo from BPU in his rate setting ability, in his negotiations with the water companies and the other utilities -- I have no respect for him as an environmentalist. The man has no environmental background, whatsoever. So as far as him saying that 250 feet is sufficient, I completely discount that.

MR. CAPECE: Mr. Chairman, not to interrupt you, but I think it's good to dialogue, if you allow me. The Connecticut example we use, not that the-- The only thing I like about Connecticut is going to Greenwich and going shopping. The only thing I will tell you about the 250 feet is, to my understanding, the Connecticut example is used because that is the toughest standard of all 50 states.

ASSEMBLYMAN ROONEY: I don't really care. Your own report from Havens and Emerson, your engineer that was paid for, I now find out, by us in this transfer-- That by the ratepayers-- Since I am one of the ratepayers that received an \$18 deduction in the Borough of Northvale, I paid for that study. That study said 500 feet. Now if you're going to change the rules in the middle of the game, that's not fair, Mr. Capece, and you know damned well it's not fair. If your engineering company said, "This is it--" If the BPU makes a determination on these properties, based on your engineering report and then you change the rules after the fact, it's not fair. So I'd like to discount that completely. I don't even want to discuss it.

MR. CAPECE: Mr. Chairman, it's not a Chinese menu. I'm submitting-- Now, you're attempting to substitute your judgment, not necessarily for Havens and Emerson, but for the Board of Public Utilities who reviewed that aspect of it. Hackensack Water played within the rules. They did what was statutorily provided. They went to the Board of Public Utilities. I fear tonight what you're doing without the BPU here -- or whether they're here -- is you're attempting to say, "Wait a minute, here I am with my 20-20 hindsight, and I'm going to substitute as an Assemblyman" -- legislators, with all respect -- "for that of the Board of Public Utilities who extensively reviewed the matter," and saying, "But I really now think you guys made a mistake. I know better."

Can you do it? I'm not sure. Should you do it? My opinion is, I think it's fraught with peril every time you attempt to substitute your judgment for the Board. I would submit to you that the precedent--

ASSEMBLYMAN ROONEY: Mr. Capece, we have a basic difference here.

MR. CAPECE: Your precedent you're setting here tonight, Mr. Chairman-- I guess what you're saying is every time that Board rules on any kind of a rating, be it Water Company rate increase, an electric rate increase, or any other matter, I think what you're saying -- I think you're sending-- In my opinion, you're sending the wrong message to the voting public.

ASSEMBLYMAN ROONEY: Are you trying--

MR. CAPECE: What you're saying is, "Come to me because I'll take care of it. I'll make it better because if I don't--"

ASSEMBLYMAN ROONEY: No.

MR. CAPECE: "--agree with what the Board is doing--"

ASSEMBLYMAN ROONEY: Mr. Capece.

MR. CAPECE: I think that's dangerous.

ASSEMBLYMAN ROONEY: The transfers, in my understanding -- you correct me if I'm wrong -- the transfers were made on the basis of a 500 foot buffer. That was what the BPU agreed to, based on the Havens and Emerson study. You changed this in the Borough of Emerson and other areas to a 250 foot buffer and said that's all they needed now, after the fact. After the transfers were granted by BPU, you turned around and said under the 500 foot buffer-- That was a condition. The 500 foot buffer in the study-- You turned around after the fact, after you got your transfers under that study condition and turned around and said, "Oh no, we don't need it." Now we've got other indications that say 250 foot.

BPU never agreed to it or set those buffers. It was set by your company who you now own. That's another issue I want to get into, is you're talking about clean water and how, you know, you have passed all these tests? Who tests your water, Mr. Capece? I understand you own all the testing companies in this area.

MR. CAPECE: Mr. Chairman, all our tests have to go through DEP approval. Look, let me-- I'm trying to go slowly with you because you're pitching them even faster than I am.

ASSEMBLYMAN ROONEY: Well, you threw--

MR. CAPECE: Regarding the 250 feet--

ASSEMBLYMAN ROONEY: No.

MR. CAPECE: Regarding the 250 feet, Mr. Chairman--

ASSEMBLYMAN ROONEY: No, Frank--

MR. CAPECE: I'll get back--

ASSEMBLYMAN ROONEY: Frank, I'm going to do what you did. I'm going to just lecture you for about 10 minutes, like you did to me.

MR. CAPECE: Please, do.

ASSEMBLYMAN ROONEY: And ask you to just keep quiet until I finish--

MR. CAPECE: You got it.

ASSEMBLYMAN ROONEY: --because I respected you and I want, you know-- You're talking about a publicly held company and their obligation to stockholders. There's a difference here. You are a public utility. As a public utility, the Hackensack Water Company under their original charter was given a guaranteed profit. They were allowed price increases, rate increases, that would maintain a minimum profit for them. This was as their special status as a public utility -- a water utility. For that, the stockholders knew darn well that there would be dividends; that it was a safe company; that it was a very sound investment for them to make. It wasn't going to be a real shooting star, meteoric rise. They weren't going to get big appreciation on the value of the stock, but they would have dividends that would give them better than, supposedly, the bond rate at the time or the interest rate that they could get at the bank.

That's what you had. You turned around, you created a holding company, and you decided to be the shooting star. You took lands that were acquired as a public utility and you transferred them -- I feel if it wasn't fraudulent, then damn it, it was something close to it -- at fictitious values which had no relationship to real market value. You took these lands. You took them out of this public held company or the public utility basis and you put them into a private company.

You transfer them at 10% of their real, true value, and you say to the ratepayer, "Hey guys, we're going to be nice. We're going to give you 50% of its value." And you really give us 20% of the fictitious value, which is 2% of the real value, and then you say we're supposed to be satisfied with this; that we should turn around as ratepayers, who paid for this land over and over and over again, and who allowed you to acquire land-- In one case in 1977 you acquired some acreage of land for \$38,000 an acre and then you transfer in this package, in this same package of 700 acres, at \$12,000 an acre.

Frank, this is fair? This is not fair. This is highway robbery. And you're trying to defend this and defend your client? You are standing on quicksand as far as I'm concerned.

You had other things here: fiscal notes, economic deprivation. Economic deprivation in this case is accrued to the ratepayer, to the public. We're deprived of the economic value of this land. You took it from us at 10% of the real value.

And you not only deprived us of it economically, but you also deprived us of the land environmentally. It could have been used for parkland, for recreational facilities. No. The greed of the Water Company has taken over.

You say that Mr. Zarillo wasn't here tonight. They're not here to defend themselves. We made calls to Jean Fox, to the BPU and asked them to be here because we had these questions. We made calls to the Water Company to find out if they were coming. This public notice has been out longer than last Thursday. I asked Marty Green almost a month ago. In fact it was in Hillsdale, as a matter of fact. And I told her when the public hearing was going to be. and said, "We'd love to have some of the executives of the Water Company to answer these questions."

If you want to answer economic deprivation or if you want to answer what corporate executives' responsibility is to stockholders, fine. I have no problem with that. But remember where you're coming from. You're coming from the fact that you were a public utility. You were a Water Company whose sole purpose was to deliver clean, pure water to the public. You changed the rules of the game, and now you say-- You played your shell game. We were fooled once; no question about it -- 700 acres. We were fooled, because we didn't realize the value of what you did to us.

The second time, you know, we got you on the moratorium. And that moratorium is good. We'll look at it. We'll try and preserve those lands. But you haven't transferred this. Believe me, the game is not over. You have not transferred a lot of this land legally.

And I think that we're entitled to more than what we've gotten. I think, when the Attorney General looks at this-- And we also have some questions that we have to ask about former BPU commissioners and their relationship to the Hackensack Water Company or United Water Resources today, that are now a part of a subsidiary company or a company dealing with the Water Company. There's supposed to be some sort of an arm's length relationship that we always hear about -- conflicts.

There are questions that we're going to have to have asked. There are questions of your own Water Company utility -- your own Water Company corporate officers that are involved in these subsidiary corporations. So these are some of the questions we have. We would love a lot of answers.

Let your executives come to Trenton. Let them testify on the record what they believe a public corporation, a stockholder responsibility is, and we'll refresh their memory on what a public utility is supposed to be.

MR. CAPECE: Mr. Chairman, I'll be very brief. I'm trying to take notes. Regarding the 250 foot with Emerson, that does require a response from you. I think I'm correct. I know you think you are. But I would point out to you, that nothing was done at Emerson without the approval of that Board. To me, that's just another opinion of the Legislature, now not substituting your judgment for that of the BPU, but now you want to substitute your judgment for that of the local planning board. I think that's dangerous.

Regarding the--

ASSEMBLYMAN ROONEY: If I may answer that-- One at a time. From now on you--

MR. CAPECE: You set the rules, Mr. Chairman. I'll follow them any way you want.

ASSEMBLYMAN ROONEY: --have a question, I'll answer it, back and forth. One statement at a time.

The Emerson Planning Board was told by the Hackensack Water Company attorneys that this is what the Legislature said: That this land was not subject to anything on the moratorium, that there was all types of things that they were told was not true, was absolutely not true, by the Water Company. They told them that a 250 foot buffer was adequate. I can ask Mrs. Romaine, right here tonight, if that's not true. I know it's true; that this is what your lawyers told them. This was what they were completely lead to believe; that this was the only thing, and they had no choice in the matter of how this was subdivided. This was it. It was already done and approved by the BPU, which was a lie.

MR. CAPECE: Mr. Chairman, that's a scary accusation. I think we ought to just leave that one.

ASSEMBLYMAN ROONEY: I can get the records.

MR. CAPECE: I mean, I think what you're saying regarding the Emerson Planning Board-- I'm not going to comment on that. I just think that's kind of scary.

ASSEMBLYMAN ROONEY: I think we can get the records to prove what I just said.

MR. CAPECE: I think the Emerson Planning Board is competent, and I just don't want to comment on that. I think that's kind of scary, to be candid with you.

Regarding, number two, the sale of the property. I must point out to you that the sale of the excess property was not something envisioned by some utility company executive, I think you said -- I don't know where you said -- but over a beer-- That was mandated, again, by the BPU.

ASSEMBLYMAN ROONEY: No, it wasn't. That I disagree with you right off the bat because we have found there's a request which says on the order by the BPU that at the request of the Hackensack Water Company that they are allowing them to proceed with these transfers.

MR. CAPECE: Mr. Chairman, I think you'll find, if you refer to the previous testimonies on the other bills, I think it was made totally clear that the BPU during the water shortage of '73 -- one of the water shortages -- mandated this when they were looking around to find the abilities of water companies to keep rates down. I would submit to you, that's another factual difference that we can then -- that we would certainly respond to.

ASSEMBLYMAN ROONEY: All right, if--

MR. CAPECE: My understanding -- I think I've been pretty close to this issue -- is that this was mandated by the BPU, the sale of the excess property.

ASSEMBLYMAN ROONEY: We have a major disagreement there because the order by the BPU says, "At the request of the Hackensack Water Company." And if we go back to Mr. Gusto's original numbers -- book value of this land -- of this land was \$1,083,000 which represented pennies to the ratepayer.

So if it's done for rate reduction, then I think that all of the commissioners at the BPU at the time should be lined up and shot, with absolutely no questions whatsoever. (laughter) Lined up and shot because this is an absolute scam, saying that \$1,083,000 represents any amount of money in rate reduction.

MR. CAPECE: Assemblyman, I may share your view regarding the future of the BPU representatives on other matters, but I've got to point out to you that regarding the sale of the property as I understood it, it was in full compliance with all statutory and regulatory requirements. Regarding the sale price, I must point out to you, that your

anger notwithstanding, I think if you're able to examine the case law in this, which is--

I've got to tell you, a case that pops up in my mind -- I wish I could dazzle you with the name of the case -- but a 1924 case which is a landmark case in this area, which deals with this very premise-- There have been many attempts by many boards around the country to attempt to say that some disproportionate amount of sale of the property should go to the ratepayer. I know an analogy that was used -- it's not a popular analogy; but I think it's graphic for you -- is that in fact, what the ratepayers were doing with all the shares and carrying that property in rate base, was paying for water, not the land.

The analogy that was given to me -- and I know it's not popular -- but I think it's graphic, is when I went out a couple of years ago and bought my Cutlass, I didn't buy an interest in General Motors. What I bought was a Cutlass from General Motors, and I didn't buy an ongoing interest in the company.

But again, I've got to tell you, whatever my view may be, whatever your view is, the real issue here tonight is your attempt, I think by this Committee, to substitute their judgments for existing regulatory requirements, and more importantly, for the judgment of the BPU. I think that's really the quicksand, to be honest with you, Assemblyman. And I respect your view, and I understand your view.

ASSEMBLYMAN ROONEY: Let me back up just one comment.

MR. CAPECE: Okay.

ASSEMBLYMAN ROONEY: Why is it you question giving the ratepayers in Bergen County and in New Jersey 50% of even this fictitious value when in New York you agree to 100% of their value on the land?

MR. CAPECE: Assemblyman, I'm not questioning either number. What I'm submitting to you is, as I understand the

law, because I really wanted to deal more with the bill than with any individual-- Because I'd be interested if what you're saying on the record tonight is that this bill is directed toward improprieties that you perceive against the Hackensack Water Company. And if you're saying that, then I think you ought to put that on the record tonight. If that's the purpose of this bill, then I think you ought to say that on the record.

But what I'm submitting to you is, that my understanding of the law -- and that's all I'm doing here tonight, telling you I think this bill is deficient -- is that the case law that has come down has been significantly toward the position that the sale of the property accrues to the benefit of the shareholder as opposed to the ratepayer.

I'm not saying that's a popular position. I'm merely submitting to you that that's the law, at least as Frank reads it.

ASSEMBLYMAN ROONEY: And the law in New York is different. It says 100% of the value of property accrues to the ratepayer.

MR. CAPECE: Well, but I--

ASSEMBLYMAN ROONEY: Why haven't you represented them in New York to fight that decision?

MR. CAPECE: I'm not a member of the bar in New York. Maybe I should take the exam in New York.

Mr. Chairman, two other final points, and I do thank you for this, and I'm not one to criticize you because I think you give me every opportunity and we do-- We kibitz a little bit, because I think that's okay. And we're serious when we have to be serious. You know how I feel about your ability to allow me to come here tonight, and I appreciate that.

We have a disagreement on this.. I'm going to continue to respond as best as I can. You know my requests tonight regarding what I think would be the way to expand this hearing -- to give it somewhat more objectivity in my view, than has been present. But I will certainly respond.

I'd ask you, finally, to use your pressure on Cindy Lombardi to get the transcript as quickly as you can, because I'll tell you, it's going to be very hard for me to summarize this tonight, and on these accounting issues, I really wish Mr. Gusto would give me the testimony because it's going to be hard in my notes to summarize this quickly. But I'm going to do my best, and I thank you for the opportunity, again.

ASSEMBLYMAN ROONEY: All right. Does anyone else on the Committee wish to question Mr. Capece at this time?

MR. CAPECE: Beat up on Frank tonight.

ASSEMBLYMAN ROONEY: Because I think we have-- Don't leave, Frank.

MR. CAPECE: Thank you, Mr. Chairman. (Chairman confers with Mr. Gusto)

ASSEMBLYMAN ROONEY: Frank, anything you need from Mr. Gusto, you can get after the meeting.

MR. CAPECE: Mr. Chairman, if he has a card, that will be really helpful.

ASSEMBLYMAN ROONEY: You can reach him at my legislative office.

MR. CAPECE: I'd like to meet with him. He can take me through that.

ASSEMBLYMAN ROONEY: Okay, we also have one last comments from Robert Contillo. Bob?

ROBERT P. CONTILLO, ESQ: Mr. Chairman, thank you very much for hearing me. It's ten to ten. I know you've all had a long day and so have I, so I'll be pretty brief.

I didn't really come expecting to testify about the bill but more to ask questions about the bill. It's clear to me that this is a bill that is meant to address a statewide problem. However, my comments are not going to be for statewide concerns, but really for local concerns here in Bergen County.

My name is Bob Contillo. I live in Hillsdale. I'm the Zoning Board attorney in Hillsdale. I'm the Planning Board attorney in Haworth. I have been wrestling with the problem of these transfers on behalf of the Borough of Haworth, and I am very familiar with the ideology in the beginning of the BPU hearings, with the BPU order that transferred the lands out, and with the various mechanisms by which the Hackensack Water Company and Rivervale Realty have attempted to develop all of these lands.

As I said in the beginning of my comments, my concern really is the impact of this bill on the problem that we face here in Bergen County; and that is the original transfer of the 700 acres and the attempted transfer of the so-called golf course acres. I'm not sure what realization of this bill will do to both problems; the original transfer and the golf course transfer.

I'm not sure whether, in our fight to preserve all of those lands, we will be better off dealing with a company other than the companies that we're now dealing with in trying to preserve those lands, or not. And these are truly rhetorical questions. I really don't know. And I would be interested to hear what the Committee's thoughts are or what your thoughts would be on whether or not it is good or bad in the fight to preserve these particular acres to be dealing with the companies that we are presently dealing with, or whether we should be dealing -- or we should be dealing more with a different type of developer.

Now, I think it's important, and this is a piece of information I think I can give to the Committee that it has not heard before this evening -- or at least I don't believe it has: There is no doubt in my mind that the transfers were unlawful from a land use point of view, and I have looked at this issue and can give the Committee any information that I have with respect to my analysis of the deeds.

But it's clear that the Hackensack Water Company, when it made those transfers, violated the land use law because they never went for subdivision approval from any borough. The transfers were made within days, literally, of when the BPU allowed the transfers to be made. There was first an original deed dated December of '84, and then a so-called correction deed, as you know, came out in June of '85, to clean up the mess.

The problem with the deed is that they simply ordered a conveyance of property without ever getting subdivision approval. Now I can tell you from my negotiations and discussions, that the Water Company has always taken the position that they didn't need the town's subdivision approval to make conveyances because it was ordered by the BPU. The problem with that response, on their behalf, is that the law does not allow that as an exemption from going to a town. A court-ordered transfer of land is exempt from municipal subdivision. Only if the BPU is a court--

ASSEMBLYMAN ROONEY: It is not.

MR. CONTILLO: It is not, however high-handed it may act occasionally, it is not a court. Accordingly, that transfer which they had tried to legitimize under the guise of it being a court-ordered transfer, simply was unlawful. They made subdivisions-- They effected it themselves without ever coming before the towns and saying, "Here's how we propose to subdivide them."

That's against the law. They are subject to a fine under the Municipal Land Use Law of \$1000 per transfer, which of course wouldn't put much of a dent in their pocket, but also, interested parties are allowed to bring an action to set that aside.

However -- and this is a problem that we're all faced with now -- those challenges have to be brought within two years of the date of conveyance, and if the date of conveyance

is the date of the so-called correction deed, two years from that date would bring us to June of '87, almost two years ago.

Now I have been looking, and I know others are looking at ways of determining whether or not that statute of limitations on this illegal transfer might not apply in this particular situation. I was intrigued to learn tonight of further evidence that there was really never a transfer, anyway; and certainly if there was no transfer, then we don't have to worry about a statute of limitations problem. But it is a very serious concern because they were allowed to do this silently, basically. The towns weren't even aware of this.

Now this brings me to two points that I want to make. The Chairman made a comment that the BPU members who are in a certain context might want to line up and face the guns. I suggest that if all the people that didn't live up to their responsibilities in this case were lined up, it would stretch from here to the courthouse at least, and unfortunately, Mr. Chairman, I would have to say that you might be on that line.

The reason I say that is this: In 1983 when the BPU was having its hearings on the fate of these 700 acres, I don't believe that the legislators we have in '39, our Senator or Assemblymen, spoke up. In '84 and '85 when the BPU was compelling the divestiture of these pristine acres, I don't believe that our legislators in '39, where almost all of these acres are situated, spoke about it, or even knew about it. And when the two-year limitation period for challenging the transfer expired two years after the transfers, I still believe that our leadership failed us. The people of Bergen County were let down by the BPU which made a colossal blunder, a textbook short-sighted decision: for a few pennies, to squander our heritage.

You were quite right when you said the system failed, and it's unfortunate. This brings me to my last point. Does this bill address that problem in any way? I'm concerned

that-- I don't see how it does, but I want to hear how it does. Will it help us in the fight to block development of the 700 acres or will it merely change the name of the party that now owns the 700 acres, who will be even less mindful of what the public thinks, if that could be imagined?

As far as the golf course acres go, what does this do to the Evergreen proposal? I, for one, am not in favor of the Evergreen proposal. But what does it do to that proposal if we are talking about requiring the Hackensack Water Company to either cut its ties with Rivervale Realty or require Rivervale Realty to divest itself of this property? Is Donald Trump going to be developing the 700 acres, or what? I don't know.

I'm only concerned-- My concern in speaking about this particular bill is, what does it do to that particular fight? That's all I have to say.

ASSEMBLYMAN ROONEY: Thank you, Bob. Just to answer your question, we do have an amendment that was prepared. We saw a possible problem, and the amendment has been distributed to all the members. We saw a possible problem of cutting off the arm of the Rivervale Realty Company, and we addressed that in that there will be-- Can I just read that? We didn't want Mr. Trump to have it either. (confers with Committee Aide) "The bill also prohibits an existing holding company which owns a public utility from divesting itself of any other corporately held" -- it said "entities," I've corrected that to -- "properties, after enactment of the bill, without prior approval of the BPU."

So in other words, if they're going to, let's say, take Rivervale Realty. They're going to say, "Okay, we're going to divest of Rivervale Realty." If they they just cut off that arm and form a separate corporation, they can't take the property with them. It has to go through BPU review before they can take that property -- those 700 acres or whatever's left of the 700 acres.

We realize some of it's been sold. Emerald Hills Realty has been one example, you know. A few others have been already subdivided and approved. Those we can't do anything about. We believe, as you believe, that some of these properties have not been properly transferred. They fall under the moratorium. They are subject to further, whatever-- We might get a second bite at the apple, and that's what we're trying to do.

To address the other issue, I think I addressed it when your father brought up the same thing as far as being involved in this. I said then and I'll say again, when this happened I was not a Mayor, or I wasn't affected in my own community in Northvale by any of the properties. I really did not know the impact of it. We had, supposedly, two organizations that were going to protect public interest: one, the Board of Public Utilities, supposedly an agency created to protect the public, to regulate the utilities. They're supposed to be on our side. Second one, the Public Advocate's Office. The Public Advocate, another great name that says they advocate for the public. You would think so. You'd really think so.

You know, I'm one of those people-- You know, I believe what I'm told until you prove me wrong; until you lie to me, until you do something. Then, you know, it takes me that long. Maybe I'm a little bit too trusting. And I will absolutely confess to being a little bit naive and a little trusting. When somebody says, "Trust me," yeah, I do until you screw me. Pardon the French, but that's what happens.

What happened here was really not known. We didn't know about the impact of this until just recently. When the second transfer came up, everybody said, "Wait a minute. Let's look at it. Let's see what it really impacts." I think you'll find that in the testimony in Oradell. I was the one who

brought up the issue of the price of the land being transferred at that time at \$41,000 an acre. I was the one who calculated all that.

Then I went back and started doing the calculations. Nobody mentioned the 700 acres at that time. If you look at the transcript, I was the one who was on it.

Go back to the Water Company and their abuse of people and abuse of things. In 1983 when I was first elected to the Assembly, I wasn't even sworn in; I was elected April 26. The following week there was a lockout by the Hackensack Water Company of their workers. These were the Utility Workers of America. UWA was the union. They had a meeting in River Edge, on Kinderkamack Road. They sent a letter. I went and I listened to what they said. I sent letters opposing what the Water Company was doing. I also signed on Ben Mazur's bills. I was a freshman legislator at that time knocking the Water Company for what they had done in the Taj Mahal; putting ratepayers' money, stockpayers' money into antiques and a fancy shelf -- what they have there, their fancy headquarters.

I was on those bills. I can show my history of legislation opposing what the Water Company has done to its ratepayers. I admit I did not know the impact of what this was until recently. I don't think anybody did.

And you're talking about 20-20 hindsight. It's always great, Bob. I didn't see any other legislator in any other district, because it did impact other people. I didn't see anybody in New York find out there was a problem until recently.

So I take it as a bit of an offense, when you come and criticize the previous legislators. There was no indication that the system had failed until we took, supposedly, a second bite of the apple. Like I said originally: Fool me once, shame on you. Fool me twice, shame on me. We didn't get fooled a second time. And this bill and the moratorium

legislation is an excellent example that we weren't fooled. We're not going to be fooled.

And yeah, we're going to go back and try to correct the mistakes of the past. These are not mistakes that legislators-- You've heard here tonight, the BPU is an autonomous agency. We may be whistling "Dixie" with this legislation, with the moratorium and everything else. We may have a hard time. And I see Mr. Capece shaking his head, "Yes."

But I'm going to fight it. I'm going to try my damndest to make sure that we're going to get full value for that land. We're going to get the public's interest held in this. And you want to criticize, fine. It's easy for a candidate to come up and criticize when you haven't done anything on your own and when your own may be selling out to the Water Company and your board-- You've made your own-- Right now I understand you made your own deal with the Water Company for that 50-odd acres in Haworth. So you know, I really don't know.

MR. CONTILLO: Well, unless you know what you're talking about, I'd be happy to talk about that particular problem, if you feel it is a problem. I don't believe it's unfair to comment, since so much has been made over who was to blame for the problem that we presently are in. To point out that not only did the BPU fail us, not only did the DEP fail us, and the Public Advocate, and our legislators apparently didn't even know that 700 acres were being transferred to a real estate company. I think it's a legitimate criticism.

ASSEMBLYMAN ROONEY: You're absolutely right. Nobody really knew what was happening. And one of the things that I object to, and I've told this to the BPU, is that they didn't have public hearings up in the area of concern. They didn't do what they should have done. All the hearings were in Newark during the day. That will be changed.

MR. CONTILLO: I think if they had the chance to make that decision over, they would make a different decision, but they don't. That's why I'm not saying-- There's nothing that can be undone. I'm not sure that this bill will help us in this fight. That's the point I'm trying to make.

And I think it was a gratuitous comment on your part to say that I've done nothing. That is not true. I did. I was very instrumental in making sure that the Legislature did become aware of the problem that was addressed by the Senator from 38 and by the Assemblymen from 38 in the moratorium bill.

And, in fact, it was the Mayor of Haworth and I, who had to bring the attention out of the district to the Legislature so something could be done to grind a halt to these development plans. So I think it as gratuitous. And I'm not trying to be gratuitous in criticizing you. I tried to draw it into your particular bill. I don't accept what I consider your gratuitous shot at me either.

ASSEMBLYMAN ROONEY: Well Bob, up until those particular comments, I would have welcomed you as a part of any group that we would have formed to work on this, but, you know, I question your motives at this point, once I was brought into it.

Up until that, I could agree with you and I could say, "Bob, you're welcome to sit down with us and work with us." You're an attorney, Lisa's an attorney, Pat's an attorney, Pat Schuber's an attorney. I'd welcome all the help we can get. But when it's going to be purely political-- And I don't think this should be on the record. In fact, what I'd like to do is maybe we can continue it later. I think these comments are wrong at a hearing of this type because we do have some important things that we're doing.

The record of this is going to the Attorney General's Office. There are issues that we cannot divulge publicly right now that are going to be turned over to the Attorney General;

issues of possible conflicts of interest with individuals in these areas that we've discussed.

MR. CONTILLO: These are obviously important questions.

ASSEMBLYMAN ROONEY: And Bob, you know, there is another thing that comes up: You can never, ever protect against somebody in a certain place doing things for their own purposes. I don't know how to explain it, but it's very difficult to protect yourself against something like that. You can't just-- You'll find out about it later in a lot of cases. But you don't find out--

When it's happening, it takes a long time before you realize where all the implications-- We've had to go through with these investigations, ten corporate divisions -- I don't know how many outside -- four other subsidiaries. We don't have any staff, as you know, professional staff in the legislative offices. I'm amazed that we got as much as we did. We do have Legislative Services. Cindy Lombardi has been excellent. I want to compliment her right now. Jake and Daryl from partisan staff have been, you know, very supportive in working with us.

If you ever become a legislator, then you'll find out that you're really not given a lot to work with. We don't have subpoena power here. In fact, we have a bill for \$400-and-some-odd for copies of 10K forms.

MR. CONTILLO: Mr. Chairman, perhaps I should have been clearer that I obviously commend the work that you've done in trying to find out about the economic side of the transfers. That is obviously useful work. I think it's also useful to find out what this bill -- which is the purpose of my remarks -- to find out what this bill can do to save us here in Bergen with these particular properties. And to the extent that you're saying you're amending the bill -- I think I understand what you're saying about amending the bill -- that

it simply is not merely a transfer now; that we're going to be dealing with Donald Trump instead of dealing with Fred Laurino which I'm not sure--

ASSEMBLYMAN ROONEY: We're trying to get a second bite of the apple on the lands. What we want to do is take a look at those lands and have the BPU take control of them before any other transfers are made or before they separate to another holding company. We don't need that. We don't need another problem.

MR. CONTILLO: Obviously, it should never happen again.

ASSEMBLYMAN ROONEY: It shouldn't.

MR. CONTILLO: And I think part of the record-- And I've tried to establish that it shouldn't have happened in the first place.

ASSEMBLYMAN ROONEY: No question that it shouldn't, but you can't-- For some reason you just can't protect against things like this happening where all of the systems failed -- every one of them: the BPU, the DEP, the Public Advocate. All of the existing safeguards and agencies that were supposed to protect us, didn't. And then, even after the fact, we still didn't know as either-- Hey, I'm still a resident. I saw my \$18. I figured, what in the hell was that for? I didn't really know the impact of this, and I don't think anybody else did. The mayors in the towns didn't know about it, any of the other legislators-- Nobody really knew what was happening.

I can go back to even further examples when I was Mayor in Northvale in 1979. We had 140% increase on hydrant rentals in a 14-month period. And I called the Water Company and I said, "What the hell is going on? Why do we have that?" I find out, "Well, that was the BPU. They told us to do that. I called the Commissioner, Commissioner Hynes at the time, and he said, "Oh, that's the way we were saving money for the ratepayers." Saving money for the ratepayers? You killed all

of the municipalities with that. We had a cap, a 5% cap, that I had to eat. I had to take it out of the police budget and everywhere else.

I complained. I sent letters down to BPU. But I knew about it because I was a municipality that was informed of it. I didn't know what was happening on it, and I admit that. And yes, ignorance is-- If you're ignorant of the law, you're guilty. But I don't think that we're talking about law here. We're talking about just public information. We didn't know a damned thing. We weren't told anything that was happening.

MR. CONTILLO: No one knew that 700 acres were being transferred. It was horrendous--

ASSEMBLYMAN ROONEY: You're right.

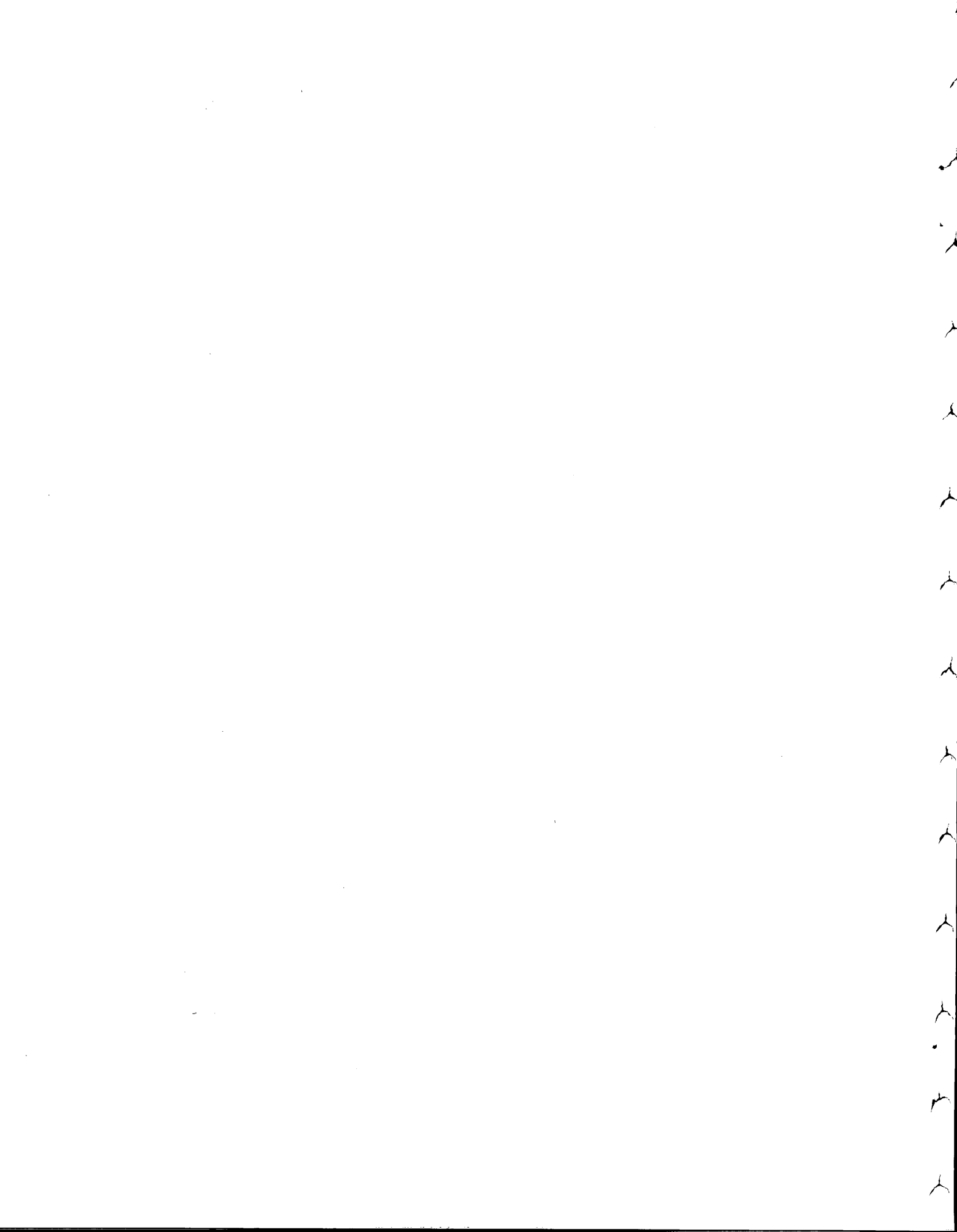
MR. CONTILLO: --and all I'm suggesting is that the line is long at the firing line.

ASSEMBLYMAN ROONEY: Does anyone else wish to testify at this time? (no response) We're going to call it a night. So I want to thank everyone for coming and appreciate everyone's testimony. We'll continue this in Trenton. We'll have the amendments prepared and ready for that day. We'll vote on those amendments, plus have any testimony from the Water Company that they'd like to add. Thank you.

(HEARING CONCLUDED)



**APPENDIX**





NEW JERSEY STATE  
CHAMBER OF COMMERCE  
Governmental Relations Office  
28 West State Street, Suite #1100  
Trenton, NJ 08608  
(609) 989-7888

Statement of the  
New Jersey State  
Chamber of Commerce

Assembly Bill A-4365

County Government and Regional  
Authorities Committee  
Hackensack, New Jersey

July 31, 1989

Chairman Rooney and members of the committee, thank you for the opportunity to present comments on Assembly Bill A-4365, which would require the separation of water utilities from real estate development subsidiaries. My name is William Healey and I serve as the State Chamber's Director of Governmental Relations.

One of the greatest concerns of New Jerseyans is the preservation of open space. Certainly here in Bergen County, that concern is even more acute. However, we feel that A-4365 is not the vehicle to accomplish this well-intentioned goal. Certainly, it is in the venue of the State Board of Public Utilities to provide the regulatory environmental oversight that this bill attempts to accomplish legislatively.

The structuring of real-estate entities and water companies under the arm of a parent holding company is one that has been adopted by several of the state's major private water suppliers. The New Jersey State Chamber of Commerce believes that this structure has been effective for meeting both the financial capital needs of the water utilities and the goal of keeping down water rates to consumers. Those goals should not be mutually exclusive, although the wording of this legislation presents that impression.

The corporate structuring that has been adopted by many of the state's largest public water utilities has benefitted the public.

The tightly regulated nature of public water utilities in and of itself leaves little initial attraction to investors. It is of course, these same investors who help provide the working capital necessary for infrastructure maintenance, expansion and improvements. It's that same investment capital that enables private water purveyors to hold down rates to their customers.

The corporate presence of a real-estate arm considerably improves the financial attractiveness of such an organization and allows the above scenario to continue to benefit New Jersey's water consumers. Obviously, we're all consumers of water.

I mentioned earlier the concerns New Jerseyans have with regard to open space. Probably an even greater concern among Garden State residents is the presence and availability of plentiful, clean supplies of water. It certainly is one of the most important, ongoing issues being tackled by the Environment Committee of the New Jersey State Chamber of Commerce. Indeed, in just about every environmental issues survey that we've seen, be it a survey of businesses or residents, water supply is always at the top of the list of environmental priorities.

It is the private water utilities of this state that are being looked to every day to provide the supplies that will be required for the future. We feel the beneficial structuring of private companies and real-estate subsidiaries under the banner of a parent company will continue to provide the necessary capital to make new supplies and infrastructure needs a reality. This is now being achieved at a lower cost to the consumer than would normally be possible under the strict setup of a public utility.

The New Jersey State Chamber of Commerce believes that the regulatory structure to protect the environmental concerns about watershed property is already in place. The BPU should rightly be the advocate for safeguards in this case. We believe they are effectively performing that function.

A-4365, though laudable in its intentions, may have the unintended effect of hampering the needed growth of the critical infrastructure of the state's private water utilities. At a time when new and greater demands are being made upon private water utilities, actions outlined in A-4365 could be harmful to meeting the demands of eight million New Jerseyans.

On behalf of the New Jersey State Chamber of Commerce, thank you for the opportunity to present our viewpoint on the critical issues of water supply and open space protection. The State Chamber, and its local and regional affiliate chambers throughout New Jersey, represent more than 45,000 business enterprises in the Garden State.

rrh/7-89



Hackensack Water Company

200 Old Hook Road  
Harrington Park, N.J. 07642  
201-767-8300

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PUBLIC UTILITIES  
NEWARK, N.J.

648-2350  
648-2341

May 21, 1985

Mr. Patrick Lombardy  
Supervising Rate Analyst  
Division of Water and Sewer  
Board of Public Utilities  
State of New Jersey  
1100 Raymond Boulevard  
Newark, New Jersey 07102

*Doc No 8312-1096*

Dear Mr. Lombardy:

Per your request, enclosed are copies of the overall proposed entries related to the land transfer. Also enclosed are copies of the entries which transferred the book value of the property from Hackensack Water Company to Rivervale Realty Company.

You will note that the end result of these entries is a "receivable" from Rivervale and a "payable" to customers. Once funds are received from Rivervale the receivable will be credited, clearing the receivable. Once the checks are issued to customers, the "accounts payable" will be debited, clearing that account and "cash" will be credited. You can see, therefore, the entire transaction takes place on the balance sheet, and there is no income statement effect.

If you have any further questions, please contact me.

Very truly yours,

Robert E. Thiele, Jr.  
Director, Rate Development Division

RET:CM  
Enclosures

cc: Kenneth D. McPherson, Jr., Esq.

CICC

Peretz

Forlenzo

Foti

Riverdale Water Company  
Proposed Accounting entries for Land Transfer

Account Number	Explanation	Debit	Credit
146	Accounts Receivable from Associated Companies - Riverdale Realty Company	\$ 4,174,881	
101	Utility Plant in Service - record the retirement of land		\$ 1,013,638
186	Miscellaneous Deferred Debits to record 50% of expenses associated with the transfer		399,984
764	Accounts Payable to Customers 50% of net Gain		769,199
146	Accounts Receivable from Associated Companies	165,161	
764	Accounts Payable to Customers to record interest paid to customers relative to refund		165,161
NOTE: Total Payable to customers		769,199	
		165,161	

785,360

Reconciliation to Fair Market Value

Accounts Receivable - Riverdale	\$ 4,174,881
7% on Cash Allowances	
Marketing Cost - Schedule G	531,500 X
Tax Allowance - Schedule H (payable by Riverdale)	283,495
50% of Expenses incurred	399,985
50% of Net Gain	769,199

4x \$ 5,120,000

CALCULATION OF RATEPAYER'S SHARE  
IN POTENTIAL GAIN ON TRANSFERRED ASSETS

Appraised Value	\$10,630,001.
Book Value	<u>(1,083,638.)</u>
Net Value	9,546,363.
5% Marketing Costs	(531,500.)
Other-:	(799,970.)
Estimated Taxes	<u>(2,832,495.)</u>
Profit	5,382,398.
50% Due to Ratepayers	2,691,199.

5X

APP \$1,175,000.00  
 \$ 940,000.00 16

REALTY FEE: \$1,175.00  
 REGR. FEE: 74.00  
 AMT. REGR. \$1,175.00

7,200,000.00  
 21,200.00  
 10,575.00  
 15,775.00

CONSIDERATION: 7,200,000.00  
 TRANSFER FEE: 21,200.00  
 ADD FEE 15,775.00  
 TOTAL: 15,775.00

Charge  
 035  
 15 days title

© 1910—By state and state dept., approved as to printer's work.  
 © 1921 by Arthur S. Hays, a State of New Jersey, Attorney  
 at Law, Trenton, N. J., 1920-1921

Consult your Lawyer before signing this deed — It has important legal consequences.

# Deed

This Deed is made on December 8, 19 87 between

Grantor  
 Full name(s)  
 and post  
 office address  
 RIVERVALE REALTY CO., INC.  
 50 Tice Boulevard  
 Woodcliff Lake, New Jersey 07675

Grantor  
 Full name(s)  
 and post  
 office address  
 EMERALD HILLS REALTY, a New Jersey partnership  
 192 Third Avenue  
 Westwood, New Jersey 07675

Grantor, and X

Grantee.

(The words "Grantor" and "Grantee" include all Grantors and all Grantees under this Deed.)

Consideration

In return for the payment to the Grantor by the Grantee of Seven Million Two Hundred Thousand Dollars (\$7,200,000.00), the Grantor grants and conveys to the Grantee all of the land located in the Borough of Woodcliff Lake County of Bergen and State of New Jersey, specifically described as follows:

Conveyance

Description of Land

- BEGINNING at a monument in the westerly sideline of Overlook Drive (60' wide), where the same is intersected by the connecting curve of the northerly sideline of Blueberry Drive (60' wide), and running; thence
1. Along the northerly lines of Lots 1 and 2 of Block 1203, the northerly terminus of Spring House Road (50' wide), the northerly lines of Lots 1, 2, 3, 4, 5 & 6 of Block 1205, the northerly terminus of Chestnut Ridge Road (66' wide), and the northerly lines of Lots 1, 2, 3, 4 & 5 of Block 1109, N 61°14'31" W, 2643.73' to a point in the easterly line, of Lot 6, Block 1109; thence
  2. Along the same and along the easterly lines of Lots 7 and 8 of Block 1109, N 28°23'10" E, 399.99' to a point in the southerly line of Lot 10, Block 1109; thence
  3. Along the same and along the southerly lines of Lots 11, 12, 13 & 15 of Block 1109, the southerly terminus of Chestnut Ridge Road (66' wide), the southerly lines of Lots 7, 8, 9, 4, 3, 2 & 1 of Block 1112, the southerly terminus of Angela Drive (50' wide), and the southerly lines of Lot 7 and Lot 6 of Block 1105, S 61°24'28" E, 2462.21' to a point in the aforementioned westerly sideline of Overlook Drive (60' wide); thence
  4. Along the same, S 01°25'51" W, 102.42' to a point of curvature; thence
  5. Still along the same on a curve to the right, in a southerly direction, having a radius of 2,346.18', an arc length of 344.83' to the point or place of beginning. X
- Containing 23.717 acres.

RECORDED-BERGEN COUNTY  
 07 DEC 10 AM 10:46

C.A. J. CLERK  
 COUNTY CLERK  
 202212

Robert A. Garber  
 Attorney at Law of New Jersey  
 Robert A. Garber

This Deed was prepared by

6X

