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PUBLIC MEETING

before

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

ASSEMBLY BILL NO. 3582

(Requires municipalities to reimburse qualified private communities for costs of certain municipal services not provided to them)

March 8, 1989  
Rutgers, The State University  
Cook College Campus Center  
Multipurpose Room C  
New Brunswick, New Jersey

MEMBERS OF COMMITTEE PRESENT:

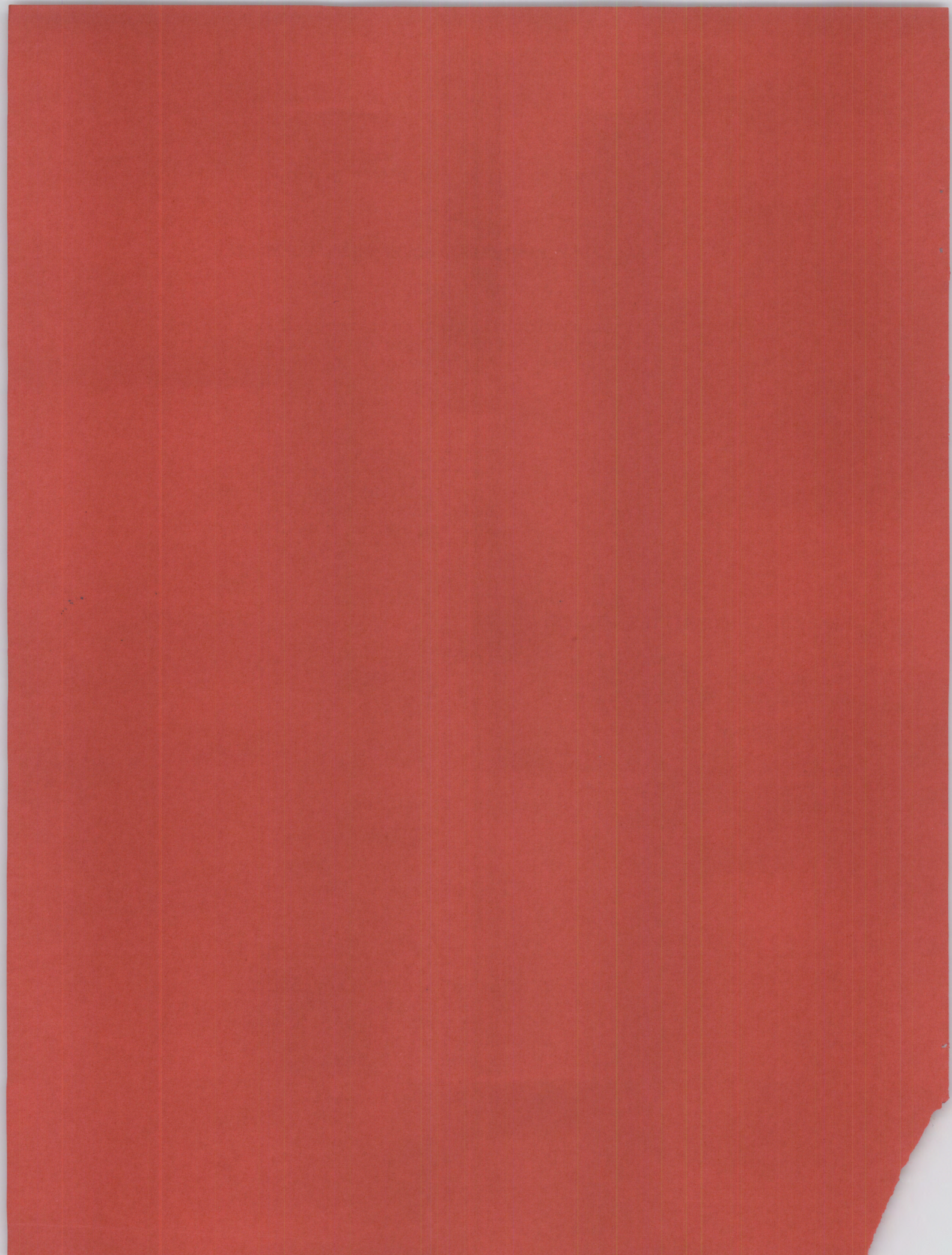
Assemblyman J. Edward Kline, Chairman  
Assemblyman John A. Girgenti  
Assemblyman Bernard F. Kenny, Jr.

ALSO PRESENT:

Gerald M. Dowgin  
Office of Legislative Services  
Aide, Assembly Municipal Government Committee

\* \* \* \* \*

Meeting Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625





**New Jersey State Legislature**

**ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE**

STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 292-1596

**J. EDWARD KLINE**  
*Chairman*  
**JOHN E. ROONEY**  
*Vice-Chairman*  
**JOHN A. GIRGENTI**  
**BERNARD F. KENNY, JR**  
**JEFFREY MORAN**

**MEMORANDUM**

**TO:** MEMBERS OF THE ASSEMBLY MUNICIPAL  
GOVERNMENT COMMITTEE

**FROM:** ASSEMBLYMAN J. EDWARD KLINE, CHAIRMAN

**DATE:** MARCH 2, 1989

**SUBJECT:** COMMITTEE MEETING - MARCH 8, 1989

(Address comments and questions to Gerald M. Dowgin,  
Committee Aide - 292-1596)

The Assembly Municipal Government Committee will meet at Rutgers, New Brunswick on Wednesday, March 8, 1989 at 1:30 p.m. in the Cook College Campus Center, in Multipurpose Room C.

Testimony will be taken from interested parties on A-3582 that requires municipalities to reimburse qualified private communities for costs of certain municipal services not provided to them.

MEMBER OF THE  
LEGISLATIVE  
COUNCIL OF  
INDONESIA  
JANUARY 1962

NEW YORK  
ASSEMBLY MEMBERS

COMMITTEE  
GOVERNMENT  
AFFAIRS

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TO: MEMBERS OF THE ASSEMBLY  
GOVERNMENT COMMITTEE  
FROM: ASSEMBLY  
DATE: MARCH  
SUBJECT: COMMITTEE  
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Room 41  
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and the  
cost of certain

ASSEMBLY, No. 3582  
STATE OF NEW JERSEY

INTRODUCED JULY 11, 1988

By Assemblyman KELLY

1 AN ACT concerning certain municipal services for qualified  
private communities and supplementing Title 40 of the Revised  
3 Statutes.

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

7 1. For the purposes of this act:

a. "Condominium" means the form of real property ownership  
9 provided for under the "Condominium Act," P.L. 1969, c. 257 (C.  
46:8B-1 et seq.);

11 b. "Cooperative" means a housing corporation or association  
wherein the holder of a share or membership interest in the  
13 corporation or association is entitled to possess and occupy, for  
dwelling purposes, a house, apartment, or other unit of housing  
15 owned by the corporation or association, or to purchase a unit of  
housing constructed or erected by the corporation or association;

17 c. "Fee simple community" means a private community which  
consists of individually owned lots or units and provides for  
19 common or shared elements or interests in real property;

d. "Horizontal property regime" means the form of real  
21 property ownership provided for under the "Horizontal Property  
Act," P.L. 1963, c. 168 (C. 46:8A-1 et seq.);

23 e. "Qualified private community" means a condominium,  
cooperative, fee simple community, or horizontal property  
25 regime comprised of a community trust or other trust device,  
condominium association, homeowners' association, or council of  
27 coowners, wherein the cost of maintaining roads and streets and  
providing essential services is paid for by a not-for-profit entity  
29 consisting exclusively of unit owners within the community. No  
apartment building or garden apartment complex owned by an  
31 individual or entity that receives monthly rental payments from  
tenants who occupy the premises shall be considered a qualified  
33 private community.

1       2. The governing body of every municipality shall enact and  
2       enforce appropriate ordinances to require the municipality to  
3       provide the following services within a qualified private  
4       community in the same fashion as the municipality provides  
5       these services on public roads and streets:

- 6       a. Maintenance, cleaning and repair of the roads and streets;
- 7       b. Removal of snow, ice and other obstructions from the  
8       roads and streets;
- 9       c. Lighting of the roads and streets;
- 10       d. Maintenance and repair of water lines, storm sewers and  
11       sanitary sewers beneath the roads and streets; and
- 12       e. Collection of leaves, recyclable materials and garbage  
13       along the roads and streets.

14       3. At the request of a qualified private community, in lieu of  
15       providing some or all of the services set forth in section 2 of  
16       this act, the municipality shall enter into a written agreement  
17       to annually reimburse the qualified private community for the  
18       cost to the municipality of providing those services for which in  
19       lieu reimbursement is requested. The amount to be reimbursed  
20       to the qualified private community shall be calculated as follows:

21       a. The reimbursement amount for the collection of leaves,  
22       recyclable materials and garbage shall be based on the actual  
23       per unit costs of the collection of leaves, recyclable materials  
24       and garbage throughout the municipality, including the qualified  
25       private community.

26       b. The reimbursement amount for the provision of municipal  
27       services to repair, maintain and clean roads and streets; remove  
28       snow, ice and other obstructions from roads and streets; light  
29       roads and streets; and maintain and repair water lines, storm  
30       sewers and sanitary sewers beneath the roads and streets shall  
31       be calculated with respect to the running length of the roads and  
32       streets within the qualified private community, excluding areas  
33       which are primarily used as parking areas or parking lots within  
34       the qualified private community, and shall be based on the  
35       actual cost incurred by the municipality in providing those  
36       services on public streets.

37       4. This act shall take effect six months after enactment.

1

## STATEMENT

3 This bill would require that a municipality enact ordinances to  
provide the same services along the roads and streets of a  
5 qualified private community as it provides to other residents  
along its public roads and streets. At the request of a qualified  
7 private community, the municipality would be required to  
reimburse the qualified private community for some or all of the  
9 municipal services that it chooses to provide for itself. A  
qualified private community is a condominium, cooperative, fee  
11 simple community, or horizontal property regime comprised of a  
not-for-profit entity having only unit owners as members, such  
13 as a homeowners' association, that is responsible for  
maintenance of the common areas and providing other essential  
15 services.

Current law permits a municipality to provide certain services  
17 on roads and streets which are not dedicated and accepted as  
public highways. This bill makes it mandatory that a  
19 municipality provide certain road and street services to  
qualified private communities. However, at the option of a  
21 qualified private community, the municipality is required to  
reimburse it for municipal services which the community  
23 chooses to provide for itself. The effect of this bill will be to  
help eliminate double payment for some services which the  
25 residents of qualified private communities now pay through  
property taxes and fees to their association.

27

29

## PROPERTY TAXES

## Landlord - Tenant and Condominiums

31

Requires municipality to reimburse qualified private community  
33 for costs of certain municipal services not provided.

STATUTE

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Peter S. Reinhart, Esq. Immediate Past President Community Associations Institute	28
Ronald Perl, Esq. Past President Community Associations Institute Counsel to the Coalition of Associations for Political Action	30
Edward Corrigan, Esq. Dover Township Municipal Attorney	33
<b>APPENDIX:</b>	
Letter addressed to Assemblyman Anthony Impreveduto from the Office of Legislative Services, plus attachments, submitted by William G. Dressel, Jr.	1x

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Assemblyman Frank Lauterbach  
Speaker of the General Assembly  
Phyllis Kessler  
Coalition of Associations  
for Political Action  
William G. ...  
Assistant Executive Director  
New Jersey State League  
Councilman ...  
Lawrence ...  
First Vice President  
New Jersey State League  
Assemblyman ...  
District ...  
Frances Holland, Esq.  
Town Attorney  
Secaucus, New Jersey  
Susan ...  
Director of Government  
New Jersey Association  
Robert F. ...  
Executive Vice President  
New Jersey Association  
Peter S. ...  
Immediate Past President  
Community Association  
Ronald ...  
Past President  
Community Association  
Council for the ...  
Association for ...  
Edward ...  
Dover Township Municipal  
Apprentice  
Letter addressed to Assoc  
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139	"Resolution Opposing Senate and Assembly Bill 3282," Township Council of the City of Berkeley-Troy Hills
140	"Resolution - Municipal Extension/Reimbursement Township of Berkeley, Ca.

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ASSEMBLYMAN J. EDWARD KLINE (Chairman): I would like to bring this meeting to order. This is a Municipal Government Committee meeting, being held at Cook College. The bill we are speaking on today is A-3582, which requires municipalities to reimburse qualified private communities for the costs of certain municipal services not provided by them.

We are honored, if I may use that word, to have the Speaker of the General Assembly here, who would like to lead off our testimony on this bill. This is a public meeting. If anyone would like to speak, or make any comments, or ask any questions, they may do so. Let us know, because we do have a list before us today.

Some of us have driven long miles. Rather than wait until later, we are going to try to keep the meeting down to between a 2:30 and 3:00 quit. I would like to say that at this time, so everyone will know it.

With that, we will start with Speaker Hardwick.

S P E A K E R C H U C K H A R D W I C K: Mr. Chairman, I thank you, and the Committee members, for bringing this meeting to Middlesex County. This problem is a statewide problem, and is certainly an acute one in Middlesex County, as it is in other parts of the State.

We examined the way private communities, such as condominiums, cooperatives, or planned unit developments paid for basic services such as snow removal and garbage collection. It is very easy to see why homeowners in these communities feel they are being treated unfairly. Homeowner association members are being told to pay twice for the same basic municipal services. They are taxed once when they pay their local property tax bills, and again when they pay their monthly association fees, which are often used to provide some of the same services that other homeowners are getting for their tax dollars.

By asking homeowner association members to pay twice to fund these services, the system has really created two groups of taxpayers. When other homeowners pay their property taxes, they assume, and they get, road maintenance, street lighting, and other services that the owners of a condominium, cooperative, or planned unit development receive only by shelling out a monthly fee. It is that kind of double standard, that kind of double taxation, that the sponsor of this bill is trying to address.

In seeking to give relief to homeowners in private communities, we must realize that no two communities are exactly alike. The differing sets of ground rules in each development require some flexibility to allow that the problem be solved, as much as possible, at the local level, between the municipality and the private community under the parameters that this legislation, or other legislation, would provide. - .

Municipalities will have to work with the homeowner associations. And the county administrators and mayors I have talked to, certainly want to do this -- we are talking about their constituencies as well -- in order to reach an understanding on how to go about providing the services, services like garbage collection on streets that were not designed to the same standards that other streets were constructed to, and which therefore may not be able to take the stress of large garbage trucks. Local officials and homeowners are the people best qualified to, in a flexible way, work out what would work best in their towns.

We understand that any solution must be fair and flexible to the homeowners and to the municipalities. Municipalities, as we on this Committee know -- as we know in the entire Legislature -- are straining under an ever-increasing demand for municipal services. If this bill, or something similar to it, is enacted, there must be an adequate phase-in period, to allow the municipalities the

flexibility and the means and the time to prepare for the consequences of the bills.

Accommodations must also be made to deal with the problems of large garbage trucks and other municipal vehicles that are driving on private roads, which were not built to municipal standards. These streets must either be brought up to some standards, or receive the approval of the municipal engineer, so that the town can adequately provide services to the homeowners along the streets.

The problems that municipalities would have in addressing this problem are severe, they are legitimate, and they are understandable. But the fact simply exists, that homeowners are being told today to pay twice for the same services.

So, I commend you, and the members of this Committee, for wading into a longtime problem. It is another problem that we in the Assembly have inherited, which we are trying to address in an equitable, fair way for all the people in the State. I commend you for your diligence and willingness to seek some solutions to alleviate what is double taxation on the part of hundreds of thousands of New Jersey residents, and at the same time, do it in a way that recognizes the problems of the local municipalities. You, as a Mayor, are certainly well-positioned to do that.

ASSEMBLYMAN KLINE: Thank you, Mr. Speaker.

SPEAKER HARDWICK: Thank you.

ASSEMBLYMAN KLINE: Are there any comments?

ASSEMBLYMAN GIRGENTI: Just one thing. Mr. Speaker, I know we had a meeting on this -- a couple of meetings so far. One suggestion I just want to know your feelings on, was to put in the law residential properties, as opposed to opening it up to everything. Do you agree with that -- to put the word "residential" into the bill? Right now, it is not in there.

SPEAKER HARDWICK: Do you mean now that it would apply to shopping centers, commercial--

ASSEMBLYMAN GIRGENTI: Yes, yes.

SPEAKER HARDWICK: Certainly the work that I have done-- The interest I have had in this bill has been toward the residential, not the commercial at all. I personally would have no problem with that at all.

ASSEMBLYMAN GIRGENTI: Yes, to be more specific.

SPEAKER HARDWICK: I would personally have no problem with that. In fact, I think that is a good suggestion, if it is not in there.

ASSEMBLYMAN KLINE: Thank you, Mr. Speaker.

SPEAKER HARDWICK: Mr. Chairman, thank you. I appreciate it very much.

ASSEMBLYMAN KLINE: Bob Franks is going to walk out with the Speaker. I guess he needs a bill posted, and he wants to lobby him on the way out.

Phyllis, we have you next, if you want to go next.

PHYLLIS MATTHEY: (speaking from audience) Could I go toward the end to give me time to just correct anything that got by?

ASSEMBLYMAN KLINE: Fine. We just wanted to give you that opportunity.

MS. MATTHEY: Thank you.

ASSEMBLYMAN KLINE: Bill Dressel has asked to speak next. Bill? For the record, please state your affiliation with the League of Municipalities.

WILLIAM G. DRESSEL, JR.: Mr. Chairman, with your permission, I would like Gretel Gatterdam, Councilwoman from Lawrence Township, and First Vice President of the League, to join me.

ASSEMBLYMAN KLINE: Good; very good. (Councilwoman Gatterdam joins Mr. Dressel at witness microphone, and Mr. Dressel passes out a substantial amount of written material to members of the Committee)

ASSEMBLYMAN KLINE: You don't have anything else to pass out? Gee!

MR. DRESSEL: I think that's it, Mr. Chairman. You know the League, we have a lot of paper.

Mr. Chairman, for the record, my name is Bill Dressel. I am Assistant Executive Director of the New Jersey State League of Municipalities. I would like to thank you for the opportunity for the League to present testimony here today. As I indicated, Gretel Gatterdam, Councilwoman of Lawrence Township in Mercer County, and First Vice President of the League of Municipalities, joins me.

Mr. Chairman, before you is our formal statement, and I will read the statement into the record. The additional correspondence and statements I passed out, and the attachments to my formal statement, are from municipal officials up and down the State, who would like to have that correspondence a part of the record today.

I would like to mention, Mr. Chairman, that the League of Municipalities received notice of this meeting from your staff this past Friday. We immediately, upon receiving that news, sent a notice to all 567 mayors, managers, clerks, and administrators in the State, advising them of this meeting. Yesterday and today, we received numerous inquiries -- numerous requests from local officials, indicating their willingness to attend, but because of previous scheduling conflicts, and because of the fact that they did not have adequate time to make today's meeting, they are not here. I guess what I am suggesting, Mr. Chairman, and requesting on behalf of our members, is that this meeting today be the second -- I understand that you did have a previous hearing, where we did present testimony -- but that this be the second in a series of hearings on this subject. It is very important, and I believe that local officials who have indicated an interest in testifying, should have the opportunity to come before you.

As a preface to my remarks, I would like to say that the problems with this bill I will describe are common problems that dozens of local officials have brought to the League's attention through resolutions, letters, and direct conversations.

Among the many problems we have been apprised of, I would like to relate the major ones to you. These problems point out how the provisions of this bill are unfair, unworkable, and, in fact, illegal.

First, Assembly Bill No. 3582 allows the Condominium Association to decide whether it is to be given a service, or reimbursed for it. If, for some reason, a bill like this were enacted into law, municipalities should have the ability to act in accordance with its own resources. Local governments should be able to decide if it provides whichever of the two benefits it deems more affordable.

Secondly, we believe municipal services should only have to be rendered under certain circumstances. In order to provide snow plowing or garbage pickup, we insist that the roads within these communities meet the specifications of the municipality within which it is located. Road width and base requirements must be met, or the road must be approved by the municipal engineer, in order for the municipality to be held accountable for the service or reimbursement thereof.

We seek language in this legislation that will fairly and comprehensively allow municipalities to demand whatever local specification requirements are necessary to provide the services of snow plowing, garbage pickup, and lighting. This will include things like the size of a garbage dumpster and acceptable street lighting structures. This provision in the legislation is necessary to ensure its fairness. A municipality should not be expected to conform its service capabilities to the needs of a private residential community. It would, after all, be unfair to those municipal residents living outside that private community.

Related to that point, we believe there should be a "hold harmless" clause for any damages incurred from services provided by a municipality. Otherwise, liability insurance would be prohibitively expensive. It would, therefore, detract from the fair and equitable situation this legislation attempts to create.

While on the issue of fairness, I would like to make my next point. This bill unilaterally abrogates agreements reached in negotiations between developers and local government officials. Contracts reached between the two parties prior to development clearly define service responsibilities each would have towards the condominium complex. This bill would supercede these agreements, adversely affecting one party only -- the municipality.

Finally, and perhaps more importantly, there is an inherent problem with this bill that would make the problems I have outlined moot points; that is, the bill is unconstitutional. The Office of Legislative Services has rendered such an opinion, stating the Constitution: "Strictly prohibits the use of government funds to benefit an individual, association, or corporation." Attached to our formal statement is a copy of a letter from Albert Porroni, Legislative Counsel to the Office of Legislative Services, which was sent to Assemblyman Anthony Impreveduto on the subject. The letter gives a detailed explanation of the unconstitutionality of Assembly Bill No. 3582.

On behalf of the League, I would like to thank you again for your attention to our concerns with this legislation.

I guess one of the factors that has to be stressed, Mr. Chairman, in a discussion on this legislation, is the cost factor. For the past couple of years, as you know, it is a fact that local property taxes have increased 25%. Neither the Legislature nor the Governor have been able to adequately come to grips with the solid waste issue or with the liability

insurance issue, which continually plagues our communities with the high costs of doing business. It would be almost impossible for the municipalities, at this point in time, to undertake another mandated program as set forth in this legislation.

There are meaningful dialogues taking place on this subject at the local level. We would encourage that dialogue. We would encourage the condominium owners, the associations, and the municipal officials to continue that dialogue, and there may very well be remedial legislation. There might be an alternative that can be addressed legislatively. And I guess to you, Mr. Chairman, I would say that the League would encourage that dialogue, and that we want to become a partner with you and your Committee in discussing this subject further. And, as I indicated at the outset, I think it is important that this be only one in a series of meetings to come, on this issue.

At this time, Mr. Chairman, I would be available for any questions. And, Ms. Gatterdam, do you have some comments you would like to stress?

**COUNCILWOMAN GRETTEL GATTERDAM:** I would just like to bring up one thing: Our community already is doing a certain amount of reimbursement. And there is an existing State statute that our own municipal attorney called to our attention, when I asked the question, "Is this legal?" I think the Committee should look at this. It is State statute 40:67-23.1, which says that roads or streets not taken over by municipality, or dedicated and accepted as public highways, maintenance, removal of snow and ice, lighting, garbage collection, dedication of road, if serviced, refusal to accept services notice-- It does allow a municipality to provide for the "collection of garbage placed at the curb of such streets, or for the reimbursement of such garbage collection costs as the municipality may determine to have been reasonably incurred by persons residing adjacent to such streets."

Under this current State statute, we, in fact, are providing some reimbursement. In light of the recent legislative decision, I am wondering whether your current State statute is constitutional.

ASSEMBLYMAN KLINE: The reimbursement you are doing now-- Does that put a burden on the municipality financially, or under the cap law, or how are you--

COUNCILWOMAN GATTERDAM: Well, the costs are outside of the cap, but we are not doing total reimbursement. We were hoping to phase this in. Last year, we did about \$52,000. This year, to cover the garbage costs, it would cost us \$250,000.

ASSEMBLYMAN KLINE: Are you paying the bill to the contractor, or are you paying money to the--

COUNCILWOMAN GATTERDAM: We are directly reimbursing the condominium association. And there is a certain fairness issue. We have looked at, in our tax assessor's office, how these condominium people are, in fact, assessed. There is absolutely no consideration with regard to the services they receive. Many of them are paying a very high tax. Our counsel felt that there was a need to be fair and, because we couldn't do it all in one year, we were looking to phase this in. But it is a very definite burden, especially since our own landfill costs this year have gone up \$400,000, and we have yet to see any money from the State Legislature to help us with this.

ASSEMBLYMAN GIRGENTI: I think you ought to take that up with the Governor, because the State Legislature did vote for it, and the bill was vetoed. I don't think there is anyone on this panel who is going to disagree with the problem. I think they have all gone on record and voted for it. As a matter of fact, the Senate overrode it, and perhaps we can impress upon the Speaker to go for an override in the Assembly.

COUNCILWOMAN GATTERDAM: Well, this is absolutely critical, because with a \$400,000 increase-- We were hoping to

get, according to that bill, \$300,000. It still would not have covered our increase in costs. But compounding that is the very sincere desire to try to be fair to these condominium people.

ASSEMBLYMAN GIRGENTI: One question I have -- not really a question, more or less a statement. One thing we have heard continually is that our job is to legislate. There are a lot of things that could be unconstitutional, but that is later on down the road. Our rule is to legislate what we feel is a good law, and then it is up to the courts to interpret it. You know, I don't think that just by saying-- The only way you have a law is, you have 41 votes in the Assembly and 21 in the Senate, and you have the Governor's signature. That is really our involvement. Where it goes from there is up to the court. But you know, it just needs 41 votes and 21 votes and the Governor's signature. That is really just a fact, and then the courts have to determine from there.

ASSEMBLYMAN KLINE: Bernie, any questions?

ASSEMBLYMAN KENNY: No.

ASSEMBLYMAN KLINE: Bill?

MR. DRESSEL: Just a response to what Assemblyman Girgenti said. It's true that there are several different branches of government, but clearly Mr. Porroni's decision is very clear -- or his letter is very clear on this subject; that it is unconstitutional. It appears, in light of his finding, that to just willy-nilly enact legislation which is going to present an avalanche of more litigation on the subject-- It does not appear to be prudent.

ASSEMBLYMAN GIRGENTI: Bill, would you say that maybe we should just sit back and let Mr. Porroni do all the work of the Legislature from now on? We won't have to--

MR. DRESSEL: I'm just saying that it is a legal opinion, which I think you--

ASSEMBLYMAN GIRGENTI: And maybe some people would agree with that.

MR. DRESSEL: --should seriously consider.

ASSEMBLYMAN GIRGENTI: Oh, I agree with you. But I remember you coming in-- I don't know if you presented it last time, at our last meeting, but the League came in with a position paper that was slightly different. You gave some suggestions to make this a better piece of legislation, because I have a copy of that. One of the things that was added was the residential element, which I happen to agree with. I think you would be going into a disaster, if you opened it up to commercial.

So, if this bill goes anywhere, I think at least one thing that has to be added to it is the residential, and not commercial.

MR. DRESSEL: We would support that.

ASSEMBLYMAN GIRGENTI: Yes. Some of the suggestions that were brought up, I thought were very good. Of course, -I know there was an opinion rendered since then, and that is why you have had a change of heart, or have changed your stance.

MR. DRESSEL: That opinion was not released after that. It was released before then, but it was not released to us at that time. Our association feels very clearly that this legislation would be at variance with that opinion.

COUNCILWOMAN GATTERDAM: May I ask one more question? If this bill, in fact, is moved, as it currently exists, we, at the local level, would not have a choice about reimbursement versus actual picking up the garbage, and that troubles me. We don't know, in our town, until we go out for our garbage contracts this year -- go out to bid -- what way would be most cost-effective. But I think that in the protection of all the taxpayers in our town, we want to have that as an option.

ASSEMBLYMAN KLINE: Yes.

ASSEMBLYMAN GIRGENTI: I agree, if it gets out of Committee -- you're correct -- this time.

ASSEMBLYMAN KLINE: Okay. Any other questions? (no response) Okay, thank you, Bill.

MR. DRESSEL: Thank you.

ASSEMBLYMAN GIRGENTI: Bill, just before-- I tend to be open-minded. I want to hear more input from all sides. Certainly, that is what we are here for. That is why I took the time to come down here -- to listen.

MR. DRESSEL: Again, I think it would be important for the Committee to consider having more hearings on the subject. There are a number of municipal officials who have indicated that they are interested.

Thank you.

ASSEMBLYMAN KLINE: Very good. Well, let's talk about the unconstitutional issue. Assemblyman Anthony Impreveduto is here. Will you please come up? I guess you are going to speak on that, aren't you?

A S S E M B L Y M A N   A N T H O N Y   I M P R E V E D U T O:  
Actually, I'm not.

Good afternoon, gentlemen. Certainly, I thank you for opening up these hearings again. I would just like to reiterate what Bill Dressel had to say. There were a number of mayors from my particular district -- District 32 -- who had wished to come today. Unfortunately, due to the late notice of the meeting, they could not attend. So I would hope that if you are going to have an additional meeting -- and I hope that you do on this issue -- that notice would be given somewhat earlier so that these gentlemen and ladies can come and give you input from their individual communities.

I would like to speak on the whole issue again, just very briefly, and then I will introduce Fran Holland who is here to speak, who is representing the town of Secaucus.

There were some comments made as to the last hearing and the League's position on this particular bill, and the unconstitutionality opinion that was rendered by the Office of

Legislative Services. While Mr. Porrone should certainly not legislate, we in the Legislature should not do things that fly in the face of the Constitution either. Certainly, we don't want to do things that are going to be bounced back to us. It is our job to legislate, and to do that within the confines of the Constitution of the State of New Jersey. So we must take that into consideration in any legislation, certainly, that we do. I just wanted to say that.

Secondly, I think it is important to talk to the fact that the bill has been amended, and it has been amended to include the word, "residential." That's important, and it is a step, certainly, in the right direction. However, there is another problem. If you remember back to when you first heard this, I raised the issue of a condominium as a form of ownership, and that a commercial condominium certainly could be included under this, the way the bill was written at that time. I think Dr. Paterniti has added the word "residential" in his amendment. However, we are forgetting about another strange aspect of new development, and that is called the "mixed use community" -- "mixed use development," whereby you have both commercial condominiums and residential condominiums together.

How do you plan on handling that one? You can't say it is just residential. You've got to plow the streets; you've got to fix the piping under the ground. And that is the other problem. The bill talks not only to garbage pickup, and not only to recycling, but to fixing street lights; to repairing roads; to fixing piping under roads, and we don't know what condition these roads are in, or the piping underneath these roads. At the onset, a developer comes into a swampland area and develops -- and puts his piping underground, and his wiring underground, and leaves. We don't know the condition of that piping that we have to accept as a municipality, to do the repairing of these things. It then becomes ours to do that. And I think that is unfair.

Another part of the bill talks to the fact that the municipality must accept the roadways, as long as they are the proper width and in the proper structure. I don't think we want to do that. I don't think you want to tell any town-- I don't think you want to usurp the authority of any municipality, by saying that they must do something, that they don't have to do. I don't think it is our job to do that here. I certainly hope you will take that into consideration -- that we don't wish to mandate to a town that they must accept the dedication of a street. Again, you are usurping the authority of that municipality.

Fran certainly will speak to the fact that when we talk about condominium and private condominium -- private community ownership -- it is somewhat different than the horizontal condominium maybe on a public street, where snow plowing currently exists, where it would not be a hardship for a community to pick up the garbage of that condominium, since they can put that garbage at street level.

My concern basically deals with the private community aspect, and there are a number of them throughout the State. Again, how would you handle a situation where if I owned 25 or 27 acres of property, and I built mine and my father's and my aunt's and my sister's homes on those acres of property, and it is my property, do you then come in and snow plow my driveway, if it meets the proper width? And, do you put street lighting up for me, and maintain it for me? It is not owning a condominium, but I own it. I will be paying taxes, and I will be getting the same amount of services that you get, or that you would be giving to the private community. And you would remove the guard at the gate that enters the private community. If we keep the guard at the gate to the private community, and don't offer the rest of our citizens the ability to drive onto that property as they can on anyone else's street, are we not telling the people of our community: "We

have a special community; you cannot go in there, but we will do everything we have to do for them also"?

I think those are my concerns -- the private community aspect of it. Now I will turn it over to Fran Holland. Fran will give you her concerns.

FRANCES HOLLAND, ESQ.: Good afternoon. I have been asked to speak on behalf of the Mayor and Council of the town of Secaucus. I brought with me copies of the statement that they wish to be made this afternoon.

Before I begin, however, I would like, in effect, to create what is a certain looseness of term and inaccuracy that I hear utilized in phrasing the situation with private condominium developments, whereby they pay for certain services as a double taxation situation. I think we are all aware that that is a loose usage of terminology. It is not truly accurate. Taxation is a power that belongs only to the government. I think what we have here in this situation is more closely analogous to a private school situation, whereby you have a taxpayer sending a child, or children, to private schools. Despite the payment of the tuition for that private school, the taxpayer, has part of his taxes, is still obliged to pay for public school purposes. I think this analogy more closely parallels the situation at hand here.

I hope you will bear with me. I intend to read from this statement, and will do so now.

Having been advised of the hearing on Assembly Bill No. 3582, requiring municipalities to either provide specific municipal services to "qualified private communities" or to reimburse these communities for the services, the town of Secaucus wishes to make known to the members of the Committee the serious concerns of the Mayor and Council regarding the adverse impact upon our municipality which would result from enactment of this bill, as well as certain constitutional prohibitions which appear to compel rejection of the bill.

Secaucus is one of the 13 constituent municipalities within the Hackensack Meadowlands District, but unlike many of the other HMD communities, the larger portion of Secaucus lies within the boundaries of the Meadowlands District. As a result, zoning and planning determinations for those large areas of Secaucus within the District fall under the mandate of State legislation, and are made by a State agency with local authority over developmental approvals.

The HMDC has granted approvals in our town for the development of various residential condominium subdivisions, as well as numerous subdivisions ultimately capable of conversion to condominiums, cooperatives, or other horizontal property regimes, which potentially fall within the definition of "qualified private communities."

Under the bill at hand, the municipality would be required to provide municipal services, or alternatively, to reimburse for service costs. However, in our community, and under the specific provisions of the original subdivision approvals, and as conditions thereof, and also under the subdivision general plan approvals by the HMDC for these various condominium developments, there were express undertakings and requirements by the HMDC, as well as undertakings by the developer/sponsor that the service costs, which are now the subject matter of this pending bill, were to be borne in perpetuity by the developer/sponsor and/or subsequent owners as their successors in interest in the land.

This was consonant with the Hackensack Meadowlands Development Act, and its mandate to provide for an orderly regional development of the District which would neither tax nor overburden the resources of local government.

It seems that within the situation which has been structured here within this bill for private -- qualified private communities-- Within our community, we would have a certain very unfair scenario. In Secaucus, due to the

104 developers' desire to create distinct residential condominium  
105 communities with a high degree of exclusivity and security,  
106 entrance to and exist from certain of these communities may be  
107 gained only by passing through a guardhouse. This is  
108 frequently the case in other communities as well. Travel  
109 through the communities are via a network of private roads  
110 within the condominiums. These features remain expressive not  
111 only of the intent of the current condo associations to retain  
112 these distinct characteristics of their condominiums, but of  
113 their unwillingness to dedicate their streets to the  
114 municipality, or to any kind of public use. As Assemblyman  
115 Impreveduto has touched upon, different construction standards  
116 and specifications exist for curbing, roadways, and other  
117 infrastructure required to be serviced and maintained under  
118 this bill.

119 There is an inherent danger for a repairing  
120 municipality in a situation in which it is obliged to repair,  
121 without any knowledge of the nature of the structure to be  
122 repaired. Even assuming any kind of methodology for overcoming  
123 inherent logistical problems, in budgeting terms street repairs  
124 would add hundreds of thousands of dollars to the costs of the  
125 municipal budget, in addition to untold dollars in future  
126 capital investments for infrastructure maintenance. This would  
127 be, within our community, in direct controvention to the  
128 original subdivision approvals by the HMDC, upon which  
129 development had been premised, and it would be manifestly  
130 unfair to the town as a whole.

131 Large portions of our municipality have been developed  
132 for commercial uses under HMDC approvals. This approvals have  
133 been conditioned upon retention of ownership of private roads,  
134 again by developer/owners and the provision by them of all  
135 services to these commercial areas, including road and  
136 infrastructure maintenance in lieu of municipal services.

The identical letter that was annexed to the prior materials that have been given to you, and which is referenced in the statement of the town, declares, and the town is in agreement, that the definition of "qualified private community" has been defined in such a sufficiently broad manner as to include commercial or office uses. It is possible that a vast number of conversions by owners of commercial properties to condominium or cooperative uses may occur in our community, subsequent to an enactment of this bill. The scope of any kind of potential fiscal impact of commercial conversions would be greater than perhaps in any other municipality in the State.

This bill would negate the underlying fiscal premise of the HMDC planning within our community, upon which most of the developments within Secaucus in recent years have been based.

In addition, the town is currently a defendant in an action brought in the Superior Court by two condominium associations seeking that the town of Secaucus provide routine garbage collection, or reimbursement to the members of the Association for a portion of property tax equivalent to the cost of garbage collection services, or alternatively, reimbursement to members equal to the cost of private garbage collection.

In this litigation, the town of Secaucus contends that the relief sought by the condominium associations is barred by Article VIII, Section III, paragraphs 2 and 3 of the New Jersey Constitution, which prohibit the use of government funds to benefit an individual, association, or corporation, and is additionally barred by the uniformity requirement of Article VIII, Section I, paragraph 1 of the Constitution. Within that action -- and this refers to the current legislation referred to by an earlier speaker -- the town also asserts that the provisions of N.J.S.A. 40:67-23.1 bar the relief sought where the access to the condominium communities' private roads is via

passage through a guard booth. This system excludes most municipal residents from the use of these private streets.

I will skip over some portions of this, so that I don't take up too much of your time this afternoon. But the next legal opinion, which was referenced by the speaker from the League of Municipalities, is also annexed to our statement. We are in agreement that the holding of Roe v. Kervick, on grounds similar to our defenses in the current legal action against our municipality, bars an enactment of this bill as valid legislation.

If I may, I think all persons in this room would certainly recognize a separation of powers in State government, but it is respectfully suggested that any power to legislate is always within the confines of the jurisdiction and authority of the Constitution.

The fatal feature of the legislation now under consideration arises from the reimbursement scheme authorizing the use of public funds for private purposes. If you refer to the statement, you will see the express provisions of the Constitution violated thereby. But, to restate the proposition in common parlance, or plain language, the bill is unconstitutional because it violates the basic prohibition against the utilization of public funds for private purposes. It would place an improper and unfair burden upon municipalities containing private communities, where the public is barred from access or entry to the private communities. This very exclusivity and exclusion is, in fact, the premise upon which many of these residential communities were planned, the reason for their existence and construction.

I would like to go on further to state, if you refer to the statement presented on behalf of the Mayor and Council, there is an analogy made that if the question were posed to this Committee, for example, as to whether all the taxpayers and citizens of West Orange were to bear the costs of services

and of maintenance and repairs to the private community of Llewellyn Park, I think this Committee, and perhaps all in this room, would answer that question with a resounding, "No." This effect, however, would be the inevitable result of enactment of the provisions of this bill. I think if you take it to its extreme and analogize it again to a community like Smoke Rise, and ask whether all the taxpayers of that municipality should bear the costs of such an exclusive community again, you will see that this does not comport with our notions of the function of utilization of tax revenues.

I would like to go on in a little more detail, and then I will conclude. The New Jersey State Supreme Court, in 1964, in rendering its opinion of Roe v. Kervick, delineated the relationship between Article VIII of the New Jersey Constitution and the basic and fundamental governmental principle repeated earlier, that public funds should be raised and utilized only for public purposes. I will go on from the quote from Justice Francis, to say that while the concept of public purpose as Justice Francis interprets it is a broad one, it generally connotes an activity which serves as a benefit to the community as a whole, and which, at the same time, is directly related to the functions of government.

I will pass through various other portions of that opinion, which is available for you to read. But there is a basic test set forth in Roe v. Kervick, at page 223, that if a private benefit of legislation is found in conjunction with a public purpose, the relative significance of each of these components should be evaluated and balanced to determine which benefit is primary. Where such a double aspect is an accompaniment of a statute, courts generally seek the objective which is primary, and classify the purpose as public or private accordingly.

It is our contention, and our belief, that the preeminent benefit resultant from the provision of municipal

services set forth in section 2 of the bill would be to relieve the private community from the responsibility for maintenance of its private property. This responsibility would then be shifted to the municipality, despite only a limited and secondary benefit to the general public. Under the test set forth in Roe v. Kervick, and upon reading the applicable provisions of the New Jersey Constitution, we believe this to be constitutionally infirm. This is an unconstitutional provision.

I thank you.

ASSEMBLYMAN KLINE: Thank you, and we have all of your written comments. It would make a short story, but we have it. Did you want to respond to that?

ASSEMBLYMAN GIRGENTI: Yes, one thing. If you look through the history of our country, the Supreme Court has been overruled at times, too. So nothing is in cement. I remember, in the United States Supreme Court, in 1896, Plessy v. Ferguson allowed segregation. In 1954, it was a different opinion, and a completely different interpretation.

What I'm saying is, it doesn't necessarily mean that because a court ruled one time that that was what was constitutional, that it can't be ruled differently at a different point in time.

MS. HOLLAND: While it is true that this case could -- that a subsequent holding could come from the court, this is not an isolated case. This case lies in a whole chain of cases holding similarly as to use of public funds.

ASSEMBLYMAN GIRGENTI: But what I'm saying-- What I tried to point out before is: We, as legislators, have to make our decisions based on how we see the issues. We are not going to be overly concerned about how the court would rule on that. That is a different area of government, as far as I am concerned. That is a decision that they have to make, if they feel that we have overstepped our bounds.

The other thing I found that is interesting in all of the statements here -- and I don't say that you say this -- is that we get this locked private community that is composed of all super rich individuals. I have to tell you from my district, people can't afford to buy a home. That is why they are going into condos. You have individuals who cannot afford to go out and buy a house, so they have to try to start with a condo, or a home such as that, to start living. So, you know, this means a lot to them, too, individually.

In my area, we don't have any locked communities, with gates and so forth. We are looking at people who have it very hard getting by day to day. They are paying into the town for the garbage collection of the community, yet they have to also pay for their own garbage collection in that particular area. I understand there are some cases where we have wealthy type communities, but I don't think we are talking about the Patersons or the urban areas, where people are struggling to get by, and these are some of the condos that are affected by this. It is not only the rich people in Smoke Rise.

ASSEMBLYMAN IMPREVEDUTO: No, but I think what we should do is look at the fact of, are those condominiums affected by the communities?

MS. HOLLAND: Are they along the private roads with limited access, because I believe when I spoke to--

ASSEMBLYMAN IMPREVEDUTO: Yes, that is my whole point.

MS. HOLLAND: --exclusivity, I was not referring to it in the sense of being for the rich, but exclusive in the sense that access -- physical access--

ASSEMBLYMAN GIRGENTI: No, I understand. I am just bringing out a point. The feeling is that it is only the rich who have these private communities and this is what we are affecting. But no, it is other individuals, too.

ASSEMBLYMAN IMPREVEDUTO: I don't think we argued the fact that having a condominium complex on a public roadway --

about picking up their garbage. I don't argue that point. I do argue the fact that in a private community I, as a municipal official, have to repair their roads, fix the piping under their ground, and repair their lighting. I don't think that is the responsibility of a municipality, but of the private community. Yet the bill specifically says, "horizontal condominium and private community," and I object to the private community.

ASSEMBLYMAN KLINE: Thank you. Phyllis?

MS. MATTHEY: I promise to be brief. This is a copy of the amendments that have already been adopted by the Senate, which will answer many of the concerns the previous speakers have brought up. Inasmuch as the Chairman has said that he has to adjourn fairly soon, I want to urge you to please find time for three people who have come a long way: Bob Ferguson, Peter Reinhart, and Ron Perl.

I just have a few points, and I will be quick. One of the things that Mr. Dressel said, was that they insist that the roads be brought up to standard. I would like to point out that when the associations were being approved -- the planned communities -- the towns did not insist that the roads then be made standard, and the communities, most of which we are dealing with, will be bankrupt if they must bring these roads up to standard. They should not have been permitted to be built below standard, and certainly other ways can be found if the trucks are too heavy or too wide to traverse our narrow roads. There is nothing more narrow than the roads we used to come in here today to get into this building, and yet these are public roads, I'm sure, maintained with speed bumps by the City of New Brunswick.

The question of constitutionality is very clear in my mind. I understand exactly the speakers before me, but the key word in this constitutional argument is "benefit." Where are the private communities -- the condos and co-ops -- benefiting

by getting something that they are paying for in their taxes? We are not "for-profit" associations. The word there is "benefit." We are not lining our pockets because of this. We are only getting something that we are entitled to, which we are not now getting, and should be. I think that if it is brought to court, we would certainly win.

I would like to also say that when the Assemblyman spoke about not knowing what is in the roads, what kind of piping, and so forth, I ask, "Why not?" Did they not approve these associations and the developers and the plans, and did they not keep records, and are they not supposed to know that? I understand there are differing specifications and differing standards, but there are also seven different kinds of municipal governments, and we manage to work with those. There are hundreds of different zoning ordinances and things all over the State. That is no excuse to not do the right thing.

As far as association bylaws being agreed to in perpetuity, I would like to point out -- and I believe this was alluded to by the last speaker -- that the fair housing bill, which is Federal legislation, has now taken those associations that want to be out of communities, and where in many cases the towns require that they sell to families that did not have school-age children, and has now told them that they are being discriminatory and they can no longer deny these residents who have children from moving into these communities. Therefore, it is a question of what is right and what is fair. Is it fair for an association to deny a family with children to move in, unless it is truly qualified as a senior community? So, what is right, and what is fair, and what is "in perpetuity" are questions that have to be answered by this Committee.

I have two last things: The question of privacy and guardhouses is one that drives me crazy. There are other extremes from the Llewellyn Parks and the Smoke Rises. In those communities, frankly, if you offer to come in and do

their streets, take their garbage, and remove their snow, they would probably say, "No," and I would say the bill should be amended to say, "If you don't want us, great. We are not giving you anything -- no rebates, no reimbursements." If you have offered to give them the services and they have turned you down, then I think they can do without. Obviously, they can afford to do without.

In the other communities -- the average communities -- ones like the one that I live in, we have, in some cases, guardhouses or speed bumps or warning signs or things because we are forced by the municipality to maintain our own roads. They don't want them. So we do whatever we can to deter other traffic from the roads to keep the costs of maintenance down to a minimum. We do not feel that our communities will not be opened immediately. If you offered tomorrow to take my association's roads and handle them, we would remove our warning signs; we would remove our speed bumps. We won't widen our roads -- I think our roads already qualify, but many don't -- because we couldn't possibly raise that kind of money. But you can drive through my association -- everybody else does -- any time you want, as long as you don't exceed the speed laws.

I will say on that issue, that the police won't even come and monitor the speed, because we are a so-called "private community." But we did not ask to be a private community. We were told: "We don't want to maintain you. You maintain yourself, and then we will let you be built."

The big benefit that has to do with this bill is affordable housing. The only affordable housing in the State of New Jersey is represented by condominiums, co-ops, and planned unit developments. If it is a mixed use development, I'm sure the municipalities can work out the percentage of the roads and streets, and street lighting, and reimbursements they need to work out.

The amendments that have been agreed to in the Senate-- It is a very flexible bill. The association no longer has the right to request which of the two options. It will be the municipality's right to decide. With a reasonable phase-in, something that is fair, something that doesn't make people who have been waiting 10 or 15 years in some cases-- I think we can reach an equitable solution, and certainly a constitutional solution. As far as it being manifestly unfair to do this, it is manifestly unfair not to do it.

I thank you.

ASSEMBLYMAN KLINE: Thank you, Phyllis.

Susan, do you want to come up next -- from the New Jersey Association of Realtors?

S U S A N C O V A I S: Thank you, Mr. Chairman. My name is Sue Covais. I am the Director of Government Affairs for the New Jersey Association of Realtors. I just want to briefly make a comment that we are supporting the bill, and then I will turn it over to Mr. Ferguson, our Executive Vice President.

The Association supports the bill in question. In the interest of fairness to the property owners, I think we have to look at the issue that these are property owners also. I mean, the \$1600 in taxes that a condominium owner pays, and the \$1600 in taxes that another homeowner pays-- One homeowner is getting services, and one homeowner isn't. I think that is what we are really trying to point out. I think that is what Phyllis was mentioning before. It is really an issue of fairness -- what's fair.

You know, laws can be changed; constitutions can also be changed by the Legislature. That is your prerogative. So I think that is the reason why we support the bill -- in the issue of fairness and in the issue of double taxation. The point that it is unconstitutional because the condominium owner is receiving a benefit-- I think Phyllis brought that out very well. You are paying taxes, and you are not receiving

services. The municipalities are receiving taxes from the condominium owners, and are not turning back services to them. So, there is an issue of unfairness there.

I would like to turn this over to Mr. Ferguson.

**ROBERT F. FERGUSON:** The New Jersey Association feels that there has to be some middle ground reached. We think the Legislature, perhaps, rather than the courts should be the body to define that middle ground.

The time bomb is ticking. In addition to being the Executive Vice President of the Realtors Association, I also happen to be president of a condominium association. I also sit as a member of a board of adjustment. I can tell you that with the costs for removal of garbage today, the organization -- the Association that I represent-- We're jumping from \$8 a day to something like \$15 a day. There is not much room for negotiation. This is going to continue throughout the State. - .

In addition to paying soaring taxes -- and I can appreciate the problems in the municipalities-- Unless we can come to grips with this problem, we are going to find people who can't pay their bills, people who are either going to have to be delinquent in their real property taxes, or are going to have to be delinquent in their association monthly maintenance fees. It cannot continue.

I am not here talking for the Smoke Rises. Those folks who have high profile security-- That's a different story. The condominium association that I represent had a requirement that some of the slips in our marina have to be open and made available to the general public, yet the City of Long Branch claims that our street is private. Well, it can't be private if, in fact, we have to keep the street open for the members of the public who rent slips in the marina.

We are going to have to take a look at where we are going with affordable housing. The condominiums that I am familiar with in my association, sold for about \$153,000, which

I wouldn't consider, by any stretch of the imagination in the State of New Jersey today, to be luxury housing. The maintenance fee now is at \$231, and will be escalating on an emergency basis. Real property taxes on the unit I have are \$5600. We have retired people; we have people on fixed incomes who can't-- They are struggling now, but a year from now, or two years from now, this ticking time bomb is going to explode.

Rather than go to the courts -- and each court decision seems to be different from the one that preceded it -- the Legislature should take a look at the affordable housing issue. This seems to be a way to address affordable housing -- to go the condominium route. At the same time, we can't ask people to pay, in fact, double taxation.

Again, I think that this bill certainly is acceptable. However, like anything that happens in the legislative process, there has to be give and take. I think everyone has to recognize the pressures the municipalities are under. At the same time, I don't think we can ignore the plight of tens of thousands of unit owners.

ASSEMBLYMAN KLINE: Any questions? (no response)  
Okay. We thank you for your comments.

May we now hear from Peter Reinhart?

P E T E R S. R E I N H A R T, E S Q.: Thank you, Mr. Chairman. My name is Peter Reinhart. I am here today as the immediate Past President of the Community Associations Institute. I testified once before, but I thought I would raise a couple of things in response to some of the comments made earlier today.

Our organization has over 800 members in this State; nationally, CAI has over 10,000 member organizations. Among our 800-and-some-odd members are well in excess of 500 community associations.

A couple of the comments made today-- Affordable housing that Phyllis Matthey mentioned, is absolutely true. Despite what may be the case in Secaucus and Smoke Rise and a

few other wealthy municipalities, the situation is, in fact, the opposite. Affordable housing is only found in condominiums, co-ops, and other forms of attached housing. Nationally, it is very interesting: 29.4 million people in this country live in common interest communities, one out of every eight Americans. In 1962, there were 500 community associations in the country; today, there are 130,000. Of all of the condominium buyers in the country, 48%-- This is their first home. So, we are talking about affordable housing. We are not talking about something that is a discretionary purchase.

As far as the specifications of the roads, I am also a developer, but I can tell you that the roads are not paper thin. They are built sufficient to withstand the garbage trucks, the moving trucks that move all these people into their first homes, and are perfectly well situated to handle the type of traffic that would be provided in these municipal services.

The private school analogy is just very unfair. Private school is a discretionary choice that someone who has the financial means to do so, or for religious reasons, chooses to not attend the public schools. The fact is, these are affordable homes we are talking about in the large majority of cases, and it is not a discretionary situation.

People have talked about double taxation. This is actually a triple taxation situation in one respect. Not only do unit owners pay their property taxes, but they also pay their maintenance fees, and that portion of the maintenance fees that goes for municipal services that would otherwise be provided, is not tax deductible under their Federal Income Tax, as they would be. So in a sense, they are hit three times. There is nothing you can do about that, but it is something that you should be aware of.

As Phyllis mentioned, the Senate committee amendments do address most of the concerns that I have heard raised today.

I am also an attorney, and I want to mention one other item, and then I will get away from here; the constitutionality question. I have read a lot of things in the Roe v. Kervick case that was mentioned earlier, that would be supportive of this legislation and for finding it constitutional. But there is another argument; there is another aspect of the Constitution that we should be aware of, and that is the equal protection clause. There have been several cases recently -- unpublished opinions, unfortunately; one in the town of Nutley, and another in nearby Edison Township -- which upheld that a municipality, by refusing to provide garbage service for communities such as these, or for private commercial enterprises, are unconstitutionally depriving those owners of rights that are given to everyone else in the town. Specifically in the Edison case, it was discussed, and stated by the court, that the cost effect on the municipality was not a viable factor -- not a valid factor in denying that garbage pickup.

Thank you for the opportunity. I hope we don't have too many more public hearings, so we can get on with this important piece of legislation. Thank you.

ASSEMBLYMAN KLINE: Very good. Thank you, Peter.

We will now have Ron Perl. Ron is an attorney for CAPA.

R O N A L D P E R L, E S Q.: Thank you. Yes, I am an attorney -- counsel to CAPA. I am a Past President of CAI. I was President immediately prior to Peter Reinhart. I also represent 85 or 90 associations throughout the State of various shapes and sizes, high-rises, town homes, and condominiums and cooperatives. So I have a varied perspective here, but I am in favor, and speak in favor of the bill.

There are a couple of issues I would like to address that Peter didn't touch on, and that Phyllis didn't. Peter did mention that we now, in our associations, get the trucks in.

We get the garbage trucks in, and it is so true. At the same time, it should be remarked that the very entities that are now opposing this bill on the grounds that certain of the installations may not be up to standard -- for example, pipes under the street, or electrical wires under the street -- those entities were responsible not only for the approval, but for the inspection process. So I am forced to ask myself, and ask this Committee, where were their inspectors at the times these communities were built? If they were there on the job, these same municipalities that employed the inspectors should have no doubt about the appropriateness of the installation. If they do have a doubt about the appropriateness of the installation, it only tells me that they have some doubts about their inspectors and the job they did in the inspection phase.

We are also told that there are contracts. Well, I haven't seen too many of these contracts, although I have heard a lot about them. What we are being told, is that a contract was made between a developer and a planning board. As far as I know, only the council can make a contract on behalf of the municipality. Certainly, the developer can't make a contract on behalf of subsequent unit owners. What we are talking about, in some instances, are conditions of municipal approvals.

But in any event, at best, that kind of statement can be interpreted to say, "We contracted with your developer to deprive you of certain of your rights, and there is nothing that you can now do about it." I think that-- If anything is unfair, that kind of position is. We contracted away your rights before you even moved in, and now while you are trying to enforce those rights, we are going to throw that back up in your face. I think that is eminently unfair.

As to the public purpose of these expenditures, I think it is clear that the types of services we are talking about -- street lighting and garbage -- refuse removal, and snow clearance-- Those do serve a public purpose. The

residents in these homes that happen to be planned communities are still citizens of the town, and all they are looking for -- all we are looking for is the very same kinds of public services that everybody else is getting, and that we are paying for. This hasn't been said, but in effect, the residents of community associations -- the owners -- are subsidizing the services received by others in the community. It is not a question of whether or not the community should subsidize services for unit owners. The plain fact is that at the present time, the unit owners are subsidizing the services received by the others.

The comment that increasing maintenance fees is a time bomb about to explode is so true. In the 85 or 90 associations that I represent, the issue constantly comes up that costs seem out of control, especially in the garbage and utility areas. People who bought condominium units and co-op units to get affordable housing, are now finding that it becomes unaffordable, and it becomes unaffordable because, while their mortgage payment may stay the same, taxes are going up, but the condo association fees are going out of reach. And you know, when you have a certain amount of disposable income every month, the more of it that goes to condominium fees and association fees, the less there is to pay for the mortgage. That may affect values as time goes on, and that is of great concern. It should be of great concern not only to the owners, but to the Legislature as well.

Peter Reinhart kind of stole my thunder on the equal protection argument. That is the constitutional argument that we advance. Secaucus may be engaged in litigation. I can tell you that within days, Washington Township in Mercer County is going to be engaged in litigation, as I am about to file a lawsuit there over the same issue. Our residents are being deprived of equal protection under the law, the same right to the kinds of services we have been discussing as every other citizen and every other taxpayer.

I would urge the Legislature to act, so that the courts are not the ones that have to make the final determination in this matter, because usually when the courts get involved, nobody is ultimately satisfied.

Thank you.

ASSEMBLYMAN KLINE: Thank you. Ed Corrigan, from Dover Township -- another attorney. We're loaded with attorneys today.

EDWARD CORRIGAN, ESQ.; Good afternoon, Mr. Chairman, members. I am going to apologize. I just heard about this meeting today. I don't have a prepared text. The Mayor called me this morning about nine o'clock, and he said, "You get over there and tell them that we are not in favor of this bill." I have spoken to the League of Municipalities -- Mr. Dressel. I have read through his comments. Basically, the township is in support of his comments, as well as the comments made by the representative of the town of Secaucus.

The comment that was made by the League of Municipalities which I feel is most pertinent to the situation of the Township of Dover, is where they indicated that they felt the bill, if passed, would encourage the breaching of contracts made between municipalities and condominium associations for services. I am just going to try to briefly give an example of how it would affect Dover Township, if you passed it.

We have a large community. I believe it is 44 square miles, although I am not very good at geography. I am not exactly sure how many square miles it is. Most of our condominiums and condominium associations were built in areas where they were not zoned for multi-family housing. What happened was, the developer would come before the Board of Adjustment and request a variance, and indicate that in return for the variance-- They probably didn't say, "in return for the variance," but said they wanted a variance and that it

wouldn't affect the municipal services, despite the fact that we would have a higher residential -- a higher number of residences than what we otherwise would have under the zoning, because they would provide their own services.

The Board of Adjustment, feeling and thinking that this was going to be the case, and that these communities would supply their own services, would, in most cases, grant the variances, and we would end up with a higher number of residences on the site than we had originally anticipated, and that we had originally planned that we could provide services for.

This situation has worked out pretty well in the past because in return for the greater density, we had them providing their own services. If this is changed, it is going to do a number of things. First of all, it is going to increase the load on the municipality at a time when we are, quite frankly, not prepared for it and not able to budget for it. We are in the middle of our budget now, and if we had to provide for these services all at once, it would be very difficult on the municipality.

Based on that, and based on all of the other comments, I would ask that you give serious consideration to this bill, and perhaps hold it for further discussion.

I would just like to make one more notation with respect to the issue of private roads. There has been a lot of discussion pro and con about private roads. I think we can all agree that probably for every one of these associations and condominiums, the type of road they have, or the type of approval, is somewhat different. The League of Municipalities has indicated that it is their opinion that the roads would have to be upgraded before the services could be provided. That is probably true in some cases, but not true in other cases. The people who are in favor of the bill say, "So what. Obviously, the municipality agreed to these standards, and they

should be forced to do it." I would just like to note, and ask the Committee to take note, of the fact that private roads are traditionally not the same as municipal roads, because they do not bear the same burden. The municipality does not have to require the private developer to put in quite as good a road, because they are not required to maintain it. It doesn't need as much maintenance, because it doesn't bear as much traffic.

I would suggest to you that the issue of private roads is a valid issue, and something that really needs to be taken into consideration by this Committee.

I have heard the arguments on the constitutionality of the matter. I am going to be quite honest with you, I don't necessarily think this bill is unconstitutional. When Mr. Dressel finds out I said that, he will probably call me up and yell at me. But I do think it is ill-advised, and I would ask you to consider it carefully. Please consider the impact it has on municipalities. You know, it is far too often that the Legislature doesn't take the real and honest problems that our municipal officials have under advisement, before they pass their legislation. The municipal officials feel like orphans who are left out in the cold to solve the problems that are sometimes created by these bills.

I appreciate your listening to me. I know I came in late in the meeting.

ASSEMBLYMAN KLINE: That's okay.

MR. CORRIGAN: I'm sorry I was not prepared. I tell you quite honestly, I would have been had I heard about the meeting a little further in advance.

ASSEMBLYMAN KLINE: Well, we will be having another hearing on the bill, and you will have an opportunity, so--

MR. CORRIGAN: Oh, that's good. I appreciate that. I would appreciate it also if I could get some kind of notification.

ASSEMBLYMAN KLINE: Okay. Thank you.

That's all the sign-in slips I have. Is there anyone else who has not filled out a slip, who would like to make a comment? (no response) If not, we thank the public for their participation.

We are now going to turn over and just speak among the members of the Committee for any ideas or recommendations about what you gentlemen would like to do with this bill today.

ASSEMBLYMAN GIRGENTI: If I may, the one thing I think we should add for sure is "residential" in the bill, to limit it to residential. I believe the Senate did that, in their version.

ASSEMBLYMAN KLINE: Yes, they did.

ASSEMBLYMAN GIRGENTI: I think everybody on this panel agrees that that is really what the intent was. I don't think we were talking about commercial.

ASSEMBLYMAN KLINE: I'll agree with that.

ASSEMBLYMAN KENNY: I have an open mind on this legislation. I thought today's meeting was very, very good. I think the issues have been somewhat crystalized. I also don't feel that it is a constitutional issue, particularly I think it is the case -- which I have had occasion to read for other purposes-- I think that can be used to support it; the proposition in support of the legislation.

I think the last speaker made some very good points. The impact of this type of legislation on the municipalities is something that I would have to consider, in view of the economic crisis that is facing all of the municipalities today. That, to me, is very important.

The exclusivity aspect of it doesn't really have much weight with me. There are a lot of exclusive neighborhoods and parts of our State which are exclusive in their effect, if not by a guard, for other reasons. We have apartment buildings that are -- you know, rental buildings -- not so much today, but 15, 20 years ago, that were very exclusive, you know, that

had doormen. Certainly, no one could go into the lobby and hang out, or go upstairs. So, the exclusivity is not really a factor.

I think a factor is the impact this would have on municipal budgets, and also, on a case-by-case basis, the type of arrangements that these various associations have entered into with the municipalities when they received their COs, their permits, as the case may be. I think that is also relevant.

Those are the two areas. I see equities on both sides. I think it is a very interesting piece of legislation. I think further that I would like to hear more from municipal officials as to the impact question. I think that is very vital.

As to the roads, and the private nature of the roads, and their ability to handle traffic, as both sides pointed out-- A lady testified earlier that the reason why the roads are somewhat private is because they are not supposed to handle the traffic; they were not meant to handle the traffic, because you have to maintain them. Then, the last gentleman who spoke said that was because when the roads were constructed, it was understood that the cities or the towns would not be maintaining them. I think we have what was, in its origin years ago -- five years ago, ten years ago -- one set of circumstances, and now we have a different set of circumstances in the State -- the rising number of these communities, the rising number of taxpayers who live in those communities. So you have, in effect, more of a claim. On the other hand, the state of the municipalities today is therein.

I really think it is an economic question, quite frankly, as to how you are going to -- from a legislative point of view-- From how people are going to vote, it is a clear economic question in many ways. How a court would rule: That is a different issue, as they would rule on the legal aspects

of it. But as a legislator, economically, I am going to be very much influenced by that, quite frankly.

In Hudson County, the part that I live in, unlike Mr. Impreveduto, most of our condominiums are serviced. Most of our high-rise condominiums are serviced by the municipalities in garbage removal, utilities, and so on. We don't have private communities. In Secaucus they do, and in Kearny and Harrison they have private communities. In District 33, we don't have any. The condominium associations there, in effect, are serviced, in one fashion or another. So, it does not affect me per se, although condominium associations have lobbied me for this bill, just on the merits of it.

I think it is very interesting, but I would like to hear from from the municipalities.

ASSEMBLYMAN GIRGENTI: You know, I think we should have more hearings. I agree with that, because there may be some more input. This meeting, as you know, was hastily put together. Other people may have wanted the opportunity to testify, so at least we should have another one.

One of the things I do-- I understand the impact on the municipalities, too. There is no question about it. But also, we have to do what we think is right and fair. I think that some of the amendments that were put into the Senate version were good ideas. I don't know if you want to consider them today, at this point in time -- we have the Senate copy here -- and amend our bill accordingly. There are other suggestions we may want to make in certain sections here, but I don't know if we want to get into that now, because we may want to base that on other discussions.

ASSEMBLYMAN KLINE: Yes, I think so. John, what I was going to recommend was--- We have taken a lot of testimony. Gerry (referring to Committee Aide) has been taking notes. I would like to have some amendments drafted from the hearings that we have held up until today, including all the Senate

recommendations or amendments. Let's get a draft of them written now, and we can then have a public hearing-- The next public hearing will be over the drafted amendments and those ideas.

I would like staff, since we have all listened and heard it-- Gerry is taking notes. I would like to have the amendments drafted and, rather than having a public hearing and passing out the amendments for the first time-- I would like everyone to receive them -- the people who have spoken and heard and have been involved in this session-- I would like to have a copy mailed to them a week or so in advance--

ASSEMBLYMAN GIRGENTI: And to get their input--

ASSEMBLYMAN KLINE: --to get their input on the amendments at the next hearing. If everyone is in agreement with the amendments, then possibly we could move it out at our next hearing. But I think the next step would be to have Legislative Services and our staff put together an amendment package that can be mailed out to everybody. Then there will be an opportunity for everyone to debate it again. That is the issue.

I am from Atlantic County, and Senator Gormley shares an office with me. He wanted to be here today. He was upset when he found out that I was driving all the way up here. You know, he looks at the taxation problem in New Jersey as being hefty, and this increases, or puts fuel on the fire as far as tax increases to homeowners are concerned. That financial issue has to be addressed. That is, I think, what the League of Municipalities is in opposition to -- the financial burden placed on the taxpayers. Senator Gormley wanted to speak today on that issue. That has to be addressed -- the financial -- and the roads and everything else.

I think if we are all in agreement, I would like to see us--

ASSEMBLYMAN GIRGENTI: Our people have worked on a number of amendments, too.

ASSEMBLYMAN KLINE: Give them to Gerry. We want to see them.

ASSEMBLYMAN GIRGENTI: I think the Senate amendments were a step in the right direction.

ASSEMBLYMAN KLINE: I agree. Gerry, you get together with Jake and get those amendments, and we will try to put them all together into a package.

We thank everyone for attending. The meeting is adjourned.

(MEETING CONCLUDED)

APPENDIX

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September 26, 1988

Honorable Anthony Impreveduto  
100-A Route 153  
Secaucus, New Jersey 07094

Dear Assemblyman Impreveduto:

You have requested information concerning whether Assembly Bill No. 3582 of 1988 (hereafter A-3582), requiring a municipality to provide the same services to a qualified private community as it does to its other residents, applies to commercial or office condominiums and whether the bill violates any provisions of the New Jersey Constitution. The bill requires a municipality to provide the same services along the streets of a qualified private community as it does along the public streets for its other residents. The bill further permits a qualified private community to provide its own services and obtain from the municipality in lieu reimbursement of the amount the municipality would have had to spend to provide the services.

We have concluded that the definition of a "qualified private community" is broad enough to include commercial or office condominiums. We have also concluded that the reimbursement scheme in the bill may be distinguishable from a tax deduction or exemption and therefore might not violate the uniformity requirement in the State Constitution. Regardless of whether or not it violates the uniformity requirement, however, A-3582 does violate Article VIII, Section III, paragraph 2 of the State Constitution, prohibiting the use of government funds to benefit an individual, association or corporation.

Subsection e. of section 1 of A-3582 defines a "qualified private community" as:

... a condominium, cooperative, fee simple community, or horizontal property regime comprised of a community trust or other trust device, condominium association, homeowners' association, or council of coowners, wherein the cost of maintaining roads and streets and providing essential services is paid for by a not-for-profit entity consisting exclusively of unit owners within the community. . . .

Hon. Anthony Impreveduto  
September 26, 1988  
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The definition does not contain a requirement of residential use. Since the condominium form of ownership provided for under the "Condominium Act," N.J.S.A. 46:8B-1 et seq., includes commercial as well as residential condominiums, a nonprofit association comprised of commercial or office condominium owners could be included within the definition of a "qualified private community" and the provisions of the bill would apply.

The statement to A-3582 indicates that the bill was introduced to provide relief for persons living in qualified private communities who believe that they are paying twice, through their taxes and association fees, for certain services that are publicly provided along municipal streets and roads. Assembly Bill No. 2517 of 1988 (hereafter A-2517), authorizing a real property tax deduction for individuals who reside in condominiums and horizontal property regimes and do not receive certain municipal services publicly provided to other taxpayers, has a similar purpose.

Our letter to you dated June 7, 1988, by Walter Kennedy, Principal Staff Counsel, concluded that the real property tax deduction permitted by A-2517 was prohibited by the uniformity requirement in Article VIII, Section I, paragraph 1 of the New Jersey Constitution. The reimbursement scheme in A-3582 can be distinguished from the deduction authorized by A-2517 on the basis that the reimbursement in lieu of services is not paid to the taxpayers directly, as is the real property tax deduction in A-2517, but is instead paid to an entity such as a condominium association, homeowners' association, council of coowners, or community trust which is responsible to the residents in the private community for the provision of the services. Also, the calculation of the reimbursement amount paid to the entity is independent of the actual pro rata tax assessment on the members of the qualified private community for the provision of municipal services for which in lieu of reimbursement is paid. These distinctions may not be of enough significance, however, to preclude a court from determining that the reimbursement scheme in A-3582 is merely an attempt to circumvent the uniformity requirement in Article VIII, Section I. Since Mr. Kennedy's letter to you contained a thorough discussion of the uniformity requirement, it will be assumed in this letter that, based on the distinctions enumerated above, the reimbursement scheme does not violate the uniformity requirement and we will proceed with an analysis under Article VIII, Section III, paragraph 2 of the State Constitution.

Section 2 of A-3582 requires a municipality to provide certain services within a qualified private community in the same fashion as it provides them along public streets. This provision raises the issue of whether providing services to benefit a private community violates the constitutional proscription against a political subdivision giving money or property to an individual, association or corporation. Article VIII, Section III, paragraphs 2 and 3 of the New Jersey Constitution provide:

Hon. Anthony Impreveduto  
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2. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation.

3. No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.

In Roe v. Kervick, 42 N.J. 191 (1964), the State Treasurer refused to deposit State funds authorized by statute for use as a loan to the New Jersey Area Redevelopment Authority to aid the poor through private agencies, alleging that the statute violated the constitutional prohibitions in Article VIII, Section II, paragraph 1 and Section III, paragraphs 2 and 3 against lending funds or the credit of the State or its political subdivisions in aid of an individual, private association or corporation. The court, finding the statute authorizing the loan constitutional, recited the history of those constitutional provisions and concluded "that they were enacted to retreat to a fundamental doctrine of government, i.e., that public money should be raised and used only for public purposes." Roe v. Kervick, 42 N.J. at 207.

In determining whether the provision of the State and local government loans to the private entities was constitutional under Article VIII, the court focused its inquiry on whether the statute authorizing the loans had a "public purpose" and, if so, whether the loaning of governmental funds was so consonant with the accomplishment of the public purpose as to be beyond the limitations on the use of public money laid down by Article VIII of the Constitution. Roe v. Kervick, 42 N.J. at 212.

If the aim of A-3582 is characterized as ensuring the uniform provision of certain fundamental services throughout a municipality, the Roe v. Kervick public purpose inquiry can be structured as follows: (1) Is the legislative requirement for the provision of certain services to a qualified private community a public purpose and, (2) if so, is the option of allowing a qualified private community to provide those services for itself and receiving a reimbursement payment from the municipality, representing the cost to the municipality of supplying the services, so consistent with the public policy of ensuring the provision of these services as to be beyond the limitations on the use of public money laid down by Article VIII of the Constitution?

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Roe v. Kervick offers guidance in determining what is a public purpose:

The concept of public purpose is a broad one. Generally speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government. Moreover, it cannot be static in its implications. To be serviceable it must expand when necessary to encompass changing public needs of a modern dynamic society. Thus it is incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare. Roe v. Kervick, 42 N.J. at 207.

The services listed in section 2 of A-3582, i.e., road and sewer maintenance, snow and ice removal, lighting and cleaning of streets, and collection of garbage and refuse, are generally agreed to be public purposes along municipal streets. The municipality has an obligation, being subject to liability in tort, to all of its residents and visitors to keep its property clean and in good repair. The benefit of these services to the residents living along the public streets and roads is secondary to the public purpose of keeping the roads and streets clean and safe for the use of everyone.

That public purpose rationale does not extend onto the streets and roads of a private community since the community is generally closed to foot and motor vehicle traffic from the rest of the municipality. In the case of a private community, the public purpose of keeping roads and streets clean and safe for the use of all municipal residents is secondary to the benefit of relieving the private community from the burden of maintaining private property, since most municipal residents are excluded from the private streets and roads.

If a private benefit is found to accompany the public purpose, the court indicated that the interests must be weighed:

We have said that an expenditure of public money is not to be condemned as unconstitutional because an incidental private benefit accompanies pursuit of the public purpose. Where such a double aspect is an accompaniment of a statute, courts seek the objective which is primary, and, for constitutional test, classify the purpose as public or private accordingly. Roe v. Kervick, 42 N.J. at 223.

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Hon. Anthony Impreveduto  
September 26, 1988  
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We believe that the primary benefit of a municipality providing the services listed in section 2 of A-3582 would be to relieve the private community of the burden of maintaining those aspects of its own property. The service for which the best case can be made that the primary benefit is to the entire municipality is the collection of garbage and refuse since, under a public health and safety rationale, that service can be said to protect all of the residents of the municipality from disease and vermin hazards.

If, for the purposes of analysis, we assume the constitutionality of a legislative requirement of municipal garbage and refuse collection along the streets of a qualified private community, Roe v. Kervick requires a further inquiry into whether having the municipality, in effect, pay the qualified private community to perform the collections violates the prohibition in Article VIII of the State Constitution against appropriating public money for the aid of individuals, associations or corporations.

The court in Roe v. Kervick said:

[T]he prohibition against lending credit or money does not mean that the State and its political subdivisions cannot buy and pay for what they need to achieve public purposes. Nor do they signify that governmental units cannot employ the services of a third person or corporation to do any lawful act which they have the right to have done, and to pay for it. . . . It seems to follow, therefore, that if the purpose of a statute be public, as it clearly is here, the means are restricted to the public end by the legislation and contractual obligation. Roe v. Kervick, 42 N.J. at 217.

The court found the nature of the relationship between the government and the entity receiving funds to be important in determining whether a public purpose is being served, and it condoned contractual relationships if, "by virtue of the contract, the private operator is so closely identified with accomplishment of the public purpose, and his business activity is so strictly pointed in that direction, that for practical purposes he represents the controlled means by which the government accomplishes a particular objective." Roe v. Kervick, 42 N.J. at 219-220. Therefore, a qualified private community assuming the burden of serving the public purpose of providing garbage and refuse collection services in return for payment from the municipality, furnishes a sufficiently substantial consideration to remove the transaction from the prohibition of Article VIII of the Constitution. See Roe v. Kervick, 42 N.J. at 220.

Hon. Anthony Impreveduto  
September 26, 1988  
Page 6

Section 3 of A-3582, although requiring a municipality to enter into a contract with a qualified private community to pay in lieu reimbursement for certain "public purpose" services that the community elects not to receive, does not require the qualified private community to either provide those services or to use the payments to provide the services. Since the requirement of these contractual provisions is absent in the bill, the element of governmental control over the means to accomplish the public purpose that the court in Roe v. Kervick found necessary is missing, thereby rendering the bill constitutionally defective.

We conclude that the definition of a qualified private community in A-3582 is broad enough to include commercial and office condominiums. The reimbursement scheme in the bill may be sufficiently distinguishable from a real property tax deduction or exemption so as not to violate the uniformity requirement in Article VIII of the State Constitution, but a court could focus on the underlying result of the bill and find the reimbursement scheme to be an unconstitutional attempt to circumvent the uniformity requirement.

We also conclude that a municipality may not provide services along the streets of a qualified private community unless the provision of those services is determined primarily to be a public purpose. The provision of services that relieve a private community from the burden of maintaining its property while providing little benefit to the entire municipality violates Article VIII, Section III, paragraph 3 of the State Constitution. If, however, a municipal service that is determined to primarily have a public purpose is provided to a qualified private community, then the municipality may enter into an agreement to have a qualified private community provide that service for itself in exchange for payments from the municipality, representing the cost to the municipality of providing those services, without violating Article VIII of the State Constitution.

Under these standards we conclude that A-3582 is constitutionally defective because the provision of the services to a private community listed in section 2 of the bill is not a public purpose which primarily benefits the municipality as a whole. If provision of these services were primarily a public purpose, the bill would remain defective because it does not require an agreement by the qualified private community to perform those services in consideration for the payments received from the municipality.

Very truly yours,

Albert Porroni  
Legislative Counsel

By: Robert H. Levin  
Robert H. Levin  
Deputy Legislative Counsel

AP:L/al

February 16, 1989

# Resolution of the Boonton Township Committee

R89-54 .

WHEREAS, legislation has been proposed in the New Jersey State Senate and Assembly, known as Senate Bill 2869 and Assembly Bill 3582, which would require municipalities to either provide or reimburse qualified private communities for certain municipal services; and

WHEREAS, the private roadways of such qualified private communities often do not meet municipal standards for streets; and

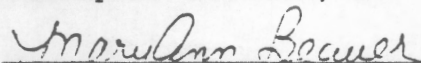
WHEREAS, the cost of providing or reimbursing for municipal services such as street lighting, maintenance of roads, snow removal, sanding, and garbage collection, would place a severe financial burden upon the municipality; and

WHEREAS, residents living on private roads and in private communities do so by choice.

NOW, THEREFORE, BE IT RESOLVED by The Township Committee of The Township of Boonton, County of Morris, and State of New Jersey, that the Township of Boonton hereby opposes S-2869 and A3582, and urges its Legislators to oppose the passage of this legislation.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Governor, members of the Assembly and Senate of the 25th Legislative District, the New Jersey State League of Municipalities, the Morris County League of Municipalities, and to neighboring municipalities.

I hereby certify the foregoing to be a true copy of a resolution adopted by The Township Committee of The Township of Boonton, at its meeting held February 16, 1989.

  
Mary Ann Beaver, Clerk  
Township of Boonton





# MUNICIPAL PLANNING BOARD

CITY OF OCEAN CITY, NEW JERSEY 08226

February 6, 1989

The Honorable Frank A. Lobiondo  
Assemblymen, District 1  
106 North Main Street  
Cape May Court House, NJ 08210

Dear Mr. Lobiondo:

RE: A-3582 (KELLY)/S-2869 ACA(PATERMTI)

The Municipal Land Use Law under N.J.S.A. 40:55D-2 states that it is the intent and purpose of the act to:

"encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development of the particular site."

The Ocean City Planning Board has abided with the intent and spirit of this legislation and approved several planned unit residential developments (PURD) with substantial design deviations from the requirements of the "BUILDING DESIGN AND SITE PLAN REVIEW" provisions of the Zoning Ordinance such as:

1. a reduction in the right-of-way widths;
2. deletion of street curbing;
3. the reduction of paving thickness of private streets;
4. bulk requirement variances;
5. open space and recreational requirements modifications;
6. the relaxation in performance and maintenance bonds;
7. waived additional access road requirement.

The strict adherence to the design standards were waived based on the applicant's argument that the (PURD) would be a private development, to be maintained by the private homeowners association, and never require public funds for its continued maintenance. The reduction in design standards were justified by the applicant based on the argument that the infra-structure facilities would only be used by the prospective residents and not subjected to free and easy access by all residents in the city as other municipal streets are.

The Honorable Frank A. Lobiondo  
February 6, 1989  
Page 2

Proposed legislation A-3582/S-2869 will effectively reverse all development agreements and burden the majority of taxpayers with the maintenance of substandard infra-structures in the (PURD) without enjoying the benefits of living in an exclusive planned community.

No municipal legislation under the Municipal Land Use Act can be retroactively applied. The Ocean City Planning Board can find no justification to introduce retroactive state legislation nullifying past land development agreements and is vociferously opposed to A-3582/S-2869.

Very truly yours,

*Michael Crowley*

Michael Crowley  
Chairman

MC:JRG:cor:3b

c Members of City Council  
League of Municipalities  
Council of Mayors  
PL6CD/PBLTR03 ML



HARTLEY DODGE MEMORIAL  
BOROUGH OF MADISON  
MADISON, NEW JERSEY 07940

593-3040

THIS LETTER SENT TO THOSE  
ON THE ATTACHED LIST.

January 11, 1989

Re: SENATE BILL 2869

Dear :

I have been asked by the Borough Council to express the Borough's opposition to Senate Bill 2869. This bill requires municipalities to provide the same municipal services to private self-contained communities as it provides to other property owners who live along public roadways. There are many reasons for the Borough's opposition to this legislation:

1. The private condominium complexes in Madison have developer agreements negotiated in good faith which spell out the responsibilities of each party. These agreements were a part of site plan approval. If negated, considerable costs for garbage, water, sewer, roads, street lights, sidewalks, curbs, trees and other services will be shifted to the other taxpayers of Madison.
2. Condominium owners purchased their homes knowing that association costs were to be assessed in addition to taxes. This knowledge effected market value and thus effected taxes. Therefore, it can be argued that taxes for these private communities are lower because of the additional costs for service.
3. The layout, design, size and type of facilities in these complexes do not lend themselves to municipal management. The width of the roadways, the type of materials used for curbing and sidewalk often cannot accommodate large garbage trucks and other municipal maintenance vehicles. The location of facilities for garbage, water and electric often does not allow access by the equipment use by Madison to serve other property owners. These designs were approved with the understanding that services were to be provided by the private association.

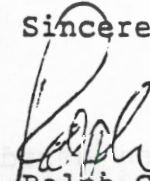
Madison Legislators

January 11, 1989

4. There are many profit making apartment complexes with similar design which will demand the same "free" service should this bill become law.
5. A final note: The bill gives great power to the condominium associations by allowing them to determine whether municipalities must reimburse them for costs incurred instead of providing the service. This language would put Madison at the mercy of these property owners.

It is my hope that you will take these concerns into consideration and oppose this legislation. Should you have any questions concerning Madison's position, please do not hesitate to call.

Sincerely,



Ralph G. Engelsman  
Mayor

JRA:al  
13/14L

Hon. John H. Dorsey

355 Route 46

Mountain Lakes, New Jersey 07046 Senator Dorsey\_

Hon. Arthur R. Albohn

80 South Jefferson Road

Whippany, New Jersey 07981 Assemblyman Albohn\_

Hon. Rodney Frelinghuysen

10 Park Place, Room 208

Morristown, New Jersey 07960 Assemblyman Frelinghuysen\_

Hon. John

355 House

Mountain

Hon. Arthur R.

85 South Jefferson

Windsor, New York

Robney R.

Bank Place

Windsor, New York

TO: Members of the Assembly Municipal Government Committee  
FROM: Mayor and Council of the Town of Secaucus  
RE: March 8, 1989 Public Hearing, Assembly Bill No. 3582

---

Having been advised of the above-captioned hearing on Assembly Bill No. 3582 requiring municipalities to either provide specific municipal services to "qualified private communities" or to reimburse these "communities" for said services, the Town of Secaucus wishes to make known to the members of the Committee the serious concerns of the Mayor and Council regarding the adverse impact upon our municipality which would result from enactment of this bill as well as certain constitutional prohibitions which appear to compel rejection of bill.

Secaucus is one of the thirteen constituent municipalities within the Hackensack Meadowlands District, but unlike many other HMD municipalities, the larger portion of Secaucus lies within the HMD boundaries. As a result, zoning and planning determinations for those large areas of Secaucus within the District fall under the mandate of State legislation and are made by a State agency with local authority over developmental approvals.

The HMDC has granted approvals for the development of various residential condominium subdivisions in the Town, as well as numerous commercial subdivisions, capable of conversion to condominiums, cooperatives or other horizontal property regimes, which potentially fall within the definition of "qualified private communities". The bill would require the provision of municipal services or alternatively for reimbursement of service costs by the municipality.

Under specific provisions of the original subdivision approvals and as conditions thereof, and also under the subdivision general plan approvals by the HMDC for various condominium development, there were express findings, and requirements by the HMDC as well as undertakings by the developer/sponsor that the service costs, which are now the subject matter of this pending legislation, were to be borne in perpetuity by the developer/sponsor, and/or subsequent owners as their successors in interest in the land.

This was consonant with an express legislative mandate of the Hackensack Meadowlands Development Act and implemented under the Commission's Master Plan to provide for an orderly regional development of the District, which would neither burden nor drain the resources of local governments by imposing too great a demand on governmental services.

Due to the developer's desire to create distinct residential condominium communities with a high degree of exclusivity and security, entry to and exit from certain of these communities could be gained only by passing a guard house. Travel through the communities are via a network of private roads within the condominiums. These features remain expressive of the intent of the current condo associations to retain these district characteristics of their condominiums and their unwillingness to dedicate their streets to the municipality or to public use.

In many instances, the construction standards and specifications for curbing, roadways, water piping, storm sewers, sanitary sewer and lighting in the condominium subdivisions may differ from the standards applicable to a more conventional subdivision, thus making it more difficult for the Town to fulfill obligations of providing various governmental services than would otherwise be the case. These variations from standards would raise a host of difficulties for a municipality obliged to repair and maintain. The municipality would have no knowledge of the specifications of the developer or the required methods for or consequences of repair work to be undertaken. There is notably an inherent danger for the repairing municipality to find itself subject to liability for damages to persons or property as a result.

The municipal street repairs and infrastructure maintenance in these areas would not only be more difficult due to differing specifications and standards, but even assuming no such inherent logistical problems, street repairs would add hundred of thousands of dollars of cost to the municipal budget plus untold future capital investment for infrastructure maintenance. Not only would this be in direct contravention to the original HMDC approvals upon which development was premised, but would be manifestly unfair to the Town as a whole.

Large portions of our municipality have been developed for commercial uses under HMDC approvals conditioned upon retention of ownership of private roads by the developers/owners and the provision by them of all services for the commercial areas, including road and infrastructure maintenance, in lieu of municipal services.

Since, as noted by the annexed September 26, 1988 letter of the Office of Legislative Services, a "qualified private community" has been defined in a broad manner sufficient to

include commercial or office uses, it is possible that conversions by owners to condominium or cooperative commercial uses may occur subsequent to an enactment of this bill. The scope of potential fiscal impact upon our community of such commercial conversions may thus be greater than would be the case in other municipalities throughout the State.

The underlying fiscal premise of the HMDC planning upon which most of the developments within Secaucus have been based would be negated by the passage of this legislation permitting inclusion of commercial uses within its scope.

The Town is currently the defendant in a Superior Court action brought by two condominium associations seeking that the municipality to provide routine collection of garbage or reimbursement to the members of the associations for that portion of property tax equal to the cost of garbage collection services or, alternatively, reimbursement to members equal to the cost of private garbage collection.

In this litigation, Secaucus contends that the relief sought by the condominium associations is barred by Article VIII, Section III, paragraphs 2 and 3 of the New Jersey Constitution, which prohibit the use of government funds to benefit an individual, association or corporation and is barred by the uniformity requirement of Article VIII, Section I, paragraph 1. The Town also asserts that the provisions of N.J.S.A. 40:67-23.1 bar the relief sought where the access to the condominium communities' private roads is via passage through a guard booth. This system excludes most municipal residents from use of these private streets.

Although N.J.S.A. 40:67-23.1, as amended in 1983, permits municipal discretion in the provision of certain specified services along private streets, these services may be provided by the municipality only where circumstances of sufficient public use of the private streets justify the expenditure of public funds.

In the annexed September 26, 1988 letter to Assemblyman Anthony Impreveduto from the Legislative Counsel to the Office of Legislative Services, that office finds that Bill No. 3582 is prohibited under the holding of Roe v. Kervick, on grounds similar to the defenses in the current legal action against our municipality.

The fatal feature of the legislation now under consideration arises from the reimbursement scheme inherent in the bill which authorizes the use of public funds for private purposes and therefore violates the prohibitions of Article VIII, Section II, paragraph 1 and of Section III paragraphs 2

and 3 against the lending of funds or the grant of credit of political subdivisions of the State in aid of an individual, private association or corporation. To restate the proposition in plain language, the bill is unconstitutional because it violates the prohibition against the utilization of public funds for private purposes.

The bill would place a improper and unfair burden upon municipalities containing private communities, where the public is barred from access or entry to the private community. This exclusivity and exclusion is in fact the premise upon which many of these residential were planned and constructed and which is part of their reason for being.

It does not behoove the State legislature to burden the citizenry at large with financial burdens of the private choices of those who choose that level of exclusivity.

If the question were posed to this committee, for example, as to whether all the taxpayers and citizens of West Orange were to bear the cost of services and of maintenance and repairs to the private community of Llewellan Park, the answer would be a resounding no. This would be, however, the inevitable effect of the enactment of the provisions of this bill.

In 1964, the New Jersey Supreme Court in rendering its opinion in Roe v. Kervick at 42 N.J. 191, at page 207 delineated the relationship between Article VIII of the New Jersey Constitution and the fundamental governmental principle that public funds should be raised and utilized only for public purposes.

The Court by Justice Francis opined as follows:

The strictures of Article VIII, which were adopted in 1875, were simply the retreat to a fundamental doctrine of government, i.e., that public money should be raised and used only for public purposes. The article brought the doctrine into the organic law and thus established as basic policy a prohibition against lending the credit of the State directly or indirectly, or loaning, giving or donating its money or property or that of its subdivisions to or for the use of an individual, association or corporation for private purposes....

The concept of public purpose is a broad one. Generally speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government. Moreover, it cannot be static in its implications. To be serviceable it must expand when necessary to encompass changing

public needs of a modern dynamic society. Thus it is incapable of exact or enduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare.

In general when rendered on public roadways or streets, the services set forth in Section 2 i.e., road service and waterline maintenance, street lighting and garbage collection are public purposes. The specific benefit to residents along these roadways and streets is in large measure only by product of the primary public purpose of maintaining these thoroughfares in a safe and sanitary condition for the use of the public.

However, when these services are employed in a private community, generally not accessible to public traffic from the balance of the community, any public purpose becomes secondary to the private benefit which is to relieve the private community from the responsibility of maintaining its own private property. As a result of the exclusion of most residents of the municipality from private roadways and streets, the general public purpose rationale becomes inapplicable.

As the Court indicated in Roe v. Kervick at page 223, if a private benefit of legislation is found in conjunction with a public purpose, the relative significance should be evaluated and balanced to determine which benefit is primary.

Where such a double aspect is an accompaniment of a statute, courts seek the objective which is primary, and, for constitutional test, classify the purpose as public or private accordingly.

It is our contention and belief that the preeminent benefit resultant from the provision of municipal services set forth in A-3582, Section 2 would be to relieve the private community from the responsibility for private property maintenance which would be shifted to the municipality, despite only limited and secondary benefit to the general public. Under the test set forth in Roe v. Kervick, we believe this to be unconstitutional.

January 24, 1989

RESOLUTION OPPOSING SENATE BILL 2869  
AND ASSEMBLY BILL 3582

WHEREAS, legislation has been proposed in the New Jersey State Senate and Assembly, known as Senate Bill 2869 and Assembly Bill 3582, which would require municipalities to either provide or reimburse qualified private communities for certain municipal services, and

WHEREAS, the private roadways of such qualified private communities often do not meet municipal standards for streets, and

WHEREAS, the cost of providing or reimbursing for municipal services such as street lighting, maintenance of roads, snow removal and garbage collection would place a severe financial burden upon the municipality;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Parsippany-Troy Hills, in the County of Morris and State of New Jersey, that the Township of Parsippany-Troy Hills hereby opposes S-2869 and A-3582 and urges its Legislators to oppose the passage of this legislation, and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Governor, members of the Assembly and Senate of the 26th Legislative District, the New Jersey State League of Municipalities, the Morris County League of Municipalities and to each of the municipalities of Morris County, in each case urging their opposition for these pieces of legislation.

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND  
LAWFUL COPY OF A RESOLUTION ADOPTED BY THE  
TOWNSHIP COUNCIL OF THE TOWNSHIP OF PARSIPPANY,  
TROY HILLS, COUNTY OF MORRIS, STATE OF NEW JERSEY  
AT ITS MEETING OF Jan. 24, 1989

Joel I. Silver  
JOEL I. SILVER, TOWNSHIP CLERK



MAYOR  
William H. Williams  
TOWNSHIP COMMITTEE  
Dorothy H. Avallone, Deputy Mayor  
Clare M. Farragher  
James M. Mayor  
David P. Segal

TOWNSHIP OF  
**FREEHOLD**  
NEW JERSEY

MUNICIPAL PLAZA • SCHANCK ROAD, FREEHOLD, N.J. 07728-3099  
(201) 462-7900 • FAX (201) 462-7910

L. STANLEY STIRES, P.E., L.S., P.P.  
TOWNSHIP ENGINEER  
DIRECTOR OF PUBLIC WORKS

March 8, 1989

New Jersey Municipalities  
407 W. State Street  
Trenton, NJ 08618  
Attn. Chris Carew  
Fax 609-695-0151

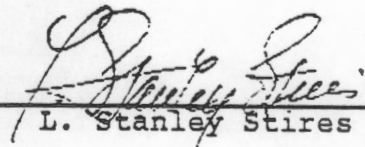
Chris:

Forwarded Municipal Engineers Resolution dated December 7, 1988.

"Municipal Services: Extension/Reimbursement"

Please represent our interest today at the hearing.

Thank you,

  
\_\_\_\_\_  
L. Stanley Stires

LSS/jc  
enc.  
cc: Leon Avakian  
Art Vitale



RESOLUTION  
MUNICIPAL SERVICE: EXTENSION/REIMBURSEMENT

Concerning: public service extension and/or reimbursement to qualified private communities for costs associated for certain municipal services not provided.

WHEREAS the New Jersey Society of Municipal Engineers, Inc., wish to express certain concerns regarding pending legislation

Assembly No. 3582 introduced July 11, 1988

by Assemblyman Kelley

Senate No. 2869 introduced September 19, 1988

by Senators Paterniti, Costa, etc.

that may not be of general knowledge to the legislator, public or private resident, and;

WHEREAS it is deemed in the public interest to disclose these concerns, the following information is offered as constructive comment:

1. Would the reimbursement include extension of public insurance liability into private communities for performance or lack of performing public services?
2. Recent "private" residential developments were granted major waivers from municipal requirements with the plea of moderate housing costs. These waivers took the form of reduced pavement design, roadway widths, sidewalks, drainage and increased density.

Under the guise of cost savings, public utilities were granted waivers from standard locations and permitted to meander/intermix with strictly private responsibilities.

-2-

3. Substantive design waivers were granted where major residential complexes were constructed without benefit of roadway frontage and public access through a maze of "parking lots" and dumpster areas.
4. The recent rental apartment conversion to condos presents a full spectrum of public deficiencies oriented to the "parking lot" concept including garbage collection and street lighting.
5. The cost of public recreation facilities is underwritten by all the residents with free access to same. Public funds to support "private" recreation facilities which prevent public use would be excluded.

It is further recognized that the terms and extent of "public services" varies from community to community and that the intent of the legislation is to extend those services common only to that specific community.

The required ordinance procedure to record the public obligation is to be commended. It is recognized as the only procedure that will assure proper record management.

WHEREAS the New Jersey Society of Municipal Engineers, Inc., recognizes the public benefit of dedicated infrastructure elements and therefore recommends:

1. A request for extended public services must be founded on public dedication of infrastructure elements of public interest comparable to the communities standards and shall include but not limited to road systems, public storm sewer mains, water and sanitary mains, and detention basins where public access is assured.

Not included is driveway/access and parking lots; storm, water and sanitary sewer laterals and pavement repair/services associated therewith.

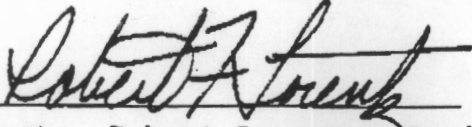
- 2. Reimbursement for costs as deemed appropriate for non dedicated elements shall also exclude those elements excluded from public dedication.

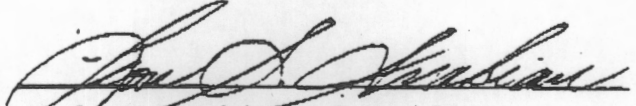
NOW THEREFORE BE IT RESOLVED by the New Jersey Society of Municipal Engineers, Inc., that the state legislature and general public be noticed of our concerns and;

FURTHER that the organization/management of this legislation be founded on the public hearing procedure required by ordinance upon advice and counsel of the Municipal Engineer.

The resolution shall take effect immediately and shall be distributed accordingly.

Adopted: DECEMBER 7, 1988

  
 Attest: Robert Lorentz, Sec'y

  
 Leon Avakian, President

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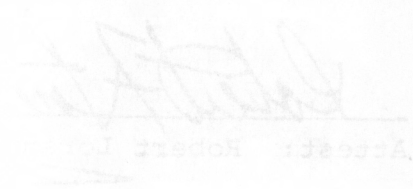
Approved: DECEMBER 1953



President



Secretary



Robert J. ...

