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# *Public Hearing*

before

## ASSEMBLY TASK FORCE TO STUDY HOMEOWNERS ASSOCIATIONS

*“Information for the study of homeowner associations  
and common interest property ownership under New Jersey law”*

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**LOCATION:** Edward Nash Theater  
Raritan Valley Community College  
North Branch, New Jersey

**DATE:** January 16, 1997  
7:30 p.m.

### **MEMBERS OF TASK FORCE PRESENT:**

Assemblyman Christopher “Kip” Bateman, Chairman  
Assemblyman Guy R. Gregg  
Assemblyman John Wisniewski  
Wendell A. Smith  
A. Christopher Florio  
Phyllis A. Matthey  
Stephen M. Dahl  
Bruce D. Blumenthal  
James H. Robinson  
David Herzfeld

### **ALSO PRESENT:**

Joyce W. Murray  
Office of Legislative Services  
Aide, Assembly Task Force to  
Study Homeowners Associations



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

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## TABLE OF CONTENTS

	<u>Page</u>
David Ramsey, Esq. President New Jersey Chapter Community Associations Institute	4
Betty Romyns Private Citizen	9
Emilia A. Bizzoco Concerned Homeowners of Cambridge Manor Association	14
Mark Hartman Member Board of Trustees Signal Point Neighborhood in Hills	17
Larry Forni Private Citizen	19
Thomas Junis President Board of Trustees Winding River Village Association	22
Jerry Darby Private Citizen	23
Suzanne Lauricella Private Citizen	26
Robert E. Carrigan Private Citizen	28
Paul Weissler Private Citizen	34
James Bevere Private Citizen	40
Dante Allario	

## TABLE OF CONTENTS (continued)

	<u>Page</u>
Private Citizen	48
James J. Herlihy Jr. Private Citizen	50
John Patrick Rosney Sr. Member Board of Trustees Beckett Association	50
Edward R. Hannaman Alternative Dispute Resolutions New Jersey Department of Community Affairs	56
Haim BarAkiva Private Citizen	60
James J. McAloon President Board of Trustees Fairway Valley Community Association	62
Victor Steiner President Board of Trustees Hills Village North Master Association	64
Barney Judach Private Citizen	66
Lucinda J. Choquette Private Citizen	67
Greg Machyowsky Private Citizen	70

## TABLE OF CONTENTS (continued)

	<u>Page</u>
Suzanne Vahala President Board of Trustees The Commons at Lebanon	79
Bill Barr Private Citizen	85
Andre de Garneau Private Citizen	87
<b>APPENDIX:</b>	
Position paper submitted by David Ramsey, Esq.	1x
Letter plus attachments addressed to The Honorable Guy Gregg submitted by Betty Romyns	14x
Letter plus attachment addressed to Assembly Task Force to Study Homeowner Associations submitted by Emilia A. Bizzoco	26x
“Proposal for Creation of Legislative Task Force” submitted by Jim Bevere	38x
Letter plus attachments addressed to State of New Jersey Legislative Assembly Sub Sec. Homeowner Associations submitted by John Patrick Rosney Sr.	47x
Letter plus attachments addressed to Christopher “Kip” Bateman, Chairman submitted by Haim BarAkiva	78x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued):**

#### **Page**

Letter addressed to  
Ms. Joyce W. Murray  
submitted by James J. McAloon

91x

Letter plus attachments addressed to  
The Honorable Christopher Bateman  
submitted by Lucinda J. Choquette

93x

Letter addressed to  
Assemblyman Christopher Bateman  
submitted by Phyllis Spiegel

100x

Letter addressed to  
Assembly Task Force  
to Study Homeowners Association  
submitted by John Mayerski

102x

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**ASSEMBLYMAN CHRISTOPHER “KIP” BATEMAN (Chairman):**

Good evening. My name is Kip Bateman and I am Chairman of this Assembly Task Force. First, let me thank you all for coming out tonight.

We were appointed, roughly, about a year and a half ago, and our assignment was to take a look at -- our mission actually was to take a look at the existing laws governing condominium associations and to take testimony and make recommendations where we see fit on whether we can make the laws better. There has been some problems with condominium associations around the State, and the Speaker established this Task Force in the hopes that we can have public hearings around the State, take testimony from you, and come back with some recommendations, and hopefully have some meaningful legislation.

Now, what I'm going to ask you to do is -- we're here to listen to you. I would like you to sign in -- some people have already signed in. I'm going to call their names in a minute, but we are here to listen to you not to really answer questions -- to get as much information as we can tonight to take back to Trenton.

This is probably the third of a series of six or seven of these hearings we are going to have around the State, and thus far, they have been very well attended, and I think they have been very beneficial. I think last month or two months ago we were down in Ocean County. It was extremely helpful, the information we received there.

So we are here to listen to you. Tonight, I'm going to ask the Task Force members to introduce themselves. Starting to my right, my colleague.  
Assemblyman.

ASSEMBLYMAN GREGG: Thank you.

Are we on here? (referring to microphone)

ASSEMBLYMAN BATEMAN: Yes, I think you're on.

ASSEMBLYMAN GREGG: Thank you, Assemblyman Bateman. My name is Guy Gregg. My district is District 24 and that District is just north of us. We have northern Hunterdon County starting at about Route 78, working its way up to Western Morris County, dealing with the Chesters, Long Valley, Mount Olive, Netcong, and then encompassing all of Sussex County.

I look forward to listening to your comments this evening, and it's nice to be down in Raritan Valley College tonight.

MR. HERZFELD: My name is David Herzfeld. I live in Mercer County. I'm President of a condominium association down there, so I am familiar with a lot of your concerns and issues.

MR. DAHL: I am Steve Dahl, Vice President and Chief Legal Counsel with K. Hovnanian Companies. I live in Bridgewater.

MR. FLORIO: My name is Chris Florio. I am a lawyer with the Mercer County law firm of Stark and Stark. I practice exclusively in the community associations.

MR. BLUMENTHAL: I'm Bruce Blumenthal, the President of the Wood Duck Pond Neighborhood Association in Bedminster, New Jersey, and I'm eager to hear your testimony tonight.

MR. SMITH: I am Wendell Smith, the attorney member of the Task Force. I practice law in Woodbridge. I live in Monmouth County and represent both associations and developers, and I am anxious to hear both points of view.

MS. MATTHEY: I am Phyllis Matthey. I'm from Edison. I'm a property manager, past president of my own town house community, and a Realtor. I'm also President of the Coalition of Associations for Political Action.

ASSEMBLYMAN WISNIEWSKI: I am John Wisniewski. I am the Assemblyman from the 19th Legislative District, which is in Middlesex County, representing five communities: Sayreville, Woodbridge, Perth Amboy, Carteret, and South Amboy. I am very interested in hearing what you have to say tonight.

MR. ROBINSON: My name is Jim Robinson. I am the Chairman of a town house development in Sayreville, which is Assemblyman Wisniewski's District. I am a former director of CAPA.

ASSEMBLYMAN BATEMAN: Thank you.

Let me just add, if by chance you have additional information that you would like to submit to us in writing later on, we would welcome that. You can send it to my legislative office.

I happen to represent most of Somerset County and one town in Morris County. My Legislative Assistant is here, Debbie Joran, and Glen Beebe from the Assembly Majority staff is here also.

We welcome your input. If you don't want to testify and just like to submit it, that's fine. We've received a number of letters already and we welcome your information.

So I'm going to ask now that if you would like to speak to sign up, but I have a list that I would like to call.

Is Dave Ramsey here?

Dave, would you like to testify?

**DAVID RAMSEY, ESQ.:** Yes, I would. Thank you.

ASSEMBLYMAN BATEMAN: And again, I'm sorry, I just need your name and your town for the record.

MR. RAMSEY: Good evening, my name is Dave Ramsey. I'm an attorney. I practice in Morristown, New Jersey, and I am the President this year of the New Jersey Chapter of the Community Associations Institute. The community associations Institute is a national organization. The New Jersey Chapter has about 1100 members, 650 approximately of which are Community Associations.

I have a position paper prepared on behalf of CAI, and I will submit that, Assemblyman Bateman, to your staff and hopefully save some time with regard to my remarks this evening.

I would, however, like to highlight a couple of things that are in the position paper. The main point of CAI that we would like to bring to the Task Force is to recommend to the Task Force legislation that is currently pending before both the Senate and the Assembly known as the Uniform Common Interest Ownership Act.

Over the last several years there has been an effort to draft legislation that is specific to New Jersey, but that is based upon the Uniform Common Interest Ownership Act, otherwise known as UCIOA.

UCIOA is a bill that is drafted by the Uniform Commissioners. There are many other Uniform Acts; probably the one that you might be most familiar with is the Uniform Commercial Code. It is the same group who have drafted this particular bill. We believe that UCIOA is a real benefit, and I would like to just tell you why and what it offers to the State of New Jersey.

Right now we have, in the State of New Jersey, the Condominium Act. That is literally the only substantive form of legislation that now exists with respect to community associations. There is no substantive legislation currently in New Jersey with regard to town house associations, general home owners associations, cooperative associations, or any other form of associations other than condominiums. That has presented a number of problems and continues to present a number of problems.

UCIOA deals with that issue by providing a structure, a framework for every type of community association that literally exists within the State of New Jersey. UCIOA brings into play legislation that is, in some ways, similar to the Condominium Act, although, we think an improvement over the existing Condominium Act.

The existing Condominium Act is approximately a quarter of a century old. It does not bring into play more modern concepts with respect to community associations. We have seen over the last couple of years problems as a result of there not being modern legislation for community associations.

Most recently, we've seen the problem that came about as a result of the lack of a power to impose fines or have late charges, and the Legislature dealt with that with respect to condominiums this past summer. However, there is nothing dealing with respect to the right to impose late charges or fines with respect to other types of community associations. They are just left out in the cold at this point, and there is no way of knowing for sure what their powers or rights are. UCIOA deals with that.

Transition: transition is that process whereby the unit owners take over from developer control. It's a process that has largely grown up in New

Jersey by custom. There is a little bit of statutory material with respect to it that mostly deals with when must the developer transfer control of the governing board to the home owners. That's basically all there is in terms of regulatory or statutory material that deals with transition.

UCIOA deals with that with regard to all types of associations. Importantly, UCIOA provides a framework for having a staged transition. The reason that's important is we have seen over the last several years, particularly when you have a larger project that will go through a downturn in the economic cycle, there is no way to obtain the transfer of control, and there is no way to deal with the problems of defects in the common elements, or the common properties, until you have reached 75 percent of all units being conveyed. Not surprisingly, when you have a project that takes years to reach that 75 percent level, there are problems if you wait until that point in time to deal with the defects in the common elements, or the common properties. UCIOA deals with that by allowing a phase transition -- and I won't spend a lot of time talking about how that's dealt with because it is in the position paper that we have presented, but we think that's a real step forward in the existing status of the law.

Going hand in hand with that, there is a continuing issue about what we call successor liability. What happens when you have a developer who goes bust while a project is ongoing? How do you deal with that particular problem? What happens when a successor developer comes in? Is that successor developer responsible? That might discourage successor developers. It's good to have successor developers come in and finish out a project. What happens when a bank takes over a project? Is the bank responsible? UCIOA

puts that all in order and tells you when a bank is or is not responsible, when a new developer is or is not responsible for the sins of the prior developer. We think that's a step forward.

UCIOA deals with disclosure issues, and particularly with disclosure issues -- not so much with new developments because we already have the Planned Real Estate Development Full Disclosure Act that deals with that issue for developers, but disclosure for resales. One thing I see as an attorney who practices in this area is a problem when an existing owner of a unit sells a unit to a new buyer who doesn't have a public offering statement when they come in and who doesn't know what the rules are of the community when they come in. UCIOA attempts to deal with that by requiring each seller to provide a disclosure statement -- essentially with a disclosure statement to the new buyer and to tell that buyer about certain financial matters in the association and to tell that buyer what the rules are coming into the community.

Are you allowed to have pets or are you not allowed to have pets. Many of us have seen situations where buyers come in and say, "Well, we were told it was okay to have a dog," not knowing that it wasn't okay to have a pet in that particular community, and then be very disappointed and very disheartened to find out that they can't keep a pet. And that's the whole reason they bought a unit in that particular community.

So UCIOA tries to address that by making sure that buyers coming into a community know the basic rules, know the financial status, know what the insurance requirements are for a particular community. That doesn't exist in any form of ownership currently in the State of New Jersey.

UCIOA also deals with fines and late charges for all types of communities, not only for condominiums. And we've tried to track the recent legislation that was adopted this past summer, so it's consistent with what the Legislature just went through with respect to condominiums.

We also have language in the UCIOA bill dealing with an assignment of rents provision. We find, or we have found, many of us who practice in this area, that when you go through an economic downturn investors frequently do not pay their share of the common expense assessments even though they have their units rented. UCIOA deals with that by not allowing an investor to take advantage of the common elements in the association and rent their unit and have their tenants take advantage of the tennis courts, the swimming pool, etc., etc., etc., but have the investor not pay the common expense assessment. That's another provision of UCIOA.

Perhaps as important as anything else, UCIOA contains numerous default provisions. That is, if your documents don't speak to particular issues, UCIOA has provisions that fill the gaps. So, if you don't have insurance provisions that should be in the documents, UCIOA has default provisions. If you don't have other particular provisions that deal with very important issues within community associations, UCIOA steps in to fill those particular gaps. UCIOA allows existing associations, if they choose, to opt into UCIOA. Now, if they don't want to, if they want to have what they currently have, UCIOA allows that flexibility to allow associations to choose to stay under existing law. It allows existing associations to opt in, and thereby fix problems that they might have with their documents by taking on the default provisions in UCIOA.

In conclusion, I simply recommend to the Task Force that they take an opportunity to take a look at the UCIOA bill, consider the many benefits that are there, and join in the recommendation that UCIOA is a real advantage to the State of New Jersey and is a step up and may help many existing community associations.

Thank you for your consideration, and I appreciate any thought you can give towards the UCIOA bills. Thank you.

ASSEMBLYMAN BATEMAN: Thank you very much, Dave.

Our next speaker is Betty Romyns. Is Betty here?

**B E T T Y R O M Y N S:** Mr. Chairman and Task Force, thank you so much for hearing me tonight. My name is Betty Romyns and I'm very short, so I don't know if you can hear me. Can you hear me all right? (affirmative responses) Okay, great.

I live in the Township of Montague, in the County of Sussex, in what was the very first condominium project in the State of New Jersey. I am glad to be able to speak to you today to have you understand a few of the problems that have existed over a period of 34 years.

We are not new, we're old. We've tested the temperance of what has happened, what can happen, what is continuing to happen, the downside, the upside. I have submitted a report, which you will receive, that will outline the basic history of my community -- the troubles it went through -- and tonight my speaking with you is going to be short and direct. I hope that you will be able to read the case history and take the time to understand it.

The number one issue, and I have four of them, that I find is the most important in either a condominium situation or a private community -- and these are some of the things that have happened.

I noticed that the gentleman before me just spoke of foreclosure. We lived through that, and it was judged in a court of law on opinion. We don't have laws. We still don't have proper laws.

So let me start with, first, which has already been repeated, buyer beware. It's an old law, but I think what the consumer needs to do and what we need protection on -- and this is a consumer protection subject -- is that the consumer needs to be told, not by the association, not by the condominium association at all -- it should be told to them on disclosure. That comes either with their attorney or with their salesperson, real estate agent, or seller, that a written notice be handed to them prior to closing, not after closing.

And if I may, I'll read this to you very quickly. Buyer beware: Most, if not all, buyers in private communities do not know what cost, lifestyle, or future cost will be expected from them. Legislation solution: Full disclosure in writing describing how private communities operate. I notice that laws and assessments are subject to change at any time at the discretion of the Board.

And secondly, show that you are buying into a deed -- a restricted deed, and owners may not use the property in the way they may think they can. Now, you have got to remember, in most of these associations, those bylaws change at the change of the guard. So what you're buying into today may not be what you're going to get tomorrow, next year, or the year after. I have lived through it. I have lived in this condominium association for 11

years. I am witness to the fact that these laws change on a yearly basis, if not more.

The second issue is security. We lived through, also, that part in our community. When you get a security service to monitor your roads, it's fine. This is good as far as people feeling comforted in knowing that their streets or their area is being secured, but it also can work in the reverse. If you have a corrupt Board or you have a corrupt organization, which can happen, that same security force can be an invasion into your home, into personal matters, and work against you.

If I may, security or security enforcement of rules and regulations: Most private communities have some form of security service. Used properly they serve your residents; used improperly they can dictate an assault. Solution: We need legislation to restrict the powers of private security services. No private security service should have the ability to fine, harass, or secure private information or bully a community. Only police should have the power to police and enforce the laws in any street or condominium area. Only the police have the right to protect the laws of this State, not a private security force that is untrained and unknowledgeable in police work.

The third item is something we have, in fact, in tact. It's called the Open Meetings Act. We all know what that is. Many of these private communities and private associations have meetings behind closed doors that the home owners are unaware.

If I may, Open Meetings Act: Residents of private communities do not have notice of private meetings of boards that control the communities or the availability of requesting information. Too often, new bylaws are

changed, assessments are increased, large capital expenditures decided without community involvement. Solution: Adopt the Open Meetings Act to all condominium associations. We do live in the State of New Jersey. Just because we live in a private community does not alienate us from living in America and in the State of New Jersey. The same laws that apply to the State of New Jersey should apply to wherever you live in this State. This is ridiculous.

If I go into Shop Rite and I buy a quart of milk, I know that milk is protected and I have consumer protection. I know that a lot of people say, "Well, who told you to buy in a private community? That's what you wanted, that's what you got." Your townspeople can't help you. Your Legislature can't help you. We are prisoners in this association in many ways, prisoners, because we do not have protection.

The third (sic) thing, the right to vote. Certainly, this is the American way. Private communities should have the right to operate democratically. Some developers have used current measures in operation to milk community members. Some have budgets larger than the township in which they reside. Solution: Legislation should provide for democratic operation to prevent corrupt developers from controlling community financing. Most private communities work under a corporate stock that you buy shares into that corporation, and in effect, what you get is, if you own, say one unit, you get one vote. If you own ten, you get ten votes. If a developer, in fact, owns one hundred fifty, he's got one hundred fifty.

In the case of High Point Country Club, because of bankruptcy and the decision in the court, the judge saw that it was fit to give the developer

40 percent, no matter how much stock he owned. And over a period of years, hopefully that stock would diminish as the development finally got finished.

Well, it's been 34 years, ladies and gentlemen, and we are no further today than the day we walked into that courtroom to get democratic vote. We are no further today in solving the problems of this community.

The judge looking at this case felt that the bank, the receiver of this community, because of bankruptcy, was the most secure area to keep the community. Solve it? Not so. The bank wrote us off as "forget it, we're getting out of this investment." Three years of substantial loses, the bank said no more. Where are we now? We got a new developer that came in and he has the majority of the vote. If every single home owner voted, he could not outweigh that vote. It's a 60 percent to 40 percent. What does that mean? We can't pick our Board, we can't pick our budget, we pay and we pay. I'm looking for help.

My community is now in the process of passing a petition. In that petition we are requesting you, our legislators, to please take this. Most of what we are asking for exists. It's already there. We don't have to reinvent this wheel. All we have to do is you have to adopt what applies to everyone else in this State to us.

Thank you very much.

ASSEMBLYMAN BATEMAN: Thank you.

I see that we have approximately over 20 speakers. I'm just going to ask, in the first round, just to try to keep it to five minutes or less, and if you have more to say, you can come back a second time, or if you want to submit addition written material after the hearing, you'd be more than

welcome to. I just want to give everybody an opportunity to speak this evening.

The next speaker is Emilia Bizzoco.

**EMILIA A. BIZZOCO:** I have some paperwork I would like to submit to the Task Force, but I would like to just read my covering letter.

First of all, in the paperwork it reiterates many things that this young lady has just spoken about.

As condominium home owners, we appreciate the opportunity to be part of your public hearing this evening. We at Cambridge Manor Association, in Middletown, New Jersey, are faced with many problems that have been unsolvable due to apathy in the community, apathy that is a result of a Board of Trustees that has promoted limited home owner involvement for the past eight years. Even though there are concerned home owners on the Board, at the time, we were the minority and overruled. Committees and newsletters were established then banned because of possible concern for legal ramifications promoted by the Board President.

Unfortunately, this past year we found ourselves faced with a major financial problem: a roof replacement project that depleted our reserves and put us in debt, for still, an undisclosed amount, as well as a bank loan for which we have yet to receive any type of information in writing or otherwise. Since we were only privy to hearsay, last October a group of home owners started a petition to have a special meeting to ask for the Board of Trustees resignation before our community becomes totally unsalvageable. We have received over 50 percent of the community's signatures. We only needed 25 percent per our master deed. The Board of Trustees would not comply, using

stalling and threatening tactics. A group of us found it necessary to retain legal counsel and had to take the Board of Trustees to court at our own expense to accomplish what we are supposedly guaranteed by our master deed and bylaws. The special meeting was granted by the judge. The Board scheduled a meeting for December 4, the week after Thanksgiving; unfortunately, we did not win the vote, but we were able to at least present our case. The home owners are now aware, the Board of Trustees are now on notice.

As of today, the only benefit realized is increased communication to the home owners. A lot of paper has been received, but we still do not know the true facts about the extent of our debt.

Following, I'll submit the copy of our presentation for your review. It states the facts as we see them. What we need is to know what are our rights. We did what we had to do to retain a lawyer, to have the meeting; we complied with the requirements of the master deed. What recourse do condominium home owners have if the Board of Trustees will not perform their fiduciary responsibilities? It seems that master deeds and bylaws protect the Board of Trustees, not the home owners.

The Board of Trustees has the association's money and insurance coverage to protect them. The State needs to enact Legislature (*sic*) to protect the home owners and their investment. Following are some suggestions which could help alleviate some of our frustrations.

Board of Trustees should be compelled to have some form of training in condominium and State laws. They should also be held personally responsible for their actions, expecting to be fined if they are proven to act outside the master deed. Master deeds should follow certain criteria

established by State Legislature (*sic*) that will provide protection for the home owners. One major concern is finances. Financial committees should be a requirement to assist the Board with investments, as well as expenditure recommendations. Home owners should be a part of all major decisions.

Terms of office for Board of Trustees should be established. This will protect the community from stubborn, power-minded individuals.

Procedures for special meetings requested by home owners that do not favor the Board of Trustees, example, petitioning for their removal -- these meetings should not be controlled by the Board of Trustees as it is a biased situation which allows them to establish the agenda, as well as have unfair accessibility to personal records of all the home owners for their campaigning efforts.

Attorneys hired to advise home owners associations should be certified in this area of law.

All management companies should be licensed to assure associations that they are hiring people with expertise. These companies need to know that if they do not work in the best interest of the community, by directing the Board of Trustees when necessary to honor and enforce our governing documents, they can be fined and lose their license. They should also be given the authority to override the board when public interest and safety is concerned. The State should be notified and the board, once again, should be fined accordingly. You can see, we have trouble with our Board.

ADR needs to be enforced by the State, not left to the Board of Trustees' discretion. If the Board of Trustees does not have a procedure, the association should be fined. The State should supply an arbitrator. It should

not be the Board of Trustees' responsibility to form a Covenants Committee or hire an arbitrator. This should be an uninterested party and not someone selected by the board. Otherwise, how can the home owners expect an unbiased decision?

Last, but not least, the State should collect from all home owner associations a reasonable yearly fee to assist in the State's enforcement of the home owners' protection, ADR arbitrators, etc. I understand there is very few people in this department who can help us. Mr. Hannaman, for instance, is about the one that I know of.

Thank you for the opportunity to offer some input this evening. I would appreciate being kept informed of any developments. I have chosen to live in a planned community, as it compliments my lifestyle, but I am very disappointed to find abusive power and nowhere to turn. I ask you for your help in this situation and I will just leave these papers.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you very much.

Thomas Boland. Is Tom here? He preregistered. How about Mike Nudelman? (no response)

Okay, Mark Hartman.

**MARK HARTMAN:** Good evening. My name is Mark Hartman. I'm a resident and a board member of Signal Point Neighborhood in Hills, in Bedminster. And I'm just going to be very, very, quick with my remarks.

I'll tell you what the overriding theme is of what I'm going to talk about. It is the abuse of a developer.

I appreciate the opportunity that you have afforded concerned citizens to outline areas of importance that are incumbent to our community and perhaps to other New Jersey communities. I sincerely hope that my comments are used to help us improve the quality of our lives in the future.

My main comments will be directed toward the entity known as the Hills Development Company. This is a company that has consistently abused segments of our community through whatever means suit its purpose. Just ask members of the Long Meadow community who saw concrete foundations sit unattended for years, allowing rats to set up residence in all respects, except for representation on the neighborhood boards. Ask Wood Duck Pond residents, of which Bruce Blumenthal is President, who had been fighting for an access road for emergency vehicles. Not convinced yet? Just ask various town officials for their opinions. The examples are seemingly infinite.

With this commentary as a base, let me address two issues that feed off of these previous remarks. One is a past issue that will, once again down the road, be a future issue, sewerage costs. The second issue is a major one that most people in our community are not presently aware of, and that's maintenance of common elements.

With regard to the sewers, Hills Development Company petitioned the Board of Public Utilities through its lackey -- and I'll tell you why in a second -- Environmental Disposal Corporation, back in 1994 for an obscene 122 percent increase in all residential sewer fees. The reason I call them a lackey is because they are a private company that the developer owns. That's unfortunately the way it was set up, and that is incredible abuse that has been

abused consistently. Through the vigilance of a handful of concerned citizens the fee was reduced to 58 percent. In addition, there was a call for an intercompany audit between Hills Development Company and Environmental Disposal Corporation. My question is, has this audit been completed? If so, when will the public find out the results? Your Task Force could certainly help our community out with this situation.

On the second issue, rather than ramble on, I'm going to suggest that you contact the president of our master association, Bernie Pane, and speak to him about a major maintenance issue that is developing with Bernards Township. From what I gather, the hidden culprit here is once again the Hills Development Company.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

Larry Forni.

**LARRY FORNI:** Good evening. I also will make my comments brief. I have two issues to discuss. First of all, I am from the Cedarbrook of Branchburg Association, here in Branchburg, just a very short distance from the college.

I'd like to discuss two areas tonight, and they both deal with boards. The first, I believe that there is a need for consideration for legislation regarding the number of board members that can be appointed. For example, on a board of seven members, there are currently on our board only two that are elected. The remaining five are appointees, and the appointees are those that go along with the two elected board members.

MR. SMITH: Appointees by the developer or appointees by the--

MR. FORNI: Appointees by the board.

MR. SMITH: Okay.

MR. FORNI: Now, it's understandable that there has to be appointees, because people do leave, people move, and you have unfilled terms that need to be filled, and it's not necessary to go through all of the ritual of an election. But it is my recommendation that there should be some legislation that the majority of any board should be elected by the members at large at the association and if it falls below that number, then indeed, an election process should be undertaken to fill the entire board at that time. Because what happens is -- you can almost see the second point that I'm leading towards, and that's an abuse of the Board. Because now you have one person, a close friend, and then having all appointees, there is a board that is ready made for an abusive power.

And we have already had one comment tonight about violations, or at least we might call them violations, of the Open Meetings Act, where months and months have gone by without open meetings. During that time, management companies' contracts were canceled and a new management company was installed without any intervention from the community at large. New legal counsel was brought in and the other legal counsel was dismissed. All the other contracts are following along with that, like snow removal, and so forth, but the management company and the legal counsel were the two that seemed to trouble us most because of the way that the penalty clauses were written. We're still not sure that we may not be liable as an association for legal action against us.

So now we have an occasional meeting, but at that meeting it's a very, very closed agenda. All of the things are voted upon in closed sessions, and all we get to hear about and watch is, "I nominate that we are at least-- I submit that we go along with this particular event," or whatever they voted on. There is a second from the board. Everybody votes, and now that's declared -- having seen this thing happen in an open meeting -- when, at that time, nobody is allowed to make any statements at all. At the end of the meeting, there is a very, very short period of time when we can make comments, but we have no input at all into the goings on.

So the two issues are, just to kind of summarize them, is -- one is I do think that there needs to be some legislation that specifically states that these association boards must have a majority of elected officials, and if it falls below that, you need to have new elections.

The second item is, again, I would like to reiterate-- A friend here, who is also -- I don't know her, I just called her a friend because I think we are fellow association members here-- I think there needs to be something done about this Open Meetings Act. It just seems to be very, very loose, and yet when we question the new legal counsel about this, we were told that they had talked to somebody in Trenton and there was absolutely no problem. Now, I don't know who she talked to. I don't know how that happened. I don't even know if she talked to somebody, because this was the first time that we got to see them.

So these are my two points. I would be more than happy to submit them in writing and I will intend to do so. I thank you for your time.

ASSEMBLYMAN BATEMAN: Thank you, Mr. Forni.

Thomas Junis.

**T H O M A S J U N I S:** Good evening, Mr. Chairman. My name is Thomas Junis, and I am President of the Board of Trustees of Winding River Village Association in Brick Township.

The present Board of Trustees had taken over from management back in 1994, because of the fact that everybody else has already commented on, where the managing company had taken over complete control of all accounts, all contracts. They would not listen to us as to what we wanted done, and we had asked for three or more -- at least three-- We had asked for at least three contractors' bids and they refused to listen to us.

We had taken over the association. It took us almost a month before we were able to get any of our money, and we had problems getting records from them in order to conduct a good audit.

Since then, we have been on our own. Here it is, almost four years that we have taken over, and we are still trying to get our records. We have been unable to get any records. We have turned over about every source we possibly can. We have written to the Department of Community Affairs. We had letters acknowledging our request, but so far we have been unheard and we cannot do anything.

We did receive one letter from the attorney of our previous management company telling us that if we would get the records, would we release them from any lawsuit. -- which is almost impossible. How could we release them from anything that we don't know anything about?

So it's been a very difficult time, and I came here, like I said, I came unprepared. I didn't bring anything with me but myself and never realizing what this whole thing was about.

So I will be brief, and if anything -- you people want any information from us we would gladly be able to give everything we can and accept all help that we possibly can.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

Jerry Darby.

**J E R R Y D A R B Y:** Hi. Jerry Darby of Bricktown, Riviera Lakefront Estates condos.

I also came unprepared. My wife and I dealt two years with our association of a private lawsuit over nonsense. We funded ourselves, so if I start rambling you will understand why.

We have the same problem as everybody else. Open board meetings, what are those? We don't have them. Property management walked in -- same management as the last gentleman -- in 1994. We watched our voting rights disappear. We watched open home owner's meetings disappear. 1994 election went to '95, no explanation. We found out one gentleman bought out 32 units at foreclosure. They waited for his proxies and they put in their board. We had a five-man board member. They tried to pass bylaws within a 10-day period of last year just thrown into the mail. People disputed them. Well, come to find out in October, they passed them. We now have to have 65 percent of the votes to hold a special meeting. We asked for a special meeting in '94. They refused to acknowledge it. They refused certified mails.

This is the property management that all of the association members' and board members' mail goes to.

We have one gentlemen that owns over 50 units out of 104. We no longer have our rights in this community. Everything is done behind closed doors, apparently like everybody else around here. There is only 104, units; 50-plus units are owned by one gentleman, and there is only about 12 home owners on this association.

We started up a group called Concerned Home Owners. We requested special meetings to review the board. They ignored us. Several home owners got threatened with lawsuits. They all backed out. There is no more backbone.

My wife and I are worried, we're tired, we're fed up. If we could sell our unit, we would. We bought it at \$80,000; it's now worth \$42,900 because of all of these foreclosures. We have gone through the foreclosures also.

We have gone through the abusive board. We're still going through it. They passed bylaws from a five-man board, which there was no five-man board, it was only a three- or a two-man board. Now it's down to a three-man board.

Property management has a contract; as renewed, he gets power on the seat of the Board of Trustees. His secretary or president of his company has a seat on the board. Is this right? We don't know. We're asking for your favor to enact legislation to put in -- as one person stated -- a license on the property management. They cannot bid on contracts -- I mean hold proxies that will benefit them financially, because we don't have that. The

management company dishes it out to family and friends. We don't see what goes on.

The property has gone down even worse -- brick buildings, the outside, the bricks are falling off. We asked them at our so-called annual meeting this year, what are you going to do about it? "Oh, it's not in the budget." We asked them where's the audit for '95. It's a draft. It shows up on our door within a few weeks later. The auditor signed it off in September. Where is '96 or '97 budget? We don't know. We don't know what goes on. We get pieces of paper -- a one-sheet piece of paper for a budget. It doesn't list anything. Lifeguard, beaches closed, tennis courts turned into a day care center for kids to destroy them. Beaches that closed for two years we were told, "Oh, the town does not allow swimming in the lake, because they don't want people to get hurt." That's wrong. They just don't want to open it up. They don't want to foot the bill. They don't want to fix the tennis courts, they don't want everything.

This is the problem that we're having. These communities around here might be a lot bigger than us, but from now on we will not have a say in our association ever again because this one gentleman owns over 50 units. He will not return calls, will not respond to letters. The board does not care.

The property management is a bigwig in the town. He has connections: prosecutors, statesmen, and everybody else -- we saw a resume of his -- judges. We have no pull. We spent two years in the court to win a hollow victory. We got nothing. They were supposed to do their work that they were supposed to do two and a half years ago, but they still violated the court orders.

My wife and I just quit. We said forget it, because this is the way they are going. They don't care about the home owners.

We need laws to put in. This last law that was changed where the associations can fine, that's great, but what about the home owners rights? The State took out the teeth in Senator Ciesla's bill where the DCA can walk in and remove the board members. We need that put back, because I've been in touch with Mr. Hannaman, Mr. Desch, Mr. Connolly, and the State Attorney General's Office because of my court case. They have all told me, "We can't do anything; we can send a letter, that's it. We can't do anything." You have to sue these people to get your rights, to get your records, to get an election. We can't afford it. The association refuses because it's all investors. Investors want to get out. What happens? They vote, the investors go belly up, this guy drops in and buys them all, 32 units for \$100. He owns majority again.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you very much.

Suzanne Lauricella.

**S U Z A N N E L A U R I C E L L A:** Good evening and thank you for giving me this opportunity to speak tonight.

I am an association member at Cedarbrook at Branchburg, which is right here in the community. Most of what I had to say has already been said, but I would like to add that we do need more asunder from the State.

Laws have been enacted, but they're not reinforced. For instance, our association is still waiting to receive moneys, for four years, from the municipality that is owed to us for services. I don't think that's fair that we

have to provide legal counsel to get these moneys when a letter from the State could be sent to the municipalities enforcing this. It's not that much in our particular case because we pay for our own garbage here locally.

So what do we have? When I started out in this association, we had six lights in Branchburch Township. Ten percent of six lights doesn't amount to that much. So we're not talking about that much money for us, but it's there and it belongs to us and all the other associations, and we shouldn't have to put out legal fees to collect these moneys.

Another thing is, when letters are written to make complaints about association governing bodies, they are answered, but the reply always comes back we're the troublemakers. We're not troublemakers. We are concerned association members, concerned about our association.

I have heard horror stories, and that's why I'm here tonight, to avoid our association and others from becoming horror stories. I feel that this Task Force can really help all associations and I commend your efforts. I think when all is said and done, we might have stronger laws and people to enforce those laws.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you, Suzanne.

I should add that we are making a transcript of this, so when you do come up, would you please repeat your name again and address for the record so they could pick it up.

Robert Carrigan.

**ROBERT E. CARRIGAN:** Good evening. I am Robert Carrigan. I'm an adjunct professor of law at New York Law School and also a condo unit owner in Hackensack.

I have kind of a dual perspective on this. I teach constitutional law, so my perspective is the due process balance in the condo situation between the board and management on one side and the unit owner on the other.

I do think that the Legislature has made a good start in the area of the Open Meetings Act and also in the ADR Act, but they are only starts. I can tell you that in my condo area, there are now posted agendas for the meetings, which we haven't ever had before, and the agendas actually are followed. So the legislation does have effect if the Legislature cares enough to do it, but there are still holes and gaps, as you heard tonight. There are still opportunities for denial and ignoring of the unit owners' rights, and in some, I think, relatively rare cases, there is still the opportunity for real oppression of unit owners in the condo situation. I think we may have heard a couple of cases of that tonight already.

I don't have anything tonight to report to you of that gravity, but I do think that in terms of general corporate governance matters, I would like to ask a couple of things for your consideration. I will follow this up with a letter in more detail. I would have had it to you in advance, but there was a crunch of things that happened after the holidays. I just could not do it, but I will get to it. I promise.

One problem in our community is that the board is made up of unit owners, as it is everywhere, and they are usually very busy people. They

work. They come home tired. They don't have a lot of time to prepare. The result is the board is dominated by the manager. The manager usually selects the board members and invites someone to run when he finds out someone is resigning and encourages them to run, and it tends to be a self-perpetuating situation.

The board members, I think, are well-meaning people, but they sometimes put too much trust in the management. If the manager does a lot of things away from the property dealing with an individual unit owner, here and there, the board quite often never hears about it, or it hears the manager's very slanted version of it, so that by the time the unit owner gets to complain about it, the unit owner is viewed as a troublemaker.

That is part of the problem, and so the solution, it seems to me, has been raised a couple of times to that particular problem, and that is, I believe there should be some mandated board training. When a board member is elected that the Legislature or perhaps the DCA, the Community Affairs Department -- if it's given the authority to do so -- could promulgate rules that would -- and an actual assisting training documents that would show the board members, that for example, they have a fiduciary obligation to the unit owners. Attorneys know what a fiduciary obligation is, and by and large, they are very careful about preserving it.

Board members are laymen, they don't know what they are. Most board members, to be honest with you, I don't think understand that they are supposed to represent the unit owners. I think many of them think they are supposed to represent the management.

Board training would eliminate some of those systemic problems, I believe, if you are dealing with people who have good faith to begin with. As I say, I think most of the elected board members are people of good faith. They just are not receiving the right bones, you know, the skeletal training that they need to have for the job that they are doing. They are an organ of government once they take their position, and they don't really know how to act at this point, so the manager ends up acting for them.

The next thing I'd like to mention is the access to documents problem -- I think has been raised a couple of times. A very brief scenario from my unit. We heard-- I read in the minutes, as matter of fact, that our insurance company who had carried the master liability policy for the condo -- had for years, 10, 15 years -- had canceled the policy and said they weren't going to renew it. I asked the managing agent for a copy of the letter, so I could see what reason was given, and I was refused -- refused to see the letter.

I'm a member of the association. I believe under New Jersey Nonprofit Corporation law, a member of any corporate association has an absolute right to any corporation document that's not confidential. That's my understanding of the law, and please correct me if I'm wrong, but when I mentioned this to the Department of Community Affairs, they said, "Well, that particular provision is in nonprofit law, it's not in condominium law, so we can't enforce it. You have to file suit to get the document." Now, that sounds to me like elevating form over substance, if I may.

Why can't the Department of Community Affairs enforce laws that apply in the condominium community even if it's in a different State law? There is really no reason for that, and it's absurd in my view.

I'll go on to the ADR, which is the other area that I wanted to talk about, and then I will sit down. I've already probably used up my five minutes. Let me get through this quickly.

That was, again, another good start. The fair and efficient idea captures the general due process concept. The Legislature's acknowledgment, I think, of unequal bargaining power between management and a unit owner is evident, and the mandate that ADR be an efficient alternative to litigation that recognizes that the association has finances and power, a single unit owner does not. A unit owner cannot take his rights to court in the way that might be envisioned because, usually, the financial amount in dispute is not enough to make it worth its while.

The playing field really isn't level yet -- you've heard that from other people tonight -- and part of the reason it isn't level is because associations are already finding ways to wiggle around the ADR requirement.

For example, there is a requirement that ADR, whether it's arbitration or whatever, be granted as a common expense. That's stated clearly in the statute. Well, our condominium association has interpreted that to mean that they only have to pay for the arbitrator, but if they hire an attorney and have a five-day arbitration hearing and the unit owner loses, they want to maintain that their attorney's fees can be charged against the unit owner. Now, the attorney fees, of course, are five times what the cost of the arbitrator would be, and if that interpretation were ever to hold up, it would completely undercut the whole idea that it's being provided as a common expense. But this is what the kind of -- I don't want to call it chicanery. It seems like it to me, but I'm trying to think that these associations and their attorneys are

operating in the best interest of the whole association and not just the board and manager because that is their ethical obligation, but sometimes we have to wonder about that.

I'll skip over to the remedies that I would recommend at this point. I think I have and the other speakers have talked enough about the problems. I don't think the Legislature is in any position to micromanage this problem anymore than it is any other problem. That's what the agency is for, but the agency is timid and I don't mean that it's unwilling to act. I think that it's timid because it feels that most of its statutory mandate is amorphous, it's not specific enough, and it doesn't have a mandate from the Legislature at all, in its view, to do any kind of rule making.

If you will look at the rules that the DCA has promulgated up until now, all they are, are tracking of the same language as the statute. There is really no attempt to define, to give more detail to the statute, and there is no mandate at all from the Legislature to do rule makings.

Just think what the Legislature could do with one quick stroke of the pen by saying the DCA should hold hearings like this, public hearings. For example, on the question of certification of managers, let the public speak; then, if there seems to be public support for that idea, they could promulgate the rules and then they could issue the certification. If there is a manager operating in violation of the bylaws or in the State law, that certification could be yanked quickly. It could be done.

So certification for managers number one; number two, rule-making authority for the Department to continue leveling the playing field. I would say I was extremely distressed by looking at the Department of

Community Affairs' proposed bylaws for adoption by the associations on ADR and open meetings, well, especially ADR though, because that went into all the violations that unit owners could possibly commit and the fact that fines could be assessed against them, but not one word about what would be done if it was the board and the manager who was violating the bylaws or State law. What remedy was there for that? Doesn't it strike you that this could happen? How could a set of regulations have ever be promulgated with the assumption that only unit owners would violate the law? I mean that is the most absurd thing I have heard about.

Now, I understand that part of the reason for that is that there is a dominance of association lawyers on most of the panels and apparently on this one. Which one is the unit owner representative on this panel? Is there one?

ASSEMBLYMAN BATEMAN: Absolutely.

MR. CARRIGAN: Unit owner who is not a board member.

ASSEMBLYMAN BATEMAN: Oh.

MR. CARRIGAN: Oh. Okay.

So I would ask that the next iteration of the Department's rules regarding ADR include a section that has to do with what remedies there are, what fines against individual board members and managers would be assessed in situations where they act in violation of the bylaw or State law against a unit owner's interest -- in oppression of a unit owners interest.

For example, denying arbitration by saying, "We'll give you arbitration, but if you lose you'll pay \$35,000 worth of our legal fees," things

like that, which is a clear violation, in my view, of the ADR statute even as it's written now.

In closing, I think that boards and managers are given the power to act on behalf of the association, but where are the constraints when the board or manager begin to act in contravention of law, the bylaws, or both?

Boards have dominated the debate because of their financial resources. It's the owners who are the great silent majority who go to and from work each day, who vote in large numbers, and who need protection from all of the concentrated power that exists between the board and management.

Please bring this message to the Legislature. I will send a more detailed letter to you in the coming weeks.

Thank you very much.

ASSEMBLYMAN BATEMAN: Thank you, Mr. Carrigan.

Paul Weissler.

**PAUL WEISSLER:** When I decided to come to this thing, I was sure I was going to hear remarks like, "Gee, we've never heard of anything like that"; instead, everything I hear seems to be stuff that I had brought up.

What disturbs me is the idea that we have a whole Task Force here and no one who represents unit owners. Everyone in effect is a member of a board except for the Assemblyman.

ASSEMBLYMAN BATEMAN: No, that's not correct.

MR. WEISSLER: I mean, there is condo association people here. There is no one who represents the unit owners individually. We are all here for that. I think some of these people perhaps should be brought onto a Task Force.

ASSEMBLYMAN BATEMAN: We have a unit owner here, representing your ideas, right on the Task Force.

MR. WEISSLER: Yes, I know, but I'm not part of the Task Force itself and I'm not asking to be. I'm just pointing out that you've got a lot of people here who are duly distressed.

The issues that I wanted to raise were in large part raised. The main thing is nobody joins a condo association because they're joiners. They join because they legally have to.

The way to handle a lot of these problems is probably to restrict what a condo association board can do. There is a lot of things that they end up trying to do that they really have no right to do or shouldn't be doing. A lot of these issues involving fines should never be allowed to be handled by a condo board. Members of the condo board have no idea what constitutes evidence. They have no idea on how to hold a hearing, and yet you're having these people hold hearings and issue fines. That's just absolutely preposterous.

The condo association managers are no better. They're no lawyers. Whatever is in the bylaws can be ignored. They don't read them. They don't care about them.

You have board members who, in large part, are appointed. You have a set of friends and that's it. A condo association board holding a hearing, it's preposterous on the face of it. These are not strangers listening to a hearing with impartial detachment. These are all neighbors. Every one of these neighbors has friends and enemies and their issues of revenge and getting even and all this sort of thing. That's what most of these things are. There is really very little to do with trying to maintain a better community.

My experience, in our community, was with the condo manager who -- she basically was trying to-- I guess they taught her in condo management 101 that the ones you listen to are the members of the board, and if there is a member of the board that wants to get after someone, you just go with the flow.

MR. SMITH: Where is your community, sir?

MR. WEISLER: I live in Hillsborough in the Glenn Meadows community.

MR. SMITH: Okay. Thank you.

MR. WEISLER: This is -- and I heard the issue raised about trying to get information out. Now, this is a fact-finding group and you're hearing many viewpoints. But you get into a condo association, there is none of that. There is one source of information, it is the condo manager, and we had a change in condo management, and we found out about it by a mailing.

Now, you're talking about the possibility of issuing fines for late payments. They changed condo managers in our development. We found out about it with a mailing that said Midlantic. At first I thought it was the bank, but then I realized they changed names because we deal with that bank. I opened it up, it turned out to be the new condo management company saying, "Well, now you have to pay. Send us the check, and if we don't get it by the 10, you'll be assessed a \$20 late charge." I got this notice on the 3, the statement was blank, didn't tell us how much to pay. It turned out you had to go to the budget submitted by the previous condo manager and look through that to find out what the new dues were. But they never said that in the letter. I can show you this letter. It is absolutely incredible. I got it on the

-- it was dated the 21 of December. It arrived January 3. I tried calling the office. I think it was a Friday and I got on -- Monday they let me know, which was the Monday, 6. They let me know that I had to have it in by the 10 or there would be a late charge.

You've got people who are not particularly efficient in allowing late charges, allowing fines, it's just ridiculous. There is no reason for that. If there is a dispute, it should go to small-claims court. That's what we have small-claims court for. The unit owners should be able to go to small-claims court by the same token and be able to sue the condo association.

One of the issues that we had and one of the reasons that they got rid of the condo association -- one of many -- management, was leaking roofs. A month after the roof leaks they are sending around notices: Poke a hole in your ceiling and put a bucket under it to relieve the pressure. My god, I moved from a private home. When I had a roof leak, and it was in my garage, a day later there was a guy up on the roof resealing that thing. I wasn't going to wait a month and a half and first poke in my ceiling to relieve water pressure. Come on. I mean -- and yet there is nothing that allows the unit owner to make temporary repairs to his own unit. You have no protection. You can't do it yourself. You can't have it done and you -- is this what you-- You have to have some sort of legal protection to allow people to make emergency repairs and expect the condo association to pay for it if they don't do it promptly.

A unit that you can't repair is worthless. If you've got a leaking roof and you've got a big leak in your house, how are you going to sell it if you want to get rid of the place? I mean -- or live there for that matter. Because

your personal property is not covered under any of the insurance coverage. That's just one of the issues.

The other is fines for architectural standards. I was on the architectural committee. I went through this nonsense. We prepared a set of reasonable, generic standards. I know a little bit about writing standards. I served on committees of the Society of Automotive Engineers where we write international engineering standards. We don't make them as restrictive as some of the things that this board tried to do.

We wrote a very nice set of generic standards. If the thing was supposed to be chocolate brown, we said chocolate brown matte. We ended up with very limited selections of items, specific brands, specific color because that's what somebody on the board wanted to buy, and he was going to get it for free or at a discount if he required it as part of the standard. Another case: They put through a specific requirement for a sliding door because that's what somebody who was just appointed to the board already had and they "had to make them legal." I mean this is what you see here. You see so much nonsense.

You say, why are you living in one of these places? The answer is, we didn't know how bad it was. We saw some of the stuff. Quite honestly, we are so ticked off that we are going to move. I expect that we will be putting up our place. Anybody wants to buy we are putting our place up.

ASSEMBLYMAN GREGG: I don't think this a bad group here.

MR. WEISLER: It's a matter of months. When my wife gets her job transfer, we will not go into one of these things as a repeat of the process. It's been a ridiculous experience.

You've got to set up something that gives the unit owners the protection. You've given a lot to the condo association and the manager has plenty. These things are self-perpetuating, I've seen it.

The condo manager in our development went around soliciting people that she thought she could trust to get on the board. They did appointees that they thought they could trust. This worked until all the roofs leaked, the pool couldn't open, and people just started enough screaming, and they finally got rid of her. But, for the most part, it is self-perpetuating. And so there is no democracy.

So the way you get rid of a lot of the problem, to start with, is you give people a legal out. The best legal out is still small claims court. There is no reason why a condo association should be holding hearings-- There is no reason why neighbors should be holding hearings on other neighbors. It's just insanity.

If they have a dispute, let the association lawyer say, "Okay, we want to fine these people for doing this." You take it to small-claims court, and you've been to small-claims court, you know that a lawyer comes in with 30 cases, he's got them for four or five businesses. If they are all legitimate, they go through in one night, in 15 minutes. This should not be an issue.

Small-claims court is a perfect place for a lot of these issues, and with a lot of the problems would disappear if people could go to small-claims court and handle them.

The only other thing that I thought of is there should be some right the people should have to spruce up their property for resale. Right now it is probably not legal to do so. For example, if you wanted to repaint your

garage door, and the only ones in our development who get scheduled for repainting tend to be the quads in which the board members live. They get the first shot at that. You know that sort of thing, that's real world.

But people should have the right to do this without facing the possibility of harassment and fines. But harassment by individuals and board members with appointees and all this, this is real-world headaches and people shouldn't have to put up with it. They bought a unit to not be bothered with a lot of nonsense, and instead they are getting hassled with all this.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

James Bevere.

**JAMES BEVERE:** Good evening. Can you hear me?

ASSEMBLYMAN BATEMAN: Yes.

Would you state your name again and town, please.

MR. BEVERE: Okay. My name is Jim Bevere. I'm from Hamburg, New Jersey. To give you a little background on myself, I --

UNIDENTIFIED SPEAKER FROM AUDIENCE: Where are you from?

MR. BEVERE: Hamburg.

I served as an association president of a board in a home owner capacity from 1988 until 1995. I was an elected official in Hamburg as a councilman. I served on various boards in the town.

My interest in this Task Force was going back to about 1990 when I started talking to Chuck Richmond about creating just this thing, a task force, because it is sorely needed.

I firmly believe that planned residential communities are probably the biggest consumer fraud issue right now to face the public since lemon laws were created with cars.

My perspective on this has been not so much of the communities that are built and running smoothly, but on the communities where people have bought and are basically trapped with no other escape to get out of that type of living arrangement.

I'd like to read a statement. It's a little lengthy. I'm not going to read the whole thing. I'll skim through parts.

ASSEMBLYMAN BATEMAN: Because you submitted it, right? This is what we have.

MR. BEVERE: I've submitted it, right.

For the last 10 years, the State of New Jersey has experienced rapid growth and development in planned residential communities.

In January of 1986, New Jersey Legislature passed a New Jersey Planning Act -- entitled the Act. The Act went on to map out a State plan that would help New Jersey move toward the 21st century. New Jersey, the nation's most densely populated state, requires sound and integrated statewide planning and a coordination of statewide planning with local and regional planning in order to conserve its natural resources, revitalize its urban centers, protect the quality of its environment, and provide needed housing and adequate public services at a reasonable cost, while promoting beneficial economic growth development and renewal.

This plan was adopted to enable New Jersey to move towards the 21st century with a plan to start planning and coordinating our investments in ways that bring these preferences to reality.

The plan describes communities of place that are dynamic, diverse, compact, and efficient. In most aspects that plan wants to promote a quality of life that will be compatible for the State, counties, and the town residents of that State.

In theory this plan is sound; however, will this be an achievable goal if we do not have a solid foundation to build from? There are many aspects of planned residential communities which are limited by legislation and regulatory agencies, municipalities included, that are in conflict with each other or do not work together interactively. Most of the legislation that is now in existence deals with the creation and regulation of such communities but somehow fall short of dealing with today's problems now confronting these communities. Additionally, change and fine-tuning of our laws and regulation has not kept pace nor dealt with the problems we must solve in order to minimize bureaucracy, regulation, and plan for the future.

During the housing boom years of the mid to late '80s, we saw an enormous surge of development and growth. It is only now that we are finding out many of the inadequacies of our system, laws, and problems which are manifesting with the communities built or started during those years.

Planned community living is the only sensible and affordable scheme of development that meets the needs of most people of the State and the only housing product in most urban areas. It is the most environmentally

reasonable type of housing for our State and one that is adopted as part of our State Master Plan.

Common interest ownership has become a complicated proposition for everyone involved in that process. It has become a gamble for the prospective purchaser, a regulatory nightmare for the DCA, and very difficult for our legislators to act on because many of them do not understand the complexity or the myriad of problems affecting planned residential communities. The solution to the problems we face will not come from building a better mousetrap, but rather to fix something that is broke.

Now, I've itemized some different parts of where I feel there are main problem areas. I won't read the whole thing, but I want to highlight a couple of them.

PREFDA statutes: The statutes which provide for the regulation of the division of housing and development have become outdated and do not encompass -- this is obvious, this is why we are here -- do not encompass or provide realistic and effective guidelines for true full disclosure. The proposal -- I'm going to present a proposal, too. I want to talk about transition.

Another problem is phase developments. Planned residents and communities should be exactly as they are approved. Projects should not be allowed to be constructed out of phase without safeguards in place to ensure against defaults and unfinished developments. The proposal that I will talk about, well, present, will help provide details on planning and afford protection against repeated mistakes which become costly for everyone involved.

Public offering statement: The POS is probably the most important document that exists between purchasers and developers. It is a

nucleus of what the relationship between the two parties is all about and also serves as the bible, or foundation, on which the association is formulated by. Although the POS is written in conformance with existing statutes, most of these documents are somewhat lacking in uniformity, complicated to understand because of their diversity, and nonspecific in many critical areas. This may be attributed in part to the PREFDA statutes to which are also vague in context. The DCA has been working on standardization of this document and buyer's guide to the POS documents which are two very good and necessary things to have.

Transition--

ASSEMBLYMAN BATEMAN: Mr. Bevere, this is very extensive. I'm not going to allow you to read the whole thing word for word.

MR. BEVERE: I won't read the whole thing.

ASSEMBLYMAN BATEMAN: Okay. If you could summarize in a couple of minutes, it would be great.

MR. BEVERE: I'll just summarize a couple more points.

ASSEMBLYMAN BATEMAN: Thanks. A lot of people still want to testify.

MR. BEVERE: I understand.

ASSEMBLYMAN BATEMAN: Thank you.

MR. BEVERE: Transition: Transition processes become a game of catch-up. When projects are built out quickly and according to schedule, the time frame for transition seems adequate and equitable, except undetected mistakes go undetected until this takes place.

Problems with transitionals also become very apparent when their projects fall behind, as far too many have over the last five years. Typically, problems are exacerbated by the fact that transition does not begin until control of the association is turned over. More often than not transition then becomes a feeding frenzy for engineers, lawyers and an expensive nightmare for both developers and home owners.

This proposal may eliminate some of the litigation errors and problems that are often discovered too late.

Now, that's what I really wanted to talk about, which is transition. In actuality, what I would like to see happen is I would like to see transition remain the same as far as when control turns over at 75 percent because I think its only right that a developer retain an equitable position in its property. But what happens here is that many times the problems that occur prior to transition aren't addressed.

I've outlined there what I think should happen. I think, as I said before, phase developments of projects should be built in exactly the way it's supposed to, by phase. If it's a three-phase project, phase one, phase two, phase three, then I think you can just simply go in and inspect that by phase. We do an engineering review now, typically, at that transition point of 75 percent. Why can't we do it by phase? It doesn't have to be as complete. This way the engineer knows what's going on. The home owners know what's going on, and if a mistake happens you can catch it. Why make the same mistake twice? You're waiting until 75 percent to find out you did something wrong. In the first phase, you could correct it.

I think that you should review the budgets in the same way. Each development typically goes in -- they have a maintenance fee that's set based upon start-off costs. It's not until years later when control reverts to the home owners that they find out their capital reserves were underfunded. They find out that there wasn't adequate moneys put aside. Then they go into a long, drawn out negotiation process where they come up with some type of equitable settlement.

Why can't you just turn around, and as you do your engineering review by phase -- and it doesn't have to be as detailed as the ones they're doing now. I think there is three or four firms, Bect, Ross Christianson and Kip Kahn, that are doing them right now.

You can basically check on them. Make sure that they are following the plans to some degree. That there is no blatant errors. A lot of people are having problems with ice damming now. It's become a nightmare. If there's a problem in phase one, why not bring the engineers in earlier? It's to the developer's advantage to do so. A lot of times a lot of the problems that people face are not developer problems. I think developers can get on board with a plan of this source, because if they have the ability to identify a problem-- Some of it is architectural. Some of it is things that they are not directly responsible for, but they might like to be aware of so that they can correct it early on.

In taking a look at each association's budget to make sure it's operating adequately, home owners can be relatively assured that their budget, from year to year, isn't going to be drastically increased once they take control

and all of a sudden they are faced with all of these hidden costs that they now have to catch up on.

So I can say this from firsthand experience that-- In Hamburg we have four condominium communities. Two of them have never been finished. One was a 428-unit project that is only 50 percent complete. People have lived in these communities for 10 years. They have not been able to resell their home because the values have plummeted. They cannot get any secondary financing. They're locked into whatever their mortgages are. In many cases their mortgages are over \$100,000. The value of the property is \$50,000. It's been decimated.

Another project, the developer went bankrupt and nothing happened. It's sitting there and people can not get out from under other than declaring bankruptcy and walking away.

The other problem that I think that we really have to look at is something on a municipal level that I came across as a councilman. And that happened when you have -- and again no slight to the developer-- When you have a developer going in for an approval -- and if this was in the business world, it would be considered a bribe or a shakedown, but in government it seems to work it's aboveboard -- a government can extract favors from developers and there is no problem. They can ask them to donate an ambulance. They can ask them to deed over property. They can ask them to do anything that they want and essentially they can get the approvals they want. That's got to be monitored a little bit more closely because a lot of things are getting by that shouldn't.

I've taken up enough of your time. I hope that you read the report that I prepared, and if I can come back and speak at a forum like this, I would be happy to. I think it's good, and I think that it's wonderful that the Task Force is finally getting up to recreating some of these statutes that have inundated the public for a long time.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

Actually, there are a number of these we're in the process of scheduling more, one up your way, I think in March, so there will be another opportunity.

MR. BEVERE: Great.

ASSEMBLYMAN BATEMAN: Dante Allario.

**D A N T E A L L A R I O:** Hello, my name is Dante Allario. I live at Chelsea Village Condominiums right here in Bridgewater.

Most of the concerns I have as a unit owner for 14 years have been addressed. So I'll just specifically cover a couple.

We had an election in 1995, November. A quorum was not reached. The people on the board declared a quorum had been reached and declared themselves winners. They subsequently went about knocking on the doors and calling up and basically strong-arming you -- this was the president at the time, he is deceased now -- into getting the number of votes they needed to have the quorum. They didn't have it at the official meeting where you have to have judges and certain procedures.

When I questioned this at an open meeting -- supposed open meeting -- as a point of order I was called swear names. I was physically

threatened. I was threatened again on my answer phone that every bone in my body would be broken. I've consulted with attorneys. We pursued a lawsuit against the condominium association -- an injunctive relief situation. There was a judge's decision in superior court. They basically found that we had certain valid points, but there was going to be a new election in November of '96, and that would resolve our problems at that time.

I'm continually fined by my own attorney. As I look at it -- the board association attorney -- I'm up to \$1000 in fines for having painted the word reserved on my assigned limited common element parking spot. The word reserved was there when I moved in, in 1982, and they subsequently mechanized the road surface. The word was not replaced.

I had several incidents where vehicles would park in my open spots, since I have two spots, one car. I complained to, at that time, the current board. I was piff pauffed and told that nothing could be done about it. I called the Bridgewater Police. They sent out an officer. A ticket was written. He found out that he couldn't submit this ticket. It wasn't accepted by his officer because it's private property. I couldn't have a tow truck come in to have this car that was parked in my spot removed because it was private property. I had no resolutions. I went to the president of the board; he said good luck. So I went out myself and painted the word reserved on my parking space. A member of the board, who was the liaison to the board from the parking committee, has the word reserved painted in one of his parking spots. It's totally ridiculous being labeled as a loose cannon.

I have people bringing their arm up at me, close to my face. I have a nine-year-old daughter that has been subjected to swearwords, cusswords on

my answer phone, and at an open meeting, that she was present, I was called an A hole and threatened to be spat upon by a board member.

I'm totally disillusioned. I wish you guys could help us. Again, as the unit owner, you've got cronyism going on in our particular board, five members. You even had a situation when the president dies and points to the next individual that's going to replace himself, and they didn't interview people that were interested in this position. And so his crony buddy was appointed to replace him and continue the same process on.

You have no resolutions when you live in these condominiums. If you can't go to you people, really, you have nowhere to go. I wish you could help us. I sincerely do. A unit owner is speaking right here.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you very much.

John Rosney and Jim Herlihy.

**J A M E S J. H E R L I H Y J R.:** That's close. Herlihy. (corrects pronunciation)

ASSEMBLYMAN BATEMAN: Who's first, or are you together?

**J O H N P A T R I C K R O S N E Y S R.:** How are you doing? My name is John Rosney. I'm presently the only elected member of the Beckett Association, which is in Logan Township, Glouster County, New Jersey. We have \$100,000 to \$200,000 single-family dwellings, as well as attached units. We don't have condos particularly, but we're involved in this fight as I have been in contact with Mr. Hannaman from everybody. He says -- I think his word was that I card blank every complaint I could, and I have since June.

Dear Legislative Task Force -- I'm going to read from the letter -- and special PRED members. I am speaking to this body as a resident home owner in a home owners association with PUD restrictions, not as a member of the Beckett Association board or on the behalf of the Beckett residents, only myself.

I got a little letter today warning me, because they heard I was coming here. What are they afraid of for people to hear? Forget about reading some of these complaints, because everybody has said it. You know, I have a \$110,000 home, I'm on the Board of Directors -- I can't see documents. My vice-chairman and his wife, who is the property manager-- Their next door neighbor is the office secretary. They filed harassment charges -- all the documents are in there -- for asking questions. I want to see my documents. I'm a board member, let alone a home owner. I have 200, 300 people behind me. They have the audacity to call two weeks ago that I went around claiming that I was going to do a riot. I mean, there is no protection to the home owner resident that ask questions.

I only pay \$113, but all they take care of is common ground in our facility. The actual budget comes to be about \$140,000. I want to know where the money is going, so do other people. But they are using my own lawyer, which I am paying my association dues, against me. They are harassing me and my wife and family. It's a disgrace what they are allowed to do.

But anyway, I live in a development that currently has a PUD with 18-year-old unrealistic, housing projections. The present documents call for 300 to 1500 homes, adding one elected member on a graduated scale up to 13,000, and we're only at 1300.

As of 9/13/96, there were 1278 built out of 13,000; therefore, after 18 years there is only still one required elected board member. Yes, I'll be honest, the rest of the board members are home owners, but they are appointed, and they seem to be definitely representing the developer's interest.

The present board hides behind unrealistic documents to maintain control for whatever reason. This does not reflect all the current residents' wishes. With a fully elected board, we would rotate and the community would evolve through time, or with time, with all the residents' wishes. Yet the present board consists of eight-member-developer's-appointed resident board with one elected position.

There should be alternate legislation in place when a PUD becomes unrealistic or outdated for the turnover of the board of directors to a fully elected board of residents. The alternatives in our documents provide for the year 2000 or 13,000 homes. As you hear, we are only at 1278 at the present date.

To provide legislation that protects the home owners over longer developmental periods than projected, statutes that require the election of resident-elected board members sooner if the housing is not being completed for some reason or other.

To have current laws provide remedies for effective protection for current residents over a certain length of time period which would trigger turnover of the home owners association to elected board resident members.

Require an increase of elected board of directors over time periods if percentage housing completed as written and the current PUD is not attained. Or basically, the need for expanded PRED rules on larger developer

projects that regulate a developer or home owners association control such as over a period of time not projected housing completed.

Require the State to monitor the project progress or any new projections as to the completion of the projects and obligate the developer to update the existing PUD.

Problem two: When a home owner resident asks to see records of their home owners association or corporate affairs such as books, minutes, and records of transaction, the home owners association will be required to comply requests without obstruction, interference, or providing information other than requested.

The current documents provide that the home owners association make this information available to residents for inspection with reasonable time period according to the documents. If the home owners association does not comply with requests by providing incomplete information or ignore requests-- I have been a board member and asked to review certain documents as far back as October. Is that a fair amount of time to comply?

The only recourse left -- and I'm presently out of work and they know it -- is to attain an attorney through my own private counsel. There is a letter in your packet dated last week that I went to an attorney, and I haven't received anything, even any acknowledgment to come in and talk to them. I have checked it out with the Attorney General's Office. The whole State has been overly cooperative. We're a nonprofit group, we don't have sunshine laws. I'm a volunteer fireman. I'm ready to run in somebody's house and put it out, except for a few people I live around. (laughter)

You know what hurts about this the worse, four of these board members live across the street and to the right side of me. I mean, I've heard it here, cliques, whatever. They are hiding behind documents. The problem is there's \$140,000 in income a year, maybe \$60,000 is accountable. That's it, where is the rest of it going? Yes, I'm horrified. You don't even want to hear what I'm labeled. But it's appalling, and I have 300 residents, and this guy is hiding behind-- I've been here 14 years. You tell me why you're doing this for nothing. Then he hires his wife and next door neighbor. You know it's rude, and I just don't know what to do, and somebody offered this, and I've never ever felt in more company than here. (applause)

I've asked to speak right before the Assembly. When you read those documents in there, there is actual-- I mean, the vice-chairman's wife called and said I was causing a riot. I had 20 people going out, which were in a new committee, to try to promote change. They used the documents -- our own lawyers against us. It's just appalling.

So I won't keep talking, and I will save time because it's all in front of you to read, as well as backup information, which I think if you don't read this and see some of this-- I've been in the papers 17 times. I rustled, I've gone door to door, and I told them I'd do it because I'm just tired of being a small group controlling something -- whether it's a power trip or whether they're hiding something, I don't honestly know.

I would like to say in conclusion -- and I would like to read my conclusion, if anything. Excuse me for the emotional thing. This has been going on since June.

When a New Jersey resident signs away the rights to the major purchase of their life, they should have written guarantees of protection in place. That if they feel something is wrong with their home owners association they are paying dues in or if they feel they are being harassed by their home owners association, there should be legal remedies provided by the State to have swift and immediate action against any such organization at their disposal.

The present developer-home owners association system uses the documents in their own interest against home owners. The present documents are unrealistic and outdated.

Would you wish to be told every little thing you could do with your property then have to always seek legal counsel out of your own expenses, as well as contributing dues to the legal fees of the same association causing you this added expense? Would you like to have the present board of directors of your home owners association appointed by the developer or have the same people on the board 10 to 14 years so there is no room for growth?

I'm here for two reasons: to try to stimulate change in our community; to try and prevent the same type of events from happening to other home owners. The sad story is, when you come to the settlement table, it's the first time most residents find out there is a home owners association, and what are you going to do, back out? It will cost you money to back out, so you sign it. And that's what's really going on.

So I don't know whether you have any questions or comments. I provided enough information. I should stimulate some thought, I hope.

ASSEMBLYMAN BATEMAN: Mr. Rosney, thank you. This is a very impressive presentation. You have spent a lot of time on it and we appreciate it. That's why we're here, to take your views back and hopefully come up with a better legislation that's going to help all of you.

MR. ROSNEY: Is Mr. Hannaman in the audience, or has he left?

ASSEMBLYMAN BATEMAN: He's right there.

**EDWARD R. HANNAMAN:** (speaking from audience) I have some letters for you, too, if you would like to read them over.

MR. ROSNEY: You're Ed Hannaman?

MR. HANNAMAN: Yes.

MR. ROSNEY: It's nice to -- I finally wanted to meet the voice I've been talking to for the last six months.

I want to say, I got a letter back from the Governor today. I complimented the board -- I mean his office. When you finally reach him -- and it's very tough in this system, and I understand the system that's why I'm coming here, to let you know and see what's really going on. It's wrong, it's tragic what they do to people, the terror they put into people.

Mr. Herlihy, my associate, he's my neighbor, and we live across from these people. There is two questions. Is there a power trip, or is there money missing? It's really wrong, and we have no recourse but to get or retain our own attorneys to get control.

Thank you.

ASSEMBLYMAN BATEMAN: Hopefully we can change that.

Thank you.

Haim BarAkiva.

I'm sorry, I didn't know -- I thought you were together.

MR. HERLIHY: Jim Herlihy.

MR. ROSNEY: He's with me. Did I eat up all the time?

ASSEMBLYMAN BATEMAN: No, not at all.

Go ahead sir, I'm sorry.

MR. HERLIHY: My name is Jim Herlihy. I'm a home owner in Beckett, and I would like to thank the Task Force for letting me speak. My written comments are there so I'll make this short and sweet, because I've heard the story at least 10 times since I've been here.

I've got 18 years of contracting experience with the Federal government. I've dealt with everything from a small purchase of \$200 up to \$5 million to \$12 million in contracts.

When the Beckett Association -- and might I add I'm speaking as a home owner -- when the Beckett Association submitted what they called a budget -- and you as professionals get a feel for things after working with them for so long -- I saw a budget of \$70,000 for ground maintenance. I went to the meeting -- and the questions I asked are in my letter, but I would like to read them for the people because I think it's a very familiar story.

I went to the meeting and I said, "Did you award a five-year ground maintenance contract, or did you award a one-year contract with four one-year options?"

The Beckett Association responded, "Yes, we did."

I asked them, "Was it a five-year contract or a one-year contract?"

There was no response.

“Did you receive bids or proposals, and how many did you receive?”

“We received about 11.”

“Who was on the board to evaluate them?”

It should be noted here that one of the members of the board rose and stated that he reviewed them.

I asked a very basic question: “Do you have a background in contracting that gives you the expertise to evaluate the bids or proposals?” I was never told what they were.

The Beckett Association vice-chairman said to me, “It seems that you have a strong interest in ground maintenance.”

My actual response was, “I don’t care if you grow weeds. I have a strong interest in contracts. The number didn’t sit right with me.”

He said to me, “What makes you an expert?”

I responded by saying, “I have 18 years of contracting background with the Federal government. I would like to request copies of the bids and proposals to review. I would like to insure my fellow home owners that a fair and reasonable price was obtained with their money.”

At this point the Vice-President of the association, Mr. David Powell, told me that this information would be made available to me. The meeting then carried on with other home owner’s questions.

In addition to my request, the only elected Beckett Association board member has requested in writing, by certified mail, for the opportunity to review the bids/proposals. To date his request has not been acted on.

Having received no response to my request, I attended a second open meeting held on January 7 of '97. I once again made my request to review the bids/proposals for the ground maintenance contract. Once again, the vice-president of the association told me that this information would be forthcoming.

In accordance with the Beckett Home Owners Association manual, Page 11, Article 8, Section 2d which states: "cause to be kept a complete record of all its corporate affairs including the book of resolutions, make such reports reasonably available for inspection by any member or his agent and present an annual statement thereof to the members."

I can see no reason why I cannot review these bids/proposals, and as of this date I have not received -- and this is a very subjective statement -- nor do I expect to receive the information I have requested.

In closing-- I'm not used to talking in public. I think you figured that out.

ASSEMBLYMAN BATEMAN: You're doing fine.

MR. HERLIHY: I would like to say thank you. It's the first time in a long time I feel very comfortable with all these people here. We all seem to have the same problem, we're troublemakers. In listening to them--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Disgruntled.

MR. HERLIHY: Disgruntled, right. Thank you.

It is my opinion that what you're hearing can only lead you to one corrective course of action, and that's to protect the home owner or, in a lot of cases here, the condo owner.

I generally believed all my life that the needs of the many outweigh the needs of the few or the one. All I've heard here tonight -- and in my case and John's case -- is that everyone is trying to fight that person who wants the needs of the one and who has the financial resources to use them. Usually that is the money of the home owner being used against him, either correctly or incorrectly. This country was not founded on that.

I think that if any one of you were in a position that all of these people and myself are in, having the positions you have now, resolutions would happen a lot faster. A lot of these people are thinking things, not saying things, but I can tell you-- I don't know anybody in here except John. But at least everybody in here has either thought they heard a threat or a threat was eluded to them. Gangs do that. Essentially we are being run by gangs. Would you like to have a gang run your area? That's my question. I think you know what you have to do and I really pray to God you do it.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

Haim BarAkiva.

**H A I M B a r A K I V A:** Mr. Chairman and members of the Task Force. I have delivered to Joyce Murray a long statement, and as an addendum to it, there is short summary statement that I would like to read to you.

I am from Twin Rivers Planned Unit Development, PUD. It's an area of about 10,000 in population with millions of dollars in its budget. This statement brings to light some of the concerns and experiences of residents in Twin Rivers, a planned unit development in East Windsor, New Jersey.

For several years a number of home owners have approached the board, the development, and now administrator with questions about expenditures. I'll give you an example. We know that our administrator's benefit package is between \$150,000 to \$200,000 a year, more than the Governor of New Jersey. We were unable to penetrate this iron curtain of secrecy, and we never were able, despite the lawsuits, to find anything on how much he is making.

We have been chastised and made to feel disloyal and some have even been threatened with lawsuits. In my statement there you will see a letter that I received from a law firm threatening me with a lawsuit.

The concerns are threefold. The first is with the annual board election, which is supposed to be by secret ballot, but it is conducted in such a manner that everyone's vote is known without administrative staff.

Secondly, the percentage of the budget that goes for administrative salaries and benefits is disproportionately high, and information regarding this amount is withheld from the residents who pay fees to finance their entire operation.

Third, and most important, is the fact that even though the New Jersey legislators have enacted a law that requires each association to establish and make available the services of an alternate dispute resolution committee, that administration of Twin Rivers Condominium Association ignores requests for hearings before such a group and refers such requests to the law firm.

This experience has brought me here tonight to urge this panel to do the following: that the Department of Community Affairs be given more effective means to oversee condominium associations; and two, that

condominium associations, including PUD, be regarded as local municipalities in terms of their accountability.

Thank you for giving me the time.

ASSEMBLYMAN BATEMAN: Thank you.

Sharon Clarke. Is Sharon here? (no response) Okay.

James McAloon.

**J A M E S J. M c A L O O N:** My name is Jim McAloon. I am the President of the Board of Trustees of the Fairway Valley Community Association, in Washington Township, in Warren County.

I'd like to commend this Task Force on their courage and their stamina for holding all of these public hearings. I'm amazed that you can hear all of these complaints. I think there are very legitimate bases for these complaints.

I was very glad to hear Mr. Ramsey say that they are looking for some sort of legislation that will also include mixed-use type housing instead of just condominium associations. There is clearly a large number of problems with the community associations, not just condominium associations. I'm glad to hear that one of the complaints in that is the full-disclosure statement. I think if more people know what they are getting into when they buy into a community association, some of the problems may be avoided. If there is an agency that they can go to with these complaints, I think it would also help.

Our particular situation deals with the fact that we have a mixed-housing community. We have single family homes, we have condominium units, we have low-income housing. We share certain common facilities and we pay proportionately for those common facilities.

The community has not been completely built out to date. The developer still owns a number of town house units or lots for those town house units. Up until a few years ago, he was contributing into the budget to basically keep our maintenance cost within a reasonable amount.

At about 1993 he decided, somewhat arbitrarily, that he was no longer going to contribute to the budget. We felt that as lot owners it was his obligation to contribute, at least to some extent, to the continuing upkeep and maintenance of the association. There is no way, however, that we have found, thus far, to force a developer to own up to his responsibilities as an owner, whether it be a unit owner or a lot owner in a development.

By walking away from these responsibilities, the developer has essentially forced the home owners to subsidize the developer until a developer sees fit to finish the development when its beneficial for him, in terms of profit and his own economic benefit. We would like to see that corrected, to have some way of the developers being held accountable during the course of construction of a development, no matter how long that takes. We're not asking for the developer to pay as much as a unit owner, for example, using the pool or using tennis courts or amenities such as that, but certainly contributing to the upkeep of the association and the development in general. So that when he does build, that's a very nice community that people are going to want to buy into, that he has helped to maintain that to be a saleable property.

So again, I would like to thank all of you for your efforts and I certainly commend your stamina. Keep up the good work.

Thank you for your time.

ASSEMBLYMAN BATEMAN: Thank you.

Victor Steiner.

**VICTOR STEINER:** Good evening. My name is Vic Steiner from -- I'm the President of the Hills Village North Master Association in Bedminster. How are you doing, Bruce?

As President of the home owners association I do want you to know I have a bulletproof vest on tonight, after what I have heard. Luckily, or knock on wood, my concerns as both a home owner and a board member are nowhere near what I've heard here tonight.

Our concerns, though minor in respect to some of these, though are life threatening in some cases. One of our biggest problems is the enforcement of traffic laws. When I lived in a single-family residence on a 25 mile an hour street, sure, people could speed down the street, but the police could enforce that. Right now, we have streets which, granted, are not as big as they are or should be -- somebody decides to drive down that road 60 miles an hour, there is not a thing we could do about it. Nothing whatsoever. We have spoken to the police. They have no enforcement whatsoever unless, I believe, there is a person present and there is a situation where it's basically a reckless-driving incident. But as far as any traffic laws or stop signs, enforcing anything that people in single-family neighborhoods would consider standard, fair, we can do nothing. If you know that to be different, please let me know.

ASSEMBLYMAN BATEMAN: Are these private roads?

MR. STEINER: These are private roads.

MS. MATHEY: But Title 39 allows the--

MR. STEINER: You can make them public. There is an expense to doing that, significant in many cases, and what we would be doing in many

cases is taking smaller side roads which we want to be 15 miles an hour and automatically making them 25, which means 35.

UNIDENTIFIED SPEAKER FROM AUDIENCE: No, ours permits to the public and the speed limits beside Hills and Branchburg is 20, and the police officer occasionally comes in, hides, and tickets when you go flying through.

MR. STEINER: Are they Title 39?

UNIDENTIFIED SPEAKER FROM AUDIENCE: Yes.

ASSEMBLYMAN BATEMAN: I'm sorry, you know what, we are having trouble. We can't pick it all up.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I'm sorry.

ASSEMBLYMAN BATEMAN: That's okay.

Continue.

MR. STEINER: So you have made them Title 39. And was there an expense to that?

UNIDENTIFIED SPEAKER FROM AUDIENCE: I don't know.

ASSEMBLYMAN BATEMAN: I'm sorry, we can't--

MR. STEINER: Okay, fine.

So, in any case, whatever the legality of it is, that is a major issue that needs to be looked at, mostly from a safety standpoint. It does involve, of course, life.

Thank you very much.

ASSEMBLYMAN BATEMAN: Thank you.

Barney Judach.

**BARNEY JUDACH:** I'm thankful to see this Task Force sitting here tonight, and the only thing I ask as a Task Force is to look into the low-income and moderate-income condominium establishments. Most of the problems that were expressed here, I expressed in my communication to Assemblyman Bateman, which I was thankful for his prompt response and his interest.

There are a lot of shanigans that go on in these situations of low income and moderate income. to hastily just go over and not take your time, The most recent in the past year was the awarding of a \$220,000 electric stair contract for replacement steps -- no competitor bidding and handpicked a contractor. In fact, the contractor was not even qualified. after I verified he was a welding shop and had no experience whatsoever. In fact, yesterday the installation of one of those staircases was installed -- they retained an excavator to install the stairs and no electrician -- which requires a change of stairs and a permit from the Township of Bedminster, and none was obtained.

Another example, the people were told that they were going to change the solid waste -- or the garbagemen. People were told that we're going to save them \$15,000 a year. It comes out now that the contractor is proceeding the same conversation that the previous contractor that handled it for eight years. To top it off, the county had resulted in losing the recycling that went to Somerset County.

So the only thing -- to cut it short -- is that we're looking at factors that many of them were expressed here tonight with the same conditions and probably even worse in some instances that are taking place in this situation. In this particular instance you have 260 units, the management company consists of a former bank clerk and another so-called banker. Well, what you

have today in the field -- and I come out of the construction and the management of planned maintenance -- and I find that anybody out in the field can become a manager. If you license a nurse and you license various -- even a barber and a beautician, the management should be licensed or controlled and monitored by the State with some sort of means of rules and guides.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

Lucinda Choquette.

**LUCINDA J. CHOQUETTE:** Good evening. My name is Lucinda Choquette. I live in Leisure Village East, a 26-year-old, age-restricted community in Lakewood in Ocean County.

First, I would like to thank you for the opportunity to voice our concerns. It's gratifying to know that you're interested in seeking solutions to our problems. For many of us the freedoms to congregate and to speak openly, as well as to anticipate rational solutions, are simply not possible where we live. Having said that, I will also say that I live in what should be one of the best communities found anywhere.

We have 14,012 single-story residential condominium units and I think that's just about a perfect size. We have open spaces, mature and natural landscaping, wide streets, and a reasonable amount of privacy. We are fenced, gated, in a secure community. All of these are of great value these days.

These benefits plus our association-owned amenities are the things the developer left for us, and there it all stopped, fixed in time. After 20-plus

years of management by the association, we now have the following: Aging residential common elements, some of which can no longer be repaired. The association says there's no money to take care of them. We're told if we want to repair them we have to pay for them ourselves. I think they're verging on altering our form of ownership and doing that -- which would violate our master deed. And once we have repaired them or fixed them, they are telling us that they will not maintain them or insure them.

Reserve and replacement funds are grossly inadequate with almost nothing reserved for the residential condominiums. Basic maintenance is deferred again and again. The bottoms are rotted out of gutters, water is leaking through; old people are falling on ice because of that type of maintenance. Planning is nearly nonexistent, but it's apparently an agonizing function. Our Trustees meet regularly but seem to accomplish nothing.

Documents required by statute to have been turned over to the association can't even be found. Most business, which includes the taking of binding votes, is conducted in secret. Announcements and what I call for-show votes, which are votes taken on acts that have already been completed, take place at the so-called open meeting of the Board of Trustees. This seems to be about as far as they're going to go as far as implementing open meeting provisions which are required by statute.

It took us several years to get them that far. We still do not have an alternative dispute resolution procedure; although, based on complaints, the Department of Community Affairs has been working with them for about six months now.

Meetings of the association are announced as meetings of the Board of Trustees, and they seem to see no difference between the two. There are no provisions for association members to vote at association meetings, even on nonbinding resolutions; although, our bylaws provide for that. In fact, the bylaws of the association are violated by the Trustees on a regular and routine basis. If you challenge them, they say, "What are you going to do about it?"

The processes and procedures for voting in elections and bylaw modifying referendums are a deceptive farce. Correspondence and inquiries are ignored or nonresponsive answers are provided. The list could go on and on, and I think you have heard a lot of the same sort of thing tonight.

They say if we don't like it like that we should move elsewhere. As one of our residents said, "I wasn't aware when I moved here I had to give up my U.S. citizenship. They have more rights in communist countries." I doubt that anyone in the Senate or the General Assembly could have predicted this type of outcome or that we would be in need of serious protection from our own governing body.

I have written to you regarding the problems that exist in an age-restricted community and why our seniors are unlikely to act on their own behalf. I hope you will consider those. I won't belabor those points here. I think this audience is not in the same category.

I would like to note that government, at all levels, has become more responsive to the people, open to the people, and more accountable to the people. The age of information availability in sharing is here. Our Trustees, are in fact, our first line of government; however, they seem to have

been exempted from these government reforms. This needs to change and it needs to change quickly.

I have also written to you about the need for standardization, structure, oversight, and penalties against Trustees. I believe these are essential to prevent abuses. The need for protection does not end when the developer leaves, it simply changes form.

Anything you could do to help us in these areas will be greatly appreciated.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you very much.

Greg Machyowsky.

**G R E G M A C H Y O W S K Y:** Mr. Chairman, members of the Task Force and staff, fellow condominium residents and public: Five minutes, even an elastic five minutes, is not much time to try to capsulize my major concerns after 10 years of very intensive participation as a citizen in my condominium association.

I am a 10-year resident, almost from the inception of the association, of a medium-sized, 545-unit association in Piscataway Township, New Jersey.

I wondered tonight how I would be able to persuade this Task Force, based on my intensive study of condominium associations -- and I will give a little more detail on that in a moment -- how I would be able to persuade them that as legitimate as are the concerns of business management questions in condominium affairs, such as limited priority liens, dealing with the delinquencies of tenants, standardization of your reserve funds and perhaps

the licensing of property managers-- As legitimate as are these concerns, and the many concerns in your Uniform Common Interest Ownership Act, which is somehow being heralded on this Task Force as the main purpose of the Task Force-- As legitimate as they are, the overriding concern must be a fundamental question of constitutional democracy. It's not overdramatic to say it.

I was wondering how I was going to persuade you of that, but the testimony here tonight has made the case for me, and I can only embellish it and perhaps suggest a partial remedy in these few minutes that I have time to do so.

The Chairman of this Task Force, when it was established, is quoted in *The Courier-News* of October 23, 1994 as saying, "Condominium associations, they have a great deal of power. We're not really certain who is watching them." He really laid his finger on the point, right there. They are not being watched. The Community Association Institute, which is the so-called trade association, which many of us assume are going to represent the residents, represents instead a very, in my view, parochial, business management-oriented approach to condominium government. As a result, the really unheardable abuses of authority that we have seen in condominium associations have been permitted to exist. They exist because bylaws are not being followed.

I've looked at a number of bylaws, most particularly my own. When I moved into my condominium association, I saw these bylaws as giving a wonderful opportunity to make democracy flourish, to build a sense of community: people living close to each other, getting together, like the New

England town meeting, which incidentally condominium associations were originally conceived to be. I want to call your attention to a book, *Privatopia*, written by Evan Mackenzie, 1994, Yale University Press. It is easily the most comprehensive discussion of the history and philosophy and actual practice on unveiling a community association in this nation. It's *Privatopia*. It's an odd name, P-R-I-V-A-T-O-P-I-A. I was going to do this at the end, but let me poke briefly how he sums up things -- well, there are a lot of things he talks about, including the unsophisticated boards, the hostility and intimidation, which surprisingly, from your fellow citizens, you encounter when trying to make democracy work.

Mr. Mackenzie says, "The ideal of self-governing communities fashioned after the New England town meeting was the ideal. The reality too often was an undemocratic oligarchy in which an apathetic body of residents was governed by a few dedicated or overly zealous neighbors who were, for the most part, told what to do by property managers and lawyers." I might add accountants and engineers, too. "In the absence of meaningful legislative regulation or oversight, the idea of residential private government took the shape advocated originally by developers through ULI, the Urban Land Institute, and FHA, and later by lawyers and property managers through CAI."

Now, CAI of course is -- from what I observe -- largely dominated in its policy making by the property management companies, the lawyers, the accountants, the engineers -- all fine fellows and important to add to the competence of associations; but at the very least, it seems to me their preoccupation has been, as you will see in legislation, with their powers and their business management techniques and very little with the concept of

condominium democracy. Now, you've gotten something in the law in terms of the alternate dispute resolution and due process. People accused of offenses by associations is a real problem, but I don't think the leadership of the CAI wholeheartedly or even enthusiastically supported that. That was the effort of one or two individuals concerned with the abuse of power in condominium associations.

Excuse me, I'm a little apprehensive because I know my time is going to run out.

ASSEMBLYMAN BATEMAN: It's okay, take your time.

MR. MACHYOWSKY: All right, thank you.

UNIDENTIFIED SPEAKER FROM AUDIENCE: You're doing fine.

MR. MACHYOWSKY: Thanks so much.

Now, as I say, let me put this in the perspective of having gone to scores of condominium meetings.

Since 1991, when the so-called Open Meetings Act was enacted and took effect in October 1991, I have attended every, every condominium board meeting of my association, except three when I was out of town. That's easily 50 or 60. I attended a few before that when, with reluctance, I was permitted to observe every couple of months, and actually that was made an issue of criticism, I mean thereafter, in the subject of a complaint to the police about harassing them because I was attending meetings even when nobody objected to my attending the meeting until later on.

In any case, I have had a career in municipal government as a legislative draftsman, I'm retired. My career was out of state, not in New

Jersey. I'm a graduate of the University of Chicago Law School and the Eagleton Institute of Politics. I have given my whole life as an elected official in a medium-size city in another state; although I'm Jersey born and raised. I am anxious to try to make the system work where the people really are welcomed and involved. When I read the bylaws of my association, I said this is terrific, but as has been evidence tonight, and somewhat surprisingly to me, those in office seem to try to intimidate participation. They don't want the committee systems to work is my impression. They evade and willfully ignore the bylaws.

My point on that is that if we could get the bylaws to work, a lot of these problems of abusive authority would be cleared up.

Now, my presentation is based not just on my own experiences, but rather wide reading on the subject. I've kind of made it a volunteer civic activity that's taken a lot out of me. But it's very important.

The courts told us about a year or so ago, in the *Briarwood* case and the *Holbert* case, they manifested a concern about abuse of authority from condominium associations. Don't take my word for it. R. Bruce Freeman, a community association lawyer, Westfield, New Jersey, wrote a paper for a seminar of the Community Associations Institute in 1994, and he tried to call attention to this problem -- that there's a problem of abusive authority. Let me read quickly -- it's only a few paragraphs:

"The theme of this discussion is that the courts in New Jersey are becoming more skeptical of association actions involving unit owners and, accordingly, have revamped the legal structure under which association actions are reviewed. When condominium cases first reached the courts in the '80s,

the facts and the cases involved reasonable action by the board. The court decisions assume that boards, in general, would act in good faith, and it would be inappropriate for courts to meddle in private community government. The fact patterns in the cases coming before the courts in the '90s may have been perceived by courts as betraying the trust extended in the earlier cases and have resulted in decisions in which the court has overturned the action of the board in favor of the interest of the unit owner.”

In *Briarwood*, the association’s attorneys spotted two apparent rule violations as owners were moving out of the condominium and immediately imposed a fine and secured it by recording a lien. This raises a question in my mind, where is the attorney’s role in defending the bylaws in these associations? Are they trying too much to please their clients?

“The lien was paid the following day at the closing, but the owner appealed. The decision has sent shock waves through the industry. The appellate division struck down the board’s action and raised serious questions about whether fines may be imposed at all. At bottom, however, the court clearly signaled that unreasonable, abusive actions by boards not only will be stricken, but may cause judicial withdrawal of trust earlier extended to boards to run their communities without judicial interference.”

This attorney, Mr. Freeman, called attention to the problem. The CAI responded by asking for legislation that just gave it more power. It didn’t seem to be at all concerned about the due process questions raised by the *Briarwood* decision. All this is to say that it’s not just me and the folks here saying, from our experience, that there has been abusive authority and intimidation and hostility. It’s to say that the courts and even some

commentators have been calling attention -- I think trying to alert the Legislature to the fact that something has got to be done.

Now, I had a list here of the particular violations of bylaws that I have noted that are quite serious. I won't go into them. Many of them are similar to what were raised here. I'd be glad to prepare a documented statement, if you wish. I'm reluctant to publicize them because I worked hard to reform -- from my view -- my condo association and I made some progress in that direction. I am no longer subject to the kind of, I consider, abuse that I used to be, basically, because through struggling we managed to change the membership of the board a bit. But it's left its scars on me, I must admit.

I don't want to hear from them next week that I am making trouble for them, but they have been guilty -- I have to say in all honesty -- of either willfully or ignorantly evading and ignoring bylaws that are basic to the proper function of the association when it comes to elections, when it comes to financing and other matters. I have about 10 specific items of about 30 or 40 I could site, but time is getting short.

The recommendation that I want to make is this. Since abusive authority should be your priority concern, I think the people here ought to think in terms of ourselves organizing an interest group because CAI does not seem to consider our concerns that important. We want a group that represents the residents. You might call me at 908-463-3532 if you want to talk further about this.

UNIDENTIFIED SPEAKER FROM AUDIENCE: What's your E-mail?

MR. MACHYOWSKY: I don't want to lobby now, but if CAI will not represent the residents in their concern for constitutional democratic concepts and the implementation of the bylaws, then we'll have to organize ourselves.

In the meantime, let me only suggest that you amend the law at least to provide an ombudsman concept. Anybody who has a gripe, a complaint about a bylaw being ignored, evaded, misused -- and as I said I can cite many -- should be able to contact an ombudsman or some official in the Department of Community Affairs who by law will be instructed and through proper regulations will be instructed to check out that complaint. Something along those lines at the very least, because I have been stuck as many others with the defense that if you don't like what we're doing, take us to court. How many times have I heard that. We shouldn't be required to have that. You've got a little bit of a precedent in a provision already in the law that permits direct appeal to the Commissioner of Community Affairs when a right is violated. Unfortunately, I didn't refresh my memory on that tonight. I believe it has something to do with the alternate dispute resolution procedures. If a board is not providing those procedures, then you can immediately appeal to the Commissioner of Community Affairs. I suggest that with any asserted bylaw violation, the people should have a right to contact Community Affairs, and they should investigate it.

Right now, you might say, "Well, the State law, the Attorney General, or the Department of Community Affairs is required to enforce--" We have heard that that's been rather lukewarm. That's true, but not a lot of these requirements regarding finances and bidding procedures and audits and

elections are in your bylaws, they're not in your State law, and DCA might say, "Well, we don't enforce the bylaws, we will only consider enforcing the State laws." We need an overall comprehensive, strong abuse of authority check because the situation, to me, is at the point of scandal.

Finally, I would urge also that the Task Force consider something in terms of budgeting procedures. My condo association spends \$700,000 a year. It's a horror story, until recently, the question of fiscal accounting and reporting procedures, to say the least. There is no real budget control on these condominium associations. There is no bidding requirements for a lowest responsible bid or anything. It took me a couple of years to get them to stop adopting these contracts in executive session. It was claimed that it's contract negotiations -- the attorney sitting right there-- I think most attorneys would say negotiating a contract is different than opening the bids as to which contract you're going to choose.

Again, you might start asking some of the attorneys how can they seem to be so liberal in terms of these questions -- appropriated abuse of authority. It boggles my mind.

Finally, on the election. Somebody raised a question of secret ballot. I think constitutionally we have a right to secret ballot. The management should not see the names, the vote, the unit owner, and who he is voting for as they come into the office. Oftentimes a management company is allied with the people -- the insiders on the board.

We have corrected that somewhat at our place, not totally. People still have to sign their ballot, but it's put in an envelope and not opened until the day of counting. That still is inadequate. Nobody should be required to

have to sign their ballot and show who they voted for, even if it's only opened at a certain time.

As I said, prior to then, people had to put it on a postcard who they were voting for-- No, it wasn't on a postcard, it was on a piece of paper that was opened at the front office. Not a good idea at all. So I think secret ballot is constitutionally required, and it can easily be done.

The other thing is the due process procedure -- you should ensure that there is an impartial third party, that this is not circumvented by appointing unqualified people to handle that matter.

So we have a wonderful opportunity here to revive democracy. This goes beyond just condominium government. It's what President Clinton is talking about: sense of community. Other officials are talking about -- it goes to the whole question in this nation whether we want to be a community or a crowd.

The 15 percent of us who live in community associations -- 32,000,000 people in this country, 1100 associations in this State, 250,000 units-- If we could get these bylaws to work openly, honestly, and enthusiastically, then you're going to have an effect on the entire fabric of democracy in this country.

Thank you so much.

ASSEMBLYMAN BATEMAN: Thank you.

Bob Stephenson. Is Bob still here? (negative response) Okay.

Suzanne Vahala.

**S U Z A N N E V A H A L A:** I'm afraid I didn't come with a prepared statement because I didn't know exactly what was going to transpire here

tonight, so I made notes as I've listened. And if it is a little bit disjointed, I apologize and I hope you can just follow.

I am the President of the home owners association at The Commons at Lebanon, in Lebanon, New Jersey. We are a community of 181 fee simple town homes. We have a five-member board that are all elected. We have gone through transition. We have seven standing committees and one ad hoc committee.

I have never heard so many horror stories as I've heard tonight. We haven't experienced anything near like that in my community, and I suppose we may be lucky or not, but I would hope -- I pray -- that the stories that we have heard are from one end of the bell curve. I hope this isn't typical of the vast majority of communities across the State and across the country.

One point I would like to try to make is that we try not to throw the baby out with the bathwater. That in these communities where things do work as they're supposed to work that if restrictive laws are put in place that you might hurt the communities that are doing the right things and doing it well.

I know in our development we are five board members who are all home owners, we all pay the same maintenance fees and expect the same services and have the same basic complaints about everything in life as anyone else. It's been my experience that the same is basically true even of the council in our borough, the planning boards. They're mostly just regular people from varied backgrounds, that, for whatever reason, volunteer or are shanghaied into public service because there are not exactly people beating down the doors to do these jobs because they are unpaid and, for the most part, unappreciated.

I may be a little far moved from my grammar school civics, but if I remember correctly, the United States is not a pure democracy, it's a democratic republic. By that we mean that we elect officials in whom we have placed some measure of trust to make decisions for us because it is unwieldily for hundreds of millions of people to vote on every single issue, and so it is in the associations. If the previous speaker is correct -- if the bylaws are working the way they're supposed to, any problems that come up should be able to be addressed by the home owners through elected board members.

In my community we had a small problem a few years ago with a board president that had a private agenda and did tend to muck things up for a couple of years. When enough of us woke up to the fact of what was going on, we took the time from our -- all of us have busy schedules, we work, we have families, we have commitments, but we took the time to go to meetings and become vocal. When time came for election, we elected new people to the board. We were able to replace the management company that was, in my opinion, in large part responsible for what happened when you have a weak board. The managing agent can become a little too strong, and it's up to the board to lead the way they are elected to do by the home owners.

We got on the board and we turned things around. We got a new managing agent, a new attorney -- we actually lowered our maintenance fee -- and while providing, we think, the same or better services, which only goes to show that board members and home owners can do what's necessary. But you have to have some people on those boards that have some business background and know how to run an association, because it is a business. It is where we live and it is our home, but it also a business because we all live very close to

one another and we are very dependent on each other for our property values, and that's the reason for the rules and regulations.

If home owners were allowed to put out pink flamingos and whatever else willy nilly, all of our property values will fall accordingly. In our community, by virtue of tightening up somewhat from the lax management that we had in previous years, we've seen a significant increase in property values, in some cases, \$10,000 more per unit than they were selling for two years ago, which is pretty good in today's market. Not only that, but when our units go on the market, some of them are selling at a matter of days, a week, or two. They're in demand. So, obviously, keeping a community well kept and well maintained and well managed does have its benefits. The vast majority of home owners do see that and do appreciate that. So I would just hope that you will take that into consideration when you're making any changes or initiating new legislation.

I know in our community I literally have to go door to door ringing doorbells to get people to get onto committees because people-- no matter how many times I advertise in newsletters, we need members, we need committee people, we need volunteers, we need help, everybody's busy. I literally go door to door saying, "Look, if we don't have people to do this on a voluntarily basis, we are going to have to go out and pay people to come in and do these services, and accordingly, your monthly maintenance fees will go up." When they're made to understand that, I've had some success in getting people to get on committees.

I guess I feel sorry for the people that have spoken here tonight, that they have such horror stories where they live, that people are trying to get

involved and aren't allowed to. In my development I'm pulling teeth to get people involved because my husband and I have about 20 minutes a week together. The rest of my time is divided between my work and my association because they are so needy of the time and attention that I wish there were more people to divide that work among, but it's just very difficult to get.

As far as disseminating information, we have open board meetings. Not only are they sent out once a year on a calendar, I personally walk around every month and put a notice on everyone's door to remind them of the board meeting, to try to get them to come. I brew coffee. I make cake. I tell them to come and have refreshments to get them there. I have monthly programs where I invite people to come and speak on topics of interest to try and interest people in that if they won't come just to sit through boring board business. We've done everything we can do.

We have a newsletter, we put things on people's doors. We have mailings from the management company. Even with all of that, it's hard to get participation until someone gets a violation for whatever, and all of a sudden they have the time to come and gripe about it and get to an attorney and send letters and this sort of thing. I think, wouldn't it be wonderful if all that enthusiasm were channeled into a more productive end, like coming on and helping us run things and make things run the way they are supposed to.

We have a covenants committee that we understand serves the requirements for ADR. I would be a little afraid of having that taken away from us, only because the people on the covenants committee are home owners. They are, in essence, a jury of one's peers, and they have a vested interest in the property values in that community and the lifestyle in that

community. Someone from the outside, a paid mediator or whatever, who comes and sits and looks at your bylaws and may adjudicate them very efficiently still does not have the vested interest in the lifestyle of that community. They don't live there. So I would have some reservation about rushing to do away with covenants committees.

I myself have lived in all modes in my life, from apartments, growing up in New York City, to a single-family home in Hillsborough, now to my town home in Hunterdon County. I was somewhat, yes, aware of the restrictions in my kind of community from having lived in a condo before in Hillsborough before I bought my single-family home. I realized, even though, at that point, I did not read the POS cover to cover, that there were going to be some restrictions in my lifestyle which, quite honestly, I had no problem with. In exchange for not being able to paint my house fuchsia or put out pink flamingos, I have someone else cutting my grass, shoveling my snow, picking up my trash, cleaning the pool, sweeping the tennis court -- everything in life is a tradeoff.

In order to get the services that you get in a planned development, you have to give up all of the initiatives that you -- well, not all, but some of the initiatives that you have as a single-family home owner. That's life. I don't have a problem with it, and if people have been dooped into buying in a place where they didn't understand the situation, I can genuinely sympathize with that, but there are many, many of us who consciously buy into this type of lifestyle because we want that kind of lifestyle. We don't want the headache of single-family ownership, of making all the decisions, and having all the responsibility. So, if we become this true democracy where -- if you have one

person too many on the side of the pink flamingos, then the rest of us, our lifestyle is compromised. So we have to weigh that very, very carefully before we go slashing and burning everything that's in place right now.

Other than that, just that living so close to one another in a planned community you have to understand that one person's rights end where the next man's begins. If rules and regulations aren't in place you can literally have anarchy. We have to have some way to preserve the lifestyle of everyone, and that means being somewhat restrictive to everyone so that everyone can have a decent lifestyle. I think the vast majority of people, if they were really to understand that concept, could understand that.

I'm sorry, I'm probably running over time. But I thank you for listening, and I just hope you will consider what I had to say.

ASSEMBLYMAN BATEMAN: Thank you.

Bill Barr.

**B I L L B A R R:** Bill Barr, I live in Clinton Township, and I reside in Beaverbrook, which is currently an unfinished PUD.

I want to take things in a little bit of a different direction. From this standpoint, a lot of the problems that occur in many of these developments start way, way early in the beginning of them. One of those that I see has to do with local authorities trying to do a good job but frankly, from the State perspective, being quite hampered in being able to do that. One of those I see is with the planning board. Now, I don't know exactly what kind of venue you folks are going to cover, but I know that in our locality, for instance, the planning board has had many issues recently with new developments and continuation of existing developments. The planning board

has expressed all kinds of sympathies in terms of the existing home owners. But, in short, they have come back with some responses to us in the sense of saying, "We have the authority to require a developer to place a bond for roads, utilities, sewers," things of this nature.

When it comes to entering into the transition phase, we have no authority to require a developer to put up a bond to assure that before he goes belly up or before he walks away that there is going to be some money in the bank. What's the use of talking about a transition if there is no money there anyway? This is something that's happened quite frequently.

The planning board, if they were able to have a little more oversight on these applications that come before them with respect to the review of bylaws-- There's a lot of *t*'s that have to be crossed, *i*'s dotted. That mostly has to do with local ordinances, engineering factors, and things of this nature. However, when it comes to the actual operation of a planned unit development bylaws, transition, for instance, the planning board itself has no oversight that I am aware of with those issues, and if those issues could be addressed early on, I think that many of these problems that we see occurring could be prevented in the future. I can only second the emotions.

As far as property values are concerned, and I can speak for people in our development and probably you have heard from many others, that as far as this being a consumer issue, I think-- I just have to state the fact that in New Jersey, as far as I'm aware and what I see, a tremendous number of people have lost a tremendous amount of equity in their homes, and in reaching out and grabbing for this dream of home ownership, this loss of equity has cost the folks in New Jersey a tremendous amount of money. You

heard one fellow testify an \$88,000 condo, now at \$40,000 to 49,000 market price. These are tremendous hits.

So I think that the local authorities could use a little more teeth, a little more support from the State, and perhaps we wouldn't have to complicate the situation for the operation of the condo associations too much more. I think that would be a big help if you could address that issue.

A final concern. I've read recently that the New Jersey Builders Association has been approaching Trenton -- or lobbying Trenton, trying to get planning boards basically dissolved and realigned into -- as I understand it -- one man, one municipality. He has the responsibility for overseeing all the applications.

ASSEMBLYMAN BATEMAN: That's not going to happen.

ASSEMBLYMAN GREGG: It's not true either. It's a rumor.

MR. BARR: Okay.

ASSEMBLYMAN GREGG: It was a written rumor.

ASSEMBLYMAN BATEMAN: No, it's not a good idea.

MR. BARR: Please keep the planning board process there and strengthen it any way in which you might be able to.

ASSEMBLYMAN BATEMAN: Thank you very much, Mr. Barr.

MR. BARR: Thank you very much.

ASSEMBLYMAN BATEMAN: Andre de Garmeaux.

Last but not least.

**ANDRE de GARMEAUX:** Thanks for your patience and endurance here tonight.

I live in Ocean County in Burnt Tavern Manor Condominiums, and we've had a situation that's been unfolding now for a little bit over three years. I know some of our people have spoken with Phyliss Matthey. I think myself I've spoken with Wendell on the phone, if not in person. We basically-- I'm not going to bore you with details because I would take up an hour and a half, two hours of your time alone.

ASSEMBLYMAN BATEMAN: You can't have two hours.

MR. de GARMEAUX: It's an absolute nightmare. We've been in the paper probably 30 times. I heard a word mentioned tonight, oppression. I think it's a very fitting word for what we're experiencing, and apparently it's not all that uncommon. We have no open meetings. We had a period of nine years where we were told there were no elections. We asked for an election to be held at open meetings. "Okay, you want to have an election." They handed us slips of papers with their names on them, and that was an election.

MR. SMITH: Do you still have the same management company?

MR. de GARMEAUX: Same management company.

MR. SMITH: Just curious.

MR. de GARMEAUX: Okay, you understand a little bit of the inside of it then.

We went out and solicited enough proxies to win an election. We went in, turned over our proxies, went into the meeting. They said, out of almost 100 proxies we had given them only 6 were valid. So now we have to go into court to fight for our proxies so that we can have an election process. It's like a never ending-- Well, let's take it into court for this; let's take it into court for that. This just does not make sense. There has to be some

organization, board, person, whatever, that can enforce some of the rules that you make.

Senator Andrew Ciesla was nice enough to write a bill. The original bill would have empowered DCA to remove wrong boards. Those teeth were taken out of it. Now they are empowered to write a strongly worded letter, which really doesn't do anybody any good, because then that result is, Hey, let's go into court, which costs home owners, who maybe have a \$60,000 or \$100,000 investment in their homes, to go into court and spend \$20,000 to try and protect their rights and to have some participation in their community. That's just not fair to us as individuals.

We thought that perhaps we were alone in Burnt Tavern Manor, that this was just a problem we were having. We started going to our town council meetings to see what was going on. We started meeting people from other communities in town, two of them which are here tonight, who had experiences with the same management company. Before we know it, we have six communities all having the same shared problems with one management company. I'm getting to a point here.

The point is, who has anything to gain from this? We're home owners; we bought into something, that's our investment. We're going to spend our time trying to protect our investment, to grow it, so that if we choose to move out, we can recoup our investment or if we want to keep in for the long term maybe we'll recoup a little gain on it. The people who have money to gain from this -- and a wise man once told me, if you want to find the problem, follow the money. Look at the people who are getting paid in this game. That's the management company -- excuse me, but the lawyers and the

accountants. In our particular situation, that trio of management company, lawyer, and accountant have been together since, at least, 1981.

If you want to look at an area, that's where we've got to be looking at, the people that are earning money from this. They're the one's that are causing the oppression, that are preventing the elections. If we had a professional management company, they would be encouraging an election process, much like this woman over here who lives in a utopian society, almost. They would be encouraging people to come out to vote, to get involved. We don't have committees, we don't have votes, we don't have a newsletter. We have nothing except our dues that we pay every month, \$400,000, that gets spent, and when we question it we get told nothing.

I'd just like to read-- There was a letter sent from our town council to the prosecutor of Ocean County, and I'd just like to read a couple of highlights, and then I'm done, because I'm sure you're about as tired and had a long day like I did.

"Management company exerts undue influence and control over their association by requiring their election as secretary and treasurer, money and records. Management company exerts undue influence and control over the association by requiring that nonresident condominium owners provide their voting proxy. Management acting as elected officials of the association do not hold meetings as required by the association bylaws and master deed." And there is a whole list that was sent. It was published on the front page of the Ocean County section in the *Asbury Park Press*.

This is not a game to us, these are our lives, our livelihoods, and we're looking for some solution. We would like to offer maybe a couple of solutions -- you've heard an awful lot here tonight:

Licensing these management companies, so that when they begin to play games like this, would be key. You can revoke the license. A doctor does something negligent, you revoke his license. A taxi driver gets found drunk driving, you revoke the taxi license. License them so that there is some kind of leash on them so that you can control the situation. Granted, this is to be used in very extreme situations. I've heard a lot of very extreme situations here tonight. I wish I could say that most people's experience were like this woman here. That's what I think most of us were looking for.

ASSEMBLYMAN BATEMAN: You'll submit that letter -- you have copies of that letter you're reading from? If you'd like you can submit it for the record.

MR. de GARMEAUX: Sure.

ASSEMBLYMAN BATEMAN: That would be helpful.

MR. SMITH: Is that case still pending?

MR. de GARMEAUX: Yes, it's within the Prosecutor's Office right now. It's not actually a lawsuit that we're holding. It's under investigation -- I guess you would say.

I will say this too: I live down in Ocean County, we drove 95 miles to get here. We didn't know about the meeting in Ocean County. It wasn't very well advertised.

ASSEMBLYMAN BATEMAN: Yes, I was going to say to you that we were down your way a couple of months ago, right in your backyard.

MR. de GARMEAUX: Right, we found out about it the next day because we read the caption. They covered it in the paper.

So, if you would advertise a little better in the future, we would gladly attend and not stand up and take up so much time, but just to participate.

ASSEMBLYMAN BATEMAN: That's okay. We appreciate you taking the time to drive up here.

MR. de GARMEAUX: Enforcement is key. There's got to be somebody to enforce. We spend so much time going from division to division to Community Affairs. You go from planned real estate development -- they tell you to call this number, you call that number and you speak to this division, then they send you to another. By the time you go through six divisions, you're back where you started. It seems like there's no concrete employee to contact there who has any kind of power to do anything.

There should be some way to resolve a situation like this in a three- to six-month period. You shouldn't have to spend three months and multiple times going into court to try and resolve a situation.

If you could provide that for us, we will gladly -- I think, probably could speak for everybody in this room -- get behind you and do whatever you need us to do to make it happen. We would gladly do that.

Thank you for your help. Thank you for your time.

ASSEMBLYMAN BATEMAN: We thank you for your input.

Thank you very much.

Is there anyone else I missed?

I'd like to thank Kerry Israel for allowing us to use the theater tonight. I'd like to thank the technicians in the back and everyone -- the technicians down front for recording. I thank you all for coming out and taking time and giving us the valuable information we need.

Drive safely going home.

Thank you.

**(HEARING CONCLUDED)**