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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE STATE GOVERNMENT COMMITTEE

RYAN OFFICE BUILDING
ROOM 205
HARRISBURG, PENNSYLVANIA

WEDNESDAY, FEBRUARY 6, 2008
9:00 A.M.

BEFORE:

- HONORABLE BABETTE JOSEPHS, CHAIRMAN
- HONORABLE MATTHEW E. BAKER
- HONORABLE KERRY A. BENNINGHOFF
- HONORABLE MIKE CARROLL
- HONORABLE PAUL I. CLYMER
- HONORABLE MARK B. COHEN
- HONORABLE TOM C. CREIGHTON
- HONORABLE FLORINDO J. FABRIZIO
- HONORABLE ROBERT FREEMAN
- HONORABLE JARET GIBBONS

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(CONT'D)

HONORABLE CARL W. MANTZ
HONORABLE JIM MARSHALL
HONORABLE MICHAEL H. O'BRIEN
HONORABLE CHERELLE L. PARKER
HONORABLE THOMAS J. QUIGLEY
HONORABLE SEAN M. RAMALEY
HONORABLE KATHY RAPP
HONORABLE MIKE VEREB
HONORABLE GREG VITALI
HONORABLE ROSITA C. YOUNGBLOOD

ALSO PRESENT:

SECRETARY STEVE CRAWFORD, SECRETARY OF
LEGISLATIVE AFFAIRS
RODNEY L. OLIVER, MAJORITY EXECUTIVE DIRECTOR
SUSAN S. BOYLE, MINORITY EXECUTIVE DIRECTOR

BRENDA S. HAMILTON, RPR
REPORTER - NOTARY PUBLIC

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P R O C E E D I N G S

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3 CHAIRMAN JOSEPHS: I'm going to start
4 the hearing while we're moving furniture a
5 little bit because the stenographer said she
6 was ready and that's my signal.

7 I want to welcome the witnesses; but
8 before I do that, if we start over here on my
9 left and the members say their names, their
10 counties, introduce themselves, I'd appreciate
11 that.

12 REPRESENTATIVE RAMALEY: Good
13 morning. Sean Ramaley, Beaver and Allegheny
14 Counties.

15 REPRESENTATIVE FABRIZIO: Flo
16 Fabrizio, Erie County.

17 REPRESENTATIVE MARSHALL: Jim
18 Marshall, Beaver County.

19 REPRESENTATIVE O'BRIEN: Mike
20 O'Brien, Philadelphia.

21 REPRESENTATIVE CLYMER: Paul Clymer,
22 Bucks County.

23 CHAIRMAN JOSEPHS: Babette Josephs,
24 Philadelphia County.

25 REPRESENTATIVE BAKER: Matt Baker,

1 Tioga and Western Bradford Counties.

2 Minority chair's legal counsel, Rod
3 Quarry.

4 REPRESENTATIVE GIBBONS: Jaret
5 Gibbons, Lawrence County.

6 REPRESENTATIVE CARROLL: Mike
7 Carroll, Luzerne and Monroe County.

8 REPRESENTATIVE RAPP: Kathy Rapp,
9 Warren, McKean and Forest Counties.

10 REPRESENTATIVE MANTZ: Carl Mantz,
11 Lehigh and Berks Counties.

12 CHAIRMAN JOSEPHS: Rodney Oliver, the
13 Executive Director of the Committee. And I
14 want to say that these four members are not
15 here, not because they're not interested, but
16 because they have conflicting committee
17 meetings, Representative Gingrich,
18 Representative Kula, Representative Kortz, and
19 Representative Curry.

20 REPRESENTATIVE BAKER: And
21 Representative Watson.

22 CHAIRMAN JOSEPHS: Sir,
23 Mr. Creighton, you want to say you're here?

24 REPRESENTATIVE CREIGHTON: Tom
25 Creighton from Lancaster County.

1 CHAIRMAN JOSEPHS: Tom Creighton from
2 Lancaster, in case he could not be heard.

3 Thank you for joining us. Welcome,
4 Secretary and Ms. Myers.

5 We all have the testimony of the
6 Secretary. I don't see any reason to ask him
7 to read it, repeat it again. And we've heard
8 it, I believe, before, pretty much as you are
9 presenting it now.

10 I would like to ask Ms. Myers to give
11 her testimony and as much as you can to speak
12 to us, not to read to us, and then after you
13 are concluded, if both of you will stay at the
14 witness table, we will ask questions.

15 Please proceed when you're ready.

16 DEPUTY SECRETARY MYERS: Thank you,
17 Chairman Josephs, Chairman Baker as well, and
18 members of the committee.

19 I appreciate this opportunity to
20 discuss with you some of the matters relating
21 to our administration of the constitutional,
22 statutory, regulatory provisions relating to
23 the submerged lands of the Commonwealth.

24 At a hearing on September 11th, 2007
25 Secretary Creedon testified and explained how

1 the Commonwealth looks at the bulkhead line in
2 particular.

3 We share our understanding of how
4 that is done, and I am here today because we
5 were asked to provide some additional
6 explanation of how the Commonwealth determines
7 the boundary of the submerged lands of the
8 Commonwealth which would -- which would
9 identify our jurisdiction in administering
10 those laws.

11 As you probably know, submerged lands
12 beneath the ordinary low water mark navigable
13 rivers within Pennsylvania are owned by the
14 Commonwealth.

15 The state may authorize the private
16 use of submerged lands and even give riparian
17 owners significant indications of ownership
18 and leases of -- and ownership of structures
19 placed on those riparian submerged lands.

20 Under Pennsylvania law, riparian
21 owners along navigable rivers may have
22 ownership of the bottom only as high as the
23 low water mark.

24 And the case law is clear on that
25 point, and we've provided citations to you in

1 my written remarks.

2 Rivers change their course. They can
3 move. The Commonwealth's obligation and
4 rights to administer the submerged lands of
5 the Commonwealth move with the river, or may
6 move with the river. So that when we have an
7 open Delaware River, we believe our
8 obligations under the Dam Safety and
9 Encroachments Act are to protect the shoreline
10 and administer the law where the shoreline has
11 found itself to be.

12 So basically changes in local water
13 line resulting from natural accretion or
14 erosion can add to or diminish riparian
15 owner's and the Commonwealth's title.

16 However, changes in low water mark
17 caused by artificial filling will not modify
18 that boundary unless the legislation should
19 act to declare it to be so.

20 Where there's artificial fill on
21 Commonwealth submerged lands, we retain
22 ownership and the riparian owner may own the
23 structures on top of that -- submerged lands.

24 In places like Philadelphia, where
25 there has been a long-term and extensive

1 development, The natural water line has been
2 significantly altered and may be extremely
3 difficult to locate or find, even with much
4 research and historical reconstruction.

5 In such circumstances, the
6 Pennsylvania courts have supported the use of
7 an artificial low water line for purposes of
8 boundary determinations.

9 The -- I'd like to get into a little
10 bit of the development of that law relating to
11 the bulkhead line. During the development of
12 the Philadelphia ports, the shape of the
13 waterfront has been extensively modified along
14 the shoreline, both by adding and removing
15 fill from the area along the shore and along
16 the harbor.

17 In 19 -- in 1864 the General Assembly
18 responded to these modifications by authoring
19 a survey and establishing a low water line.

20 There have been many other -- several
21 other occasions where the legislature has
22 acted to establish a boundary line, including
23 the federal bulkhead line which was
24 established after Congress empowered the Army
25 to create harbor lines.

1 After the federal legislation was
2 passed, the Pennsylvania General Assembly gave
3 a general grant to cities of the first class,
4 meaning Philadelphia, of course, to revise and
5 establish the arbitrary low water line or
6 bulkhead line on the Delaware River in
7 conformity with those established by the
8 Secretary of War or as they may from time to
9 time be established by him.

10 So it's clear that this was intended
11 to be a proxy for or a line to quiet title on
12 where the Commonwealth lands end where there
13 has been extensive filling over time and the
14 legislature can then act to say we're going to
15 quiet title, on this side of the bulkhead line
16 is public land, on the other side is private
17 land.

18 Since that time the General Assembly,
19 DGS and DEP have all generally utilized the
20 bulkhead line as the boundary of Commonwealth
21 submerged lands in legislative transfers,
22 leases, and submerged lands licenses relating
23 to the Delaware River in Philadelphia where
24 the submerged lands of the Commonwealth have
25 been filled and the federal bulkhead lines

1 traverses those filled lands.

2 Now, occasionally a different
3 question is presented, and I believe it has
4 arisen in some of the developments that are
5 going forward along the Philadelphia shoreline
6 at this time.

7 And the question has been presented
8 as to how we apply the bulkhead line when the
9 boundary -- as a boundary when the bulkhead
10 line actually traverses open water.

11 That is, the surveyed line that
12 establishes the bulkhead line that's on the
13 map now crosses right over a visible part of
14 the Delaware River, which we all know is a
15 navigable river and there's commerce occurring
16 on that river. How do we deal with that?

17 Okay. What our -- what our position
18 is and what we think is a clear and a simple
19 application of our obligation to protect the
20 river and the shoreline is that where the
21 river is, and the shoreline is ascertainable,
22 we continue to treat the submerged lands as
23 ending at the water's edge, at the low water
24 mark.

25 So we do take jurisdiction when the

1 river is there, visible, and there's a
2 shoreline we can easily ascertain regardless
3 of the location of the bulkhead line.

4 We use the bulkhead line when we're
5 on upland and we think that's the purpose of
6 the legislative determination that there
7 should be a clear line on filled land where
8 the shoreline is not visible, the navigable
9 waterway is not there now, there is nothing
10 for us to protect with our Dam Safety and
11 Encroachments Act requirements, so we respect
12 the legislatively created bulkhead line as the
13 line we should use separating the
14 Commonwealth's title from private title.

15 To summarize, the DEP and DGS utilize
16 the bulkhead line in administering our
17 constitutional, statutory and administrative
18 obligations for the majority of submerged
19 lands transfers on the Delaware River
20 waterfront in Philadelphia.

21 However, where those -- in those
22 circumstances, which have been few, where the
23 bulkhead line traverses open water, the
24 ordinary low water mark is utilized as the
25 appropriate boundary.

1 And I'd be willing to answer
2 questions about that.

3 CHAIRMAN JOSEPHS: Thank you. Very
4 interesting. Let me say that we've been
5 joined by Representative Freeman. And that I
6 should have said before Mr. Chairman Baker has
7 a pressing meeting at about 10:00.

8 So he is going to have to leave us,
9 but he will get a good report from his
10 excellent staff.

11 And we've been joined by his staff,
12 Ms. Susan Boyle.

13 Questions? Representative O'Brien.

14 REPRESENTATIVE O'BRIEN: Thank you,
15 Madam Chair.

16 Intriguing. Absolutely intriguing.
17 And I do want to thank you for making your
18 comments, Philadelphia specifically, because
19 as the Philadelphia legislator, I do love
20 Philadelphia and as being a waterfront
21 legislator, I do love the Delaware River.

22 But, joyfully, I'm a member of the
23 Pennsylvania General Assembly and not
24 Philadelphia City Council.

25 As you may be aware, of the 203

1 legislative districts, 177 have navigable
2 waterways. 177 are impacted by the question
3 of riparian rights.

4 So now the question becomes a larger
5 policy question. So let's turn our attention
6 there. Because certainly a lot of the
7 waterways throughout this Commonwealth are not
8 affected by pier heads and bulkheads.

9 So let's begin with a question that I
10 put to the Secretary on September 11th in
11 Philadelphia when he gave testimony before
12 Gaming Oversight where we tried to establish a
13 definition of a riparian lease.

14 The Secretary at that time informed
15 me that he wasn't an attorney and wasn't able
16 to speak to that. I presented to the
17 Secretary that Blacks Law Dictionary defined
18 riparian lease as that area between the high
19 and low water mark. The high, the low water
20 mark.

21 Now, the Secretary and I went back
22 and forth on that. Representative Keller and
23 the Secretary went back and forth on that. It
24 seems like we were unable to come to a
25 conclusion on that.

1 Now, I got to say the Commonwealth --
2 the Commonwealth has really, through practical
3 usage, has kind of left that question hanging
4 out there.

5 Took us a little bit of time and a
6 little bit of research, but we were able to
7 come up with a submerged land survey that your
8 department submitted back in 2000 where the
9 question is asked on what basis does the
10 Commonwealth derive riparian leases. They
11 answered high and low water marks.

12 So once we get out of Philadelphia
13 County, we walk down the street here to the
14 Susquehanna. We walk down here to the
15 Susquehanna.

16 Mr. Secretary, how do you put
17 together a riparian lease?

18 SECRETARY CREEDON: Can I ask for a
19 little clarification? I'm sorry. I'm not
20 that -- what do you wish -- what do you want
21 me to address in that question?

22 REPRESENTATIVE O'BRIEN: What do you
23 use, high or low water mark?

24 SECRETARY CREEDON: If it goes
25 back -- and that's the reason I asked DEP to

1 be here today -- I believe we have provided
2 you with what we have used as the traditional
3 use of the measurement.

4 REPRESENTATIVE O'BRIEN: It's a
5 simple question. What do you use on the
6 Susquehanna?

7 DEPUTY SECRETARY MYERS: We use the
8 low water mark. We own the -- but there are
9 two different riparian issues you're referring
10 to.

11 One is the issue of public trust,
12 which is their riparian easement which the
13 public enjoys, even on private land, and
14 there's case law in many states which grants
15 the public right of access between the high
16 and low water marks everywhere.

17 We're talking about a different
18 principle of water law, which is the delivery
19 of the title of the beds of navigable rivers
20 to the sovereign states when they joined the
21 United States and that title resides in the
22 Commonwealth by virtue of the existence of the
23 Delaware River or Susquehanna River or the
24 Little J River.

25 We -- we just vindicated the public's

1 rights in the Little J River determining that
2 it was a navigable river in Huntingdon County
3 and the Huntingdon County Court agreed with
4 us.

5 And in all those cases we're talking
6 about who owns the bottom of the river.
7 Because if the Commonwealth owns the bottom of
8 the river, they must exercise care to assure
9 that public rights in use of that river,
10 including the ability to use the bottom for
11 ordinary commerce, fishing, boating, and
12 recreation, are not intruded upon.

13 In the case of Little J River, it's a
14 good example. A -- an excellent fishing club
15 was established on the river, took good
16 management of the river, both sides of the
17 river, got leases, managed the river well.
18 But they shut it off from the public and they
19 put cables across and said no one else could
20 use that stretch of the Little J River. Made
21 it a private fishing club.

22 We and The Fish Commission had
23 complaints about that from people who felt
24 that was a public trust, that was public land
25 under the bed of the river because it was

1 navigable, and the court ended up agreeing
2 with us.

3 And so we're talking about that
4 riparian land. It's not really a good use.
5 We didn't come up with riparian, the term
6 riparian. It was adopted by others. Because
7 you are correct. Riparian usually refers to
8 just that strip.

9 But when people are trying to build
10 along the river, they say we need rights to
11 that riparian strip. And when the
12 Commonwealth owns the bed all the way up to
13 low water mark, that's where people want to
14 put piers and docks and promenades and so we
15 end up giving rights to sit on the bed of the
16 river, to occupy lands of the Commonwealth,
17 and that's why when we have to do that, DGS
18 then writes a lease to -- essentially like a
19 lease of any other Commonwealth land, except
20 this is special because it's on the bottom of
21 the river.

22 I don't know if that helps,
23 but that's --

24 REPRESENTATIVE O'BRIEN: Well,
25 let's -- let's explore for a moment some --

1 some things that you put out here.

2 If I could walk across the river, if
3 I could leave my house and I could walk across
4 the river, when do I cross into New Jersey?

5 DEPUTY SECRETARY MYERS: There is a
6 line, and it's not right down the middle, I
7 don't believe, on the Delaware, but there is a
8 line.

9 REPRESENTATIVE O'BRIEN: There is a
10 demarcation along there.

11 DEPUTY SECRETARY MYERS: There is a
12 demarcation, that's correct.

13 REPRESENTATIVE O'BRIEN: All right.
14 So the river bed, that land, if we sucked out
15 all the water, there's a line that goes down
16 the river.

17 DEPUTY SECRETARY MYERS: That's
18 correct.

19 REPRESENTATIVE O'BRIEN: That's the
20 boundary between Pennsylvania and New Jersey.

21 DEPUTY SECRETARY MYERS: Yes, sir.

22 REPRESENTATIVE O'BRIEN: Now, we take
23 water and put it on top of that. So we look
24 to the United States Constitution. The United
25 States Constitution says, well, that water

1 under the Uniform Commerce Clause, that water
2 is now a navigable waterway so we got to use
3 that for commerce. Right?

4 DEPUTY SECRETARY MYERS: Correct.

5 REPRESENTATIVE O'BRIEN: But the
6 Commonwealth still owns that land, that river
7 bed. Right?

8 DEPUTY SECRETARY MYERS: Correct.

9 REPRESENTATIVE O'BRIEN: Right to
10 that border?

11 DEPUTY SECRETARY MYERS: Uh-huh.

12 REPRESENTATIVE O'BRIEN: So now we
13 come out and we say, well, we got to make sure
14 that commerce can continue. Right?

15 DEPUTY SECRETARY MYERS: Uh-huh.

16 REPRESENTATIVE O'BRIEN: We get ships
17 up and down the river. Commerce can
18 continue. What was that? McCulloch versus
19 Maryland. Something. 1803? I don't know.
20 I'm a butcher. I don't know about those
21 things.

22 DEPUTY SECRETARY MYERS: Uh-huh.

23 REPRESENTATIVE O'BRIEN: So -- now to
24 get this done, the Fed comes in and says we're
25 going to establish a pierhead, a bulkhead, and

1 we're going to impose navigational servitude.

2 Now, you can build inside this
3 pierhead/bulkhead. You can do stuff inside of
4 this pierhead/bulkhead, but you can't do
5 anything outside of this because we got to
6 retain commerce.

7 Right? Do you agree with me so far?

8 DEPUTY SECRETARY MYERS: Uh-huh.

9 REPRESENTATIVE O'BRIEN: So far we're
10 together.

11 All right. What does this have to do
12 with protecting and preserving commerce under
13 the Uniform Commerce Clause? What does this
14 have to do with the Commonwealth's ownership?
15 What does this have to do with valuation and
16 what does this have to do with stewardship of
17 the people's resources?

18 I'm not getting this
19 pierhead/bulkhead versus high, low water
20 mark.

21 Now, before I let you answer, just
22 one more thing and then I will be quiet, but
23 in perpetuity, in perpetuity, the riparian
24 rights along the Delaware River were
25 valueless. You either own the water or its

1 mud. Valueless.

2 Until the administration said, let's
3 step back, let's evaluate and value. Let's
4 put a value on this, which the administration
5 did. Five dollars a square foot.

6 And I still got to come back, if high
7 water/low water is more square footage than
8 pierhead/bulkhead, isn't it our mandate as
9 stewards of the public trust to charge on the
10 larger area?

11 I'll be quiet.

12 DEPUTY SECRETARY MYERS: I'm not sure
13 exactly the question that you'd like me to
14 answer. So if you could --

15 REPRESENTATIVE O'BRIEN:
16 Pierhead/bulkhead is federal. Doesn't affect
17 us. We own the bottom of the river to the --
18 to the middle of it, to the boundary of it.
19 Pierhead/bulkhead is an arbitrary -- the
20 arbitrary navigational servitude under the
21 Uniform Commerce Clause.

22 Pierhead/bulkhead -- low water/high
23 water mark is the standard definition of
24 riparian right. This is what we should use as
25 a definition for evaluation and establishing

1 square footage that we times by five to get a
2 value. Why aren't we?

3 DEPUTY SECRETARY MYERS: What I have
4 -- you have raised many different interesting
5 issues of water law which we have to bring
6 together and come together when we administer
7 our Dam Safety and Encroachments Act.

8 I am advising you how we interpret
9 the law as applied to our particular role,
10 which is just under the Dam Safety and
11 Encroachments Act, if someone is on --
12 wants to occupy submerged lands of the
13 Commonwealth, how do we administer that law
14 and how do we understand our obligations to
15 extend?

16 And the way we understand it and the
17 way we have treated it is that if there's open
18 water and you can see the river and you can
19 see the shoreline, there's no question and we
20 apply the principles, the common principle you
21 understand, which is up to the low water mark
22 is owned by the Commonwealth and is
23 Commonwealth titled lands.

24 There may be other rights in the
25 public based on other laws but I don't

1 administer that. I'm dealing with a
2 property's -- property ownership title in the
3 Commonwealth and that's the bed of the river
4 and it ends at the low water mark.

5 There are, certainly, other rights,
6 but that's what I'm dealing with and that's
7 all I'm dealing with with the Dam Safety and
8 Encroachments Act. Who can get the right to
9 occupy, essentially lease our land,
10 Commonwealth land, and give it to DEP because
11 there's always the shoreline water, water
12 resource habitat problems involved with that.

13 We don't get all of them. We only
14 get those cases where it's up to 25 acres, and
15 only where there's a water dependent use can
16 we issue a license.

17 When we have vast land and we are
18 faced with land that has been filled, we and
19 the courts have directed and upheld the use of
20 the bulkhead line as a line quieting title and
21 describing where the public land, the
22 submerged lands of the Commonwealth, even
23 though they're filled, should be considered to
24 end.

25 And we have used that as, admittedly,

1 an arbitrary line as all lines to quiet
2 boundary title are. We have used that
3 routinely to describe on upland where we think
4 the Commonwealth boundary is.

5 REPRESENTATIVE O'BRIEN: Madam Chair?

6 CHAIRMAN JOSEPHS: Yes.

7 REPRESENTATIVE O'BRIEN: I have a
8 number -- I have a number -- I have a number
9 of questions, but in the interest of time and
10 the interest of -- of fairness to my
11 colleagues, I'd like to -- I'd like to yield
12 at this time.

13 But I would request the Chair
14 recognize me at a later time.

15 CHAIRMAN JOSEPHS: Certainly. I
16 believe Mr. Clymer -- before you start,
17 however, I'd like to say we've been joined by
18 a number of representatives, Benninghoff,
19 Vereb, Quigley, and Youngblood, Parker, and
20 Secretary Crawford.

21 Please go ahead.

22 REPRESENTATIVE CLYMER: Thank you,
23 Madam Chair.

24 And good morning for our special
25 guests.

1 DEPUTY SECRETARY MYERS: Good
2 morning, sir.

3 REPRESENTATIVE CLYMER: For the
4 members, I think it would be helpful if
5 someone could describe the land that
6 SugarHouse is attempting to purchase, describe
7 the land as it relates to the definitions that
8 we heard this morning and the number of
9 acres.

10 Could someone just give us an
11 overview there?

12 SECRETARY CREEDON: Yeah. What we
13 can do is we can give you some general
14 information on SugarHouse -- what we believe
15 SugarHouse is looking for.

16 We have it as 7.38 acres or 321,500
17 square feet of area required. And, again,
18 that area required is by the definition which
19 Deputy Secretary Myers defined this morning.

20 REPRESENTATIVE CLYMER: So then -- so
21 then SugarHouse is attempting to buy 7.3
22 acres, is that correct, of riparian land?

23 SECRETARY CREEDON: They're not
24 attempting to buy anything. They're
25 attempting -- first of all, they -- there's no

1 legislation that's been introduced on
2 SugarHouse.

3 There's been no approach actually
4 formally to the department, I believe, at
5 least the DGS, with SugarHouse's proposal.

6 We're basing this on information that
7 we've received either through informal
8 meetings or through submissions that they've
9 had in order that we can keep track of what
10 might be required.

11 DEPUTY SECRETARY MYERS: We do have
12 pending applications before us for
13 SugarHouse.

14 We have a NPDES permit which was
15 conditionally issued, and we have a Chapter
16 105 permit under the Dam Safety and
17 Encroachments Act pending.

18 So I believe those numbers were based
19 upon whatever they submitted to our regional
20 office describing those permit requests.

21 REPRESENTATIVE CLYMER: My next
22 question is the -- according to the historical
23 maps that we have, where was the water edge in
24 the 1800s? Do you know where that might have
25 been? The -- according to your definition of

1 the riparian --

2 DEPUTY SECRETARY MYERS: No. No.

3 We're looking at the land today.

4 REPRESENTATIVE CLYMER: All right.

5 Well, I think that's important. But I'll step
6 back for a moment.

7 My next question is this. Based on
8 what we have heard, how is it that the city
9 government could find an antiquated law dated
10 in 1907 and from that law they have drawn the
11 rights to allow the Commerce Commission to
12 provide the authority for SugarHouse to move
13 forward?

14 Where in that law, which I have had
15 the opportunity to read, as did staff, that
16 said that the -- that this land could be sold
17 without the authority of the Pennsylvania
18 General Assembly?

19 How -- how did that come about?
20 Where is that authority when I have looked at
21 other -- other authority from the constitution
22 to the administrative code of 1929?

23 Explain that to me, if you would
24 please, and to the other members here.

25 DEPUTY SECRETARY MYERS: I don't have

1 an explanation. I haven't studied that and
2 the Commonwealth takes no position on -- on
3 the authority of the city.

4 We know what our authority is. We
5 have authority under the Dam Safety and
6 Encroachments Act and with the legislature,
7 and we know what the authority of the
8 legislature is, and we've worked with the
9 legislature on these land trans -- these land
10 transactions involving Commonwealth lands for
11 many years.

12 We have -- we have submitted an
13 amicus brief in that litigation that is
14 ongoing to answer that very question and we
15 simply preserved our -- you know, made clear
16 what we thought the extent of our authority to
17 engage in submerged licenses was and took no
18 position on whether or not the city has some
19 authority to do the same

20 REPRESENTATIVE CLYMER: You're both
21 aware of the fact that the General Assembly in
22 the past has provided state land, riparian
23 lands, for the purpose of development along
24 the Delaware River?

25 DEPUTY SECRETARY MYERS: Absolutely.

1 REPRESENTATIVE CLYMER: And when that
2 took place, it was done through legislation.

3 DEPUTY SECRETARY MYERS: Correct.

4 REPRESENTATIVE CLYMER: We looked at
5 things that are very similar to the situation
6 that we now have today with SugarHouse.

7 So my question is, back then we went
8 through the legislative process to secure that
9 land for the economic development along the
10 river, and yet in this case we're being denied
11 that, where the door is being shut.

12 Do you have any observations on that
13 issue?

14 DEPUTY SECRETARY MYERS: No, sir.

15 REPRESENTATIVE CLYMER: Well, I know
16 that there are other members that want to --
17 that have thoughts here, and I can continue.

18 Are you also aware then that the
19 General Assembly continues to look at
20 legislation that deals with riparian rights?

21 DEPUTY SECRETARY MYERS: Absolutely.
22 We've worked very well with this Committee.

23 We think that -- to be clear,
24 remember, I said the Department of
25 Environmental Protection only deals with,

1 submerged lands in relatively small
2 situations. If it's -- or if it's not one of
3 those water-dependent uses.

4 If it's not for a marina or park, you
5 know, a dock or a public utility, we don't
6 have authority. If it's for a condominium or
7 residential development, we don't have any
8 authority.

9 So what we do is work with the
10 legislature and -- and assist on analysis and
11 determination of things like public access
12 rights and what -- what are the uses of that
13 shoreline and what -- and what is the habitat
14 implication and what kind of permit are we
15 going to be issuing.

16 So that's our experience as well.
17 Either we have submerged land -- since 1978
18 either we have issued submerged lands
19 licenses -- 1978 is when the Dam Safety and
20 Encroachment Act was adopted.

21 It's been since that time it's been
22 either we've issued licenses or the General
23 Assembly took a specific action on the
24 transaction.

25 REPRESENTATIVE CLYMER: I'll conclude

1 with this last thought, and that is according
2 to the historical maps that we have looked at,
3 and we had a hearing down in Philadelphia
4 where we had an opportunity to view those
5 maps, really where the water edge was in those
6 maps, that land is designated as Commonwealth
7 land and that's the land that we're looking at
8 even today.

9 I'm just -- I'm just, I guess,
10 exasperated that it looks like we -- we, the
11 General Assembly, is not being given its due
12 diligence in is who to purchase that land and
13 our authority to allow that to occur.

14 So thank you, Madam -- Madam
15 Chairlady, and we'll continue the dialogue
16 later.

17 CHAIRMAN JOSEPHS: Thank you. I just
18 want to say we've been joined by
19 Representative Cohen.

20 Mr. Chairman Baker has a question.

21 REPRESENTATIVE BAKER: Thank you,
22 Madam Chair.

23 And again thank you very much for
24 attending and giving us your valuable time
25 this morning.

1 Madam Secretary, you had mentioned
2 that you administer the Dam Safety and
3 Encroachments Act and you had certain
4 obligations relative thereto and then you
5 mentioned applications pending, permits
6 pending, SugarHouse and its 7.3 acres.

7 Is that -- is that the normal due
8 diligence and protocol of -- of applicants to
9 apply for these things before they own or
10 enter into any kind of agreement?

11 You'd mentioned they don't own this
12 land yet and yet you're entertaining
13 applications and permits. Is that -- is that
14 the normal course of -- that transpires?

15 DEPUTY SECRETARY MYERS: The
16 requirement for the Dam Safety and
17 Encroachments Act goes beyond submerged lands
18 of the Commonwealth.

19 Any -- any obstruction or
20 encroachment, and even things in the
21 floodplain, in the floodway come under that
22 act.

23 So there are many occasions when you
24 would have a Chapter 105 permit requirement
25 and come to us because you're doing things on

1 land you already do own, whether or not
2 there's been a determination that they'll also
3 have to get rights to land they don't own in
4 order to finish or complete the project.

5 So whether it's typical or not,
6 certainly there are occasions where we will be
7 looking at the permit consequences of a
8 proposal with an applicant.

9 And this is not something that's been
10 acted on, so we frequently work that out and
11 advise them that we think there are problems
12 with what they're planning to do and that
13 they're going to have difficulty getting a
14 permit because of some of the regulations that
15 don't fit with what they're planning to do.

16 REPRESENTATIVE BAKER: So does DEP,
17 in fact, issue permits to applicants that
18 don't actually own the land or have entered
19 into any kind of contract or lease?

20 I mean is that -- is that part of the
21 due diligence? Is that part of the --

22 DEPUTY SECRETARY MYERS: We would
23 except to have indications before a permit was
24 issued, of ownership or easements or rights,
25 legal rights to -- to the activities on the

1 land that they propose to do that relate to
2 our permit obligation, yes.

3 REPRESENTATIVE BAKER: I'm just
4 trying to get my head around.

5 SECRETARY CREEDON: Mr. Chairman,
6 maybe if I could just kind of help. You've
7 got to keep in mind, and the first thing about
8 any of these projects, is none of them is
9 typical. Every one of them has some little
10 different twist to it.

11 So it's difficult to give you a
12 typical project. But what -- what generally
13 I've seen happen is most of these requests
14 they're asking for, they own a piece of
15 property and they are required -- they need
16 some additional -- rights beyond what they
17 have the title to from us. So they have -- if
18 you can think of it almost as two pieces of
19 property, the one they wish to build on, and
20 perhaps they want to extend the marina, they
21 want to extend some walkways, maybe they want
22 to build over, so they have a base piece of
23 ground and a secondary piece of ground which
24 they need to come to the legislature, the
25 DGS.

1 In the case of SugarHouse they would
2 go to the city for the permit. So a lot of
3 times DEP will conduct permit reviews on the
4 piece that they -- they don't need our
5 involvement on as well, and on other
6 properties as well.

7 REPRESENTATIVE BAKER: I just find it
8 extraordinary that -- that permits and
9 applications could be granted to an applicant
10 that doesn't have any legal right to the land
11 yet.

12 So I'm just trying to understand this
13 concept of -- it's almost an advisory kind of
14 thing, but yet, if you do enter a permit,
15 that's a legal grant of -- of -- of permission
16 to do certain things.

17 So I don't know if it's a
18 contingency, do you then require -- before you
19 actually deliver the permit or give the permit
20 to the applicant, do you require that they
21 obtain the DEP --

22 DEPUTY SECRETARY MYERS: Yes.
23 Ordinarily these things would occur
24 concurrently, because no one would ever get a
25 development done if they had to have

1 everything sequentially and everyone would ask
2 for everyone else's permits and documents and
3 we'd never get anywhere.

4 So usually they go forward
5 concurrently. But I am advised that there
6 have been some occasions where for one reason
7 or another we would issue the permit but it
8 would then be conditioned upon obtaining all
9 necessary easements, leases, or acquisitions.

10 REPRESENTATIVE BAKER: Thank you. I
11 appreciate that. That answers my question on
12 that.

13 And it was mentioned earlier that
14 informal meetings have transpired with
15 SugarHouse.

16 When did those meetings occur and are
17 you -- are you at liberty to discuss what took
18 place or transpired during those meetings?

19 SECRETARY CREEDON: I -- I did not
20 attend the meetings. Our real estate
21 office -- they're held with our real estate
22 office. I'm told they were -- December?

23 DIRECTOR JOANNE PHILLIPS: September.

24 SECRETARY CREEDON: September?

25 DIRECTOR PHILLIPS: Or summer.

1 SECRETARY CREEDON: Summer. Over the
2 summer. Sometime this summer. July, August.

3 REPRESENTATIVE BAKER: The basis --
4 or what transpired in those meetings, is that
5 proprietary or is that something you think you
6 could share with this committee?

7 SECRETARY CREEDON: Joanne Phillips
8 is our director of real estate. She attended
9 the meeting.

10 CHAIRMAN JOSEPHS. Ms. Phillips, I
11 think if you come up and I would invite the
12 other deputy secretary, Madam, if you require
13 a technical person, to ask her to come up
14 also --

15 DEPUTY SECRETARY MYERS: That's okay.
16 We're fine.

17 CHAIRMAN JOSEPHS: -- so things can
18 move more smoothly.

19 Ms. Phillips.

20 DIRECTOR PHILLIPS: Sure. Good
21 morning. Joanne Phillips. I'm the director
22 of the Bureau of Real Estate. There were --
23 we --

24 CHAIRMAN JOSEPHS: You may have to
25 get closer to your mike.

1 DIRECTOR PHILLIPS: Sure.

2 CHAIRMAN JOSEPHS: I'm sorry.

3 DIRECTOR PHILLIPS: That's all
4 right. Thank you.

5 We took in some documentation
6 regarding the site, survey, plan, information
7 that would allow us to begin an analysis of
8 what might be needed in the event there was
9 legislation, in the event we were asked to
10 call on it. It was really a intake of some
11 documentation which we've done for other
12 riverfront developers that are undertaking to
13 begin the process.

14 So it was really an intake of some
15 information. That was really the extent
16 of our -- of our meeting. I think there was
17 one meeting where it was even exchanged by
18 mail.

19 So the other thing is we -- is we did
20 participate in some meetings just to
21 understand what was going on with the river
22 and met with some city agencies where, I
23 believe, SugarHouse may have been -- in the
24 summer, sort of an introductory, this is what
25 we've been awarded and this is what the

1 project looks like.

2 REPRESENTATIVE BAKER: Informational
3 type of things?

4 DIRECTOR PHILLIPS: Really
5 informational.

6 REPRESENTATIVE BAKER: Sharing
7 between each other like we are now basically?

8 DIRECTOR PHILLIPS: Correct.

9 REPRESENTATIVE BAKER: Okay. Thank
10 you.

11 SECRETARY CREEDON: Sir, we have
12 an -- we have an ongoing list actually, an
13 inventory we keep. I think there's -- by my
14 quick count, there's about eight to ten on
15 this list.

16 And some we'll never hear from
17 again. They may have come in and said we're
18 thinking of buying pier such and such. What's
19 going on? We read a lot in the paper. What's
20 happening? We try to share as much as we
21 can.

22 I know I certainly, when I've had the
23 opportunity to meet people, I say you must
24 meet with your legislator because the key to
25 this is going to be their approval or, quite

1 frankly, their disapproval of moving this
2 forward.

3 We try to get as much information
4 because generally what has happened is they go
5 to their legislator and a bill comes out, and
6 we'd like to be at least prepared and be able
7 to come back and say based on what we know
8 here's -- here's how this policy will work,
9 here's what's applicable.

10 I know the one -- I can think of two
11 that I've sat in have been very general.
12 Not -- one -- one bulkhead, I think,
13 nongaming. One -- I'm sorry. Very early on,
14 two, three years ago I thought Foxwood gave a
15 quick presentation before they were even
16 granted a license.

17 But, again, it was just what's going
18 on, that type of dialogue and discussion.

19 REPRESENTATIVE BAKER: Okay. One
20 last question, if I may, because I do
21 apologize. I have this pressing meeting at
22 ten o'clock.

23 Secretary Creedon, in your testimony
24 that was read ahead of time, you mention the
25 SugarHouse property along the Delaware River.

1 I'll focus on that parcel since it's already
2 been mentioned.

3 There seems to be somewhat of a
4 conflict regarding testimony about that parcel
5 in that you support the effort of the
6 SugarHouse to obtain the so-called riparian
7 permit from the city of Philadelphia rather
8 than the Commonwealth of Pennsylvania.

9 And that is enunciated, it's
10 articulated in here, in your testimony on the
11 last page, and yet it's been clearly the
12 intent and the will of the General Assembly,
13 especially for the resolution that was passed
14 recently unanimously, that it -- that -- that
15 was -- what was done by Philadelphia council
16 was not correct and it -- these matters should
17 be approved by the Commonwealth and the
18 legislative bodies' responsible for that.

19 Do you still hold to that opinion or
20 do you still think Philadelphia city council
21 has that right?

22 SECRETARY CREEDON: Let me -- let me
23 try to clarify and put a little bit more meat
24 on the bones of the testimony.

25 When SugarHouse and -- indicated they

1 were going to proceed with the city permit, I
2 think the administration at that point -- I
3 know the administration expressed its -- we
4 were okay with that.

5 And the reason we were was that if it
6 was a way to get the process moving in
7 Philadelphia, to -- in order to have gaming
8 occur, which we're supportive of, we felt this
9 was a -- a course of action, if appropriate,
10 that could be followed.

11 Unfortunately, because of the
12 litigation, chief counsel or general counsel
13 has advised that I not discuss my view on
14 whether the city has the ability to do that
15 and ultimately I think the Supreme Court will
16 make that decision, although to make it even
17 more interesting, the new mayor has pulled
18 that permit. So it's -- the soap opera
19 continues.

20 REPRESENTATIVE BAKER: Are you -- are
21 you participating in that -- in that ongoing
22 litigation?

23 SECRETARY CREEDON: No. We elected
24 not to -- to file any -- any briefs in support
25 or in opposition to either side of that.

1 REPRESENTATIVE BAKER: And could you
2 tell us who's representing the Commonwealth's
3 interests in the land?

4 SECRETARY CREEDON: At --
5 representing the Commonwealth's interest in
6 the land?

7 REPRESENTATIVE BAKER: Yeah. Is
8 there a state entity, department, legal
9 counsel representing the state's interests in
10 this land?

11 SECRETARY CREEDON: Where the --
12 the -- I guess in this case we have -- the
13 administration is not a party to the
14 litigation.

15 DEPUTY SECRETARY MYERS: Well --

16 SECRETARY CREEDON: Although --

17 DEPUTY SECRETARY MYERS: We're not a
18 party. The Department of Environmental
19 Protection submitted an amicus brief
20 clarifying the issue of what the role of the
21 Commonwealth was, the Commonwealth executive
22 agencies, in administering the submerged lands
23 licenses under the Dam Safety and
24 Encroachments Act.

25 REPRESENTATIVE BAKER: In the amicus

1 brief can you share with us whether you
2 supported Philadelphia city council?

3 DEPUTY SECRETARY MYERS: We took --
4 as I said before, we took no position as to
5 anybody else's rights. We simply agreed that
6 the General Assembly and the Commonwealth,
7 through the Dam Safety and Encroachments Act,
8 specifically, the legislature gave the
9 Governor and the Commonwealth through the
10 Department of Environmental Protection the
11 right as defined in -- and the obligation as
12 defined in the Dam Safety and Encroachments
13 Act to issue submerged lands licenses on
14 submerged lands in the Commonwealth in those
15 specified areas that the statute lays out for
16 our administration.

17 And we clarified that because the --
18 the original briefs were overly broad. The
19 original briefs cited questions of the act
20 without --

21 CHAIRMAN JOSEPHS: Which act?

22 DEPUTY SECRETARY MYERS: The Dam
23 Safety and Encroachments Act which say one has
24 to go to the legislature or DEP, and it left
25 out the "or DEP".

1 REPRESENTATIVE BAKER: So the amicus
2 brief was filed --

3 DEPUTY SECRETARY MYERS: Very
4 limited.

5 REPRESENTATIVE BAKER: -- on behalf
6 of the narrowness of DEP?

7 DEPUTY SECRETARY MYERS: Correct.

8 REPRESENTATIVE BAKER: Do you, any of
9 you collectively, know if anyone is
10 representing the broader essence of the
11 people, the Commonwealth of Pennsylvania on
12 this issue? The people of Pennsylvania?

13 SECRETARY CREEDON: As I've
14 indicated, the department elected, based on
15 what had been filed and what would be
16 determined, to not enter into the litigation.

17 REPRESENTATIVE BAKER: So I guess the
18 answer is there's -- you're not aware of
19 anyone.

20 SECRETARY CREEDON: The lit -- I'm
21 trusting the Supreme Court and the
22 litigants to make a determination and
23 represent the people.

24 REPRESENTATIVE BAKER: Okay. Thank
25 you very much.

1 Thank you, Madam Chair.

2 CHAIRMAN JOSEPHS: I know that
3 there's a second round. I'd like to give
4 people a first opportunity.

5 Mr. O'Brien.

6 REPRESENTATIVE O'BRIEN: Thank you,
7 Madam Chair.

8 Ms. Myers, it would be something
9 really unusual if I asked you about water
10 management. That --

11 DEPUTY SECRETARY MYERS: That would
12 be something within my jurisdiction.

13 REPRESENTATIVE O'BRIEN: Yes. So --
14 and I really wanted to stay away from
15 SugarHouse. Notice I tried to keep it to a
16 statewide policy discussion.

17 But it's like potato chips. We start
18 to eat them and just can't resist them. I got
19 to go there. So here we are.

20 So SugarHouse currently has a 105
21 permit?

22 DEPUTY SECRETARY MYERS: No. They
23 have an application.

24 REPRESENTATIVE O'BRIEN: Application
25 pending?

1 DEPUTY SECRETARY MYERS: An

2 application, yes, sir.

3 REPRESENTATIVE O'BRIEN: 105

4 application pending. That's correct? Right?

5 DEPUTY SECRETARY MYERS: Uh-huh.

6 REPRESENTATIVE O'BRIEN: When was

7 that filed?

8 DEPUTY SECRETARY MYERS: I don't have

9 that information. But I can get it for you.

10 REPRESENTATIVE O'BRIEN: You'll --

11 you'll provide that?

12 DEPUTY SECRETARY MYERS: I certainly

13 will.

14 REPRESENTATIVE O'BRIEN: Thank you.

15 Now, under the Dam Safety and

16 Encroachment Act, which we've been dancing

17 around on riparian issues, can DEP grant a 105

18 permit if the General Assembly has not

19 authorized the conveyance of that specific

20 parcel?

21 DEPUTY SECRETARY MYERS: Yes. So

22 long as the permit was conditioned upon proper

23 ownership of any area that was to be built on,

24 yes.

25 REPRESENTATIVE O'BRIEN: So if

1 there's a cloud over the title, can you issue
2 the permit?

3 DEPUTY SECRETARY MYERS: So long as
4 we made it conditioned upon -- we would not be
5 authorized to clear title or to determine who
6 has title. We don't engage in property law
7 adjudication.

8 REPRESENTATIVE O'BRIEN: So we got a
9 situation going here that the Commonwealth
10 owns part of it, the riparian lands.
11 Currently SugarHouse has not closed on their
12 option. So you've got LHTW, Limited, who owns
13 vast land, and you've got clouds all over the
14 place. Kind of like what we got out there
15 today.

16 Who are you issuing a permit to?

17 DEPUTY SECRETARY MYERS: The
18 applicant -- no, we only deal with an
19 applicant. We look at the application, we
20 look at what they're requesting, we look at
21 whether they meet all the requirements, and
22 then we make a decision.

23 So whoever is the applicant is is who
24 we would consider issuing a permit to,
25 obviously.

1 In the situation where there's
2 uncertain title to material areas within the
3 permit, we would either -- as I said before,
4 either put a condition saying this permit only
5 authorizes these activities, if you've
6 obtained those rights, or we would simply not
7 issue it until that was clear.

8 And we would have the discretion to
9 do it either way, I believe.

10 REPRESENTATIVE O'BRIEN: So -- so if
11 I come in and I apply for a permit to put a
12 well on Representative Clymer's property,
13 you'll give me a provisional permit to do
14 that?

15 It's yes or no.

16 DEPUTY SECRETARY MYERS: Well, it's
17 not that simple as being a yes or no. If
18 there was no reason to believe you didn't own
19 the property -- I mean do we search for
20 property interests on every single permit for
21 every single dock in the Commonwealth of
22 Pennsylvania? Absolutely not.

23 If a question was raised to us about
24 ownership, we would probably -- we would put a
25 condition in the permit.

1 REPRESENTATIVE O'BRIEN: Okay. I'm
2 raising it to you.

3 DEPUTY SECRETARY MYERS: Okay.

4 REPRESENTATIVE O'BRIEN: SugarHouse
5 does not own the property located at 10001
6 North Delaware Avenue, Philadelphia, PA. The
7 property is owned by LHTW, Limited. And I'd
8 request, I'd request that DEP withhold any
9 permits to anyone but the proper owner who has
10 the deed and clear title.

11 Is that a reasonable request?

12 DEPUTY SECRETARY MYERS: Certainly.
13 We always take public -- public comments --

14 REPRESENTATIVE O'BRIEN: Thank you
15 very much.

16 DEPUTY SECRETARY MYERS: -- and
17 comments from the legislature.

18 REPRESENTATIVE O'BRIEN: Madam Chair,
19 I have nothing further.

20 CHAIRMAN JOSEPHS: Mr. Clymer has a
21 question, but I do want to say that the
22 Finance Committee is going to have a meeting
23 here at 10:00.

24 So I'm going to at some point soon
25 recess this hearing, not adjourn it, recess it

1 and we will come back as soon as we can do
2 that conveniently to follow this very
3 interesting line of questioning.

4 Mr. Clymer, if you -- if you have
5 something you can wrap up quickly before the
6 recess.

7 REPRESENTATIVE CLYMER: Oh, I'm
8 sorry. I'm sorry, Madam Chair. I didn't
9 realize.

10 For Secretary Creedon, let me follow
11 up on the questions and answers asked by
12 Chairman Baker.

13 You explained that there's no
14 executive agency, no part of this
15 administration which has seen fit to become
16 involved in the ongoing SugarHouse litigation
17 to protect the interests of all of the
18 Commonwealth's citizens in this land.

19 Why is it that not -- why is that not
20 the responsibility of the Department of
21 General Services since you are the
22 caretaker --

23 SECRETARY CREEDON: Sure.

24 REPRESENTATIVE CLYMER: -- of the
25 state land?

1 SECRETARY CREEDON: Representative
2 Clymer, I think I explained my position to you
3 in my letter of January 17th where I indicated
4 that based on my -- you know, our review, the
5 department's review of the case and the -- the
6 questions being asked of the court, that we
7 really did not see that we would add any
8 benefit -- benefit to that litigation and just
9 adding another party to it really didn't make
10 sense to us. That was our decision.

11 REPRESENTATIVE CLYMER: Well, I may
12 disagree with that, but I appreciate your --

13 SECRETARY CREEDON: Wouldn't be the
14 first time we disagreed on some things.

15 REPRESENTATIVE CLYMER: One quick
16 question is that the land at Spring Garden and
17 Broad Street, the state-owned land was sold
18 for \$25 million. Is that correct?

19 DIRECTOR PHILLIPS: That's under
20 agreement.

21 SECRETARY CREEDON: That's under
22 agreement of sale.

23 REPRESENTATIVE CLYMER: Under
24 agreement of sale?

25 SECRETARY CREEDON: Yes.

1 REPRESENTATIVE CLYMER: Based on the
2 value of \$25 million for that parcel of land,
3 how does that relate to the lease that is
4 being provided, that you have agreed to, for
5 the -- for the 7.3 acres of the SugarHouse
6 land? Is that five per square foot based --
7 is that the relative figure based on what the
8 agreed to price is for the Broad Street --

9 SECRETARY CREEDON: There is --

10 REPRESENTATIVE CLYMER: -- and Spring
11 Garden --

12 SECRETARY CREEDON: There is no
13 agreed price for any property -- for the
14 SugarHouse property. We recommended to the
15 legislature a policy, where a number, through
16 the very healthy legislative debate process,
17 actually two bills that were passed yesterday
18 and are waiting signature by the Governor,
19 that number was increased.

20 Did I think it needed to be
21 increased? No, I didn't. But it was. And
22 that's how we work out here and that's great.
23 We're going to get a little bit more money.

24 To value -- to use Broad and Spring
25 Garden Street as any indicator of value of a

1 property that's underwater on a wharf on the
2 Delaware River, it doesn't match up.

3 And keep in mind that the appraised
4 value, even if we put our five dollars a
5 square foot, the appraised value that we
6 consistently receive and the General Assembly
7 consistently approved, was always a dollar.

8 So we thought we were making big
9 strides by going to five dollars. But you
10 can -- it would be completely unfair to argue
11 that the property's worth more now.

12 If you want to take the position, we
13 had -- we had a proposal process for Broad and
14 Spring Garden where people had to bid on the
15 property, if you will. Submit proposals. I
16 have no reason to believe that someone would
17 bid \$25 million for land along the Delaware.
18 I -- maybe you could surprise me.

19 REPRESENTATIVE CLYMER: Secretary
20 Creedon, we're talking about an industry
21 that's going to make millions of dollars in a
22 very short time and that's why that -- those
23 riparian lands are worth a lot of money,
24 because of the value that's going to come into
25 that industry.

1 SECRETARY CREEDON: I -- I --

2 REPRESENTATIVE CLYMER: My word, that
3 is very valuable land --

4 SECRETARY CREEDON: I understand.

5 REPRESENTATIVE CLYMER: And there is
6 an answer between the two. I know we have to
7 go so I'll --

8 CHAIRMAN JOSEPHS: Mr. Clymer, I'm
9 sorry.

10 The hearing is recessed. We will --
11 we will notify everybody when it is resumed.
12 Thank you very much. Thank you, Deputy
13 Secretary. Thank you, Secretary.

14 SECRETARY CREEDON: Happy to be
15 here.

16 DEPUTY SECRETARY MYERS: Thank you,
17 Madam Chairman.

18 (The proceedings were recessed at
19 10:01 a.m.)

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I hereby certify that the proceedings
and evidence are contained fully and
accurately in the notes taken by me on the
within proceedings and that this is a correct
transcript of the same.

Brenda S. Hamilton, RPR
Reporter - Notary Public