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## **Public Notice**

### **Documents:**

3-9-22 Hearing on Government Services.pdf

2.

## **3-9-22 Agenda for Government Services and Operation**

### **Documents:**

3.9.22 - Agenda for Government Services and Operation.pdf

3.

## **Meeting Minutes**

### **Documents:**

GOVERNMENT SERVICES AND OPERATIONS COMMITTEE, 03-09-22.pdf



## **PUBLIC NOTICE**

PLEASE TAKE NOTICE THAT

**THE NASSAU COUNTY LEGISLATURE**

**WILL HOLD A HEARING OF THE**

**GOVERNMENT SERVICES AND  
OPERATIONS COMMITTEE  
RELATING TO THE DEPARTMENT  
OF CONSUMER AFFAIRS**

**ON**

**WEDNESDAY, MARCH 9, 2022 AT 2:00 P.M.**

**IN**

**THE PETER J. SCHMITT MEMORIAL LEGISLATIVE CHAMBER  
THEODORE ROOSEVELT EXECUTIVE AND LEGISLATIVE BUILDING  
1550 FRANKLIN AVENUE, MINEOLA, NEW YORK 11501**

**MICHAEL C. PULITZER**

**Clerk of the Legislature**

**Nassau County, New York**

**DATED: March 3, 2022**

Mineola, NY

*As per the Nassau County Fire Marshal's Office, the Peter J. Schmitt Memorial Legislative Chamber has a maximum occupancy of 100 people. Attendees will be given an opportunity to sign in to address the Legislature. On Committee Meeting days, Public comment will be limited to Agenda items. Public comment on any item may also be emailed to the Clerk of the Legislature at [LegPublicComment@nassaucountyny.gov](mailto:LegPublicComment@nassaucountyny.gov) and will be made part of the formal record of this Legislative meeting.*

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Theodore Roosevelt Executive and Legislative Building  
1550 Franklin Avenue, Mineola, New York 11501



**GOVERNMENT SERVICES AND OPERATIONS  
COMMITTEE  
OF THE  
NASSAU COUNTY LEGISLATURE**

**HEARING ON THE DEPARTMENT OF CONSUMER  
AFFAIRS**

GOVERNMENT SERVICES AND OPERATIONS COMMITTEE

*John Ferretti – Chairman  
Denise Ford – Vice Chairman  
Tom McKeivitt  
John Guiffre*

*Arnold Drucker - Ranking  
Joshua Lafazan  
Carrie Solages*

**AGENDA**

**March 9, 2022**

**2:00 PM**

John Capece, Commissioner  
Kenneth Heino, Acting Deputy  
Department of Consumer Affairs

**PUBLIC COMMENT**

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NASSAU COUNTY LEGISLATURE

RICHARD NICOLELLO  
PRESIDING OFFICER

GOVERNMENT SERVICES AND OPERATIONS COMMITTEE

LEGISLATOR JOHN FERRETTI  
CHAIR

Theodore Roosevelt Building  
1550 Franklin Avenue  
Mineola, New York

March 9, 2022  
2:09 P.M.

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A P P E A R A N C E S :

LEGISLATOR JOHN FERRETTI

Chair

LEGISLATOR DENISE FORD

Vice Chair

LEGISLATOR JOHN GUIFFRE

LEGISLATOR TOM MCKEVITT

LEGISLATOR DELIA DERIGGI-WHITTON

LEGISLATOR JOSHUA LAFAZAN

LEGISLATOR CARRIE SOLAGES

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2 LEGISLATOR FERRETTI: I'm going  
3 to call the Government Services and Operations  
4 Committee to order and ask Legislator Delia  
5 DeRiggi-Whitton to lead us in the pledge.

6 Thank you Legislator  
7 DeRiggi-Whitton. Mr. Clerk if you could do  
8 the call.

9 MR. PULITZER: Thank you  
10 Mr. Chair. Government Services and Operations  
11 roll call. Legislator Carrie Solages.

12 LEGISLATOR SOLAGES: Here.

13 MR. PULITZER: Legislator Joshua  
14 Lafazan.

15 LEGISLATOR LAFAZAN: Here.

16 MR. PULITZER: Thank you.  
17 Filling in for ranking member Arnold Drucker  
18 we have Delia DeRiggi-Whitton. Thank you for  
19 joining us.

20 LEGISLATOR DERIGGI-WHITTON:  
21 Here.

22 MR. PULITZER: Legislator Thomas  
23 McKevitt.

24 LEGISLATOR MCKEVITT: Here.

25 MR. PULITZER: Legislator John

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2 Guiffre.

3 LEGISLATOR GIUFFRE: Here.

4 MR. PULITZER: Vice Chairman

5 Denise Ford.

6 LEGISLATOR FORD: Here.

7 MR. PULITZER: Chairman John

8 Ferretti.

9 LEGISLATOR FERRETTI: I'm here.

10 MR. PULITZER: We have a quorum.

11 LEGISLATOR FERRETTI: Thank you

12 Mr. Clerk.

13 So, we're here today because last  
14 year many of our offices starting receiving  
15 phone calls from contractors regarding license  
16 applications. Those applications were  
17 properly filed with the Office of Consumer  
18 Affairs but were not processed timely. As of  
19 October of last year there was a backlog of  
20 over 800 new applications, more than 5,000  
21 renewals.

22 In the mean time, some of these  
23 businesses they had their licenses lapse  
24 costing them hundreds of thousands of  
25 dollars. So we're going to have some

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2 questions today about the department, but  
3 before we get started if you have a very brief  
4 opening statement commissioner.

5 MR. CAPECE: Thank you very  
6 much. My name is Commissioner John Rick  
7 Capece. My experience, I have 37 years in the  
8 police department. 27 of those years were in  
9 a supervisory capacity. One of the first  
10 things I learned when I go to a new unit or a  
11 new place to work I learn the functionality as  
12 to what that unit does or in this case what  
13 consumer affairs does. I learn about the  
14 staff and what they do and I assess and  
15 evaluate the policy and procedures that are in  
16 the place.

17 Unfortunately, I discovered the  
18 prior administration really crippled this  
19 agency. I'm going to get into that. One of  
20 the first things that you mentioned sir is  
21 about license backlogs. I immediately  
22 addressed that issue. New applications we  
23 were 1,460 to be reviewed. As of March 3rd  
24 we're down to 1,009. So, we reduced that  
25 backlog.



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2 As far as renewals, we had 5,864.

3 As of March 3rd we're down to 2,275. So

4 that's an issue of licensing backlogs.

5 We also have an issue with consumer  
6 complaints. The prior administration made  
7 backlogs the only priority of consumer affairs  
8 and some consumer complaints have not been  
9 addressed in over two years. I find that  
10 unacceptable.

11 Hearings, they're sparse and  
12 limited and the hearings are the way we get  
13 resolution of complaints and we establish our  
14 fines. Also, enforcement was limited and not  
15 done in a proper, efficient manner. Because  
16 consumer affairs investigators were working on  
17 backlogs of licensing and not enforcing the 27  
18 different consumer protection laws there was a  
19 deficiency in enforcement.

20 With these differences in mind, I  
21 strategized with the staff, who I'd like to  
22 really acknowledge as doing a wonderful job.  
23 They are fine workers. With them I addressed  
24 these issues.

25 One of the first things I did was I

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2 changed licensing procedures in terms of I  
3 stopped the policy of cashing checks on  
4 applications and renewals that were not  
5 properly filled out or had missing  
6 information. In other words, we now cash the  
7 check when everything's okay. The general  
8 feeling was from contractors you took my money  
9 I have a license. So we want to get away from  
10 that.

11 I also revamped the online  
12 processing of licenses. So only completed  
13 licenses could be submitted and processed.  
14 What that does is it reduces review time by  
15 staff and gives the staff more time to do more  
16 licenses. We changed the license applications  
17 to be more user friendly. This is an ongoing  
18 process. We're trying to make the application  
19 not be complicated. We try to keep it simple.

20 The prior administration only  
21 emailed outstanding issues on applications.  
22 Meaning if something was missing or wrong.  
23 And they would only accept email in exchange.  
24 I've now instituted they can mail in their  
25 missing forms and documents and they also can

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2 come in. We accept walk-ins and we also will  
3 do telephone conversations with the vendor if  
4 there's an issue and we'll try to resolve it  
5 that way. I'm trying to give a human touch to  
6 consumer affairs. I don't want people to  
7 think of it as a cold bureaucracy. I want it  
8 also to be business friendly.

9 Staffing was a major issue. In  
10 2018 you had 33 people in consumer affairs.  
11 When I came in we were down to 20. Now I have  
12 a county attorney full time, so I'm up to 21.  
13 And I met with OMB. We finalized a staffing  
14 issue. We resolved it, so they're allowing me  
15 to hire an accountant three, five new  
16 full-time staff members and three part-time  
17 staff members. Which I think will address a  
18 lot of issues with staffing.

19 However, keep in mind I have five  
20 members currently eligible this year to  
21 retire.

22 Over the next few months I also  
23 plan to make changes in the internal computer  
24 programs that we use. As I went in cold,  
25 looked at those computer programs and I found

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2 a couple of problems and with my deputy we  
3 identified certain issues and we're working  
4 with IT to improve them.

5 In regards to fines, the prior  
6 administration had a policy of issuing maximum  
7 penalties for many violations. I want to work  
8 with small businesses to keep businesses in  
9 Nassau County. I am in the process of  
10 establishing a graduated fine system to  
11 achieve our goal of making vendors comply with  
12 the law and protect the consumers. This  
13 office wants to bring business into compliance  
14 instead of putting them out of business.

15 As the backlog is corrected and my  
16 policies improve efficiency, I want to  
17 reestablish in consumer affairs community  
18 outreach to educate the general public on  
19 scams and unlawful business practices that are  
20 occurring.

21 I also want to expand  
22 intergovernmental cooperation with local,  
23 state and municipal governments and law  
24 enforcement agencies to better protect  
25 consumers. I want it to be a partnership so

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2 we're all working together. So we're going  
3 down the same path. We're not interfering  
4 with other investigations, and I want the  
5 community to know what we're doing.

6 By working together, consumer  
7 affairs can once again become an agency that  
8 holds the values and image it once had and a  
9 place where residents both as a business  
10 person and as a consumer are encouraged to  
11 come to our office for assistance and help.

12 Consumer affairs was once a  
13 nationally recognized and respected agency.  
14 Together let us restore the public's trust in  
15 consumer affairs and let's be that agency once  
16 again. Thank you.

17 LEGISLATOR FERRETTI: Thank you  
18 commissioner for your remarks. Just so we're  
19 all acquainted with each other, ma'am, I don't  
20 think we've met. You are in the Department of  
21 Consumer Affairs?

22 MS. HARKINS: My name is Mary  
23 Harkins. I'm a deputy county attorney and I'm  
24 currently assigned to the Department of  
25 Consumer Affairs.

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2 LEGISLATOR FERRETTI: So you're  
3 number 21?

4 MS. HARKINS: I am. I wish I was  
5 21 but no, I'm number 21.

6 LEGISLATOR FERRETTI: And Mr.  
7 Heino, I know that you've worked in the  
8 Department of Consumer Affairs for quite a  
9 long time, right?

10 MR. HEINO: Since 2004. 17  
11 years.

12 LEGISLATOR FERRETTI: 2004.  
13 Almost 20 years. God bless.

14 Thank you again commissioner for  
15 your presentation. We do have some  
16 questions. We'll get started now. I think  
17 maybe some of these questions may be better  
18 answered by Mr. Heino just because he's been  
19 there for so long. A lot of my questions have  
20 to do with how we got to the point where we  
21 had such a backlog. Although, I am encouraged  
22 to hear that in just a couple of months we've  
23 seen the backlog in licensing almost cut in  
24 half it looks like. Well, more than cut in  
25 half in terms of renewals. And about 50

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2 percent less in the new applications. That's  
3 a great sign. So thank you for that.

4 But I do have some questions just  
5 to understand how we got to the point where we  
6 even had such an issue.

7 Can you tell me with regard to that  
8 backlog, do you know how many licenses  
9 actually expired while in the queue to be  
10 processed?

11 MR. HEINO: I don't have the  
12 definitive answer on how many actually expired  
13 because a lot of them were also put on hold.  
14 And while the renewal process -- you're  
15 talking about for the renewals, correct?

16 LEGISLATOR FERRETTI: Correct.

17 MR. HEINO: So, while the renewal  
18 process was going on a lot of these  
19 applications they were just put on hold during  
20 the process. So they actually never  
21 technically expired while they were on a hold  
22 status from the previous administration.  
23 However, when we started requesting these  
24 documents from them there were different  
25 policies and procedures which allowed for the

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2 backlog to continue to grow.

3 With that, the commissioner had  
4 requested that we require a declaration page,  
5 which we had never done before. And, you  
6 know, with regards to the staffing, the  
7 backlog just started piling up. We were,  
8 previous to 2018, whenever a contractor would  
9 send in a renewal form per se you would have  
10 to have the renewal form, a check, certificate  
11 of insurance, worker's compensation insurance  
12 as well as a liable certificate. If you did  
13 not have those documents we would then mail  
14 back the renewal form giving the contractor  
15 the ability to correct the issue that's  
16 wrong. When we would get it in the mail it  
17 would then be mailed out and processed.  
18 Unfortunately, the change in policy was just  
19 to cash the checks and to email them what was  
20 missing.

21 LEGISLATOR FERRETTI: Let me stop  
22 you. You said was a change in policy to just  
23 cash the checks meaning when the application  
24 for renewal came in the check was cashed  
25 immediately?



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2 MR. HEINO: Correct.

3 LEGISLATOR FERRETTI: When did  
4 that change in policy occur?

5 MR. HEINO: 2018.

6 LEGISLATOR FERRETTI: So, from  
7 your time working there in 2004 to 2018 the  
8 application would come in. The check would  
9 not actually be cashed until the application  
10 was processed, correct?

11 MR. HEINO: Correct. It would be  
12 mailed back to the vendor with a note asking  
13 them to resubmit with whatever the missing  
14 documents were.

15 LEGISLATOR FERRETTI: And who  
16 made the decision to change that policy to  
17 cash the checks at the time that the  
18 application was submitted rather than when the  
19 application was processed?

20 MR. HEINO: The former  
21 commissioner.

22 LEGISLATOR FERRETTI: Now, you  
23 just brought something up I want to make sure  
24 I'm clear on it. So, there was obviously with  
25 this backlog -- well, before I get to that.

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2 Commissioner Capece, when you became  
3 commissioner, or acting commissioner, and you  
4 looked at this backlog what was the date --  
5 the oldest application in the queue for  
6 renewal was dated? In other words, how long  
7 were people waiting? What was the longest?

8 MR. CAPECE: 2019.

9 LEGISLATOR FERRETTI: So, roughly  
10 three years?

11 MR. CAPECE: Correct.

12 LEGISLATOR FERRETTI: Now, Mr.  
13 Heino, you indicated earlier that when an  
14 application was pending that the license would  
15 not expire; is that correct?

16 MR. HEINO: Right. So, in the  
17 system it didn't show up as an expired  
18 license. It would just show up in the system  
19 as pending or on hold.

20 LEGISLATOR FERRETTI: That  
21 contractor would still be licensed even though  
22 they submitted their application and has not  
23 been approved, correct?

24 MR. HEINO: I would say  
25 technically no.

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2 LEGISLATOR FERRETTI: Explain.

3 MR. HEINO: Sure. When the  
4 license is on hold most building departments  
5 require you to have a physical license with  
6 you. As long as your license is on hold no  
7 license would ever print. So thereafter, the  
8 contractors, if they were applying for a  
9 building permit in the townships or the cities  
10 or the villages they had no license to turn in  
11 in order to pull a permit, which created a lot  
12 of issues with regards to the backlog and for  
13 them to continue operating their business.

14 LEGISLATOR FERRETTI: So, in  
15 other words, if you're a contractor and you  
16 want to get a permit to do modification to a  
17 residential property when you go to the local  
18 municipality you have to show your license?

19 MR. HEINO: Correct.

20 LEGISLATOR FERRETTI: And if they  
21 were to show their license it would be  
22 expired?

23 MR. HEINO: That's correct.

24 LEGISLATOR FERRETTI: Regardless  
25 of what Nassau County has in their computer

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2 system?

3 MR. HEINO: That is correct.

4 LEGISLATOR FERRETTI: So, when  
5 did this backlog begin to really grow?

6 MR. HEINO: The change in policy  
7 occurred in '18 and I would say the backlog  
8 started about maybe 2019. As the renewals  
9 were coming in we switched computers systems  
10 from a Cara system that the county had to the  
11 commissioner created a new Apex system. With  
12 that new Apex system is when the policy change  
13 to upload the documents and to basically cash  
14 the check and then they would be put on hold.  
15 I would say it would start probably about  
16 maybe mid 2019.

17 LEGISLATOR FERRETTI: You keep  
18 referring to a policy. I thought the policy  
19 you were referring to was cashing the check  
20 immediately?

21 MR. HEINO: Yes.

22 LEGISLATOR FERRETTI: How does  
23 that create a backlog?

24 MR. HEINO: It creates backlog  
25 because in order to complete the license we

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2 have multiple steps. You mail in an  
3 application. The application, as I said,  
4 should have a check, the renewal form, should  
5 have a certificate of insurance, should have a  
6 worker's compensation and liable certificate.

7 The commissioner then, in 2019,  
8 decided he wanted to require these contractors  
9 to also submit a declarations page. So from  
10 the beginning of whenever we issued licenses  
11 up until this change in policy we never  
12 required a declarations page because the  
13 certificate of insurance was enough proof to  
14 show that they had the proper insurance  
15 documents needed. So, if they didn't supply  
16 the declarations page they went in --  
17 basically the check got cashed, it went into a  
18 file cabinet.

19 If the person did submit all the  
20 proper documentation we would then do a sex  
21 offender registry check, we would search for  
22 judgements. If they were clear on both of  
23 those the renewal would be processed.

24 LEGISLATOR FERRETTI: So,  
25 requiring this declarations page how exactly

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2 did that create a backlog?

3 MR. HEINO: It created to the  
4 backlog because a lot of declarations pages  
5 don't give you in detail what you're actually  
6 insured for. So, some of the declarations  
7 page may just say general contractor. And  
8 then when you dive deep into the actual  
9 declarations page does it then breakdown what  
10 you're actually insured for. Which, in an  
11 insurance company, when they supply you with a  
12 certificate of liability insurance in the  
13 description of operations they list what  
14 you're actually insured to do.

15 So, requesting a declarations page  
16 is just creating double work for these  
17 contractors. Which never had to do this prior  
18 in their history of renewing their license.

19 LEGISLATOR FERRETTI: Do you know  
20 why this change was made to the policy?

21 MR. HEINO: I do not.

22 LEGISLATOR FERRETTI: Never were  
23 told what the reasoning was?

24 MR. HEINO: No.

25 LEGISLATOR FERRETTI: But

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2 simultaneously, when this declarations page  
3 was required, the policy change also had the  
4 county cashing the check upon receipt of the  
5 application?

6 MR. HEINO: Correct.

7 LEGISLATOR FERRETTI: Now, has  
8 that policy been changed in the last three  
9 months?

10 MR. HEINO: Effective  
11 immediately.

12 LEGISLATOR FERRETTI: What is the  
13 new policy?

14 MR. HEINO: The new policy is if  
15 the application both for renewals as well as  
16 new applications are incomplete they are sent  
17 a checklist of what is missing and they're  
18 mailed back to the vendor to resubmit a  
19 complete application.

20 LEGISLATOR FERRETTI: Is that one  
21 of the reasons why we're seeing a decrease in  
22 the backlog?

23 MR. HEINO: Absolutely.

24 LEGISLATOR FERRETTI: Was that  
25 suggestion ever made to the prior commissioner

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2 or anyone else?

3 MR. HEINO: Yes, it was.

4 LEGISLATOR FERRETTI: And what  
5 was the response?

6 MR. HEINO: The response was that  
7 it wasn't my decision.

8 LEGISLATOR FERRETTI: Wasn't  
9 whose decision?

10 MR. HEINO: When I brought up to  
11 the commissioner that the policy was not a  
12 good change, that contractors, you know, we  
13 had an established policy already that was  
14 working, I was told it wasn't my place.  
15 Basically thank you for your advice.

16 LEGISLATOR FERRETTI: We had a  
17 budget hearing back in October of '21 when we  
18 were talking about these backlogs. I never  
19 heard from anyone about this change in  
20 policy. And I'm not saying we should have  
21 heard from you. I don't believe you were even  
22 here for that. It's just pretty eye-opening.  
23 Thank you for that information.

24 Aside from this change in policy  
25 that you have implemented commissioner over



1           Government Services - 3-9-22  
2           the last couple of months, which clearly is  
3           working and seems pretty obvious, is there  
4           anything else that has been done or you intend  
5           on doing to further eliminate this backlog or  
6           do you think this is sufficient, this change  
7           in policy?

8                       MR. CAPECE:       No.  There's much  
9           more we can do.  In consultation with the  
10          staff and Ken Heino we decided to, what I  
11          mentioned before, Ken, you want to recap?

12                      MR. HEINO:       Sure.  So, we created  
13          a more user-friendly application that is now  
14          online that actually -- you know, when a  
15          building department contacts our office for  
16          what specific type of work that home  
17          improvement contractors do they always want to  
18          know what type of work are you doing.  
19          Roofing, siding, interior carpentry, tiling,  
20          masonry.  You can go on to all the different  
21          subcategories.

22                      In order to make it more efficient  
23          and user friendly for the building departments  
24          as well as our office, we've implemented a new  
25          application online as well as in paper form to

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2 actually dive into the different types of  
3 categories that they are looking to do. So,  
4 by them filling out the correct work that's  
5 being done, we matched up their certificate of  
6 insurance, then saving time for us to  
7 basically email or mail the contractor asking  
8 for a description, you know, a term just like  
9 general contractor.

10 LEGISLATOR FERRETTI: Sounds like  
11 there's interaction between you and the  
12 contractors. You're kind of guiding them  
13 through the deficiencies in their  
14 application?

15 MR. HEINO: Absolutely.

16 LEGISLATOR FERRETTI: Was that  
17 being done with the previous administration?

18 MR. HEINO: No. The staff tried  
19 but when we were accepting applications that  
20 weren't complete we spent a lot of time trying  
21 to send emails with regards to what was  
22 missing. When the backlog starts growing and  
23 you start emailing contractors what's missing,  
24 some of them aren't submitting the correct  
25 documentation, you're trying to maintain a

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2 dialogue with them but it wasn't to the extent  
3 it is now.

4 LEGISLATOR FERRETTI: Just  
5 talking a little bit about staffing. By the  
6 way, did the Office of Consumer Affairs ever  
7 shutdown?

8 MR. HEINO: No. We had some  
9 staff that was -- between, I guess it was  
10 March, I want to say March 19th when the  
11 county officially went into COVID mode, to  
12 September we had some employees that were  
13 working maybe two or three days a week. But  
14 as of a September everybody was back.

15 LEGISLATOR FERRETTI: September  
16 of '20?

17 MR. HEINO: 2020.

18 LEGISLATOR FERRETTI: Right now  
19 the Office of Consumer Affairs is completely  
20 open?

21 MR. HEINO: That's correct.

22 LEGISLATOR FERRETTI: In terms of  
23 staffing, how many vacancies currently exist  
24 right now in the department?

25 MR. CAPECE: In terms of full

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2 staffing used to be -- in 2014 you had 42  
3 people working there. I really can't answer  
4 that question at this time what is full  
5 staffing. I'm still evolving to try to figure  
6 out what the full staff could be. I would  
7 love more people because I can do more things  
8 but I'm working with OMB with what they're  
9 giving me.

10 LEGISLATOR FERRETTI: You said  
11 there were 42 in 2014?

12 MR. CAPECE: Correct.

13 LEGISLATOR FERRETTI: Mr. Heino,  
14 you maybe can fill in some of the blanks. In  
15 terms of I know it seems a lot of things  
16 changed in 2018. At some point we got down to  
17 20 employees.

18 MR. HEINO: Right. So between  
19 2018 and 2021 we had 33 employees in 2018.  
20 And by January 1st of 2022 we were down to  
21 actually 19. Then the commissioner and Mary.

22 LEGISLATOR FERRETTI: So we went  
23 from 33 to 19 from 2018 to 2020 to you said?

24 MR. HEINO: Correct.

25 LEGISLATOR FERRETTI: And where

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2 did those people go? Did they retire?

3 MR. HEINO: They retired.

4 LEGISLATOR FERRETTI: Never  
5 replaced?

6 MR. HEINO: They were never  
7 replaced.

8 LEGISLATOR FERRETTI: Did you  
9 ever bring this issue -- was this a concern  
10 for you?

11 MR. HEINO: Of course. It was a  
12 big concern because it affects the  
13 enforcement, it affects licensing, it affects  
14 every aspect of the department.

15 LEGISLATOR FERRETTI: Was that  
16 concern brought to the commissioner?

17 MR. HEINO: Yes.

18 LEGISLATOR FERRETTI: Do you know  
19 how many vacancies you currently have in  
20 licensing?

21 MR. HEINO: Not offhand.

22 LEGISLATOR FERRETTI: How many  
23 employees do we have in licensing?

24 MR. HEINO: We only have three.  
25 One of the main things that the commissioner

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2 did when he met with OMB was to get three ad  
3 min assistants that the county is going to be  
4 looking to on board which will be strictly for  
5 licensing.

6 LEGISLATOR FERRETTI: I'm glad to  
7 hear that we're dealing with some of these  
8 issues that are pretty obvious. At least  
9 we're dealing with them now.

10 Just to be clear, when an  
11 application comes in now the check is not  
12 cashed upon receipt, correct?

13 MR. HEINO: That's correct.

14 LEGISLATOR FERRETTI: It's cashed  
15 only upon the application being approved,  
16 correct?

17 MR. HEINO: The application being  
18 processed. Sometimes issues do come up during  
19 the process such as maybe previous judgements  
20 or previous consumer complaints or outstanding  
21 violations.

22 LEGISLATOR FERRETTI: When was  
23 that policy changed? In other words, it was  
24 being cashed upon receipt. Now it's being  
25 cashed upon processing. When was that changed

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2 made?

3 MR. HEINO: January 4th.

4 LEGISLATOR FERRETTI: Of?

5 MR. HEINO: 2022.

6 MR. CAPECE: I implemented that  
7 change my second day.

8 LEGISLATOR FERRETTI:

9 Understood. Just want to talk a little bit  
10 about unconscionable trade practice.

11 Obviously we're all paying high amounts of  
12 fuel prices right now. We're seeing the  
13 prices go up exponentially rapidly.

14 Can you tell me what procedures and  
15 policies were in place? And we're seeing gas  
16 prices escalate now very rapidly. But we've  
17 been paying in the \$3 per gallon plus price  
18 range for about a year and two months right  
19 now. I think we'll all agree with that. At  
20 least it's been going up to about \$3.50.

21 So, what were the procedures and  
22 policies in place, Mr. Heino, to monitor and  
23 ensure that there was no gouging going on at  
24 the pump?

25 MR. HEINO: So, at the pump -- we

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2 can only issue unconscionable trade practices  
3 necessarily for price gouging during a state  
4 of emergency. Since right now there is no  
5 state of emergency and having, as you said,  
6 the gas prices have been going up over the  
7 last year, our weights and measures team is  
8 proactively checking gas pumps to make sure  
9 that the octane is what they're claiming it  
10 is. As well as to make sure you're getting a  
11 gallon of gas for the price that's being  
12 charged. But there is no regulation that sets  
13 prices on gasoline.

14 LEGISLATOR FERRETTI: Unless  
15 there's a state of emergency?

16 MR. HEINO: Correct.

17 LEGISLATOR FERRETTI: When was  
18 the last time there was a state of emergency?

19 MR. HEINO: I believe it was  
20 March 19th, COVID, of 2020.

21 LEGISLATOR FERRETTI: When did  
22 that state of emergency end?

23 MR. HEINO: I believe it was June  
24 if, I'm not mistaken, June 30th of 2021.

25 LEGISLATOR FERRETTI: Is what



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2 you're saying the only time that the  
3 Department of Consumer Affairs had my type of  
4 oversight over price gouging at the pump was  
5 between March of 2020 and June of 2021? At  
6 least in recent history?

7 MR. HEINO: Right. And then --

8 LEGISLATOR FERRETTI: Yes?

9 MR. HEINO: Yes.

10 LEGISLATOR FERRETTI: And in that  
11 time period what was being done to monitor the  
12 price at the pump that nobody was gouging?

13 MR. HEINO: Nothing but the  
14 regular routine proactive steps of weights and  
15 measure checking to make sure you're getting  
16 the right octane for the gallon.

17 LEGISLATOR FERRETTI: I want to  
18 make sure you're understanding my question.  
19 I'm talking about the time period that was a  
20 state of emergency from March of 2020 to June  
21 of 2021. You indicated at that point, when  
22 there was a state of emergency, we're supposed  
23 to be ensuring that's there's no price gouging  
24 going on at the pumps, right?

25 MR. HEINO: Correct.

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2 LEGISLATOR FERRETTI: And in that  
3 time period I understand they're monitoring  
4 octane but that's not ensuring that price  
5 gouging is not happening. So during that  
6 state of emergency was there anything being  
7 done by the previous administration to monitor  
8 that price gouging was not happening at the  
9 pump?

10 MR. HEINO: No.

11 LEGISLATOR FERRETTI: At this  
12 time I'll open it. I may have some more  
13 questions but I'll open it up to any of the  
14 legislators that may have. Legislator  
15 DeRiggi-Whitton.

16 LEGISLATOR DERIGGI-WHITTON:  
17 Thank you. Good to see you. Only a week ago  
18 I guess that we say you and we heard most of  
19 this in your confirmation hearing. I'm sort  
20 of surprised we're meeting with you again so  
21 soon because it's sort of so similar to what  
22 you said about a week ago.

23 But I have a couple of questions I  
24 want to start with. Number one, I understand  
25 that you've lowered the number of pending

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2 applications. So when you basically send the  
3 application back at this point do you still  
4 consider it pending when you send the check  
5 back?

6 MR. HEINO: No.

7 LEGISLATOR DERIGGI-WHITTON: How  
8 many of those were sent back and how many of  
9 them were resolved?

10 MR. HEINO: I don't have those  
11 exact numbers but the ones that are resolved  
12 will show in the system as being licensed.  
13 Because when they resubmit, if they submit a  
14 complete renewal that has everything in it  
15 they turn over in the system as licensed.

16 If they are sent back -- you know,  
17 we always send the license renewals basically  
18 a month and a half prior to the expiration.  
19 So, they have a month and a half to submit the  
20 proper documentation. Which they can do  
21 through the mail, online or in person. When  
22 they submit those renewals back to us and it's  
23 missing documents, if it's missing one  
24 document sometimes we even call them to just  
25 say you know, there's one little error, can

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2 you please correct it? Email us. But usually  
3 we do send it back right away on all of them  
4 and then they resubmit and then it gets  
5 processed.

6 LEGISLATOR DERIGGI-WHITTON: So  
7 out of 5800, and now we're down to 2275, how  
8 many of those were granted and how many are  
9 just still pending?

10 MR. HEINO: So that number of  
11 2,275 reflects the renewals that are  
12 outstanding from 2019, 2020 and 2021. There  
13 are currently seven renewals from January 1st  
14 to today that are currently in our possession  
15 that are pending because of outstanding  
16 judgements. So, we only have seven as opposed  
17 to the 2,275 that under the previous  
18 administration we basically collected the  
19 check and tried to notify them of what was  
20 missing.

21 LEGISLATOR DERIGGI-WHITTON: I'm  
22 just trying to find out how many of those have  
23 been resolved or are they just pending but  
24 they're just not in our system.

25 MR. HEINO: They're not

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2 resolved. Correct. The resolved number would  
3 be I guess the 5800 minus 2,275. So 61  
4 percent have been resolved.

5 LEGISLATOR DERIGGI-WHITTON: Have  
6 been resolved? Every single one of these --  
7 didn't you just say that some of these were  
8 returned so they're still pending?

9 MR. HEINO: No. You're asking  
10 how many have been resolved out of the 2,275?

11 LEGISLATOR DERIGGI-WHITTON: No.  
12 Out of the 5,000 --

13 MR. HEINO: 5,864. Right. 5,865  
14 and we currently only have 2,275. I guess  
15 that would be 3,599 have been resolved.

16 LEGISLATOR DERIGGI-WHITTON: Have  
17 been resolved. So they've been given the --

18 MR. HEINO: License. Correct.

19 LEGISLATOR DERIGGI-WHITTON: So  
20 they're no longer pending?

21 MR. HEINO: They're no longer  
22 pending.

23 LEGISLATOR DERIGGI-WHITTON: So  
24 they're licensed?

25 MR. HEINO: Correct.

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2 LEGISLATOR DERIGGI-WHITTON: That  
3 doesn't include the ones that you sent back  
4 with the check and all and are still waiting  
5 for?

6 MR. HEINO: Correct.

7 LEGISLATOR DERIGGI-WHITTON: So  
8 we still have 2200 pending as of today?

9 MR. HEINO: Right. And out of  
10 those 2,275 those have all now been contacted  
11 as opposed to previously that they weren't.  
12 Including those 2,275 they've been contacted  
13 and notified of what is missing and what they  
14 need in order to complete the I guess turnover  
15 from hold to license. That could be missing  
16 insurance documents. It could also include  
17 judgements that need to be resolved.  
18 Outstanding complaints or violations.

19 LEGISLATOR DERIGGI-WHITTON: Then  
20 you have an additional seven so far for this  
21 year?

22 MR. HEINO: For just this year,  
23 right.

24 LEGISLATOR DERIGGI-WHITTON: What  
25 is the difference between a dec page and a

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2 certificate of insurance?

3 MR. HEINO: The dec page -- one,  
4 I'm not an insurance expert so I do not know,  
5 you know -- the dec page is part of your  
6 overall policy that actually does the  
7 breakdown of what you're insured for.

8 A certificate of liability allows  
9 the insurance company, in this case, to hold  
10 consumer affairs as certificate holder. But  
11 it basically breaks down the description of  
12 what you're actually insured for. By us being  
13 a certificate holder it notifies us if the  
14 contractor decides maybe not to pay their  
15 insurance renewal then we get notified that  
16 their insurance has been cancelled.

17 LEGISLATOR DERIGGI-WHITTON: Who  
18 prepares the certificate of insurance?

19 MR. HEINO: Insurance company.

20 LEGISLATOR DERIGGI-WHITTON: They  
21 list all the limits and everything?

22 MR. HEINO: Correct.

23 LEGISLATOR DERIGGI-WHITTON: I  
24 actually agree then that you don't need both.  
25 I was just more concerned that the dec page

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2 does mention all the limits and everything  
3 else. But you have all that information in  
4 the certificate of insurance?

5 MR. HEINO: Right. So, as  
6 opposed to having our licensing staff go  
7 through -- sometimes dec pages can be 25 pages  
8 long. So rather than having our staff sit  
9 down and go through 25 pages trying to  
10 pinpoint what exactly their licensed, the  
11 insurance company will condense that on to a  
12 certificate of insurance.

13 LEGISLATOR DERIGGI-WHITTON: Does  
14 that take a long time to get from the  
15 insurance company?

16 MR. HEINO: The contractors  
17 submit it with their renewal.

18 LEGISLATOR DERIGGI-WHITTON:  
19 Could that be any type of delay for  
20 contractors or not really?

21 MR. HEINO: No. The insurance  
22 company could have that produced within ten  
23 minutes. I just had somebody at the desk the  
24 other day that left off the description of  
25 operations. The vendor contacted the



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2 insurance company and I had the certificate  
3 within ten minutes and they were licensed  
4 within 15.

5 LEGISLATOR DERIGGI-WHITTON: So,  
6 there's just two other subjects I want to hit  
7 first. Look, 2020 was a very difficult year.

8 MR. HEINO: It was.

9 LEGISLATOR DERIGGI-WHITTON: And  
10 commissioner Greg May has been with the county  
11 since 2010, with the prior administration.  
12 They had a lot of faith in him. He was kept  
13 by the Curran administration. In the  
14 beginning I wasn't too sure but I got to know  
15 him a little better. I thought he was doing a  
16 good job. He did come up a number of times  
17 and was concerned about backlog as well as  
18 staffing. He was also at that point given  
19 taxi. There was a lot going on. Then COVID.

20 There were so many problems with  
21 price gouging. I'm sure you saw it on the  
22 news and everything else. The masks, the  
23 Clorox wipes. They were like \$100 for a box  
24 of spray can of Lysol. We were in survival  
25 mode. We had the same staff at that point

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2           that we normally did. These guys, in my  
3           opinion, they were all over the place. We  
4           were in like a war and our objectives shifted  
5           from maybe the every day things to survival.  
6           Which was these businesses were really taking  
7           advantage of people and these were people's  
8           lives. Not being able to get masks and all.

9                        So in 2018, when Greg May became  
10          commissioner, he inherited a huge problem with  
11          the staffing. The real cut occurred during  
12          the Mangano administration with the staffing  
13          just so you're aware. Just to give you a  
14          little bit of a history.

15                       You were very honest. I have to  
16          tell you, I spoke to a number of people after  
17          your interview let's call it, your  
18          appointment, and you were very honest and  
19          forthright, which I appreciated. But I'm just  
20          giving you a little history that the real cuts  
21          came during Mangano. I think we went from 43  
22          employees down to 32. 22. Well, we went down  
23          to 32 originally and then it went down again  
24          to 24 under the Mangano administration. I  
25          absolutely admit we were still understaffed.

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2 MR. HEINO: I'm sorry, I just  
3 want to correct. We were down to 33 in 2018.

4 LEGISLATOR DERIGGI-WHITTON: 33  
5 in 2018?

6 LEGISLATOR FERRETTI: That  
7 doesn't mean that they had 26 employees.

8 MR. HEINO: If you're looking at  
9 the budget you also have to consider from 2015  
10 to 2018 commissioner May was the commissioner  
11 of the Taxi and Limousine Commission. So, if  
12 you're looking at the '18 budget Taxi and  
13 Limousine Commission may have still been under  
14 their own budget which would have been  
15 separate. Which they did have their own  
16 amount of employees. So, while consumer  
17 affairs may have only had 26, the Taxi and  
18 Limousine Commission --

19 LEGISLATOR DERIGGI-WHITTON:  
20 Okay. That's what we just wanted to clarify.  
21 I know Michelle is off mic so I'll just repeat  
22 what she's saying. I'm sorry about this Frank  
23 and I'm also interrupting which I'm also  
24 trying to be careful of. We have to keep  
25 Frank happy or else we're all in trouble.

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2 So, look, we can sit here and blame  
3 everybody. And listen, this is not the only  
4 department that has suffered during COVID. I  
5 just heard we need 700 seasonal employees in  
6 parks. 700. Because we don't have them right  
7 now. That's going to mean we're probably  
8 going to have lifeguard shortages. Every  
9 department I speak with has -- we're coming  
10 out of unprecedented time.

11 MR. HEINO: Of course.

12 LEGISLATOR DERIGGI-WHITTON:  
13 We're sorry that you kind of walked into this  
14 situation but what's budgeted there and we're  
15 going to be here to work with you and help,  
16 but I want to make sure there was just a  
17 couple of things that you said, and I'm all  
18 for being friendly, but when you mentioned  
19 lowering some fines, you're not going to be  
20 addressing things like selling vaping products  
21 to children or alcohol, smoking?

22 MR. CAPECE: What we're talking  
23 about in terms, the way it was explained to me  
24 by my staff, we're talking contractors  
25 sometimes and businesses. Not things that

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2       deal with children and health. When I say  
3       lower the fines, the policy was maximum fine  
4       for everything. Sometimes with contractors  
5       they make a mistake or whatever. If you hit  
6       them with a -- the fines were \$500 to \$5,000.  
7       If you hit them with \$5,000 right away you  
8       might put them out of business. You might  
9       discourage them. You can really hurt  
10      someone.

11                    What I'm saying is, the fine -- the  
12      punishment has to fit the crime. It's not a  
13      crime but you know what I'm saying. We're  
14      trying to make it -- a contractor, instead of  
15      getting hit \$5,000 he gets hit \$2,000 he might  
16      be more agreeable to pay. So we'll collect  
17      that money. Instead of \$5,000, he'll close up  
18      shop and then we lose a business and he will  
19      go work for someone else. Where, if we get  
20      that two grand, I'd rather have a little bit  
21      than have nothing.

22                    LEGISLATOR DERIGGI-WHITTON:     I  
23      know that you have a background in law  
24      enforcement, so I don't have to tell you this  
25      but we've had a lot of problems with

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2 contractors. We've had unscrupulous  
3 contractors.

4 MR. CAPECE: Unbelievably  
5 unscrupulous.

6 LEGISLATOR DERIGGI-WHITTON:  
7 Peoples' homes have been damaged. Peoples'  
8 homes have been lost. I think us up here, of  
9 course, we depend on you to use your  
10 discretion as to what to charge but it does  
11 have to still discourage the --

12 MR. CAPECE: Absolutely. No  
13 decision is going to be made unilaterally by  
14 myself. I'm going to rely on counsel and my  
15 deputy. What I was trying to say was -- and  
16 also I want to stress I'm here to do a job.  
17 I'm not placing blame on anyone. I don't  
18 blame anyone for anything. I was hired by the  
19 county executive to do a job and that's what  
20 I'm trying to do.

21 But as far as getting back to the  
22 fine schedule. Sometimes if you hit the  
23 maximum right away it could be bad for  
24 business. I'm not saying they're all good  
25 people. If they're bad people, which we will

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2 look at their prior history. In other words,  
3 if it's a first-time contractor, he just  
4 started business, he makes a mistake, he  
5 screws up, he gets \$5,000 just as the same as  
6 a contractor that has a history of doing it.  
7 I don't think the two should be treated the  
8 same. That's the point I was trying to make.

9 LEGISLATOR DERIGGI-WHITTON: I  
10 agree with you. But I also like the fact that  
11 we're kind of known in Nassau County for being  
12 pretty tough on those contractors that take  
13 advantage of seniors and --

14 MR. CAPECE: I have no intention  
15 of being lenient. I'm just trying to be more  
16 fair and to keep businesses going. I hope you  
17 understand my intent.

18 LEGISLATOR DERIGGI-WHITTON: I  
19 do. And I do respect that the fact that you  
20 have a law enforcement background and I'm sure  
21 your mind works that way. That's a real  
22 issue. Part of our job up here is to protect  
23 our residents. You're going to hear -- we had  
24 Sandy we had so many problems with contractors  
25 where they would take the money and

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2 disappear. There were a lot of problems.

3 MR. CAPECE: Believe me, I can't  
4 go to any social gathering anymore without  
5 hearing the stories. I'm always going to say  
6 I'm working in the parks department.

7 LEGISLATOR DERIGGI-WHITTON: And  
8 you're only there for two and a half months so  
9 far.

10 MR. HEINO: I also want to just  
11 say, legislator, what the commissioner also,  
12 you know, has directed the office and what he  
13 means is there's also a bigger, more important  
14 aspect to bringing, you know, maybe a new  
15 license contractor that didn't know he  
16 necessarily needed the license and may get  
17 fined \$1,500. First they reduce the fine as  
18 long as he applies for a license to come into  
19 compliance with the law.

20 LEGISLATOR DERIGGI-WHITTON: I'm  
21 all for that. But, unfortunately, this is a  
22 business, probably 95 percent of them are  
23 great but that five percent can cause a lot of  
24 damage to others.

25 I just had another technical



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2 question. As far as cashing the checks. Last  
3 I remembered a check is valid for what 90  
4 days?

5 MR. HEINO: I think six months.  
6 It depends. Some money orders are only 90  
7 days. Some checks are six months. It really  
8 depends on the banking institution.

9 LEGISLATOR DERIGGI-WHITTON: I'm  
10 just thinking practically, and again, I agree  
11 that we shouldn't cash a check unless we're  
12 pretty sure that we're going to be granting  
13 the license in the near future. But I can  
14 almost see that reasoning to cash it upfront  
15 so that we don't have to go back and get  
16 another check.

17 MR. CAPECE: Our intention is to  
18 process the licensing within 90 days. That's  
19 our intention. I think we're going to achieve  
20 that goal with new staff. I think we'll  
21 achieve that goal rapidly.

22 The way it was explained to me, the  
23 check was cashed immediately before any  
24 contact was made with the vendor or the  
25 contractor, the licensee, and that's where the

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2 problem laid. A lot of them, as you just  
3 said, how they took my money, we're good to  
4 go. I want to get away from that mentality.

5 MR. HEINO: It's not the office's  
6 policy to hold on to the checks. That's why  
7 if they do send in a renewal with the check it  
8 will be processed within two days and the  
9 check will be deposited and a renewal will be  
10 issued. The license would be issued.

11 LEGISLATOR DERIGGI-WHITTON: And  
12 if there is a problem the check will be  
13 returned?

14 MR. HEINO: Correct.

15 LEGISLATOR DERIGGI-WHITTON: I  
16 have to tell you, the clerk's office, I know  
17 just by accident, I renewed my notary stamp,  
18 and I called a couple of months, maybe a month  
19 into it, and I said I haven't received my  
20 renewal little certificate. They said did we  
21 cash your check? They didn't know who. They  
22 didn't know I was a legislator. I said yes,  
23 you cashed my check. They said then you're  
24 renewed. Then about three months later I got  
25 my certificate.

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2 So, I believe, I don't know if it  
3 still happens in the clerk's office but that  
4 was probably about three years ago. I don't  
5 know if it's just this department or if it's  
6 just the way that, you know, accepted  
7 practices throughout the county. I'm not  
8 sure. But this is not the only time I've  
9 heard of a license, which is what that is,  
10 being issued, you know, basically being told,  
11 again, I was just a regular consumer on the  
12 phone, they had no idea know who I was, and  
13 they told me oh no, you're fine. As long as  
14 we cashed your check.

15 I'm just mentioning it. It might  
16 not just be this department that has that  
17 practice.

18 When Greg May was hired by Laura  
19 Curran I was a little taken back because I  
20 thought most new administrators come in and  
21 wipe out everybody and start with new  
22 commissioners for every department. And she  
23 didn't. And we were a little hesitant to keep  
24 him. But I did feel that he tried. And  
25 again, with COVID and all, I was with him at a

1           Government Services - 3-9-22  
2           number of press conferences. He was stressed  
3           out about all the stores. So, he did work  
4           hard and I was actually impressed and I was  
5           impressed with how he handled the taxis. I  
6           can't believe I'm defending Greg May but I  
7           kind of feel like, again, a Mangano person but  
8           I felt that he stepped up to a very difficult  
9           time.

10                           And I would say between your  
11           department and the fire marshal's and the  
12           board of health everybody was amazing and went  
13           above and beyond. Yes, maybe we slipped  
14           behind on a few things and I don't ever want  
15           any contractor to feel that they're not being  
16           treated fairly. But, again, this was not a  
17           normal situation.

18                           So, I think that pretty much  
19           answered my question.

20                           I missed your name. You work for  
21           the county attorney's office? You're not  
22           under this budget, right?

23                           MS. HARKINS:        I don't believe I  
24           am.

25                           LEGISLATOR DERIGGI-WHITTON:        No,

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2 you're not. I don't have you listed. So  
3 you're not one of the new employees, correct?

4 MR. HEINO: She's from the county  
5 attorney's office assigned to consumer  
6 affairs.

7 LEGISLATOR DERIGGI-WHITTON:  
8 Right, but you're not under their budget,  
9 correct?

10 MR. CAPECE: Under our budget,  
11 no.

12 LEGISLATOR DERIGGI-WHITTON: So  
13 you're with the county attorney's office?

14 MS. HARKINS: Yes.

15 LEGISLATOR DERIGGI-WHITTON: Nice  
16 to meet you. Do you have any other  
17 obligations other than this department?

18 MS. HARKINS: Not at this point  
19 in time to my knowledge.

20 LEGISLATOR DERIGGI-WHITTON: Do  
21 you know if you will be assigned to other  
22 departments or is this going to be your only  
23 one?

24 MS. HARKINS: I believe this will  
25 be my only one. I think part of what they're

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2 hoping to do is to have me assist with the  
3 backlog of hearings. They have like an  
4 independent contracted judge, Judge Perry,  
5 that does the hearings right now one day a  
6 week. I believe in the past they were up to  
7 hearings three days a week. So the hope is  
8 that I will help clear the backlog by  
9 assisting as a hearing officer on certain  
10 cases on Tuesday.

11 LEGISLATOR DERIGGI-WHITTON:  
12 Okay, good. Listen, like I told you, I want  
13 you to prove me wrong. So, I want you to do  
14 well. We all want you to succeed. Can we  
15 just go for the record. Right now you have  
16 how many employees on board?

17 MR. CAPECE: Right now I have --  
18 not including her, I have 19 plus myself.

19 LEGISLATOR DERIGGI-WHITTON: So  
20 you have 20?

21 MR. CAPECE: Including myself.

22 LEGISLATOR DERIGGI-WHITTON: Is  
23 that including the four people that you  
24 mentioned during your interview for  
25 appointment?

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2 MR. CAPECE: No. I met with OMB  
3 and they're going to give me a full-time  
4 accountant, an accountant three. Which will  
5 help with all -- we're getting a full-time  
6 accountant three, five new hires full time and  
7 they're allowing me three part-time hires.  
8 Which will take the pressure off my front  
9 staff. So we'll have meal relief and stuff.

10 If you know the way we operate we  
11 have a front desk where people come to. And  
12 that's a critical part of our operation. I  
13 have two people there, sometimes one, and  
14 sometimes we have a line. So, if I have  
15 part-time employees that can take the pressure  
16 off of some of the clerks that are doing  
17 renewals they can jump in and assist people  
18 that come in. So, we can make it, when I say  
19 user friendly, more affable. So they're not  
20 waiting on line getting annoyed. That's what  
21 we're trying to do.

22 But as far as OMB, an accountant,  
23 five new employees and three part timers. We  
24 have to meet with civil service to make sure  
25 we match the requirements.

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2 LEGISLATOR DERIGGI-WHITTON: Then  
3 you're anticipating five more?

4 MR. CAPECE: We have five people  
5 in fiscal '22 that can be retired.

6 LEGISLATOR DERIGGI-WHITTON: So  
7 you're going to be kind of in the same boat.  
8 You're going to be constantly trying to staff  
9 this department. Just the way it is.

10 MR. CAPECE: It's Nassau County.

11 LEGISLATOR DERIGGI-WHITTON: It's  
12 the world. I mean, especially with so many  
13 restaurant staff. So, I think that we have  
14 you budgeted for 26. So, I think that's  
15 correct and look, let's try to get there.

16 MR. CAPECE: As long as civil  
17 service helps me. I intend to hire six  
18 people. So I'll be at 26. I'll be at my  
19 staffing. But they're giving me three extra  
20 part timers, which will be a great relief.

21 LEGISLATOR DERIGGI-WHITTON: I  
22 hope it works and I'm glad that the pressures  
23 of COVID are receding a bit so we can get back  
24 to focusing on the things we want to focus  
25 on. We would love to be kept updated.



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2 I want to say just say as a  
3 legislator, I understand -- here we go back to  
4 the chain of command, which I don't like --  
5 but we're always here. If there's ever a real  
6 problem people should just let us know. We  
7 all are up here to help everyone, not just the  
8 commissioners. If you were really facing  
9 these problems the last, you're saying the  
10 last administration, I never heard from you.  
11 I never heard from anybody really other than  
12 Mr. May who was trying to get staff.

13 MR. HEINO: Mr. May was the  
14 commissioner. So you would hear from him.

15 LEGISLATOR DERIGGI-WHITTON: We  
16 can hear from other people too. I understand  
17 the chain of command but we're always here and  
18 our doors are always open. I think sometimes  
19 good communication between us and anyone is a  
20 good idea.

21 Hold on. For each title that  
22 you're hiring are they coming off the civil  
23 service list?

24 MR. CAPECE: Yes.

25 LEGISLATOR DERIGGI-WHITTON:

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2 That's good. That will expedite it.

3 MR. CAPECE: That's why I have to  
4 meet with civil service to figure out, look at  
5 the list. I want to start the interview  
6 process. I want to get this going ASAP.

7 LEGISLATOR DERIGGI-WHITTON: I  
8 appreciate it. Again, I kind of felt like  
9 this hearing was started as sort of an attack  
10 on the last administration. I just don't  
11 think that gets us anywhere. Looking forward  
12 praying to God this pandemic is in our  
13 rearview mirror. I don't think it's fair  
14 really to hit these people as hard as --  
15 unless you walked in their shoes during those  
16 dark days it's very hard to be the what do  
17 they call it? Monday quarterback. It was a  
18 tough time. It really was.

19 The fact that we were able to stay  
20 above water amazes me. I'm proud of it. I'm  
21 proud of the people that put the time in with  
22 this department and others. Was it perfect?  
23 No. Did some areas suffer? Yes. Can we make  
24 improvements? Absolutely.

25 So, we're with you. But again, I

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2 don't think it's fair to point fingers at  
3 anyone else unless you were really here at  
4 that time which was horrible, horrible dark  
5 days, which hopefully will never happen  
6 again. So thank you.

7 LEGISLATOR FERRETTI: I do have  
8 some comments and then I'm going to pass it  
9 off for some questions from Legislator  
10 McKevitt. I think it's a little disingenuous  
11 to say that you don't want to blame previous  
12 administrations but for the last four years  
13 all we ever heard the Curran administration  
14 and many of the minority legislators do was  
15 blame the Mangano administration for every  
16 little thing. I mean, there was a rainstorm  
17 and it was Mangano's fault. So, I think that  
18 is what it is.

19 Talking about COVID, obviously  
20 COVID had an impact on all of our  
21 departments. All over the country it had an  
22 impact. All over the world it had an impact.  
23 But Mr. Heino, I want to make sure I  
24 understand correctly. The backlog that  
25 occurred in consumer affairs with renewals and

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2 new applications that began 2018, correct?

3 MR. HEINO: Correct.

4 LEGISLATOR FERRETTI: Two years  
5 before anyone heard the word COVID, right?

6 MR. HEINO: Right. It started in  
7 2018, correct.

8 LEGISLATOR FERRETTI: And that  
9 was at the exact time that the Curran  
10 administration made a policy decision that  
11 created that backlog, correct?

12 MR. HEINO: Correct.

13 LEGISLATOR FERRETTI: It had  
14 nothing to do with COVID right?

15 MR. HEINO: Correct. COVID  
16 didn't help.

17 LEGISLATOR FERRETTI: Tell us how  
18 COVID impacted it.

19 MR. HEINO: COVID impacted it in  
20 the sense of our front desk was closed. So  
21 contractors at that point the policy was only  
22 to email everything in. Which we had a system  
23 that allowed them to submit incomplete  
24 applications online. What the system wasn't  
25 set up to I guess distinguish between a

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2 completed application or not.

3 LEGISLATOR FERRETTI: But my  
4 point is, look, we're not here, and I know  
5 commissioner you said you're not here to blame  
6 anybody. We're not talking about blame.  
7 We're trying to identify a problem and make  
8 sure we don't create the same issue again.  
9 And it seems to me, when things are usually  
10 very cloudy in government, it's pretty clear  
11 what caused this. It was a direct event, a  
12 policy decision by the Curran administration,  
13 to change the process where they would take  
14 your \$1,000 check and cash it and then put it  
15 on hold for three years. That caused this  
16 mess clear and simple. I think we need to  
17 identify that so we don't do it again. It's  
18 not about blame. It's not about attacking.  
19 Now, I'm glad to hear the policy has changed.  
20 Seems pretty obvious.

21 In terms of us not hearing from  
22 you, Mr. Heino, I don't blame you for Mr. May  
23 and not communicating apparently with the  
24 county executive and the administration and  
25 not pointing out these obvious deficiencies in

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2 their new policy.

3 But in any event, just a few more  
4 comments.

5 I know that Legislator  
6 DeRiggi-Whitton brought up her notary  
7 application. It's not analogous because a  
8 notary is a state license. The county clerk's  
9 office is a conduit to processing that  
10 license. So when your check comes in to the  
11 county it has to be cashed. It is then, at  
12 that time, sent to the state. At which point  
13 you are licensed. The fact that you don't get  
14 your license for a period of time is a  
15 deficiency with the state not actually sending  
16 you a proper paper license.

17 But if go on the state website and  
18 go to the licenses, as soon as that check is  
19 cashed you will see you are authorized to be a  
20 notary. So, it's not exactly the same and is,  
21 in my opinion, is completely different than  
22 the consumer affairs cashing a \$1,000 check  
23 and then taking the application and putting it  
24 on the shelf for three years.

25 In terms of, again, hearing from

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2 you, Mr. Heino, I know there's this idea that  
3 we never heard from anybody about this. We  
4 heard from our residents. We heard from  
5 contractors. We heard from people who were  
6 saying hey, I came and I applied. They cashed  
7 my check and I haven't heard anything for two  
8 or three years. I don't need to hear from you  
9 Mr. Heino. I heard from plenty of people.  
10 I'm sure the county executive did too and they  
11 did nothing. They did nothing to fix that.

12 I do have some more questions.  
13 I'll pass off to Mr. McKevitt. But I want to  
14 thank you and County Executive Blakeman for  
15 addressing this immediately and we're seeing  
16 the results. It's quantifiable and it seems  
17 to be a pretty easy solution. By the way, we  
18 have the same amount of employees today as we  
19 did in December, right?

20 MR. HEINO: Correct.

21 LEGISLATOR FERRETTI: So, it's  
22 not like you got an influx of employees.  
23 You're doing this with the same amount of  
24 people. You just changed the policy that was  
25 put in place in 2018 and it seems to be

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2 working. Thank you for that. I'm going to  
3 pass off. I do have more questions. I don't  
4 want to monopolize the microphone. Legislator  
5 McKevitt.

6 LEGISLATOR MCKEVITT: Can you  
7 just walk me through the enforcement process  
8 on a consumer who had a problem with the  
9 contractor who did shoddy work. How does that  
10 process go? How do I make the complaint? How  
11 is it investigated and how does it come to  
12 resolution.

13 MR. CAPECE: I'll start you  
14 through and then Ken can pick up some areas I  
15 don't know. We have a complaint form that's  
16 online. Previously you could only make a  
17 complaint online if I was led to believe that  
18 was correct. You can mail it in too. We get  
19 a form in. That form will be given to an  
20 investigator. The investigator will then  
21 contact the complainant and the investigator  
22 will find the details of the complaint. Then  
23 he will go out to the scene, to the person's  
24 home, and usually take pictures, make a  
25 recommendation. Then that investigator will



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2 file charges if they believe --

3 MR. HEINO: They'll review it for  
4 violations.

5 MR. CAPECE: They'll review it  
6 for violations and file charges and then it  
7 goes for a hearing. At that time the  
8 contractor can try to defend his position.  
9 But that's decided by the judge.

10 LEGISLATOR MCKEVITT: How many  
11 investigators do you have doing those  
12 investigations?

13 MR. HEINO: Nine. Just to  
14 piggyback on what the commissioner was  
15 saying. Previously, in 2018, a complaint  
16 would come in. Somebody would fill out a  
17 contractor complaint. There's a few types of  
18 complaints. There's a complaint against an  
19 unlicensed contractor. Complaints against a  
20 licensed contractor and then sometimes just  
21 complaints about maybe a retail store or any  
22 type of issue that somebody may be having. We  
23 would always send a copy of the complaint to  
24 the contractor to try to address the issue  
25 that's at hand. That was stopped also in

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2 2018.

3 LEGISLATOR MCKEVITT: In other  
4 words, the old process was sent to the  
5 contractor. Let the contractor resolve on  
6 their own resolve and try to make the customer  
7 happy. But since 2018 that part of the  
8 process was taken out?

9 MR. HEINO: Right. Then the  
10 commissioner didn't want to send the complaint  
11 to the contractor. We would then schedule the  
12 contractor for a hearing. Those hearings are  
13 being one, to adjudicate the violations that  
14 may have existed and a separate hearing to  
15 adjudicate the consumer complaint.

16 LEGISLATOR MCKEVITT: What is the  
17 time frame then between when the investigation  
18 came in and when you get to a hearing date?

19 MR. HEINO: Are you talking about  
20 after 2018?

21 LEGISLATOR MCKEVITT: Yes.

22 MR. HEINO: Some of those  
23 hearings still have not been heard.

24 LEGISLATOR MCKEVITT: Four years  
25 later?

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2 MR. HEINO: Four years later.

3 LEGISLATOR MCKEVITT: What's the  
4 statute on limitations on those complaints?

5 MR. HEINO: Unfortunately,  
6 statute of limitations against an unlicensed  
7 contractor is two years. So, for some of  
8 these they may have expired.

9 LEGISLATOR MCKEVITT: So, when it  
10 comes down to the point when you get to the  
11 hearing is there an opportunity at that point  
12 where's there's like, for example, a plea  
13 bargaining process between counsel and before  
14 you get to the judge to try to resolve  
15 beforehand or does it just go straight to  
16 adjudication and whatever the hearing officer  
17 says the hearing officer says.

18 MR. HEINO: We try to settle.

19 LEGISLATOR MCKEVITT: What type  
20 of staff is involved when that settlement  
21 occurs?

22 MR. HEINO: Between 2018 and 2021  
23 the commissioner then would only allow an  
24 administrative hearing officer to hear the  
25 cases and our deputy county attorney, whoever

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2 was assigned to our department, would then act  
3 as the prosecutor. But we were at times  
4 without a county attorney for up to year at  
5 various times throughout. Those hearings  
6 alone got put on hold as well as the process  
7 for the way we did hearings.

8 Prior to 2018 we used to do  
9 hearings three days a week and utilize the  
10 deputy county attorney as the hearing  
11 officer. From 2018 to 2021 we had a separate  
12 administrative judge.

13 LEGISLATOR MCKEVITT: So right  
14 now how many days a week are hearings taking  
15 place?

16 MR. HEINO: The commissioner has  
17 reinstated the hearings right away. We've  
18 so far had nine. With Mary on board, she'll  
19 be assisting one or two days a week, plus the  
20 ALJ, hoping to get back up to three days a  
21 week and get the backlog complete.

22 LEGISLATOR MCKEVITT: When was  
23 the last time you held a hearing?

24 MR. HEINO: We just held one on  
25 Monday.

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2 LEGISLATOR MCKEVITT: And before  
3 then?

4 MR. HEINO: For 2022 we are  
5 starting to get it back up. We're basically  
6 doing one a week. Mary just joined us right  
7 around Presidents Day. So we will be picking  
8 that up. Prior to that they were on hold  
9 where we had gone months and maybe sometimes  
10 one hearing would happen with only, you know,  
11 one hearing day a week with five cases.

12 LEGISLATOR MCKEVITT: When in the  
13 past for 2018 how many hearings could you have  
14 in a day?

15 MR. HEINO: We used to have 20 in  
16 a day.

17 LEGISLATOR MCKEVITT: Then went  
18 down to five?

19 MR. HEINO: A week. Twenty a day  
20 three days a week. So 60 a week to five.

21 LEGISLATOR MCKEVITT: Thank you.

22 LEGISLATOR FERRETTI: Legislator  
23 Ford did you have questions?

24 LEGISLATOR FORD: I do. I will  
25 be very brief. Thank you chairman.

1           Government Services - 3-9-22  
2           Legislator McKeivitt touched on the topic that  
3           I had about the hearing officers and the  
4           amount of hearings that we had.

5                         But I just want to thank the  
6           commissioner for making every attempt to bring  
7           consumer affairs back to the agency that it  
8           had once been years ago, and I look forward to  
9           working with him. And yes, we don't want to  
10          point fingers at a previous administration but  
11          we definitely need to address what the  
12          problems were in the past.

13                        But I just wanted to ask on some of  
14          the other issues. Commissioner, we touched  
15          about the hearing officers and about the  
16          contractors licenses so forth on and so  
17          forth. What about some of the other, I guess,  
18          jobs or something that consumer affairs is  
19          supposed to follow-up on such as the ATM  
20          machines that are popping up in Nassau County  
21          that are being used by so many people? We had  
22          passed legislation many years ago that they  
23          have to be registered with Nassau County.  
24          Have we been able to -- do you find that there  
25          are a lot of places that are not compliant or

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2 will you be looking into this to make sure  
3 that they are compliant?

4 MR. CAPECE: We are going to be  
5 looking into that. The problem is most of my  
6 investigators were tied up in licensing. As I  
7 can ease the burden on them and I get more  
8 staff and the staff were able to in real time  
9 address the issue of licensing we will have  
10 more investigators free to investigate all  
11 sorts of complaints. We don't just get it  
12 against contractors. There's other complaints  
13 against stores, different things.

14 We also have a very robust weights  
15 and measure unit that goes out that checks the  
16 gasoline. Makes sure, like Kenny said, you  
17 get a true gallon. I think in this day and  
18 age that's very important. Make sure you get  
19 real octane. Not paying for 93 and you're  
20 getting 90.

21 The greatest thing is we now have a  
22 full-time county attorney, and I'd like to  
23 thank the county attorney for giving us her.  
24 We're expecting, me and Kenny, to be projected  
25 in about three or four weeks, we're going to

1           Government Services - 3-9-22  
2           be hitting them three days a week with  
3           hearings. So we'll be starting to get back on  
4           track. My goal is to get back to 60 cases a  
5           week.

6                       LEGISLATOR FORD:       Thank you. I  
7           know that when we talk about the contractor  
8           licenses, and Chairman Ferretti did touch upon  
9           it, how many contractors were held in limbo  
10          waiting to get their licenses so they would be  
11          able to do much needed work and many of them  
12          lost money. They lost part of their  
13          livelihood.

14                      So, I appreciate the fact that you  
15          are addressing this and you're making this a  
16          priority. Because the sooner we can get  
17          everybody the licenses and getting them to  
18          work I think is very paramount.

19                      But I do want to just touch upon  
20          something. It was brought up about Sandy. I  
21          was a legislator. Of course I live in the  
22          south shore so I'm quite aware of the problems  
23          that we had after Sandy. But even at that  
24          time consumer affairs rose to the challenge.  
25          They came out. They had numerous meetings



1           Government Services - 3-9-22  
2           with many homeowners to explain to them the  
3           processes about how to file complaints. They  
4           helped them. They actually -- at the time it  
5           was commissioner May as well as deputy  
6           commissioner Heino, who came up with some sort  
7           of funding. Also commissioner Farley I should  
8           also point out as well, came out with funding  
9           to help some of these people recoup some of  
10          the money so that they'd have something to  
11          work with. They went after the contractors  
12          with undue diligence.

13                        The problems that we had with many  
14          of these unscrupulous contractors did not come  
15          from consumer affairs. Because I had numerous  
16          meetings with them. They made every effort to  
17          go after them, to get them so that they can  
18          get money back and help these residents to be  
19          able to rebuild. But the problem happens to  
20          be there were some problems with the DA's  
21          office. It wasn't DA Singas' fault. But it  
22          also stems once again to state law and some of  
23          the restraints that they had.

24                        So, I do have to say commissioner  
25          Capece that consumer affairs in the past had

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2 always risen to the challenge despite what  
3 problems that we had and what type of  
4 hardships that we faced. They always answered  
5 the call to help the residents and the people  
6 as best as they can. Thank you.

7 MR. CAPECE: Thank you. Just to  
8 let you know, I have a very good relationship  
9 Denise Farrell in the district attorney's  
10 office and we are going to be working with the  
11 district attorney's office to do certain  
12 things -- which I'm not going to disclose at  
13 this time -- to help the consumers and make  
14 consumers safe and make sure contractors are  
15 doing the right thing.

16 LEGISLATOR FORD: Thank you very  
17 much.

18 LEGISLATOR FERRETTI: Legislator  
19 DeRiggi-Whitton.

20 LEGISLATOR DERIGGI-WHITTON: When  
21 you speak to the DA or when you speak to your  
22 county attorney you might want to ask them  
23 what the role is regarding price gouging.  
24 Because I've informed by my counsel that if  
25 there is like evidence of price gouging, like

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2 real clear unconscionable trade practices, you  
3 can in fact fine these businesses even if it's  
4 not a state of emergency. And that includes  
5 gas stations. So, you got to really focus on  
6 that right now.

7 MS. HARKINS: We can evaluate  
8 that. It's my understanding that the  
9 department in the past was only during state  
10 of emergency when they would enforce the  
11 unconscionable trade practices.

12 LEGISLATOR DERIGGI-WHITTON: No.  
13 It's really if it's glaring, you know. And  
14 clearly at times it is.

15 MS. HARKINS: What is the  
16 authority for that? I'm always asking them  
17 what's the authority for that? What's the  
18 reg? Because, like, before I came here today  
19 I looked at the state law, which is the  
20 general business law 396R, and that's the  
21 state legislation. But the Department of  
22 Consumer Affairs is empowered by you through  
23 the administrative code. So, it's very  
24 specific about what we are empowered to do.  
25 As an attorney, I'm like, all right, what's

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2 your authority for that?

3 LEGISLATOR DERIGGI-WHITTON: My  
4 counsel, Pete Clines, is willing to sit down  
5 and meet with you. We can do it now but I'd  
6 rather have him speak with you directly  
7 because he's very versed on the law. But it  
8 is part of your responsibility as commissioner  
9 to be in charge of price gouging, including  
10 the gas stations right now. It's something  
11 that -- I understand you've only been there  
12 two and a half months but you have to have  
13 that as a first and foremost right now.

14 MR. CAPECE: If you have any  
15 complaints of price gouging please let us  
16 know. I will definitely fully investigate it.

17 LEGISLATOR DERIGGI-WHITTON: 100  
18 percent but it's also part of your scope. So  
19 you got to be on it and we're depending on  
20 you.

21 MR. CAPECE: We are on it. I'm  
22 going by what my legal counsel says.

23 LEGISLATOR DERIGGI-WHITTON:  
24 Well, now it's like new revelation but you're  
25 on -- no matter what, state of emergency or

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2 not it's on you to be responsible for price  
3 gouging for gas stations.

4 MS. HARKINS: I'll confirm with  
5 Mr. Clines like what the authority, where that  
6 is in the code.

7 LEGISLATOR DERIGGI-WHITTON: We  
8 have it. We'll give it to you right now on  
9 the record because I feel good having it on  
10 the record because this is such an important  
11 thing. Our residents are suffering and we  
12 want, unfortunately, again it's just like  
13 contractors, 95 percent of businesses are good  
14 but five percent that take advantage are the  
15 problem. And that is also under your scope.  
16 We'll give it to you right now but I'd like to  
17 put on the record, Peter, if you have the  
18 section.

19 MS. HARKINS: We want to stay  
20 within our lane because we cannot exceed our  
21 jurisdiction because the power's through the  
22 code.

23 LEGISLATOR DERIGGI-WHITTON: I'm  
24 totally aware that you're brand new. You've  
25 been here since what? not even a month. The

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2 commissioner is very new also. Look, there's  
3 always that learning curve. I understand it.  
4 But this is something that is very timely.  
5 You have to be aware of it.

6 MR. CAPECE: If we have the law  
7 we'll enforce it.

8 LEGISLATOR DERIGGI-WHITTON: Here  
9 it is.

10 MR. CAPECE: If I may comment  
11 with gasoline?

12 LEGISLATOR DERIGGI-WHITTON: Can  
13 I just give this for the record please, if you  
14 don't mind. 21-10.2 Unfair Trade Practices  
15 Prohibited Enforcement. Under the Nassau  
16 County administrative code dated June 21,  
17 2018. And again, to get as yourself as  
18 familiar as you can with this book  
19 Mr. Capece. I know you depend very highly on  
20 your supporting staff. I see that today. And  
21 I guess I really do see the learning curve is  
22 still in process. But I think that you should  
23 get very familiar with this book. You have a  
24 lot of responsibilities. We went through I  
25 forget how many pages, 60 pages of the code,

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2 right? Sixty pages of the Nassau County --  
3 over 100 of the Nassau County code falls under  
4 your department.

5 MR. CAPECE: We have 27 separate  
6 laws. I read the book.

7 LEGISLATOR DERIGGI-WHITTON: You  
8 need to be really familiar with those as well  
9 as the county code.

10 MS. HARKINS: Is that the code  
11 that was amended in January of '21? Because  
12 unconscionable trade practices was  
13 specifically changed because I made that error  
14 looking at the '19 publication of the code and  
15 now there's a different definition in '21.

16 MR. HEINO: I believe the  
17 legislation changed under COVID. After the  
18 price gouging that consumer affairs issued  
19 during COVID.

20 LEGISLATOR DERIGGI-WHITTON:  
21 Let's get clear on gas stations because that  
22 is really one of our jobs.

23 LEGISLATOR FERRETTI: Why don't  
24 we get it clear now because you put something  
25 on the record that may not be up to date.

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2 LEGISLATOR DERIGGI-WHITTON: I  
3 quoted the book that was quoted from.  
4 Whenever anything is obvious, and I know  
5 you're complaint driven as is the board of  
6 health, but if you see if there is obvious  
7 price gouging I would have to thing that  
8 consumer reports would have to --

9 MR. CAPECE: The price of  
10 gasoline is a national issue. And just to let  
11 you know, over the weekend, from what I saw on  
12 the news, gas went up 40 cents a gallon. So  
13 the consumer's going to see that, and I'm not  
14 saying they're wrong, if it's more than that  
15 that could be gouging, but they get annoyed  
16 that the price went up, they immediately yell  
17 they're price gouging. We have to be fair.

18 LEGISLATOR DERIGGI-WHITTON: In  
19 comparison to other businesses. That's what  
20 happened with the masks.

21 I just had one other point as my  
22 attorney just confirmed this. When we were in  
23 COVID during 2020, like the depth of those  
24 dark days, we did have a hiring freeze because  
25 we had no idea what our budget was going to be



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2 like. That's also a time where all  
3 departments seemed to have hit a bit of a  
4 snag.

5 Again, this isn't the blame game.  
6 This isn't anything. It's just to give you a  
7 history of your department. There was a  
8 hiring freeze in place. So, it's all the big  
9 picture. Again, sitting here comfortably  
10 without masks on we can point fingers. But it  
11 was an unprecedented time, and I am looking  
12 forward to improving your department as well  
13 as many of the other ones as well.

14 Thanks for coming back only three  
15 weeks after you were or two weeks after you  
16 were put officially in office. Hopefully  
17 we're going to hear from you again maybe in  
18 six months.

19 MR. CAPECE: Absolutely anytime  
20 you have a question please feel free to call  
21 me.

22 LEGISLATOR DERIGGI-WHITTON: But  
23 we'd like you to come back to the legislature  
24 like this and have another hearing in six  
25 months. By then you'll have your feet wet as

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2 they say and maybe have other ideas.

3 MR. CAPECE: I serve at your  
4 pleasure. Whenever you want me here I'll be  
5 here.

6 LEGISLATOR DERIGGI-WHITTON: I  
7 would like to put on the record that we should  
8 meet again in six months. I do have my  
9 attorney Peter Clines. It's under -- the  
10 updated version online is miscellaneous --  
11 this is under -- what is the title? The top  
12 one? It's still 21-10.2 under C. The same  
13 exact verbiage. 14C.

14 That really puts us on the, you  
15 know, put us on the line for being responsible  
16 for any price gouging. Is that price going up  
17 40 cents a gallon all around? No. If there's  
18 an unscrupulous business owner.

19 MR. CAPECE: That was a national  
20 news story.

21 LEGISLATOR DERIGGI-WHITTON:  
22 Exactly. But that's not price gouging. Price  
23 gouging is going to happen if there is someone  
24 that's charging more than the others and it's  
25 very obvious and they say it's unconscionable

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2 trade practices. That's what happened with  
3 the masks. That's what happened with the  
4 Lysol cans. That's what happened with so many  
5 things. It could happen with gas. Let's be  
6 aware of that. It doesn't take a state of  
7 emergency for your office to be responsible  
8 for it.

9 MS. HARKINS: But when you read  
10 the statute it talks about unfair advantage.  
11 It's a higher standard. Because even if you  
12 look at the state law, the general business  
13 law, it talks about what was that vendor's  
14 price margin before this emergency or before  
15 the disruption in market and after. You have  
16 to really look at that for the comparison.

17 LEGISLATOR DERIGGI-WHITTON: Can  
18 I go back to the can of Lysol that went from  
19 to \$6.99 to \$94. That's obvious right there.  
20 And that's what you're going to be facing.  
21 And if it happens, even if it's a dollar more  
22 a gallon that someone is charging and it's not  
23 consistent with other gas stations that is  
24 when we're going to have to come down on these  
25 people.

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2 MS. HARKINS: Agreed.

3 LEGISLATOR DERIGGI-WHITTON: But  
4 before you said that that wasn't under your  
5 job description unless it was a state of  
6 emergency with gas stations. However, I would  
7 really like to have that redacted for the  
8 record and have everyone know that you are  
9 responsible for price gouging for gas  
10 stations.

11 MS. HARKINS: Unconscionable  
12 trade practice. Because it doesn't say price  
13 gouging in the code. So we have to term it  
14 unconscionable trade practice in the sale of  
15 gasoline for vehicles.

16 LEGISLATOR DERIGGI-WHITTON: 100  
17 percent. \$94 for a Lysol spray can. That's  
18 the same thing. It's price gouging but it's  
19 not called that.

20 MS. HARKINS: So we'll redact  
21 that term.

22 LEGISLATOR DERIGGI-WHITTON: The  
23 bottom line is it's the same thing. It can be  
24 price gouging, which is what charging \$94 for  
25 a spray of Lysol can is or it can be an

1           Government Services - 3-9-22  
2           unreasonable amount for a gallon of gas.  
3           Which, again, is not -- they're all  
4           unreasonable right now. That's not the  
5           issue. It's that one particular business  
6           takes advantage of the fact that maybe they're  
7           in an area that like -- I live on the end of a  
8           peninsula. For me to go down Northern  
9           Boulevard is 15 minutes. So, for me to get  
10          gas locally is great except yeah, you know  
11          what, sometimes someone can take advantage of  
12          that, the convenience, and have it -- and it  
13          has to be extreme. It can't just be a little  
14          bit. I understand that. That's where you  
15          are. And no matter what, state of emergency  
16          or not you still responsible.

17                   MR. CAPECE:       We'll get them under  
18          that statute. But I was just trying to bring  
19          out the point, any complaint we get we don't  
20          just don't throw it away if it's price  
21          gouging. We look into it and investigate it.

22                   I was just trying to bring out the  
23          point we had more inquiries when the price  
24          went up overnight 40 cents. People assumed it  
25          was gouging but it was what was happening

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2 nationally.

3 LEGISLATOR DERIGGI-WHITTON: I  
4 totally understand because I feel like  
5 complaining to somebody. As you know, I have  
6 kids that are driving now too. They have a  
7 credit card that they won't give back. So,  
8 sorry, I don't know. You have to digress once  
9 in a while.

10 Just to make sure we're under the  
11 same understanding.

12 MR. CAPECE: We are.

13 LEGISLATOR DERIGGI-WHITTON: Any  
14 time there's a disparity of rights of the  
15 consumer against a merchant or as a result of  
16 gross disparity between the value received by  
17 a customer and the price paid by the  
18 customer. So, again, that can fall under so  
19 many categories but gas being one of them.  
20 Okay?

21 MR. CAPECE: Any complaint we  
22 will investigate.

23 LEGISLATOR DERIGGI-WHITTON: You  
24 know what? I know you're complaint driven for  
25 the most part. But I think there's a good

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2 part of your group, you're out there doing  
3 weights and means you're also aware of the  
4 prices. Maybe they should be instructed you  
5 are in charge of making sure that the prices  
6 aren't gouging.

7 MR. HEINO: The commissioner has  
8 them looking at the prices but currently,  
9 right now, as of today, we are not seeing it.

10 LEGISLATOR DERIGGI-WHITTON:  
11 Let's continue to look at it. Although --

12 MR. HEINO: Our weights and  
13 measure team is out there.

14 LEGISLATOR DERIGGI-WHITTON: --  
15 that wasn't part of our job description. We  
16 will continue to look at the prices, and I  
17 think it's something we have to be proactive  
18 on not just complaint based.

19 MR. HEINO: We do. We make sure  
20 that the signage is always correct. We make  
21 sure that the stores when they're increasing  
22 the gas prices they change the street sign  
23 first as opposed to the signs at the pumps.  
24 When they're lowering prices they lower it at  
25 the pumps first, then the street signs. We

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2 are always monitoring.

3 LEGISLATOR FERRETTI: I'm glad to  
4 see that members of the minority are focusing  
5 their attention on the astronomical gas prices  
6 where we are currently paying. But I think  
7 that there's some confusion between price  
8 gouging and disastrous economic and foreign  
9 policy by the Biden administration. So we got  
10 to keep the two things distinct. If we want  
11 to get to the root of the problem, if there's  
12 no price gouging there's no price gouging,  
13 number one.

14 Number two, if we're so worried  
15 about the price of gasoline, which we  
16 absolutely should be, I would hope that  
17 members of the minority would join us in  
18 opposing the two pieces of legislation  
19 currently in New York State that are pending  
20 that would exponentially increase the price of  
21 home fuel and gasoline. So let's speak out  
22 against the things that are actually happening  
23 and get these things under control.

24 LEGISLATOR DERIGGI-WHITTON: Last  
25 I saw we were in charge of Nassau County, so



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2 let's start here.

3 I appreciate your time again  
4 commissioner and I wish you all the luck in  
5 the world. I'm always here if I can help you  
6 in any way. I don't look at it as majority  
7 and minority. We're all legislators. We all  
8 represent the people of Nassau County. We all  
9 want the best for Nassau County. And we all  
10 benefit when that happens. So, again, if I  
11 can ever help in any way.

12 MR. CAPECE: Thank you.

13 LEGISLATOR FERRETTI: I do have a  
14 few more questions. Just before I do, just in  
15 response again, I'm also glad to see that  
16 we're now instructing consumer affairs that  
17 they are in charge of monitoring gas price  
18 gouging. Again, Mr. Heino, was that every  
19 done from 2018 until 2022 in consumer  
20 affairs?

21 MR. HEINO: With regards to price  
22 gouging?

23 LEGISLATOR FERRETTI: In terms of  
24 price gouging at gas pumps.

25 MR. HEINO: No.

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2 LEGISLATOR FERRETTI: Got a few  
3 questions about unconscionable trade  
4 practice. Throughout the COVID shutdown and  
5 situation, the Department of Consumer Affairs  
6 issued over \$1 million in fines to businesses  
7 that it alleged committed unconscionable trade  
8 practice; is that correct?

9 MR. HEINO: That's correct.

10 LEGISLATOR FERRETTI: How many  
11 actual cases were brought?

12 MR. HEINO: I believe it was a  
13 little more over I want to say 300. 300, 400.

14 LEGISLATOR FERRETTI: How many to  
15 date resulted in a fine?

16 MR. HEINO: Only about 15  
17 percent. A total revenue of \$60,000  
18 collected.

19 LEGISLATOR FERRETTI: So, in  
20 other words, there were \$1 million in fines  
21 and only \$60,000 was collected?

22 MR. HEINO: That's correct.

23 LEGISLATOR FERRETTI: Why is  
24 that?

25 MR. HEINO: Because most of the

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2 summonses were deemed to be dismissed. That  
3 they weren't unconscionable trade practice.

4 LEGISLATOR FERRETTI: This was  
5 during the COVID shutdown. Was that from  
6 March of 2020 to roughly today?

7 MR. HEINO: Correct.

8 LEGISLATOR FERRETTI: Since  
9 January of 2022 how many have been issued?

10 MR. HEINO: Zero.

11 LEGISLATOR FERRETTI: So we're  
12 talking about \$1 million in fines levied under  
13 the Curran administration, correct?

14 MR. HEINO: Correct.

15 LEGISLATOR FERRETTI: And out of  
16 that \$1 million only 60,000, approximately 15  
17 percent, actually were found to be  
18 unconscionable trade practice?

19 MR. HEINO: That's correct.

20 LEGISLATOR FERRETTI: Okay. Just  
21 one more question for you, Mr. Heino. Do you  
22 recall back in 2020 during the budget process  
23 the Majority amended the county executive's  
24 budget to increase the head count by five?

25 MR. HEINO: Yes, I do.

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2 LEGISLATOR FERRETTI: Do you  
3 remember what happened? Was that passed by  
4 the legislature?

5 MR. HEINO: It was passed by the  
6 legislature. Vetoed by the administration.

7 LEGISLATOR FERRETTI: I have  
8 nothing further. Any other legislator have  
9 any comment? Any public comment? Then with  
10 nothing else, I thank you for your testimony  
11 today. Again, I want to thank you for the  
12 work you've put in over the last roughly 65  
13 days or so. Where you've done such an  
14 incredible job in getting this backlog down.  
15 I commend you and keep up the good work.  
16 Thank you.

17 (Hearing adjourned at 3:32 p.m.)

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CERTIFICATION

I, FRANK GRAY, a Notary  
Public in and for the State of New  
York, do hereby certify:

THAT the foregoing is a true and  
accurate transcript of my stenographic  
notes.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 14th day of  
March 2022.

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FRANK GRAY