

ML2 - Round Valley, Inc v.  
Clinton Twp

~~24/80~~  
6/19/77

Transcript of proceedings non-jury  
trial  
witness - John  
Rahenkamp

p 78

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-HUNTERDON COUNTY  
DOCKET NO. 1-^7(6-74-R\JO.  
A-2963-77

A 37 - SEP 1300

ROUND VALLEY, INC., :

Plaintiff, :

vs. :

CLINTON TOWNSHIP PLANNING  
BOARD AND CLINTON TOWNSHIP  
COMMITTEE, :

Defendants. :

TRANSCRIPT OF PROCEEDINGS

NON-JURY TRIAL

**FILED**

SUPREME COURT;

'AER 24 W80

*Stephen W. Townsend*

June 9, 1 ^7 Otertc  
Fleraingtpn, New Jersey

Before :

The HON. THOMAS J. BEETEL, J.C.C.

Appearances :

JOEL STERNS, ESQ., and  
MICHAEL HERBERT, ESQ'.,  
Attorneys for the Plaintiff.

FRANCIS SUTTON, ESQ.,  
Attorney for the Defendant Planning Board.

ROGER CAIN, ESQ.,  
Attorney for defendant Township Committee.

FIRST COPY OF

JAN 26 1979

TRANS. FILED

OPINION FILED  
MAR 5 1979

Reported by:  
Jacqueline Klapp  
Official Court Reporter

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WITNESSES

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
John Rahen^amp	2	--	--	--

EXHIBITS

P-90Id. Letter, 5/4/77 Page 5

1 JOHN RAHENKAMP, previously sworn, resumes stand  
2 and testifies further as follows:

3 THE COURT: I understand Mr. Cain called, Miss  
4 Klapp, he will be delayed inordinately today and  
5 we should proceed with Mr. Sutton handling the  
6 cross examination or objections or whatever. Go  
7 ahead.

8 MR. HERBERT: Your Honor, with the Court's  
9 indulgence, I would like to point out it is 9:50  
10 a.m. and I only say that because it has to do  
11 with our plan for today. We had hoped to finish  
12 the directed testimony of Mr. Rahenkamp, It looks  
13 now like that is impossible. In any event, Your  
14 Honor, we will proceed as quickly as we can.

15 THE COURT: Go as quickly as possible.  
16

17 DIRECT EXAMINATION BY MR. HERBERT (continued):

18 Q Mr. "Rahenkamp, just a couple of matters covered last  
19 night for clarification. There was a reference to a document  
20 called a natural resource inventory which is the green book  
21 Identified as P-67. A Yes, sir.

22 Q Have you had an opportunity to examine that document  
23 after your testimony? A Yes, sir.

24 Q And does that document refer, include, among the  
25 communities studied, Clinton Township? A Yes, sir, it

1 has townships listed and in fact it was included.

2 Q Last evening you had indicated that it included  
3 Clinton town? A Right,

4 [Roger Cain entered the courtroom.]

5 Q Is there another NRI that you believe included  
6 Clinton town? A Yes, the one that was available  
7 to us several nonths ago did not have Clinton Township, this  
8 one does. The pages are exactly the same as best as we can  
9 tell.

10 Q Now, Mr. Rahenkamp, I also when we were covering the  
11 aspect of the developing community find by Mt. Laurel in  
12 Oakwood or Madison, rather, there were several references  
13 that you made to Mr. O'Grady's land use plan which has been  
14 identified for the record as J-3. I would like to just make  
15 one—I would like to ask you to look at page 9 of J-3 and  
16 is there a reference in Mr. O'Grady's land use plan or the  
17 defendant Planning Board's land use plan to Clinton Township  
18 as a developing community? A Yes, in the last

19 paragraph labeled summary midway down the paragraph the sent-  
20 ence reads, "These highways along with Spruce Run and Round  
21 Valley Reservoirs will continue to attract new growth and  
22 promise to maintain the Township's position as one of the  
23 more rapidly developing municipalities in Hunterdon County."

24 Q Now, again, on the aspect of developing community,  
25 did you do a comparison of Clinton Township and Mt. Laurel

1 and Madison as it refers more specifically to the three  
2 components that you identified last night?

3 A Yeah, we reviewed the growth rates of Mt. Laurel, Madison  
4 and Clinton to get some comparative equations. Both Mt. Laurel  
5 and Madison being cited for exclusion or slow growth, and  
6 compared that then as well to the proposal that we have made  
7 for the 3500 units. Mt. Laurel in 1950 had 2,817 people.  
8 I don't have to give the numbers again because I have already  
9 done them but in Mt. Laurel between '50 and '70 it was a  
10 370 per cent increase in population. And they were cited.

11 In Madison, there was a 600 per cent increase in popu-  
12 lation between '50 and '70 and they were cited. In Clinton  
13 Township the growth rate between '50 and '70 was 184 per  
14 cent and with our 3500 units it would be only 168 per cent,  
15 between '70 and '80 over the ten-year period of development.

16 So even with our project we are substantially less than  
17 either, Madison or Mt. Laurel and so I think it should be  
18 easily accommodated.

19 Q Now, Mr. Rahenkamp, were you given a letter from  
20 Mr. O'Grady, who by the way is here as he has been for the  
21 last few days in court. Were you given a letter addressed to  
22 Mr. Sutton from Mr. O'Grady dated May 4, 1977?

23 A Yes, sir.

24 MR. HERBERT: Your Honor, the defendant Planning  
25 Boanishas presented us with a letter of Mr. O'Grady

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On the issue of least cost housing amongst other facts which is in the form of answers to interrogatories. I don't mean to--I don't intend to have this matter moved into evidence in our case as a document from their expert,, but rather, I would like to have it identified with a P-number and perhaps later if the Planning Board chooses to they could move it into evidence as a D-number.

For that reason, Your Honor, I would like to have this Xerox copy of that letter marked only for the purpose of reference.

MR. SUTTON: We have no objection to that.

THE COURT: The next, may that be identified as May 4, 1977, letter from Mr. O'Grady to Mr. Sutton.

[Exhibit P-90, consisting of the letter hereinbefore referred to, marked for identification.]

Q Mr. Rahenkamp, I ask you to look, the letter speaks for itself, and I only want you to address one aspect of it and that is contained on page 3. In that letter it indicates, does it not, that there would be a minimum of 2,120 least cost housing units available under the new Clinton Township land use ordinance? A Yes.

Q I should say zoning ordinance. A Right.

MR. HERBERT: Your Honor, perhaps you might want to make reference to that.

1 THE COURT: Thank you.

2 Q Now, Mr. Rahenkamp, based upon the analysis that  
3 you conducted which you provided extensive testimony about  
4 last night, do you concur with that conclusion of Mr. O'Grady?

5 A The suggestion was that 2,120 dwelling units would be  
6 least cost or would qualify as least cost including two-family  
7 and multi-family homes. I would contend based on Madison  
8 that because of the low densities, the subdivision actions  
9 the environmental restrictions, that in fact zero least  
10 cost housing units are provided by the ordinance, or the  
11 maps.

12 Q Now, I ask you to look at that letter, anywhere  
13 in that letter does Mr. O'Grady specify costs of these so-  
14 called 21-I shouldn't say so-called, the alleged 2,120 least  
15 cost housing units? A Costs of the units?

16 Q Yes, what they would cost? A No.

17 Q Okay. Now, Mr. Rahenkamp, last evening you went  
18 over some excerpts from the Madison decision having to do  
19 with the term "least cost housing". Now, you referred to the  
20 term exactions and you identified that based upon planning  
21 criteria. A Yes.

22 Q In the MadiBon decision, are there any references to  
23 this terminology? A There are three references that  
24 probably should be read in as a continuity. The first is on  
25 page 512 which is read into the record by the Judge, it is

1 item No, 7, "The critical thing is that the least cost housing  
2 has to be consistent with minimum standards of health-safety  
3 which the private industry will undertake."

4 The next quote in addition in reviewing this issue is  
5 on page 513 in the footnote 21, it says, "The concept of  
6 least cost housing is not to be understood as a contemplating  
7 construction which could readily deteriorate into slums. We  
8 have exercised the necessity for consistency of such housing  
9 with official health and safety requirements. Recently en-  
10 acted state uniform construction code states among its pur-  
11 poses to encourage innovation, economy and construction--"

12 Q By the way, just to ask you, reference the footnote  
13 21 and referring specifically to your understanding of mobile  
14 homes, what is the normal age as far as the mobile homes in  
15 terms of their normal life span? A Well, they are  
16 normally written up in ten years. Occasionally as much as 15  
17 years, but that is usually the last.

18 Q Why is that? A Because they deteriorate. The  
19 construction generally is not as heavy as normal construction,  
20 conventional construction.

21 Q Does that have any relationship in your expert opinion  
22 as to the indications in No. 21 as to the slum housing?

23 A Yes, I think it is a major consideration on that basis.

24 Q You stated there was another reference to the Madison  
25 decision? A Yes, on page 520, "In any event, it is

1 corollary of Mt. Laurel that when municipal exactions from  
2 developers reach such proportions as to exert an exclusionary  
3 influence whether in a PUD or in any other context, they  
4 offend the constitutional precept of Mt. Laurel unless  
5 remedied."

6 Q Now, were there any other sections of the Madison  
7 decision that have pertinence to this terminology exactions?

8 A I think it goes with the three keys but" they have to  
9 be read together to understand the concept of least cost.

10 Q Mr. Rahenkamp, while we are talking about exactions,  
11 is that only referring to zoning enactments or are there  
12 other enactments which the Court was referring to?

13 A Well, in terms of specifics of Madison and in terms of  
14 the full range of exactions on page 520 of Madison, it  
15 addresses the excess off-site construction costs. We addressed  
16 that in terms of the mobile homes yesterday, putting mobile  
17 home districts, for example, along the side of the enforcement  
18 agency where you have to pump or in way or another get into  
19 the lines which is very extensive. On page 522, it addresses  
20 the limited PUD areas, Madison Township has about 9 per cent  
21 of the town in PUD zoning. We added together the areas in  
22 Clinton Township and they have a total of 7 per cent of the  
23 town and that is in Catlin's memo of 5/11, 7 per cent of the  
24 time in PUD or PRD districts less than Madison and Madison  
25 was cited for not having enough PUD area.

1 The third item and I think the most critical in the one  
2 that has been the one that has been the greatest exaction  
3 to us is on Madison, page 523, prolonged processing. It ad-  
4 dresses two issues, one is the three-stage processing which  
5 I notice is still in the ordinances, even though it has been  
6 eliminated in Madison that means you go through a sketch plat  
7 procedure before you go through the other procedures. And  
8 I notice as well there is a statutory requirement in the  
9 municipal land use planning act, they have not been included  
10 in the preliminary draft that we have reviewed of the land  
11 use ordinance.

12 The PUD, for instance, the PUD state enabling act has  
13 not been cited in the ordinance, therefore none of the pro-  
14 tections in terms of time, review, et cetera, are incorporated  
15 and therefore it is an open-ended game, in any case.

16 The three-stage processing is cited in Madison as exaction  
17 and should be eliminated. The major cost as well is in terms  
18 of the carrying cost of the land over the several years that we  
19 have been working. By our calculations, it costs at least  
20 \$1,000 a day to carry the land for Round Valley. That is to  
21 carry it and to administer, to carry the money, et cetera.  
22 On the basis of 3500 units, 3506 to round off- that is  
23 \$1,000 per dwelling unit per year as a cost of exaction be-  
24 cause of the time delays and the extraordinary extracted  
25 process.

1 MR. SUTTON; Your Honor, I would like to object  
2 to this last statement, I think it should be  
3 stricken from the testimony. Mr. Rahenkamp has  
4 testified that it cost \$1,000 a day to carry the  
5 property. Now there has been no testimony to that  
6 effect-

7 MR. HERBERT: That is his testimony.

8 MR. SUTTON: How would Mr. Rahenkamp know?  
9 He hasn't indicated any background where he would  
10 have this information. It would have to be hearsay.

11 THE COURT If you develop these you will have  
12 the opportunity, I think, someday the -legislation  
13 will turn around and indicate that in prolonged  
14 processing there probably will' be some type of  
15 penalty if they ever show any type of deliberate  
16 delay. It is not in the present legislation but  
17 I don't feel it is beyond the contemplation of  
18 a possible suit some day.

19 MR. SUTTON: Your Honor, my point was that  
20 there has been no testimony by the Round Valley  
21 people, president or vice-president, that there  
22 has been this \$1,000 cost a day and they were  
23 the proper people to testify to this and to be  
24 subject to cross examination, not Mr. Rahenkamp.

25 THE COURT: Mr. Rahenkamp has access to figures

1 extraneous to his background, and so forth, cash  
2 flow analysis. I feel that he can give that kind  
3 of testimony. After all, he is an expert. But  
4 standing alone it is really conclusionary, I agree  
5 with you in that regard, standing alone it is con-  
6 clusionary.

7 BY MR. HERBERT:

8 Q Mr. Rahenkamp, what did you base that conclusion  
9 upon, that is the conclusion concerning the carrying cost of  
10 land? A We prepared cash flow analyses for the  
11 Round Valley project in both 1974 as well as updated for  
12 1977.

13 Q And I asked you whether or not that cash flow  
14 analysis is included in your March 11, 1974 report which has  
15 been marked as P-68? A A portion of it is, yes.

16 Q Wow, you testified since the question has been  
17 raised by Counsel, I must pursue it, you testified that you  
18 had five teams within your firm? A Yes, sir.

19 Q Does one of those teams concern itself with this  
20 issue of financial costs? A Yes, sir, it is an  
21 economic and marketing group and we have computer programs  
22 to analyze the cash flow.

23 Q And were those aspects examined with respect to  
24 preparation of the 1973 report which was presented to the  
25 Planning Board in January of 1974? A Yes, sir.

1 Q Identified as P-1 in this case? A Yes, sir.

2 Q And was that updated through the years that we have  
3 been involved in this matter? A Yes, sir.

4 Q And is there presently available economic analysis  
5 along these lines? A Yes, sir.

6 Q And when you as the principal of your firm make  
7 decisions, analyses, whatnot with respect to PUD's and zoning  
8 policy decisions for a client, do you take into consideration  
9 the material developed by the economic analysis team?

10 A Very carefully.

11 Q And based upon that work by your firm, have you made  
12 the conclusions that you have testified about today with  
13 respect to carrying costs? A Yes, sir. As a matter  
14 of fact, the numbers are rather conservative.

15 Q Now, Mr. Rahenkamp, when you are talking about  
16 exactions, I take it from your testimony that those exactions  
17 cover a number of aspects not only including density factors?  
18 A Yes, sir.

19 Q And these exactions are found in among other places,  
20 the zoning ordinances as well as subdivision ordinances?  
21 A Yes, sir.

22 Q Now, I would like you now to turn to a document  
23 which has been identified for the record as P-53 and first  
24 of all I ask you to identify that document, A You are  
25 asking me to identify it?

1 Q Yes, please, A We are talking about the  
2 land use ordinance.

3 Q Now, excuse me, Your Honor, is there a copy available?

4 THE COURT: Yes, I have one right here.

5 Q Mr. Rahenkamp, you stated that there was an ordinance,  
6 can you more specifically identify it as to its status, identify  
7 the page and the year indicated? A Well, I have re-

8 viewed the preliminary draft that was issued in December of  
9 1976, revised May 6, 1977. There have been some additional  
10 revisions"since then that I have not yet completed.

11 Q And based upon the document that you have, were you  
12 asked by us to analyze that document with respect to the issue  
13 of these exactions referred to in the Madison decision?

14 A Yes, sir.

15 Q And would you be kind enough to go through the pages  
16 and to identify what you would view as an expert in planning  
17 the exactions referred to in the Madison-decision?

18 A Okay. On page 30, Section 705.2, commercial recreation  
19 facilities.

20 THE COURT: Take your time. That is 705.3?

21 THE WITNESS: 705.2. It has a number, perhaps  
22 the numbers have changed between the old and the new.

23 THE COURT: 705.2, commercial recreational  
24 facilities.

25 THE WITNESS: Right. Item B.

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THE COURT: Page 29 now.

THE WITNESS: Right. It calls for a setback of 200 feet from the property line in the CR districts. If you look at the CR district, most likely, particularly the one we talked about with mobile homes yesterday, if you setback the 200 feet from the property line, the amount of buildable area is extraordinarily small. That kind of extraordinary setback without health or safety tie-in ends up as an exaction because it takes land out of buildable use, without any noise parameters or health parameters or safety parameters.

Q I know you are reading from the earlier document, the pages may be wrong but I think the sections are the same. In the future, for the benefit of the Court and Counsel, would you refer to the specific sections rather than pages? A Fine. We covered the mobile home parts yesterday so I will not address any of the exactions in that, so let's proceed on. Let's go to the mixed residential clusters, they are my page 49, in that general range.

Q Is there a specific section, please?

A Well, let's look at Section A first, the water and sewer.

THE COURT: By number, please.

THE WITNESS: 706.6, Section A.

THE COURT: 706.6.

1 THE WITNESS: It requires that any develop-  
2 ment would be served by public water supply and public  
3 sanitary sewer, that is an exaction to the extent  
4 that they are not available and would be difficult  
5 to bring to those sites.

6 THE COURT: What number, what part of 706?

7 THE WITNESS: A.

8 THE COURT: A, it just says minimum tract size  
9 50 continuous acres.

10 THE WITNESS: That is Item B in mine.

11 THE COURT: Item A in mine.

12 THE WITNESS: Can you give me one to look along-  
13 side and I could probably follow the numbering  
14 better, sir..

15 MR. HERBERT: Your Honor, may I just explain  
16 for the record that the reason for the-

17 THE COURT: I-know what the reason is, I just  
18 can't follow him anymore. There is nothing about  
19 sewer or water in A.

20 THE WITNESS: A, okay, it has been dropped  
21 out between the original and their revised.

22 THE COURT: Are you sure it is not still in  
23 another section, though, because you see it also  
24 ties back in 602-B.

25 I thought I saw the sewer:and water here.

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THE WITNESS: Do you have another copy? I don't see any 602-B.

THE COURT: There is a 6062-B.

THE WITNESS: There is?

THE COURT: Yes, there is.

You see, what occurs is you have--this incorpo\* rates the prior ordinance. You have to pick up the prior ordinance and its various sections in order to understand what is being amended. If you are going to talk about mixed residential clusters . you have to go back to the prior ordinance and pick up the amendment and what was required.

BY MR. HERBERT:

Q Mr. Rahenkamp, I am not going to mark this document for the time being because it is annotated, but I show you what has been--I show you what I represent to you as the land use ordinance of the Town of Clinton which is a copy of a document earlier marked, I believe it is J-4, and ask you if that would assist you in your analysis?

A Thank you, sir.

[Off the record discussion.]

THE COURT: You are on exactions on J-4, mixed residential uses, 706.

THE WITNESS:<sup>1</sup> Yes.

A The-1502.2-B is only related to minor subdivisions so it

ta

1 is of no consequence,

2 THE COURT: How about 706, you have got me on  
3 it, what is the water situation with regard to  
4 mixed residential?

5 THE WITNESS: It has to be served by public  
6 sewer and water.

7 THE COURT: All right. Now, we have it.

8 THE WITNESS: Yes.

9 THE COURT Is that an exaction?

10 THE WITNESS: If there is not available public  
11 sewer and water and if the Township hasn't made a  
12 grant main with the surrounding towns, and if they  
13 put force mains past the property which require  
14 extraordinary improvements by the property owner,  
15 I suggest that is exactions, yes.

16 Q Mr. Rahenkamp, let's hold that because of the change  
17 in the zoning ordinance I think over a four-day period after  
18 these trials started I would like to perhaps not consume a  
19 lot of time and I think it would be better if we proceed to  
20 other materials and get back to this after the break, if the  
21 Court is indulgent enough to give such break, or when we return  
22 on the 28th.

23 Mr. Rahenkamp, referring to P-68 which is the memorandum  
24 that was prepared by yourself and your firm dated March 11,  
25 1977- A Yes.

1 Q -does that report contain a review of ordinances?

2 A Yes.

3 Q Now, I know the Court has a copy and it speaks for  
4 itself and perhaps as you did last evening in highlighting  
5 Section A, perhaps you can address yourself to Section B of  
6 that ordinance review. A The vritical issues are  
7 ones that relate primarily to heavy improvement requirements  
8 before final plat approvals .would be given which perhaps  
9 would be applicable to conventional single-family develop-  
10 ment subdivisions or you are doing odd lots, but they have  
11 no applicability to PUD or other major development and are an  
12 extraordinary difficult requirement to-the point that the  
13 Township's revised subdivision ordinance adopted last summer  
14 and in force now because the otherone is still tentative  
15 requires that the improvements including the streets, the  
16 utilities, et cetera, be made prior to the final approval of  
17 an individual plat. That means that you are in fact having  
18 to construct all of these things even though they are out of  
19 phase with normal construction practices on a major subdivision

20 Q Now, just hold it right there, we had a document  
21 marked earlier P-2 which I know is not in the detail that we  
22 will be getting into later, but it does outline the 790-acre  
23 tract? A Yes, sir.

24 Q Does that mean that proposed road improvements, for  
25 example, on the easterly tract, Gobel, would have to be con-

1 structured even though there is no housing that may be contem-  
2 plated for several years over there before anything could  
3 be built on the other side of the road.

4 A At least theoretically that is true, it is certainly  
5 true in terms of the PUD but it is not cited in the PUD  
6 enabling act, therefore there is no phasing discussion or  
7 staging discussion.

8 Q Now, that is on site improvements? A Yes.

9 Q Now, have you done any review as far as the off-  
10 site improvement requirements? A The Township-let<sup>1</sup>s  
11 see. On the second page, the subdivision ordinance gives the  
12 developer several options related to the off-site installation  
13 of improvements<sub>ff</sub> but the new land use ordinance requires  
14 cash payments to be made and in fact talks as well about  
15 other 150 per cent bonding which is the highest rates that  
16 we have ever seen.

17 Q Now, I notice again on that same page, page 2, there  
18 are other matters addressed in the area of exactions, could  
19 you just summarize what they are? A Well, again,

20 these are primarily, I think, but there is a problem between  
21 doing normal small subdivision plats as compared to major  
22 development, for instance, related to two percolation tests  
23 per lot during the preliminary plat submission that is a  
24 very unusual requirement. Usually they are required in the  
25 final plat applications before you can get a CO or building

1 permit, but it is unusual that they would be front ended this  
2 far ahead. The problem is that every time you add the front  
3 end cost. it in fact is an exaction because you are having to  
4 carry that money in interest.

5 THE COURT: We will take a short recess at  
6 this time.

7 [Whereupon, a short recess was taken.]

8 BY MR. HERBERT:

9 Q Mr. Rahenkamp, you were testifying with respect to  
10 your report, identified as P-68? A Yes, sir.

11 Q And I believe what we were talking about was on page  
12 3? A Yes.

13 Q Would you pick that up, pick it up from there in  
14 terms of the so-called exactions that you have analyzed with  
15 respect to tie subdivision ordinance and the land use ordinance  
16 to the extent that it changes that earlier ordinance?

17 A " Midway, three-quarters of the way down the page the Town  
18 requires a two-year maintenance guarantee in the land sub-  
19 division code, that is longer than we are used to. It means  
20 that in fact the developers have to maintain the roads for  
21 an additional year beyond normal protection.

22 Q What significance would that have with PUD's that  
23 are planned over ten or eleven years? A It adds to  
24 the cost of carrying the ground because the maintenance has  
25 to be carried out by the owner or homeowner's association

which we are sensitive to adding any cost to. The next is the site plan approval, it only has status for one year. The critical problem throughout all of the ordinances is the whole problem of vesting and staging because the codes don't reference to the PUD enabling act and don't address the staging issue. It in fact increases the cost substantially. The point is that if one is going to build a large tract of ground, get the economies to scale, the developer should go in and open up the side with fairly substantial investment and cost, sewer, water, road improvements, whatever, deed restricting the golf course open space, all of that then is cost laid off to other situations of the ground that you need the whole ten years of this project in particular. You need that whole ten years to write off that cost. If you don't have vesting thereby absorb that cost and know you can absorb it over ten years and of course the rules of the game can change as you go along, it is an extraordinary exaction and in effect it makes it so improbable to get extra financing on the project.

Q Theoretically when you are talking about a ten-year PUD in your interpretation of the ordinance would this mean that you could be a third of the way through and a new stage plan may be denied or changed? A Unless it is under the PUD enabling act, yes, that is true. It has no real status. In fact, the only way we can do large scale development to take

1 advantage of the cost savings to get least cost housing is  
2 through the PUD enabling act. There is no way through a  
3 conventional development technique that it is deliverable.  
4 You simply can't absorb the cost over enough years. That  
5 also ties to the recent court case Niccollai v. Wayne.

6 Q Could you spell that for the record, please?

7 A N-i-c-c-o-l-l-a-i, which basically,; said that either for  
8 cluster or PUD that the state enabling act to be followed,  
9 the PUD provisions in that, the administrative provisions or  
10 state provisions had to be followed.

11 MR. HERBERT: Your Honor, I know that Mr. Rahen-  
12 kamp is citing a case, it is a recent case, I don't  
13 believe it has been published. I will furnish to  
14 Counsel and the Court over the hiatus period a copy.

15 THE COURT: I am a little bit confused, I  
16 thought the enabling act was embraced in the new  
17 land use law, it wasn't reenacted, was it?

18 THE WITNESS: No, it was refined in the new  
19 land use law.

20 THE COURT: Put in the new land use law some-  
21 place?

22 THE WITNESS: Yes, and refined. For instance,  
23 " a PRD was added, there are other refinements.

24 Q Could you proceed, please, as far as the report is  
25 concerned? A We also reviewed from the various

1 ordinances the review fees and the filing fees and we did  
 2 as well reviewing the Madish review fees as well as Sparta  
 3 which we worked in and Mt. Laurel to see what the relative  
 4 costs would be because all of these add up to unit costs  
 5 and in themselves can be exactions,

6 Q I show you a document which has been marked as F-88  
 7 which earlier for the record of the Court was not marked  
 8 among those lists and it is identified as filing fees and  
 9 associated expenses for major subdivision applications. Do  
 10 you have an extra copy there? A Yes.

11 n MR. HERBERT: I represent to the Court that  
 12 a copy of this was supplied to Counsel, I believe,  
 13 two days ago.

14 Q Now, Mr. Rahenkamp, would you basically describe what  
 15 that document is, P-88? A It is a comparison of the  
 16 various other townships<sup>1</sup> review fees.

17 Q And what townships are covered by that analysis?

18 A The Borough of Franklin, Denville, Oak Ridge, Madison,  
 19 Sparta Town and Mt. Laurel.

20 Q Why did you pick those particular towns?

21 A Franklin and Denville we happen to know something about  
 22 because we are working or have in the past, Oak Ridge for the  
 23 obvious reasons that we wanted to be tied to the case, Sparta  
 24 because we worked there and Mt. Laurel because of the case.

25 Q Now, what does that analysis show as far as filing

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1 fees? A Well, that is comparative, Clinton,  
 2 Clinton on the sketch plat application requires ten dollars  
 3 a lot, that is \$35,000, that compares to—I won't even go  
 4 through them, but it compares to the various other numbers  
 5 obviously, it is extraordinarily greater than any of the other  
 6 numbers and in fact in Madison because of the three-stage  
 7 processing and the sketch plat probably has to be eliminated.

8 MR. HERBERT: Now, we will be moving this into  
 9 evidence, Your Honor, but I would ask Mr. Rahenkamp,  
 10 - I know the document speaks for itself, but simply  
 11 for the purposes of the road to highlight some of  
 12 the aspects of the filing fees.

13 THE COURT: All right.

14 A On the preliminary plat figure, Clinton Township requires  
 15 \$50 a lot. Let me just do some quick multiplication, I had-;  
 16 it down before. For the preliminary plat filed in Clinton  
 17 Township now it would require \$175,000 at \$50 per lot, that  
 18 is an exaction. That compares to Franklin which is a borough  
 19 and is relatively billed out at \$30 a lot. That is an exaction  
 20 as well. And Denville at \$20, Oak Ridge-Madison at a hundred  
 21 dollars plus, a hundred dollars per lot and Mt, Laurel which  
 22 has \$20 per lot but it is identified specifically as an escrow  
 23 fund in which case the developer will receive back the moneys  
 24 not expended and the public agencies have to account for the  
 25 moneys spent.

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THE COURT: That is in Mt. Laurel.

THE WITNESS: Yes, sir. On the final plats, Clinton Township requires \$10 a lot and that is relatively the same as the other towns. On the inspection fees, Clinton Township requires for the size of the development that we are, there is a graduated scale \$3,700 plus two-and-a-half, that is relatively the same as the other towns.

THE COURT: What is that again, now, that is on your charts?

THE WITNESS: Yes, that is inspection fees.

THE COURT: You haven't put them on your chart.

THE WITNESS: No. Clinton, I haven't put Clinton on the chart.

THE COURT: You only put that at the bottom of that column, what do you say that is?

THE WITNESS: Thirty-seven hundred plus two-and-a-half.

THE COURT: Two-and-a-half of what?

THE WITNESS: Two-and-a-half per cent of the cost of whatever is being inspected. In other words, when you come in with a final plat, you would bond for that amount, that would set your inspection fee.

THE COURT: Now, do you have any idea what that might amount to in your case?

THE WITNESS: I ran the number out, I don't have it at hand, no, because it is relatively the same as the others, I didn't feel that I would identify that as extractive.

THE COURT: The point is ten per cent of the lot, \$10 a lot on the final plat is \$35,000 itself.

THE WITNESS: Yes, sir.

THE COURT: And \$3,700 plus two-and-a-half per cent of the cost of inspection, what is your total cost, do you have any idea?

THE WITNESS: Yes. The total cost comes up to between 120 and 150 per dwelling unit on inspection and review fees and it depends on how you calculate the base number from which you are getting the two-and-a-half per cent. So obviously there is some discussion on that.

THE COURT: Give me some idea on it, would you please. You are talking about .025 times what?

THE WITNESS: It isn't the whole amount, it would only be on the public improvements.

THE COURT: What is that? Let me know what the numbers are.

THE WITNESS: Jimmy, give me the private developed cash flow, would you? We would anticipate over the ten-year flow it would be \$10,185,000.

1 Those are the site costs for inspection.

2 THE COURT: So that is your total improvements;  
3 is that right?

4 THE WITNESS: No, those are the total site  
5 costs for improvements which for instance in the  
6 road ordinance would be those things reviewed and  
7 inspected and therefore that is the basic calcu-  
8 lation, the building fees would be different, they  
9 would be based on the residential cost and that  
10 would be \$16,311,000, in that range.

11 THE COURT: You are telling me just on the  
12 public improvements you will have a cost of ten  
13 million dollars?

14 THE WITNESS: Yes, sir.

15 THE COURT: Just for fees?

16 THE WITNESS: No, ten million is the cost against  
17 which you are placing two-and-a-half per cent.

18 THE COURT: I couldn't possibly get that.

19 THE WITNESS: I hope not.

20 THE COURT: Zero, zero, two, five times ten,  
21 one, eight, five, zero, zero, zero, \$250,224,225.

22 THE WITNESS: Yes, somewhere in that range.  
23 The other figure will be .25 times sixteen, three,  
24 one, one, zero, zero, zero, or \$407,405.

25 That is based upon today's dollars, so there  
is ID inflation factor added and that would change.

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THE COURT: It would be \$662,400 spread over ten years.

THE WITNESS: Right, or \$6,624 a year.

THE COURT: How would that compare with the other inspection fees in the municipalities?

THE WITNESS: They are relatively the same.

THE COURT: Relatively the same, so there is no, it may be an exaction but there is a cost factor directly related to that?

THE WITNESS: I agree.

THE COURT: So that is not something that is astronomical.

THE WITNESS: I haven't figured that as an exactions or crat<sup>l</sup>ca<sup>l</sup> one, I simply wanted to review the tables, the four that I identify as key exactions, one as the sketch plat which is at \$10 a lot which is \$35,000, it is improper based on Madison\*. The preliminary plat at \$50 a lot generating \$175,000 in review fees, that is an exaction, -that is -extraordinary" The final plat" at \$10 a lot is reasonable, that is within range of others so I don't identify that as exaction. .

The inspection fees are uniform exaction throughout the site so I don't identify Clinton Township as exactioning in that case. Now the

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next one is performance guarantees, Clinton Township has 150 per cent performance guarantee, that is compared to Franklin with 120 per cent, Denville with 100 per cent, Madison with 120 per cent, Sparta with 41 per cent and Mt. Laurel with 100 per cent, so that is the highest that we could find and it is an exaction. That is money that has to be financed over several years.

THE COURT: But it was not condemned in either Mt. Laurel or the Madison case.

THE WITNESS: No, it was not addressed.

THE COURT: Not addressed?

THE WITNESS: No.

THE COURT: Not addressed, so at least not condemned to date.

THE WITNESS: No.

THE COURT: It is 30 per cent higher than the highest?

THE WITNESS: Yes.

THE COURT:- At Oakwood-it certainly has 100 per cent situation and it certainly wasn't the case, it wasn't even discussed.

THE WITNESS: Yes, sir.

THE COURT: At least to the extent of 120 per cent.

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THE WITNESS: Agreed.

THE COURT.- It would be allowable.

THE WITNESS; Agreed.

THE COURT: The other would be higher.

MR. HERBERT: If I may interrupt, we cannot stipulate in any sense that 120 per cent, 150 per cent would be allowable by any court, the fact is that as Your Honor indicated it was not addressed specifically in either Madison or Mt. Laurel, but I believe in the Madison decision there is a substantial discussion of examples of exactions and when Your Honor asked a question of Mr. Rahenkamp concerning the permissibility of this as far as we are concerned, the plaintiffs, we would not concede that 120 or 150 in the case of Clinton Township would be considered an acceptable parameter.

THE COURT: Be that as it may, in Oakwood-Madison they talk about exactions in terms of subdivisions, subdivision costs ranging from 375 to 325 per lot to be reasonable. They did say that a 2.2 million dollar expenditure for schools on a Class 2 PUD—then they have a footnote—this would be an exaction of 911, between 911 and 2864 for schools alone, and they said that that does not seem reasonable and they said this must be omitted

1 in the revision of the ordinance, simply that that  
2 high a requirement would have to be permitted, not  
3 that type of requirement. And there is no other,  
4 other than the Clinton Township situation that  
5 would be exact with regard to schools.

6 THE WITNESS: We are not sure of that yet,  
7 without a procedural ordinance that we could make  
8 application on, we have no idea what the off-site  
9 extractions would be. So we have to leave that.

10 THE COURT: Okay, I can see that that is-

11 THE WITNESS: That is an open issue.

12 THE COURT: An open issue, you are saying there  
13 is a vacuum there that could be a point of jeopardy,

14 THE WITNESS: Yes, sir.

15 THE COURT: And the other exactions off-site  
16 drainage can be allowed if it is allocating costs  
17 to other properties, and the problems\* They cite  
18 the Wayne case, there was no allocation, Long Ridge  
19 Builders pave an off-site right-of-way and impose  
20 the entire cost on the developer." Again it was  
21 struck down because of the non-allocation factor  
22 and inadequate standards.

23 THE WITNESS: We may find those are applicable  
24 here but again because there is not an official way  
25 to process it we don't know if those will be true,

1 but the key citations are at 523,

2 THE COURT: 523?

3 THE WITNESS: At 523, that we are addressing  
4 now are the third potential high-cost generating  
5 the requirements, that is the approval process, and  
6 in Madison on the next page, they talk about 150  
7 day approval process. Further, they talk in item  
8 B further down on that page about the undue cost  
9 features inherent in any ordinances that raise the  
10 expense of purchasing or raising new houses above  
11 the reach of the majority of low-income population.  
12 Now obviously any of these procedural things and  
13 as well any of these minor extractions which added  
14 together, the net result is that the housing becomes  
15 extraordinarily more expensive. It is almost to  
16 the point as we review these that the review fees  
17 are greater than the design fees.

18 BY MR. HERBERT:

19 Q Mr. Rahenkamp, I would like to move now-

20 " - THE COURT: ..Just a moment.. \_\_\_\_\_

21 THE WITNESS: We have one more,

22 THE COURT: He has one more to go.

23 Q You are leading me again.

24 THE COURT: That's the first time I heard a  
25 lawyer complain about the witness leading him. Well

1 that ties back to page SLI, item 7 again to the  
2 extent that the builders of housing are developing  
3 a municipality like Madison and not through publicly  
4 assisted needs, or provide the municipalities  
5 fair share of the regional need for lower income  
6 housing, it is incumbent on the governing body to  
7 adjust its zoning regulations so as to render possible  
8 and feasible low-cost housing, so again what they  
9 are saying is there must be an adjustment in the  
10 zoning regulations to eliminate these evils that  
11 you are pointing out; is that your main point?

12 THE WITNESS: Exactly.

13 Q That is the last exaction that you can find?

14 A The last is on the maintenance guarantees in which the  
15 Township requires 10 per'cent which compared to the other  
16 towns is reasonable but it is required over two years which  
17 we have not ever found before and it is not cited in any one  
18 of the other towns that we could find.

19 More typically is a one-year or taking it through a  
20 season.

21 THE COURT: Which will offer a ten-year spread  
22 then I think you are talking about 12 years or 13 years?

23 THE WITNESS: You are talking 12 years, one  
24 year to get ready.

25 THE COURT: And during the 10 years there would

1 be the maintenance of the situation without any  
2 talcing over by the municipality at all?

3 ! THE WITNESS: It could be interpreted that way,  
4 we didn't wish to, we anticipated that they would  
5 take it in stages but in each stage even it would  
6 require two years of maintenance of those roads  
7 before the Township would take them over which is  
8 longer than we are used to.

9 THE COURT: So then we will start with the  
10 geometric formula of three years?

11 THE WITNESS: Yes. The first one would be three  
12 years after the plat would be approved, yes, sir.

13 THE COURT: Three years, and then you go to  
14 six?

15 THE WITNESS: No, I don't think it would be  
16 geometric on that portion, it would be geometric  
17 each time. Three, five, seven, nine, eleven.  
18 On each section.

19 THE COURT: You would be carrying it for a  
20 number of years\*\_\_\_\_\_

21 THE WITNESS: Perhaps that would be true, you  
22 would have to interpret it that way, that is not  
23 the way I wish to interprety it.

24 THE COURT: Again, that is because of the lack  
25 of procedure?

1 THE WITNESS: Yes, there is no staging procedure.

2 THE COURT: No staging procedure?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 BY MR. HERBERT:

6 Q Mr. Rahenkamp, we will, on the 28th, I hope, with  
7 the Court's permission, get into the '77 ordinance.

8 A Yes, sir.

9 Q We would like to now, I would like you now to  
10 proceed" with the last aspect and that is a description of  
U the Round Valley PUD and I notice that you have several  
12 charts and I would ask you to begin describing those charts,  
13 identifying each by its exhibit number.

14 First of all, I represent to the Court while Mr. Rahen-  
15 kamp is doing that, that all of these charts which have  
16 been marked P-78 through P-85 are contained in the document  
17 P-1, which was given to the defendants on January 17, 1974.

18 A I should say these are the same charts that we presented  
19 to the Town in '74 and were given to the Town in the blue  
20 book report P-1. The first map is P-78. Generally to locate  
21 the site, that is Route 78 across the top of the site.

22 Q By that you will have to be specific as far as the  
23 relationship to the tract itself. A The double  
24 line across the top part of the tract or golf course side  
25 is Route 78. The site is split by Route 31 going through

1 the middle. We are abutted by the northern Hunterdon Regional  
2 High School on the southern side of the western site.

3 Regional Road abuts us on the bottom side here as well.

4 Q By bottom side, you mean the subsidence?

5 A Southern side,

6 Q Beaver Brook runs up through the northern portion  
7 of the site abutting Route 78? A This map is one  
8 of slopes in which we have assessed the degree of slope. The  
9 critical reason to do that is that as the land gets steeper  
10 it is relatively more difficult to build on. If we built  
11 on those grounds and in fact we didn't, we would require  
12 higher performance standards, i.e., that we put in siltation  
13 traps or retention controls of one kind or another, because  
14 if we indiscriminately clear those slopes or build on them  
15 with impervious cover, we would run too much water off it  
16 and flood out downstream people or add silt to the streams.

17 We have restricted particularly the steep slopes from  
18 any development and on the less steep slopes where we have  
19 built, we have agreed to performance standards consistent  
20 with the South Branch Water Shed requirements or comments  
21 that we talked to several years ago.

22 Q Mr. Rahenkamp, simply for the record, by the steep  
23 slopes they are identified by the dark color?

24 A The darker colors are more restrictive and lighter colors  
25 less restrictive and that is consistent with the techniques

1 most of us use and it is consistent with the composite map  
2 used in the land use plan. The lighter colors or flatter  
3 slopes are easier to build, I am looking now at the Gobel  
4 site and clearly there is substantially more flat land in  
5 the back side towards Round Valley Reservoir. There are some  
6 steeper slopes and they have to be worked with very carefully  
7 because there is an aquifer recharge area.

8 Q Can you spell "aquifer"? A I cannot--

9 Q The stenographer indicates that she can spell it,  
10 so that's-all right. A I am a planner, not a speller.  
11 I am proceeding on. You can spell it for me sometime.

12 The amount of restriction on the site on this steep  
13 slope map is 15.5 per cent of the site, so we have taken 15.5  
14 per cent of the site and essentially eliminated that from  
15 consideration as buildable ground from steep slopes.

16 Q NDW, before you leave that, what relationship would  
17 this have to the aspect of least cost housing that is the  
18 relationship of not building on steep slopes?

19 A Well, to the degree that you fight nature, it costs money,  
20 if you build on the steep slopes with high intensity housing,  
21 for instance, it costs more money.

22 Q Is that consistent with environmental considerations?

23 A Yes.

24 Q In what respect? A Well, the formula  
25 is that as you fight nature, as you go against nature, let's

1 | | take an. example, if you have a 15 per cent slope and you  
2 shelf the house into it properly, you have less building  
3 wall e:posed and less footing costs than if you were on a  
4 | | 25 per cent slope, for instance. So if you take the slope  
5 categories and follow very closely with particular building  
6 types, you have the least expensive housing possible.

7 To the extent that you put the wrong type of housing  
8 in the wrong place, it costs more money, it increases the  
9 cost per foot, you have to move more soil, you have to in-  
10 crease the grading, you increase the potential for erosion  
11 going off-site and therefore siltation into the streams.  
12 You have to take down more trees because you have got to  
13 adjust more grades, et cetera. So the whole thing actually  
14 is a formula that ties very closely together,

15 Q Would you proceed, please, in that map?

16 THE COURT: Before you leave that, I would like  
17 to know, you mentioned it casually but I am familiar  
18 with the site, I think, the upper part of the western  
19 side where it is very light yellow, is that the  
20 Beaver Brook Country Club?

21 THE WITNESS: The Beaver Brook Country Club  
22 is generally in here, some of the holes come down  
23 in here, you will see that on the next sheet, actually.

24 THE COURT: Is there any way without ruining  
25 your drawing so that if, as and when people who are

1           strangers to this might have to look at P-78  
2           would know where the golf course is situated?

3           MR. HERBERT: They will on the next map.

4           THE WITNESS: We could do it on there I suppose  
5           but I am not sure it is that helpful. I should  
6           point out, by the way, that while we are on the  
7           slope map that a golf course hole—we have designed  
8           several golf courses—a golf course hole can only  
9           be adjusted slightly to the topography, if it gets  
10          too steep you lose too many golfers, the golf carts  
11          can't make it, and it is really an unplayable course,  
12          so to fit the golf course on the site is very  
13          sensitive on this side of the tract and in fact  
14          very difficult. It requires a very sensitive site  
15          plan.

16          THE COURT: Of that particular western side  
17          you have already,\* I gather, eliminated 150 acres?

18          THE WITNESS: For the golf course.

19          THE COURT:• For the golf course. So are you  
20          saying that in addition to that you also eliminated  
21          15 per cent more of this because, of the slope?

22          THE WITNESS: Fifteen per cent of the gross  
23          site, there is no way we can talk to one site alone,  
24          we have to put the two together. This site is  
25          obviously much more -restricted, this site can

1 accommodate more of the lower intensity housing,  
2 the paradox is that because of the slopes and so  
3 on we can shelf buildings in on the golf course  
4 side and accommodate multi-family reasonably well.

5 THE COURT: You are talking about 920 acres, then?

6 THE WITNESS: Yes, sir.

7 THE COURT: Times .15, that is 138 acres.

8 THE WITNESS: Yes.

9 THE COURT: You have already, you have 150 al-  
10 ready in your golf course on one side.

11 THE WITNESS: That is true, but if you will  
12 recall P-77, this is the kind of trade-off we are  
13 talking about that we can get multi-families  
14 shelved into the grades here with the amount of  
15 buildable ground, but we need the trade-off of  
16 getting lower intensity uses spread out on this  
17 site because of the flatter topo. We can get more  
18 least cost housing here.

19 Q On the east side? A Than we can on the west.

20 THE COURT: You are doing it again, just keep  
21 making an audio while I appreciate the video point  
22 I don't mind, I am thinking of someone else trying  
23 to read this.

24 THE WITNESS: We can get more least cost  
25 housing on the eastern site on the Gobel side than

on the golf course side, but there is no way you can consider the two separately, they have to be integrated together in order to get any kind of reasonable building.

THE COURT: If 15 per cent equals 138 acres and you have already got 150 in your golf course, do I add those two together to get the picture?

THE WITNESS: To get the net buildable ground?

THE COURT: Yes.

THE WITNESS: No, because you can trade some of it off. Some of the steep slopes do fall in the golf course and some of the steep slopes by doing some proper swales and so on, we can use for instance in the building area, even that we are not building a building on it; in other words, it would be on the rear yard or side yard or something like-that, so that those numbers will not be that helpful to you.

THE COURT: They are not necessarily-

THE WITNESS: They may overlap, they do overlap.

BY MR. HERBERT:

Q What is that exhibit number? A This is Exhibit P-79, it is a map of the vegetation on the western side of the site. It shows in the light green the golf course holes, it might be helpful to have the slope map alongside of it.

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1 there will be less silt problem than there is from agriculture.

2       The same thing is true in terms of A, some of the water  
3 quality problems, i.e., the agriculture uses in many cases  
4 generate greater and more severe problems and non-point source  
5 pollution than does development and in fact development with  
6 proper performance standards may in fact have less impact  
7 than agricultural uses. Dr. Horton will cover that further.

but 4-4's notable for instance that 4-V»4e 4s in crop land

1 and probably climax some time in the future and they may well  
2 not have the same kind of vegetation that they have now.

3 Q And they are identified? A That is in the  
4 cross hatches or the vertical lines.

5 >: Q And with respect to successional fields-

6 A Successional fields are simply usually along forest edges  
7 or hedgerow edges in which case they shade out the crops and  
8 you begin to get some underbrush, for instance, coming into  
9 the field and the farmers get a little sloppy so it moves  
10 in a bit further. Usually these are the best places for  
11 wildlife, for instance, and where they feed ducks, and where  
12 the most activity of the wildlife is.

13 Q Thank you.

14 THE COURT: As to P-79, you can no longer rely  
15 on it as indicating that the golf course will remain  
16 as such because you indicated you modified the  
17 golf course somehow?

18 THE WITNESS:- Yes, sir, the majority of it  
19 is exactly as it is and there would only be one or  
20 two holes that we just wanted to improve the holes,  
21 it is not a significant change.

22 THE COURT: The acreage doesn't decrease?

23 THE WITNESS: No, the only thing that would be  
24 required from the vegetation review would be sensitive  
25 performance standards in the areas of the older trees.

1 We would have to be very sensitive to those. Many  
2 of them are oaks, oaks have roots fairly close to  
3 the surface and if we, for instance, compacted the  
4 soils too much, they would have a hard time breath-  
5 ing and we would probably lose them. It has happened  
6 too often in North Jersey.

7 Q Mr. Rahenkamp, His Honor asked you about the golf  
8 course, you said there might be some shifting, will it remain  
9 in 18 holes? A Oh, yes, and indeed restricted. We

10 work closely with the Soil Conservation Service to assess the  
11 soil types and the amount of water, for instance, in different  
12 kinds of areas. The critical things we looked at first were  
13 the flood plain areas.

14 Q I am sorry, Soil Conservation Service, we mean the  
15 agency of the Department of Agriculture? A Yes, sir.

16 Q Thank you. A It is typical on most of air  
17 projects we shine on as cooperating farmers for which we re-  
18 ceive extraordinary services. The critical things we were  
19 looking for were several, primarily related to the water.

20 Q Would you identify the exhibit, please?

21 A Thank you, sir. This is P-80, again, the darker color  
22 would be relatively more restricted. The lighter color would  
23 be easier to build on. The dark purple areas are in flood  
24 prone areas or areas we would have to be very sensitive to,  
25 and in fact those areas have been restricted from development

b

1 and would be incorporated into the open space. The lighter  
2 blue area on the eastern tract on the Gobel side and the  
3 light green areas most particularly on the eastern side have  
4 to be very sensitively managed. The light green areas we  
5 restricted from any development at all in the first place.  
6 The light blue areas have reasonably high water table that  
7 would mean for instance that we wouldn't put cellars probably  
8 or basements in those areas because they may be wet, but it  
9 is not a prohibition against development but simply one in  
10 which we would have to be very careful of those soils.

11 In many cases because they are a farm field in the nature  
12 of the soils, you can get perched water that is water held  
13 close to the surface simply because of the farm practices,  
14 the plow goes and keeps compacting the soils so in many cases  
15 this may be misleading and additional field work would have  
16 to be done when you get down to final plats.

17 I should point out as well that these are based on  
18 interpolation between points of information and as you get  
19 further along the points of information may get closer to-  
20 gether and there should be and would be a refinement. Just  
21 as there is a refinement between the land use plan and the  
22 NRI report and this level of refinement down to a specific site.

23 Q In that regard, Mr. Rahenkamp, we have received  
24 just prior to trial an analysis undertaken by Mr. Bogart,  
25 the Township Engineer, as to the submissions by your firm on

1 behalf of the plaintiff. Could you categorize the document  
2 P-1 and other documents later submitted in June of 1975 as  
3 final/ intermediary, what in terms of this process?

4 A No, thenormal process when we work with the town on a  
5 PUP is that we generate the information to get it as refined  
6 as possible to the state of art of information at that time,  
7 and then as we talk to the town we find out more information  
8 and we work together to try and resolve it with the best  
9 information available.

10 Q - Now, at any time from January 1974 when you first  
11 submitted these materials until thepresent day, have you  
12 ever been asked as the planner for this PUD by anybody in  
13 an official capacity with the defendants to supply further  
14 information or refinement of these documents?

15 A No, sir.

16 Q Okay, please proceed. A The other cross  
17 patched areas indicate depths of bedrock on the eastern tract,  
18 The dark brown line represents depth of bedrock of one-and-a-  
19 half to two-and-a-half feet. We obviously would haveto be  
20 sensitive to getting deep foundations in those .areas or doing an  
21 extraordinary amount of grading. The orange areas are erodable  
22 soils and notable particularly on the western tract on the  
23 Beaver Brook side, on the golf course side. Some erodable  
24 soils particularly because of the steep slopes, and we would  
25 have to be very careful to put in side slope swales in order

1 t:o reduce the amount of erosion prospect on those areas and  
2 d.n fact most of this is in golf course so it would be referred  
3 t:o, be kept in golf course and in fact has been on the site  
4 plan.

5 Q You used the term swales, could you identify what  
6 that means? A A swale is generally running at a  
7 reasonably flat slope, an area to transport water from one  
8 place where you have got relatively concentrated development  
9 to a retention pond or into the stream system and the swale  
10 itself is usually designed to slow down the pace of the  
11 water to absorb as much of it on site as possible. And it  
12 is usually on a fairly flat plane so that it gets as much  
13 wet surface on the ground as possible. It is usually used as  
14 a better substitute than pipes. Pipes would concentrate the  
15 water, run it off faster, create downstream flooding prospects  
16 and so on. The Town of Clinton town south-I am sorry, the  
17 Town of Clinton below the site does have a flooding problem,  
18 therefore anything done on the upstream site like this is  
19 of consequence,

20 Q Was there any emphasis placed upon the ground water  
21 retention by this plan as a whole? A Yes, as a matter  
22 of fact we have an office covenant that we won't take a project  
23 unless they will agree that we will run no more water over  
24 than that which runs now.

25 Q By "they", who are you referring to? A Our client.

1 Q All right. And in this case is there a covenant  
2 with Round Valley as to that aspect? A Yes, that  
3 was presented in the owner's commitment by Mr, Therrien.

4 This is P-82a, this is a cross section map through the  
5 golf course tract and it shows a set of performance type  
6 criteria to the point of saying what our proposals are and  
7 what level of refinement we would require and what level of  
8 performance we would follow in each case, depending on what  
9 the environmental criteria was in that case.

10 The purple area on the left-hand side of the chart shows  
11 the noise coming off the expressway, the darker purple area  
12 on the right-hand side of the map shows high water cable.  
13 I think the rest of it speaks for itself pretty well.

14 Q Would that be a south or south-north bisection?

15 A It is a north-south, north-south running through the  
16 Beaver Brook, through the golf course side.

17 Q Now, I take it that the south in this case because  
18 of the unusual character is on the right side of the chart?

19 A Left side.

20 THE COURT: The left side as you look at it.

21 Q It is the old left side-right side problem.'.

22 A The right is on the north side, the south is on the  
23 left side.

24 Did I do that right? I think so. This is sheet P-82b.  
25 This is on the Gobel farm side and the particularly notable

??

1 thing is that we have lime.stone down beneath most of that  
2 and in particular that we get. penetration of the surface  
3 water on it and it addresses the microclimate conditions  
4 which are the arrows either in terms of wind and air move-  
5 ment within -the tracts which are very sensitive to inner  
6 energy, and the noise coming off of the expressway and 31 as  
7 well.

8 Q And the noise will be defined as circles, purple  
9 circles on the chart? A Yes, sir. It means that we  
10 have got to do buffering along those areas so that we apply  
11 proper performance standards.

12 Q Now, what was the kind of material that you utilized  
13 to come up with this chart as an example? You mentioned soils,  
14 noise, et cetera? A A portion of the information  
15 came from the state geologist and the state geology maps.  
16 A portion of it came from the S.C.S., the Soil Conversation  
17 Service information. The microclimate and noise, we take  
18 meters out on the site\* noise meters out on the noise coming  
19 off of the expressway to see how far we are getting pene-  
20 tration, at what decibel level. The terms of the air flow  
21 and so on, those are professional judgments that we make re-  
22 lated to our experience.

23 Based on the preceding maps, we composited together a  
24 restraint map and we accept this as sort of our bible to  
25 generate how much land is in fact buildable and/or what level

1 of restraint we have to apply in each case. On the golf course  
2 side the red cross hatched are steep slopes that we have  
3 to stay away from or at least be very careful with. The  
4 dark areas shown are existed treed areas.

5 Q I hate to do this again, but would you please tell  
6 us what it is? A Did't I do that, son-of-a-gun. The  
7 exhibit No. is P-81, I am sorry.

8 Q Would you continue from that point, please?

9 A The dark areas are the existing major trees and that  
10 we would have to be sensitive to. The dotted area is the  
11 noise shed coming back into the site so that you have got to  
12 be sensitive to the penetration of noide from 78 and the  
13 same is true of 31 on that side. This is particularly critical  
14 because there is no tree cover along 31 so we would probably  
15 have to do some buffering to absorb the sound from 31.

16 The dark blue areas are high water and floodable soil,  
17 floodable areas. Therefore; they are totally restricted for  
18 development. The light blue areas on the Gobel farm side  
19 are areas that we would have to be very sensitive about  
20 foundations and basements and so on. And we show as well the  
21 line, the fault Line which is the center or the key to the  
22 aquafer recharge and the most probable area of water. So  
23 this is really the base from which we then can apply a build-  
24 ing program. This establishes the constraints, establishes  
25 as well the performance standards we should follow, and it is

1 sort of a starting line and I believe it is consistent with  
2 the approach of the NRI and most particularly related to per-  
3 formance standards. It is clear that we could build at vary-  
4 ing intensities on the ground. The critical thing is to  
5 relate each time to performance standards related to slopes,  
6 trees, soils, flood plains, various soil types, et cetera,

7 Q Now, I notice that there are arrows on that document,  
8 would you identify what they are, please? A The arrows  
9 are the prevailing winds. We have to be particularly sensitive  
10 to that on higher intensity housing. For instance, if we  
11 face the units northerly and we don't get sun into a unit,  
12 people will actually move, and more particularly that the  
13 •-energy, costs will be much higher. We have done some studies  
14 that the energy costs are as much as 10 per cent higher on  
15 a unit facing north with doors and windows facing north as  
16 compared to a southern face so we would like to have as many  
17 south facing units as possible and if we have north facing  
18 units they better have fewer windows and be more sensitively  
19 designed. If they are south facing, in addition, the roof  
20 hang ought to be longer than in the north side because of  
21 sun generation and higher air conditioning costs, so the  
22 prevailing winds and microclimate within the tract is very  
23 sensitive and critical to concentration in energy on site.

24 THE COURT: Before you leave that, there is  
25 no fault on the west side; is that right?

1 THE WITNESS: No, sir.

2 THE COURT: There is a fault on the east side  
3 over the limestone, the aquifer recharge area?

4 THE WITNESS: It is between limestone and some  
5 quarter on the right side over the—ranging over the  
6 Round Valley Reservoir,

7 THE COURT: That is what is causing the fault?

8 THE WITNESS: Well, it is a shift between \*  
9 rock types and it is a normal area that you could  
10 either find water or the water would penetrate.

11 THE COURT: It runs in generally a northeast-  
12 direction just on this side?

13 THE WITNESS: Yes, some of it goes off-site  
14 but it runs pretty much along the massive tree line.

15 THE COURT: And there you have constraints  
16 with regard to performance standards?

17 THE WITNESS: Yes, sir. Generally what we  
18 have tried to do is make sure that that area in  
19 fact stays in open space, and what we have tried  
20 to do is cluster lots so that they stay away from  
21 it and as well stay out of the flood plains.

22 Q Would you now identify the number on the next exhibit,  
23 please?

24 A P-82. This is an assessment of the  
25 community systems as they exist now and the visual qualities  
in some of it is what is compositing of those things together.

1 On the Gobel farm side on the eastern tract, we identify,  
2 For instance, cross hatched light blue area is the aquifer  
3 recharge area and it follows approximately on the fault line,  
4 the wooded areas are identified as well as the stream systems  
5 and the existing stream valleys so that the green areas  
6 running through the tract identify areas that we will keep  
7 as open space to make sure that the existing streams are  
8 reflected and occasionally they should have retention ponds  
9 on them as well so that we can control and maintain the  
10 quality-of the water and the off-site flow. We have designed  
11 16 retention ponds on the site to both retain and detain the  
12 water.

13 The orange areas are areas of exceptional views and  
14 ones that we wish to be sensitive to and particularly if we  
15 are designing what Mr. Therrien would call market products  
16 we would like to make sure those units take advantage of the  
17 good views to their maximum potential. There is an interesting  
18 monument on the Gobel tract side as well and there are some  
19 higher points which are those in the dark brown areas of not  
20 extraordinary significance but it is a nice rolling site with  
21 respect to the front side which is relatively flatter, on the  
22 golf course side, I am sorry. One thing I would like to  
23 mention, on the back side of the site there are some existing  
24 single-family, what is the name of the road, on the back side--  
25 it doesn't matter, in any case, there is an existing local

??

1 road on the back side with existing single-family houses  
2 fronting on it. We are sensitive to the traffic problems,  
3 in fact on the road there are some difficult sight lines  
4 and we do abut through that road. One of the charts and  
5 recommendations that we talked about was tying that road  
6 directly into our site coming into a T-intersection so we  
7 could reduce the amount of through traffic going past some  
8 of the existing single-family homes and therefore reduce the  
9 amount of traffic actually using the local road. It is con-  
10 sistent with what we wanted to do and discussed on the western  
11 tract on the golf course side. Regional Road runs along on  
12 our southern side of the golf course tract. There are several  
13 single-family houses abutting on Regional Road, here, as  
14 well as the high school, Regional Road now has a terrible  
15 connection into 31. The sight lines are bad. It has also  
16 got several crooks in the road which make it pretty dangerous,  
17 so our recommendation was that on the back side, on Regional  
18 Road/ and there was discussion with Mr. Dishner about the  
19 cost of doing that. What we suggested was that we take  
20 Regional Road and run it through our site in order to eliminate  
21 the through traffic and in order to eliminate this bad sight  
22 line problem off-site. The obvious thing is with the PUD  
23 and the tract as large as this over several years we • could  
24 take advantage of these various tradeovers to improve .  
25 conditions for some of the existing roads and existing problems

1 that a town has.

2 Q By the way, just for the purpose of identification,  
3 when you were referring earlier to a road on the east side-

4 A Yes, sir.

5 Q -I believe it is Sand Hill Road.

6 A Thank you.

7 Q And that Abuts, does it not, the Gobel tract on  
8 the east side? A Yes, sir.

9 Q Thank you.

10 Now, I notice there is a yellow circle right in the  
11 middle of the project directly west of 31, could you explain  
12 what that is, please? A That is a northern Hunterdon  
13 Regional High School. What we did then in the process was  
14 take this environmental composite and use that as the basis  
15 to apply a proposed market program. The first critical thing  
16 is that we wish to retain the golf course and maintain that  
17 as open space. It is shown on the county open space plan  
18 as green. We agreed it ought to be saved. The difficulty  
19 is that a golf course in our experience can't be deed re-  
20 stricted and only used by the residents, but has to be used  
21 by outside as well. It is too expensive for the homeowner's  
22 association to carry and has bankrupted several. So the  
23 critical first step is that it is deed restricted so it per-  
24 manently can stay as open space on the golf course and we  
25 agreed to do that. And that does represent 148.9 acres or

1 18.8 per cent of the site. The second thing is that there is  
2 an umbilical cord of open space that runs through the whole  
3 site. Generally, following the flood plains and the existing  
4 streams in the environmental insensitive areas, I think it  
5 is fairly clear that we are using relatively little or less  
6 of the golf course side with higher intensity housing, those  
7 are the darker orange areas than the Gobel side in which we  
8 have more single families spread out a bit more, and an open  
9 space running through it, the primaries of open space.

10 Q Mr. Rahenkamp, you are identifying a new exhibit  
11 and I apologize for interrupting you again, but would you  
12 identify it by number, please? A P-83.

13 Q\* Before you get further in P-83, what was the develop-  
14 mental process as far as the preparation of this proposal?  
15 Did you start with 83 before these environmental factors or  
16 what, was was the flow? A No, the site plan wasn't  
17 generated until, about three or four months into the project.

18 Q And why was that? A Because there is no  
19 basis in fact to place those uses on the ground. You need  
20 first to know what the environmental capacities and composition  
21 is in order to lay against it the development.

22 Q Now, would you proceed with 83, please.

23 A Okay. On the golf course side, let me give you some  
24 general ranges, essentially the lighter the yellow color, the  
25 lower the intensity, so these are single-family lots, for

1 instance, abutting on the outside. These are generally abutting  
2 either existing single-family or probably single-family,  
3 and that is true on both sides of the site, where there is  
4 existing single-family here, there is basically single-family  
5 type uses abutting it or lower intensity uses.

6 As you come further towards the middle of the site, further  
7 from the abutting prospective property owners or existing  
8 the intensities increase. There is logic to that, not only  
9 from the abutting owners but there is logic in terms of  
10 supporting community facilities so that if for instance  
11 their commercial uses are community buildings, the higher  
12 intensity uses are more likely to use those more frequently  
13 than the lower intensity uses which may have some of them  
14 built into their own unit. In every case, every unit is on  
15 a dead-end or cul-de-sac street so nobody lives on a through  
16 road. One of the critical problems with the sprawl that  
17 would have been, encouraged by lot-by-lot development, in the  
18 zoning code of Clinton Town is the extraordinary problem,  
19 Township, I am sorry, the extraordinary problem of encouraging  
20 strict development along existing local rural roads.

21 Our studies show that the accident rate, for instance,  
22 on those roads compared with controlled access roads is about  
23 seven times as great as it is when we have controlled access.  
24 So we accept as a basic bottom line that the access points  
25 off of a through road will be controlled and that everyone

1 lives on a cul-de-sac or dead end,

2 Q What do the red arrows indicate? A The red  
3 arrows are feeder roads feeding into multi-family or multi-  
4 intensity housing. It would be assumed these areas, the  
5 parking areas and so on would be privately owned, maintained  
6 or in a homeowner's association but would not be dedicated  
7 roads.

8 Q Now, there is a large asterisk in several locations  
9 throughout the site, could you identify what those are, please?

10 A The asterisks represent community facilities, some of  
11 these may be in ballfields, for instance, in the open space,  
12 we will address that in a moment. Others of them relate to  
13 some of\* the existing buildings, for instance. There is a great  
14 farm here unfortunately we lost the barn a year or so ago,  
15 but the house is still there and the silo is, and that is a  
16 logical place for a community center to be, a place where  
17 there would be tennis courts and pools and so on as well as  
18 community buildings for the use of the residents of the  
19 community.

20 Q You mentioned that that facility burned, a year ago,  
21 was it existing when the proposal was presented to the  
22 Planning Board in January of '74? A Yes, it was a  
23 great barn, too.

24 Q And it no longer exists? A No.

25 Let's go on further. The open space in addition to the

1 golf course, and this would be open space that the homeowner's  
2 association would maintain, is about 22.5 per cent of the site.  
3 We are sensitive about that number getting too high and in  
4 fact one of the problems with getting it up much higher than  
5 about 20 to 25 per cent is that the cost of insuring it  
6 and of maintaining it goes back against the homeowner's  
7 association and it is very difficult for them to carry that  
8 cost. So we are sensitive, for instance, for what I would  
9 call extractive open space requirements maintained by the  
10 homeowner's association. That is particularly true in low,  
11 moderate income housing- Perhaps wealthy people can afford  
12 it but not when you get down into low, moderate income,  
13 the monthly cost gets too high. I am on the trustee board  
14 of a homeowner's association and if it gets much more than  
15 10 per cent of the monthly mortgage cost, we have a severe  
16 problem.

17 We should talk to the point of the unit mix as well.  
18 The single families on the plan are 320 units, this is the  
19 original plan. The townhouses are 1,216, the garden apart-  
20 ments are 1,970, for a total of 3,356. This was subsequently  
21 updated because of the time problems and because of the  
22 additional expenses, this was updated in the actual appli-  
23 cation. Do you have those numbers at hand? The new numbers?  
24 This was amended at a later date to a total of 3,559.

25 Q By this, what are you referring to, please?

1 A The numbers of units that we originally projected and  
2 these would be accommodated within the same environmental  
3 constraints, what we would essentially do is increase the  
4 numbers the townhouses and cover the same amount of ground,  
5 319 single-family units compared with 320 originally, so  
6 we reduced that slightly, 1,419 units in townhouses converted  
7 to 1,216 previously and the garden\*apartments were reduced  
8 slightly as well from 1,970 to 1,871, and the density on the  
9 original was 4.4 but the revised proposal was 4.5.

10 MR. HERBERT: Your Honor, for the benefit  
11 of the Court and Counsel, this statistical data  
12 is included within P-68 which is the March 11  
13 report of Mr. Rahenkamp. That is a voluminous  
14 document so for the assistance of the Court, it  
15 is five pages from the very end of that document.  
16 It is a computer printout.

17 Q Go ahead, please.. A We further generated  
18 a site plan, that is P-84, I did it right once, and the site  
19 plan lays the buildings out on the site, and if one reviews  
20 it they can see that we generally put the higher intensity  
21 units facing the golf course and that in many cases the  
22 buildings are rather long. One of the difficulties we found  
23 in the new subdivision code and one that we have difficulty  
24 with in terms of exaction and in terms of health, safety,  
25 welfare is the minimum number of buildings being twelve and

1 then 25 feet between units. Our experience is if you have  
2 that few units and then require endwalls each time, you are  
3 adding a thousand dollars per unit to cost simply by doubling  
4 the end walls arbitrarily, and at the same time as well,  
5 every time you break between the buildings, you are going to  
6 have to carry the sewer-water curbs and all of the costs.  
7 Therefore, you are talking about fifty to seventy-five dollars  
8 a foot for every foot that you break between the buildings.  
9 If there is a logical standard as to the length of the build-  
10 ing, I would accommodate it, but I submit it is not in that  
11 range\*with the 25-foot setback between these, and in fact it  
12 would be more logical for the buildings to follow the contours  
13 and probably be clustered a bit tighter together to get more  
14 common open space and more quality.

15 This is P-85. This is a map of the roads that we would  
16 propose be dedicated, the open space that we would have either  
17 deed restricted, that would be deed restricted either to  
18 the homeowner's association or in the case of the golf course,  
19 deed restricted as a public facility, and as well showing  
20 the roads that would be dedicated, those would be the dark  
21 red. The internal roads within the multi-family would  
22 probably be privately maintained. There is, as well, a  
23 light red line which shows pedestrian ways innerconnecting  
24 generally through the greenway system. Our experience as  
25 well is that if the sidewalks follow the road not only are

1 they very expensive and an extraction but in fact make sense  
2 and are safer to go through the open space.

3 THE COURT: This is very popular in Europe,  
4 in Finland, and everything where they have the  
5 walkways and everything else-

6 THE WITNESS: In Tapiola, probably the best  
7 new town in the whole world, that is all they have,  
8 and there are no sidewalks paralleling the roads  
9 at all. We will come back to that.

10 The dots represent various community facilities  
11 either ballfields and other kinds of recreational  
12 amenities, and the blue areas represent the re-  
13 present the retention ponds or detention ponds  
14 that will be built on site. Some of them will  
15 hold water permanently, some of them there are  
16 expansion of existing ponds and other of them  
17 would retain water only during the high flow and  
18 then would probably be dry during the low flow  
19 times. In any case, the green space is the umbilical  
20 cord tying the whole thing together and each one  
21 of the neighborhoods is surrounded by green space  
22 including buffering along Route 31.

23 Q Mr. Rahenkamp, you have testified and I represented  
24 to the Court that all of these maps that have been identified  
25 as P-78 through P-85 described by you today to the Court were

1 contained in P-1, the original submission, but there is one  
2 map in here in P-1 in addition to those and I would ask you  
3 to identify that.

4 Your Honor, for the purposes of what I am referring to,  
5 it is the first map contained on P-1 and perhaps your own  
6 document— A That is the base geology map\*

7 Q Could you describe that map, please?

8 A Well, this is the base geology, the underground geology  
9 and we were looking critically at it at one time in terms of  
10 water production and the need to be sensitive to levels  
11 of treatment of sewer effluent, et cetera, and as well as  
12 to recharging the underground water table.

13 Q Mr. Rahenkamp, there are other maps or rather charts  
14 which you brought with you, perhaps you would like to go  
15 over those. A I should point out, by the way,

16 all of these maps we set up an information center at Round  
17 Valley and all of these maps were available in the center  
18 for several years so they, were fully available to anyone at  
19 any time.

20 Q And that was communicated by you to the community?

21 A Yes, sir.

22 Q Please go on. A We are sensitive to the  
23 impact of a major development like this on the community.

24 For some fairly pragmatic reasons as well as ones that would  
25 be expected, basically, a PUD or major developer is going to

1 be a major taxpayer in the community so they are sensitive  
2 to the public costs going extraordinarily high up at an  
3 extraordinary rate, so we are sensitive to carry enough  
4 taxes to carry ourselves and probably have a process, and  
5 further we are sensitive to the cash flow so the right  
6 number of units come on in a given time so we know we are  
7 generating enough tax moneys to carry the impact that will  
8 generate. The net result is that when we look at the total  
9 cash flow originally we were generating in excess of  
10 \$400,000. a year in tax profits to the community, municipal  
11 and school taxes combined,

12 Q You are referring to an exhibit?

13 A I am referring to Exhibit P-82.

14 Q When P-82 was prepared, what year was that for?

15 A This was base year 1974 information,

16 Q And that was included among the materials that were  
17 presented in, or were considered then in January of 1973?

18 A Yes, sir.

19 Q That is P-87? A

20 THE COURT: That is out of date, then, isn't  
21 it, because Robinson v. Cahill and New Jersey income  
22 tax about which we read so much about has come  
23 into the picture since that time and I gather that  
24 these cash flow figures are no<sup>J</sup> longer valid.

25 MR. HERBERT: Your Honor, fortunately we have

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completely updated that and if Your Honor would look at P-68, there is an update on that and I was about to ask a question on that.

THE COURT: Why don't you go right to the update, then, and not confuse ourselves with what is in P-87, because that is historical now\*

MR. HERBERT: Thank you, Your Honor, We simply want to do it to reflect to the Court again that we have presented as much data as possible to the community at the time that the application was made.

THE COURT:. Well, I understand that but for the purpose of this case, we want to know what .is going on with the presentation.

A All right. In terms of the school district in the first place we did covenant in the proposal as Mr. Therrien read, we would covenant that we would produce no negative tax yields, that would be a sensitive problem on a project this large. For instance, if we brought on a single-family unit then-

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MR. HERBERT: Your Honor, to assist the Court and Counsel, P-68, that is the second page of the computer runout which is the last component of P-68.

Q Proceed, Mr. Rahenkamp. It is the second page of computer component runoff of P-68. A It is called

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school district impact.

THE COURT: I have school tax-school impact completed project; is that the one?

THE WITNESS: This one,

THE COURT: That is it, I have got it. Do you have it, Mr. Cain and Mr. Sutton? It looks like this\*

MR. CAIN: Yes, I have one of those but I have P-82 as a chart-

THE WITNESS: That is P-87, I am sorry, the 2 and the 7 look alike.

THE COURT: Just relate this update to P-87. Go ahead.

A Let me amend that slightly, P-87 is the original information presented to the town. If you would like, we can just put those aside and let's work with the more recent numbers. The critical thing is that we have incorporated both the capital cost of carrying additional school costs for building schools for our children, we have assumed zero capacity, so we have not assumed there is any capacity available to us at all. The capital cost is on a per school-child basis, based on statewide calculations that we have in the state education office and verified locally.

The local cost, the 1809 comes directly from the school board so that the real numbers and the rates are the

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1 best ones, as best we can update them. What it generates  
2 is a cash flow absorbing the cost of our children and the  
3 capital costs in which we are generating cumulatively an  
4 annual surplus at year ten at the end of the buildup of  
5 \$1,819,956.

6 THE COURT: What page is that on?

7 THE WITNESS: It is year ten program, bottom  
8 line.

9 THE COURT: Have you gone through that?

10 THE WITNESS: I have gone through that and I  
11 am down to the year ten.

12 THE COURT: All right. That is the cumulative,

13 THE WITNESS! This is the annual, annual net  
14 surplus after carrying the capital cost for the  
15 children that we would generate and carrying the  
16 operating costs at today's rates, all of this is  
17 in terms of today's rates. There is no multiplier  
18 or increment.

19 THE COURT: No factor?

20 THE WITNESS: No factor, it is today's hard  
21 dollars. On an annual basis as well, even in the  
22 first several years, we would be reducing a sub-  
23 stantial surplus in each case.

24 Let's take the municipal impact, they are on  
25 the next page. Based on a \$91 per capita cost on

1 municipal budget we would be generating, and I am  
2 flipping through several pages to simplify it, the  
3 annual surplus to the town and in year ten the  
4 buildup based upon the \$91 per capita would be  
5 \$24,000 a year or a cumulative surplus of a half  
6 a million dollars. And the point is the town can't  
7 make money but they have money at their disposition  
8 to either improve the level of services or buy  
9 their open space or subsidize housing or whatever,  
10 but we will produce and could produce with this  
11 kind of development program substantial profits  
12 to the town consistently and under a PUD with a  
13 staging plan this information becomes part of the  
14 public record therefore it is not casual information,  
15 we reviewed this very carefully, I can assure you,  
16 and they are real hard numbers.

17 THE COURT: So again this would tie into some  
18 type of filtering down process to take the opposite  
19 side of that same concept as expressed in Madison,  
20 you can take part of this and you could develop  
21 some low-cost subsidized housing with some of this  
22 or the services?

23 THE WITNESS: Yes, sir.

24 THE COURT: But correspondingly wouldn't some-  
25 thing like this generate in and of itself the necessary

1 services, more police, more fire equipment, more  
2 garbage collection, more disposal of solid waste,  
3 and so forth?

4 THE WITNESS: Yes, it will generate those  
5 demands. We have accommodated most of those demands  
6 at \$91 per capita, as a matter of fact, as the  
7 population of the town increases the probability  
8 is the per capita cost by averaging it out over  
9 more people clustered together, the average cost  
10 in fact would be reduced if we spread them out.  
11 The average cost would be higher, so in fact we  
12 are producing tax dollars to absorb those costs.  
13 We are as well generating a half a million dollars  
14 over ten years so the town is able to say look,  
15 we have got a problem with police, we want to add  
16 another car, they can go ahead and do it with some  
17 security. If they do it under conventional planning,  
18 there is no way to have that kind of security, they  
19 can't program out their capital budgeting as well  
20 so there is extraordinary better financial security  
21 to the town by having this kind of program and being  
22 able to subcontract-

23 THE COURT: If a whole development of single-  
24 family came on all at once in a two-year period  
25 then they would have a high impact at that point.

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THE WITNESS: Yes.

THE COURT: And no way of the protection you get with a PUD?

THE WITNESS: Yes, sir, and they would generate extraordinary capital costs which they have no way of absorbing. The principle of the whole density equation is critical. The point is that if we have a net land area available for development theoretically at least you can say all right, let's reduce the density, what I would say back in terms of public policy is that if you reduce the density you increase the number of single-family houses, you spread out more, the cost per year is higher so the prospect of generating least cost housing is less likely and also I will say conversely that there is a breaking point of high density as well. If we went over eight units to the acre, the densities would be too high. The best new town in the world is Tapiola in Finland, as far as I am concerned, that is eight units to the acre. The most successful in the world. The disasters that I have seen would be in Sweden and in England where the densities are extraordinarily higher and they are social disasters and economically unfeasible. The social cost gets higher when you go over the eight to the

1 acre, it is a magic number for some reason.

2 The basic economic equation is as the density  
3 increases we get more least cost housing at a  
4 lower cost to the municipality, so it makes sense  
5 to get the maximum yield we can from the ground  
6 rather than the least yield in terms of Madison.

7 THE COURT: But within the magic eight; is  
8 that the idea?

9 THE WITNESS: That is the optimum, and I  
10 would not project that for this site. I think  
11 it would be too intense and I don't think with  
12 the natural conditions that we could accommodate  
13 it, it would be too much.

14 THE COURT: You are advocating six?

15 THE WITNESS: We are advocating 4.5.

16 THE COURT: But this is really a new town, right?

17 THE WITNESS:- Thirty-five hundred units, no.  
18 We have worked in Columbia and several of the big  
19 new towns, this is a neighborhood compared to a new  
20 town.

21 THE, COURT: Would it fit the village concept  
22 of the Hunterdon County Planning Board?

23 THE WITNESS: Yes, exactly. It is a planned  
24 center as we looked at yesterday. It is exactly  
25 consistent with the definitions in the county as

1 far as I can read it and understand it.

2 BY MR. HERBERTS

3 Q Mr. Rahenkamp, you mentioned and the Court asked  
4 you about the terminology new town, you mentioned Columbia,  
5 what is the population of Columbia? A Good Lord,  
6 I think it is in excess of 5<sup>^</sup>,000, now, but I will have to  
7 recheck our numbers. I worked on the villages of Lowenbraun,  
8 one of the villages in Columbia, about four years ago and  
9 we worked only on one other in the last eighteen months.  
10 I am not that familiar with the numbers today.

11 Q But you are in a position to say that the population  
12 generated here as opposed to a place as Columbia which is  
13 known as a new town- A Columbia is substantially  
14 larger, what we can compare this type of project to is a con-  
15 ventional New Jersey village, 3500 units is like several  
16 of the villages in New Jersey, and in fact the PUD concept  
17 is nothing extraordinary and new, it is much more consistent  
18 with the old town. It is much more consistent with a Fleming-  
19 ton or some of the old village towns than it is strict  
20 development and subdivisions. We have never seen subdivisions  
21 like we have now before in the world.

22 THE COURT: Where is Columbia?

23 THE WITNESS: Columbia is just outside of  
24 Baltimore, between Baltimore and Washington.

25 Q Now. Mr. Rahenkamp, you have gone over these maps

1 which are contained in P-1, which were contained in P-1.

2 I hand you this exhibit and ask you if you can identify that,  
3 if you would like to, you can resume your seat,

4 A Thank you, sir. This is a report on the community support  
5 systems—

6 THE COURT: That is as far as we are going  
7 to go today, gentlemen. At one-thirty I have to  
8 begin the criminal list. It is 12:45 now. I have  
9 been checking with the assignment clerk and there  
10 is not only a criminal list, but two municipal  
11 appeals this afternoon, pretrials also. I doubt  
12 there will be any time left this afternoon, if  
13 you want to stay around, you are welcome to, but  
14 I have to begin this criminal list at 1:30.

15 MR. HERBERT: We can resume on the 28th, then?

16 THE COURT: All right.

17 MR. SUTTON: Your Honor, I spoke to Mr. Sterns  
18 earlier, some of our witnesses will be on vacation  
19 in July and I understand Mr. Sterns says it is  
20 satisfactory if we take some of the witnesses out  
21 of turn, I believe, but that would be satisfactory  
22 also with us.

23 MR. HERBERG: Your own witnesses? Okay, fine,  
24 Mr. Sutton has expressed some concern earlier about  
25 making sure that certain people were here when Mr.

Rahenkamp direct  
1 Rahenkam testified and I take it you are alluding  
2 only to your own witnesses when you say that.

3 MR. SUTTON: That is correct, yes.

4 THE COURT: You can work out whatever time  
5 schedule you want to, I don't care, in or out of  
6 order, taking notes on each witness by folder  
7 I can put it together, I would like to finish  
8 with Mr. Rahenkamp first, though, at least his  
9 direct.

10 MR. SUTTON: Mr. Hilliard, the former Chairman,  
11 will be on vacation during July and Mrs. Neighbor  
12 who is the present Chairman of the Planning Board,  
13 will also be on vacation during July, so I thought  
14 possibly after we finish Mr. Rahenkamp's direct  
15 and cross examination, possibly that they could  
16 testify.

17 THE COURT: -You come back on the 28th and  
18 finish up with Mr. Rahenkamp on the 28th.

19 MR. SUTTON: I don't think there will be a  
20 problem on that.

21 THE COURT: How long will Mr. Hilliard be?

22 MR. SUTTON: I have no idea; I would estimate  
23 my direct examination will probably not be over  
24 two hours.

25 MR. HERBERT: What Counsel is suggesting is

1 that some of the defendant's case go in ahead  
2 of the conclusion of our case. Your Honor, as long  
3 as that doesn't affect any legal judgment as to  
4 burden which is controlled by Madison and Mt. Laurel,  
5 we would have no objection to that.

6 THE COURT: It is a non-jury case.

7 MR. CAIN: How much more do we have with Mr.  
8 Rahenkamp?

9 MR. HERBERT: I promised an hour and a half,  
10 I'm afraid to make a judgment but I would say on  
11 direct another 20 to 25 minutes.

12 MR. CAIN: All right.

13 MR. HERBERT: I apologize to the Court, but  
14 as you can see it is an extensive bit of material.

15 THE COURT: We are talking about a whole  
16 new village concept, you are not going to go  
17 quickly.

18 MR. HERBERT: Thank you, Your Honor.

19 THE COURT: I don't think we are wasting any  
20 time.

21 MR. HERBERT: Before we conclude today, I  
22 would like to move into evidence all the documents  
23 which have so far been testified to by Mr. Rahenkamp  
24 and for purposes of moving this thing along we  
25 are talking about P-55 -through, I believe, P-85.

1 THE COURT: That is a big gulp to take, we  
2 will handle that on the 28th when we come back.  
3 [Whereupon, the hearing was adjourned until  
4 June 28, 1977, at 9 a.m.]

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6  
7 I, Jacqueline Klapp, Official Court Reporter  
8 of the State of New Jersey, do hereby certify  
9 that the foregoing is a true and accurate trans-  
10 cript of the proceedings as taken stenographically  
11 by me at the time, place and on the date herein-  
12 before set forth.

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