

MLZ - Round Valley, Inc. v.

6/28/77

Clinton Twp Planning Bd

transcript of proceedings

witness

- John Rahenkamp

p 148
—

ML 0004328

1 A 19 4SEP1979

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUNTERDON COUNTY

r A 37

SEP 1980

L-29716 --74 P<VL>

A-2963-77

3 ROUND VALLEY, INC., :

4 Plaintiff, :

5 v. :

6 CLINTON TOWNSHIP PLANNING :
7 BOARD, et als, :

8 Defendants.

OPINION FILED
MAR 5 1980

9 June 28, 1977
Fleihington, N.J.

10 B e f o r e :

11 HON. THOMAS J. BEETEL, J.C.C.

FIRST COPT 0E1

12 A p p e a r a n c e s :

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

JAM 26 1979

15 FRANCIS SUTTON, ESQ.,
16 Attorney for the Township Committee.

TRANS. FILED

17 ROGER CAIN, ESQ.,
Attorney for the Planning Board.

Reported by:
Jacqueline Klapp,
Official Court Reporter.

20 FILED
21 SUPREME COURT

22 APR 24 1980

23 *Stephen W. ...*
24 VI
25 Clerk

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I N D E X T O W I T N E S S E S

DIRECT CROSS REDIRECT RE CROSS

John RahenkaiTip

(Mr. Herbert)

8

(Mr. Sutton)

80

(Mr. Cain)

120

E X H I B I T S

P-91 Id.

Clinton Township Zoning Ordinance

Fg. 9

1 MR.. HFKEERT: Your Honor, first of all, good
2 norning. Mr. Rahenkamp will lit the one area that
3 he left the last time because of the development
4 of: the '77 ordinance and as the relationship be-
5 tween the '77 ordinance, Your Honor, and certain
6 considerations that vere addressed to the Madison
7 case, specifically, least cost housing and cost
8 exactions.

9 THE COURT: We have covered that, exactions,
10 we have covered that in detail, pages 520, 522, 523
11 of the Madison case*

12 MR. KERBERT: Your Honor, if you will recall
13 we had attempted to do an analysis of the '77 ordinance
14 and Mr. Rahenkarep had some difficulty because he had
15 a preliminary draft, there was a new one being
16 drafted so he has now had the opportunity to get
17 the final ordinance.

18 THE COURT: We will redo that all over again?

19 MR. HERBERT: Your Honor, that wasn't done.

20 THE COURT: Look at the last page of your trans-
21 cript.

22 MR. HERBERT: What was done, he attempted to
23 get into the '77 ordinance, he talked about the
24 staging, for example, on the approvals, but he didn't
25 get into side lots, front lots, all of these require-

1 merits which we believe based upon the Madison case
2 are cost exactions. In other words, Your Honor, no
3 analysis has been conducted of the '77 ordinance
4 which is most relevant to this case.

5 Your Honor, if I may for the record on the
6 June 9 transcript specifically at page 17, line 16
7 I had indicated to Mr. Rahenkamp and to the Court,
8 "Mr. Rahenkamp, let's hold that because of the change
9 "in the zoning ordinance, I think over a four-day
10 period after these trials started I would like to
11 perhaps not consume a lot of time and I think it
12 •would be better if you proceed with other materials.*1

13 THE COURT: Let me see that transcript, please.

14 MR. HERBERT: Yes, Your Honor. Starting at
15 line 17, Your Honor.

16 THE COURT: Wasn't there a hearing after June 9?

17 MR. HERBERT Your Honor, we had Mr. Rahenkamp
18 who took the stand in late afternoon of June 9 and
19 proceeded through the evening session—I am sorry,
20 June 8 and proceeded through the evening session to
21 9 o'clock or so on June 8, and then on the next morn-
22 ing proceeded with further testimony up to about 1
23 o'clock which concluded, if Your Honor recalls, with
24 a complete description of the Round Valley project
25 with the various exhibits. At the beginning of June 9

1 as the transcript indicates, we had attempted to
2 do an analysis of the '77 ordinance but because it
3 was in a transitional stage in terms of promulgation
4 we had asked the Court generally if we could go over
5 that at a later date when Mr. Rahenkamp had prepared
6 further materials. That has now been done, Your
7 Honor* and we would like very much to have Mr. Rahen-
8 kamp testify about his analysis of the '77 ordinance.
9 He had talked earlier, Your Honor, about the mobile
10 home provisions and so forth which we will not cover
11 but there are a lot of other aspects of the '77
12 ordinance which are most important for our case,

13 THE COURT: I have notes of Mr. Rahenkamp going
14 through reference to page 51 of the Madison case.

15 MR, HERBERT: That is correct, Your Honor.

16 THE COURT: And then going into Exhibit P-79,
17 we talked about trade-off and then P-78 and P-79.

18 MR. HERBERT: P-78 through P-85 are the large
19 charts of the Round Valley proposal.

20 THE COURT: Then when he got into exactions
21 I started with the zoning and subdivision ordinances,
22 page 53, the land use ordinance, the preliminary
23 ordinance of December of '76, revised May of '77.
24 We talked about page 27 thereof, section 705.2b,
25 200 feet setbacks, C.R. district. He talked about
section 706.6 in which residential cluster CJ-4.

1 We talked about P-68, a letter of Rahenkainp of
2 3/11/77, talked about site plan approval. Sorreone
3 cited the case of Tviccolai v. V.'ayne, then you vent
4 through the filing foes, the chart, P-6B. Madison-
5 Mt. Laurel, Township of Denville, all prepared at
6 different stages and we then went throueh-I have
7 the fact that we went through on June 15, Mr.Cain
8 wasn't here at 9:50 a.m. on Wednesday.

9 THE COURT REPORTS?*: June 9 was the last time.

10 THE COURT: June 15, 1977, Mr. Cain was not
11 hero, at 9:50 a.m. Yes, you are right, it is 9:50
12 a.m., that is how it begins, you are riant, it is
13 June 9.

14 MR. HERBERT: Yes, Your Honor, that was June 9.

15 • THE COURT: Well then, it must have been the
16 night session of the night before where we covered
17 all this material.

18 MR. HERBERT: Your Honor, again, what we did
19 cover on the evening of June 8-

20 THE COURT: Do you have that transcript?

21 MR. HERBERT: Yes, Your Honor, we just received
22 it this morning.

23 THE COURT: That is our problem, I don't want
24 to redo what we already did. Let me see the one of
25 June 8 very quickly.

1 Now,, page 79, Mr. Rahenkamp, I take it from
2 your'earlier testimony that you have a copy of the
3 official report of the Madison Oakwood case and
4 the answer was yes. In that case is there any
5 allusion to a term called least cost housing, yes,
6 and then he starts.

7 MR. HERBERT: Your Honor, I think the confusion
8 is this, Mr. Rahenkamp went over the Madison decision
9 in great detail as far as least cost housing is
10 -concerned, and other aspects cost exactions, what
11 has not been done.has been a relationship between
12 the Madison decision and the 1977 ordinance which
13 was Sbill in a state of development as far as actually
14 being printed at the time of his testimony before
15 we broke and as page 17 of the June 9 transcript
16 indicates-we had agreed to break off that analysis
17 which had begun because of the confusion of the
18 various documents and allow Mr. Rahenkamp to testify
19 along those lines when he returned to the stand
20 today. And that is what I am going to be getting
21 into. There was some allusion to the mobile home
22 district, Your Honor, there was some allusion
23 generally to the unavailability of least cost hous-
24 ing under the 3977 ordinance.

25 THE COURT: Here is what I am going to do, any-

1 thing on 50[^].6 has already been covered, anything
2 you covered on 705.2 has already been covered, I
3 -am .not going to redo v-hat we have already done,
4 otherwise we have wasted an entire night session,
5 I will hot go back and redo what has been done.

6 • Let's pick it up from there. VThere is my copy
7 of this, then, the June 9 transcript?

8 THE COURT-REPORTER: That was transcribed and
9 filed with the county clerk by me personally.

10 ^ THE COURT: And what about the June 8 transcript?

11 MR. HERBERT: That was a Holly Johnson, Your
12 Honor.

13 THE COURT: Do you want to call and see if
14 they have that and if they have anything else over
15 there pertaining to this, please send it over.

16 Let's move along quickly, gentlemen. AreyDU
17 ready for cross eMamination of his expert?

18 MR. CAIW: On the one we have got so far.

19 THE COURT: How much longer will you be on his
20 direct?

21 MR. HERBERT: No more than an hour.

22 THE COURT: Try to make it 45 minutes, move
23 right along.

24 Mr. Rahenkamp, you are sworn, you have all of
25" your charts and bulletin boards and you can feel free

1 anytime during your testimony to walk around the
2 witness stand and go to the charts, do whatever
3 you can to expedite this,

4 . THE WITNESS: Thank you.

5
6 J O H N R A H E N K A M P , having been previously sworn,
7 resumes the stand and testifies further as follows:

8 DIRECT EXAMINATION BY MR. HERBERT (continued):

9 Q Mr. Rahenkamp, before you begin your testimony,
10 is there any chart you would like to have to assist you?

11 A I don't think we need any yet.

12 Q Mr. Rahenkamp, when you were last testifying we
13 were getting an analysis of the 1975 ordinance, '77 ordinance
14 as it concerns the facts addressed in the decision. As far
15 as least cost housing and exactions, but I don't have to go
16 over that as the Court already indicated.

17 Now, in the intervening period at our direction, did you
18 have an opportunity to analyze the -final 1977 ordinance?

19 A Yes.

20 Q And did you synthesize that 1977 ordinance with
21 earlier ordinances so as to prepare a composite of the entire
22 existing zoning ordinance of the Township of Clinton?

23 A Yes. If you will recall we had a problem because we had
24 an earlier one and we hadn't been able to put it together
25 so we essentially cut and pasted and put the ordinances together.

1 So we could look at them consistently.

2 'Q All right.

3 j MR. HERBERT: May I have this document marked
4 P-91?

5 [Exhibit P-91, consisting of the current Clinton
6 Township zoning ordinance, marked for identification.]

7 MR. HERBERT: Your Honor, only this morning
8 I gave a copy of this document to Counsel but I
9 represent to the Court that there is nothing more
10 than--this is nothing more than a synthesis of public
11 documents, it is not an expert's report.

12 THE COURT: We will look at it, mark- it for
13 identification at this point.

14 MR. HERBERT: Your Honor, with the consent of
15 Counsel, I would like to give a copy to the Court
16 so that tbe Court may follow some of the testimony.

17 Q Now, Mr. Rahenkamp, I show you what has been marked
18 as P-91 and could you describe what that document is, please?

19 A Well, this is a composite of the ordinances, what we
20 wanted to do was look at it in terms of Madison, in terms of
21 two things, one is how were the procedures cleaned up related
22 to the Municipal Land Use Act, the municipal land use law,
23 and as well, what were the exactions by either time delay or
24 extra cost because of the various code requirements. So we
25 went section-by-section and I will try to do it as quickly as

1 possible:

2 ¹ We found some interesting changes or adjustments that
3 at least are worth commenting on. On the first page, section
4 102.4, the municipal land use law, it says that the township
5 plans do not conflict with the development of the neighboring
6 municipalities and county and the state as a whole, and that
7 is from section 40:55D-2(d) for the municipal land use law,
8 and our comments were that in fact the municipal plan does
9 conflict with both the state and county plans.

10 Q- . How does it so conflict? A Well, the county
11 plan showed different population growth rates than the town-
12 ship has accepted. It shows this is our area particularly,
13 it is a high intensity development area and it doesn't do that.
14 As far as the state is concerned, the state shows in their
15 growth plan that this is a growth area.

16 Q And did you ever have an opportunity to review a
17 document which you testified earlier about called a State
18 Development Guide? A Yes.

19 Q And that was promulgated by whom? .

20 A The State Department of Community Affairs. -

21 Q And what did that guide indicate?

22 A It indicated that the corridor generally following '78
23 is a growth corridor anticipating growth.

24 Q And is Round Valley site in that corridor?

25 A Yes, it is.

1 Q All right. Would you proceed, please?

2 A Section 102,7 there is an interesting change in that
3 the municipal law says in section 40:5-D-2 (g), it says all
4 New Jersey citizens as those whose needs should be satisfied,
5 the change has been to say that only the township citizens'
6 needs shall be provided for.

7 THE COURT: Let me check that, 102.7. Yes,
8 next to the last line, meet the needs of all township
9 citizens. You say that is a conflict with-

10 THE WITNESS: The state, the municipal land use
11 law says it shall be all New Jersey citizens.

12 THE COURT: You say that is B-2(g)?

13 THE WITNESS.* Yes.

14 THE COURT: That is the reference?

15 THE WITNESS: Yes.

16 THE COURT: The other reference is **102.4?**

17 THE WITNESS: Yes, sir, it says the town plan
18 shall not conflict with the county or the state plans
19 as a whole.

20 THE COURT: You see that as a conflict of
21 40:55-what?

22 THE WITNESS: D-2(d).

23 THE COURT: D-2(d)?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Go right ahead.

1 A Section 102.11 says that the town will encourage planned
 2 developments, et cetera, and that is from the municipal land
 3 use law, 40:55D-2(k), and our contention would be having
 4 read the code again, is there are no procedures set up for
 5 planned development and in fact those that are set up are
 6 contradictory to the plan--the municipal land use law. The
 7 same thing would be true of section 1.13 which is to encourage
 8 the .coordination of the various public and private procedures.
 9 Our reading of the code is that in fact the coordination is
 10 ad hoc at best and rather casual.

11 Q Excuse me, you mean 102.13? A 102.13, yes,
 12 and the reference in the municipal land use law on that
 13 section is 40:55D-2--if we go back two pages, page 2 is okay,
 14 on page 3 on common open space on the definition of it in
 15 the municipal land use law 40:55D-3, there is a definition of
 16 open space, it says a fairly substantial change from that
 17 definition to the definition in the municipal ordinance.

18 THE COURT: What section of the ordinance?

19 THE WITNESS: I don't think the definitions
 20 are separately numbered.

21 Q That would be Article 2 generally, would it not,
 22 the definition section? A Oh, yes, the definition
 23 section, and we are on page 3, common open space is the second
 24 paragraph down.

25 THE COURT: Which one are you quoting here,

1 which one is the ordinance and which one is the land
2 use law, I can't tell from this.

3 THE WITNESS; Khat I am saying is that the
4 definition in the code, in the municipal code is
5 different than that which is in the municipal land
6 use law.

7 THE COURT: I understood that, but what is this
8 common open space which in typing here, what is
9 that taken from, there is no source for that.

10 THE WITNESS: I have no idea what it is taken
11 from, it is not taken from the municipal land use
12 law.

13 THE COURT: We are not comunicating.

14 MR, HERBERT: Yes, Your Honor. To clarify,
15 this entire document is the present zoning ordinance
16 of the Township of Clinton, there is nothing here
17 from the land use statute; is that correct, Mr.
18 Rahenkarap?

19 THE WITNESS: No portions of it have been
20 taken from municipal land use law and incorporated
21 into the code.

22 THE COURT: But my question-

23 MR. HERBERT:- This document is the official
24 Clinton Township zoning ordinance,

25 THE WITNESS: Yes.

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THE COURT: Some parts of it are typing and some parts are photostatic, I would like to know where the definition comes from, where is the source on page 3 of the typing part, common open space?

THE WITNESS: I see. It is from the land use ordinance of the Town of Clinton.

THE COURT: Is it in the definition section?

THE WITNESS: In the definition section.

THE COURT: So I can say common open space where it is typed and put after it Clinton ordinance, Clinton Township ordinance?

THE WITNESS: Yes.

THE COURT: What is then the photostatic small printed part conditional use?

THE WITNESS: That is simply another definition coming out of a newspaper copy of one of the other pieces. In other words, we have consolidated together three or four ordinances, some of which were in the newspapers.

THE COURT: That is why I don't know what is coming from what, it is very confusing.

MR. HERBERT: Your Honor, this is what I was attempting to get into before, on June 9 there was some confusion because the 1977 zoning ordinance-

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THE COURT: Let's not confuse it any further,
I want to know where this material is coming from.
I can't make any sense from this exhibit.

Let's see if we can get the witness to tell us
where he is getting it from, put something up on the
board that we can look at where he gets it with
and where he gets it from, we are not making any
progress.

MR. HERBERT: Yes, Your Honor.

Q Mr. Rahenkamp, what does that document marked as
P-91 consist of and how is it compared? A It

consists of a consolidation of different pieces of code which
were adopted by Clinton Township over about a four or five
or six-month period of time. Some of it was in the newspaper
copy which is in the smaller type, was adopted earlier on.
It was then amended as the hearings proceeded, et cetera.
It was amended and therefore the larger printing because it
had not been published in the paper, I assume, therefore this
is the form we are given by the town, so we consolidated to-
gether that which was approved six or eight months earlier-
with that which was then adopted later by the town.

Q Would it be correct to say that despite the different
typing and so forth that this is now a synthesis or a composite
of the existing Clinton Township zoning ordinance?

A As best we can reconstruct it, yes.

1 THE COURT: Can somebody put it up on the
2 board so we can look at it and try to relate to this
3 document to the present ordinance? Put it up on
4 the board, the proposed ordinance, it is only re-
5 commended, there is no existing one. Are you talking
6 about the one in effect or the one that will come
7 in effect?

8 MR. HERBERT: The proposed,

9 THE COURT: Put the proposed ordinance up on
10 the board and compare this composite with what is
11 proposed and not following this by going from what
12 goes to what so we know if we are looking at the
13 old ordinance, the proposed ordinance, or what we
14 are doing.

15 MR. CAIN: That is my question, too, Your Honor.
16 If their book here is now law or what-

17 THE COURT: I can't follow it.

18 Do you have a newspaper copy of the ordinance?

19 MR. CAIN: You are talking about the new pro-
20 posed zoning ordinance, I don't think it is published
21 yet.

22 THE COURT: Not published yet?

23 MR. CAIN: It has been recommended to Counsel
24 and it has not been published.

25 Q Mr. Rahenkatap, I show you what has been marked as

1 P-53 which is the proposed amendments to the zoning ordinance
2 of the Township of Clinton and I show you further the document
3 which had been marked earlier as J-4 which is the use
4 ordinance dated December 1976,

5 A Right.

6 Q Are you saying that the composite which has now
7 been marked as P-91 is a synthesis of those two documents?

8 A Yes.

9 THE COURT: Let me have those two, please, to
10 see if I can follow. I assume you both have copies
11 of these, P-53 and J-4?

12 THE WITNESS: The reason it was necessary to
13 do that is without consolidating them together they
14 were referring back all the time and you didn't
15 know what the devil you were working with so you
16 had to put them together.

17 THE COURT: You are ahead of me, I have to have
18 a frame of reference, I don't have a frame of
19 reference at this point. You are looking at page 3
20 of your composite, page 3 of your composite, now
21 you have a common space area, do I then go to J-4
22 after this with the definition which says common
23 open space shall mean that open space shown on the
24 reported subdivision or site plan or common use of
25 or more dwelling units—that is where the common

1 open space in J-4 stops?

2 THE WITNESS: Yes.

3 THE COURT: Now you go on with yours and say
4 excluding streets, roadways, parking areas, driveways
5 or areas in which these buildings are located and-

6 THE WITNESS: I am not comparing the two. What
7 we have done is if there is a revision to a proposed,
8 then the original one is obviously repealed or changed,
9 therefore that has not been included. In other words,
10 if there was an old open space definition but any
11 amendment is changing that, that took precedence,
12 so we work from that and then we compare that to
13 the new municipal land use law.

14 THE COURT: Then we go to the proposed which
15 is F-53?

16 THE WITNESS: Right.

17 THE COURT: Common open space, shall mean that
18 open space shown on the subdivision or site plan
19 of a common use of two or more dwelling units ex-
20 cluding streets, roadways, parking areas, driveways
21 and areas between where these buildings are located
22 and the residential density is calculated, that
23 reads the same as your typing area here.

24 THE WITNESS: Yes, in fact we took it straight
25 out of there and put it in here.

1 THE COURT: I am beginning to understand what
2 you did. You took this definition and then you
3 photostated it so that it would appear to see the
4 large type that is the photostat taken of P^53-

5 THE WITNESS: Yes, sir.

6 THE COURT: Where it is in printing I gather it
7 is the old definition under J-4.

8 THE WITNESS: Yes, sir.

9 THE COURT: Is that it?

10 THE WITNESS: Yes, exactly.

11 THE COURT: Now we have got it. That is what
12 I wanted to know. That is the source of it. I
13 couldn't follow. I thought I was in never-never
14 land. Now P-53 is the other situation, J-4 is
15 printed.

16 THE WITNESS: Correct.

17 THE COURT: Fine.

18 MR. HERBERT: Thank you, Your Honor.

19 THE COURT: At least I know I will not classify.

20 BY MR. HERBERT:

21 Q. Mr. Rahenkamp, you have covered some aspects of your
22 analysis of page 3, please don't repeat what you have covered
23 already and perhaps we can move on to those items.

24 A Agreed. Okay. Did we make the point on the open space,
25 what I am saying is it is different and changed from the

1 municipal land use law in 40:55D-3 and I don't think it is
2 changed for the better or at least it is not changed in any
3 logical way!that I can see.

4 Q Why not? A Because the density calculations
5 are not there and in fact in the state municipal law it says
6 the open space may contain such complementary structures and
7 improvements as necessary, et cetera, and that has been
8 accepted from this paragraph. That is all.

9 THE COURT: The language common open space
10 may contain such complementary structures and im-
11 provements as are necessary and appropriate for
12 the use of a builder of residence and owners of
13 the development. That is not here?

14 THE WITNESS: Also it adds the language of the
15 net residential calculated, I don't know what that
16 means.

17 THE COURT: Definition in this ordinance is
18 entirely different than the definition in the land
19 use law.

20 THE WITNESS: Yes, sir.

21 THE COURT: If you read the land use law it
22 begins common open space means open space within
23 or related to a site designated as a development,
24 designed and intended for the use and enjoyment of
25 residents by the owners of the development, common

1 open space may contain such structures and so forth.
2 The proposed land use law 53 says common open space
3 shall mean that open space shown on the reported
4 subdivision or site plan with a common use of two
5 or more availing units, streets, roadways and so
6 forth, it is a different definition than 40:55D-3.

7 THE WITNESS: And in the proposed ordinance
8 and that in turn is different from the former
9 ordinance J-4 or perhaps the ordinance which is
10 still in effect, J-4, F-53 is only proposed, so
11 that there are two different definitions both of
12 which are in conflict with the current open space
13 definition of the state statute.

14 THE COURT: That is the point?

15 THE WITNESS: Yes, sir.

16 THE COURT: Does that go all the way through
17 all of these, the synthesis in turn shows that all
18 the way through?

19 THE WITNESS: I will show it where it is
20 appropriate, most of it is, many sections are con-
21 sistent with the state land use law.

22 THE COURT: Will we do this section-by-section?

23 THE WITNESS: We will do it fairly quickly if
24 we can get it moving.

25 THE COURT: Can we come to the major differences,

1 . the miniscule ones I am not interested in. What
2 are the major differences in the land use law?

3 MR. HERBERT: Also by offer of proof we will
4 hit the major differences in the land use law but
5 also certain aspects as to the Kadison case which
6 we would like to be permitted to pursue, I promise
7 you we will try to make this expeditiously.

8 BY MR. HERBERT:

9 0 Mr. Rahenkamp, will you proceed, then, with that
10 general admonition? A If we look on page 7 under the
11 definition of planned unit development and planned residential
12 development in the municipal land use law, 40:55D-6, they
13 talk of 10 acres rather than 50 acres, and for PUD and for
14 PRD 5 acres compared to 50 acres in the ordinance, I would
15 say that that is an exaction to the extent that it requires
16 large areas, and the way the zoning classifications have been
17 applied to the land use plan of the township, those 50-acre
18 parcels are very hard to come by.

19 Can I proceed?

20 THE COURT: What you are saying is that they
21 have by ordinance 10 acres of the planned use de-
22 velopment contiguous, planned unit residential
23 from 5 acres to 50 acres contiguous?

24 THE WITNESS: Yes, sir.

25 0 The next piece down on preliminary approval in the

1 municipal land use law in 40:55D-6 it says that the final
2 approval after specific elements of the development plan have
3 been agreed upon by the Planning Board and the applicant and
4 the applicant has been dropped out of the municipal code, the
5 Clinton Township code, which means that the Planning Board
6 would simply make the determination, that is an extraordinary
7 change.

8 THE COURT: Where is that now?

9 THE WITNESS: That is under preliminary approval
10 on the same page, page 7, preliminary approval,

11 Q By the way, the provision in the municipal land use
12 statute, does this deal with the concept of contract zoning?

13 A I think that this goes to that point, yes.

14 Q And what you are saying is that the zoning ordinance
15 does not allow for that concept of contract zoning?

16 A Well, I am saying that it has reinforced the position of
17 the Planning Board but eliminated very key language saying
18 the Planning Board and the applicant have to come to an agree-
19 ment, they simply eliminated and the applicant.

20 THE COURT: All right'.

21 A Page 11, according to the municipal land use law, 40:55B-8,
22 reasonable fee may be charged, we reconstructed the fee
23 structure, it would cost \$450,000 in fees over the ten years
24 to proceed with our application. That is an exaction. It is
25 higher than anything we have seen.

1 O 7nd Mr. R&henkamp, you provided certain testimony
2 about that aspect the last time you were here?

3 A Yes, Bir,

4 Q Go ahead.

5 THE COURT: Let me try and find what exact
6 situation you are referring to. Are you talking
7 about section 308.6, the inspection fees?

8 THE WITNESS! I am talking about 303.3, sir,
9 development applications, and in the various fee
10 ranges that I have-

11 THE COURT: That is not on page 11, is it?

12 THE WITNESS: It is on page 11.

13 THE COURT: Page 11 begins with 304.6, doesn't
14 it?

15 THE WITNESS! Yes, and the development appli-
16 cations is about three-quarters of the way down
17 the first page, down the page in the first column,
18 308.3.

19 THE COURT: 308.3?

20 THE WITNESS! Yes, sir.

21 THE COURT: Let me see if I have this item.

22 THE WITNESS! And I simply added together the
23 fees on the project and that would be \$4 50,000
24 approximately. Obviously that depends on the extras.

25 THE COURT: And you compare that with what

FORM 740

1 section of the law, of the municipal land use law?

2 THE WITNESS: 40:55D-8. '

3 THE COURT: D~8? That particular section
4 doesn't specify, the exact fees, does it?

5 THE WITNESS: No, it doesn't. I am simply
6 saying that they should be reasonable.

7 THE COURT: "Every municipal agency shall adopt
8 and may amend reasonable rules and regulations not
9 inconsistent with this act or with any applicable
10 ordinance or the administration of its function
11 and B, a municipality may, under ordinance, provide
12 for reasonable fees to be charged one applicant
13 for review of an application for development by
14 a municipal agency and an appellant pursuant to
15 section 8,"

16 THE WITNESS: In the context of Madison, we
17 are to do least cost related to health and safety
18 and I have no problem with reasonable fees tied to
19 some health, safety requirement or to performance
20 standards or whatever, but the \$44,000 a year over
21 10 years, that seems a fairly extraordinary number
22 and an extraordinary amount of fees to be given
23 to a town to assess several hundred units each year.
24 I have never seen units that high. That is an
25 exaction.

1 A In the next section, just above inspection fees, they
2 have eliminated the appeal procedures from 40:55D-17 and they
3 just haven't included it. At least that I can find,

4 THE COURT: Where is that?

5 THE WITNESS: I am following just above inspection
6 fees and I was looking for an extension over the
7 appeal procedures tied to the state law, tied to
8 40:55D-17 on page 20 of the municipal land use law
9 and I don't see any of that language anywhere.

10 THE COURT: Well, it is my understanding that
11 the governing body doesn't have to designate them-
12 selves as an appeal body, do they?

13 MR. CAIN: Only on variances from the Board of
14 Adjustment. D variances, the rest are all options.

15 THE COURT: That is what I thought, then this
16 is optional.

17 MR. CAIN: Correct.

18 THE COURT: 40:55D-17 is an optional procedure
19 which they have to adopt by ordinance to accept the
20 option if they do not accept the option then I assume
21 it is still a prerogative writ proceeding where the
22 Court becomes the appellant body. So the Court,
23 there is still appellant relief provided but the
24 option is exercised.

25 MR. HERBERT: The point here is where there was

1 an option given to the municipality which would
2 afford some due process to eliminate the cost of
3 going to court which in turn are exactions themselves,
4 those options were not adopted particularly in this
5 case by the municipality.

6 THE COURT: It is one of the courses I took,
7 they advised municipalities not to exercise these
8 options otherwise they would become courts within
9 courts and they decided not to do it, therefore
10 they left it discretionary.

11 MR. HERBERT: Your Honor, I only want to point
12 it out.

13 THE COURT: I know what you are pointing out
14 but if they haven't exercised the option, they don't
15 have to exercise the option, that is still in their
16 power to legislate. I still believe that.

17 MR. HERBERT: Fine, Your Honor.

18 A The third column on the same page in the powers of the
19 Planning Board, section 403, basically two powers were left
20 out that are notable,, one related to the official map
21 40:55D-25-3 in that, that has not been listed as a power of
22 the Planning Board and capital improvements, it is notable
23 only because the town now has no municipal debt. They have
24 zoned PUD areas, they are now either not served by sewerage
25 or served in a very difficult way and have declined to join

1 the abuting town municipal sewer services? therefore without
2 an official mep and without capital improvements it is im-
3 probable that the services will be brought to those sites
4 and the capital improvement citation at 40:55D-25-5 and they
5 have simply been left out.

6 THE COURT: Let's look at the official r.ap
7 section, what section did you say it is?

8 THE WITNESS8 It is 40:55-25-5—it is on page
9 17 of the Municipal Pl&nnig Act.

10 THE COURTJ Under procedures of the Planning
11 Board?

12 THE WITNESS: Yes, and they are shall powers.

13 THE COURT: Yes, the Planning Board shall
14 follow the provisions of this Act and shall in
15 accord exercise its power 5n regard to—well, they
16 incorporate, however, they say the Planning Board
17 shall be governed by and shall have the powers
18 as are conferred upon it by PL-1975291. More speci--
19 fically, the Planning Boardshall have authority to,
20 they already brought it in by reference, and they
21 shall specifically, they brought it all in by
22 reference.

23 THE WITNESS: I understand, however thereafter
24 they left three out or four out of the six that
25 have listed powers and they simply left out the

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official nap of capital improvement program. It just seemed notable to me because they obviously aren't committing themselves to proceed on the improvements or part and make the PUD a reality. If they had left it all out I would say okay, that is consistent as well, that is no problem.

MR, CAINt I know this is not the time for our turn but if you referred to 403,5 I think at the end it will pick it up again.

THE COURT: I think it breaks the entire object of the statute, I mean, your point is taken but you are required by the statute to take those powers, they say they embrace them, true, they left these two to come out and bring it back. It is a question of draftsmanship but it is there.

THE WITNESS: Page 12, the third line across on the application contents, they talk about sketch plats, sketch subdivision plat requirements, et cetera. In the first place, I don't believe there is any enabling act in terms of that if we check with 4Q:55D-38 it is the third process that Madison cited on page 35-A. I am sorry, that is the wrong page, it is talked to on page 508 in Madison. The lengthy three-stage approval process, so there is no provision for sketch plat application process

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that I can find any longer.

THE COURT: I don't follow you. You are on page 12 under the third column?

THE WITNESS: Yes, sir, it says application contents.

THE COURT: 601.2?

THE WITNESS: Yes, sir, talking about sketch subdivision plat and sketch plan development plat.

THE COURT: And you say because it goes to the sketch subdivision preliminary subdivision plat and final subdivision plat that those are the three steps?

THE WITNESS: Yes, sir.

THE COURT: But Madison says it is too limited, right?

THE WITNESS: Yes, so basically all of the sketch plat procedures should be simply eliminated, they are not enabled in Madison to address them.

THE COURT: Let's look at 40:55 for a moment.

THE WITNESS: Okay. That is on page 35-A, I think.

THE COURT: 40:55D-37, is that what you are talking about?

THE WITNESS: No, D-38 I am talking about, paragraph A including standards for preliminary

1 and final approvals there is no language I can find
2 in the municipal law anywhere that allows site plan
3 review. You can do site plan review and subdivision
4 review, you can do final review, but no sketch plat
5 review.

6 THE COURT: Under the old law we did have such
7 a procedure.

8 THE WITNESS: That is right.

9 THE COURT: I am wondering how a draftsman
10 -approaching one of these situations would be sure
11 that the ordinance contained provisions insuring
12 consistency of layout or arrangement of the land
13 development within the requirements of the zoning
14 ordinance without some type of a map.

15 THE WITNESS: You will get maps on preliminary
16 plat filing, that is the point. What was happening
17 is that they extended a sketch plat approach first,
18 it went through review, et cetera, and then started
19 with preliminary plat. The preliminary plat is
20 the only thing that required hearings and findings
21 of facts and substantial evidence. The other was
22 an ad hoc procedure and in most cases simply extended
23 the time. In most cases that usually wasn't covered
24 by the statutory time limits so the sketch plat
25 application ended up being an extended ad hoc pro-

1 ceeding, that is why it was struck down, I suspect.

2 THE COURT: But you said to strike out all
3 of this.

4 * THE WITNESS! Yes, sir.

5 THE COURT: Of 601.2,

6 THE WITNESS: No, just the sketch plat require-
7 ments, I have no problem with the preliminary or
8 final plat applications, I only say that the sketch
9 plat application should simply be struck from the
10 ordinance.

11 THE COURT: You say they should do a two-step,
12 not a three.-step?

13 THE WITNESS: Yes, sir, and that is consistent
14 throughout the entire ordinance.

15 THE COURT: All right.

16 BY MR. HERBERT:

17 Q Mr. Rahenkamp, do you want to proceed on the major
18 points? A Yes. If we check on page 13, section
19 602.3 again it is a sketch of the planned unit development
20 plan development plan, that is the middle column. That also
21 should be struck. There is no basis for doing that.

22 THE COURT: And the authority for that statement
23 would be again this 40:55-38?

24 THE WITNESS: A combination of that and the
25 Madison citation on page 508 related to the lengthy

1 three-stage approval process,

2 Q 2-r. Rahenkamp, do you want to proceed?

3 A On the "whole preliminary 601.4 preliminary site plan
4 site relates to planned development, if you go down about
5 seven lines it talks about substantial—if the Planning Board
6 requires substantial amendments to the layout, et cetera, it
7 doesn't tie to the municipal land use law 40:55E-45 primarily
8 on planned development to the point of requiring the Planning
9 Board to generate findings of fact. In fact, a difficult
10 thought, the whole thing is this ordinance does not tie with
11 the planned development procedures, i.e., findings of fact,
12 vesting, which is in 40:55D-39(d) and the whole prospect
13 of being able to contract zones over the ten years of the
14 project.

15 As a matter of fact in the timing, they have not put in
16 the staging approach of the PUD and put in the conventional
17 preliminary plat that had standing for three years, et cetera.
18 And therefore it is improbable that a PUD could proceed with
19 any kind of security over the length of time required. We
20 don't get cash flow, in fact, until our fourth year, so it is
21 critical that the timing in this staging is incorporated.
22 So I am saying that the substantial amendment in this whole
23 section, if you look at section C, preliminary approval shall
24 except provided. But on the exhibit from a three-year period
25 from the date of preliminary approval, that simply is not

1 adequate for a planned development and that is certainly in-
2 consistent with our application and there siraply is no way
3 that you can duplicate these under that kind of a regulation
4 and it is inconsistent with the municipal land use law.

5 THE COURT: Thereforo under this there aren't
6 going to be any PUD's in ten years?

7 TEE WITNESS: Under this ordinance/ no, there
8 is no practical way to carry them out.

9 If you look at the next column in item 4 down
10 at the bottom of that iteys comprehensiveness of
11 the development, it says provided that such design
12 standards have been revised, said revised standards
13 will govern this. Essentially that eliminates the
14 vesting, it eliminates the protection one would have
15 with the PUD application of being held by those
16 standards thereafter. The references in the muni-
17 cipal land use law are 40:55D-39(b), plus 40:55D-45(e)..
18 Both of which talk to the point of the staging and
19 the timing and the vesting.

20 THE COURT: D-45(e) and what was the other one?

21 THE WITNESS! 39(b) and 45(e).

22 TKE COURT: Now this column, where are you now,
23 I am trying to follow you?

24 THE WITNESS: I am up on the top of the column
25 just above (b), the latter two or three lines of the

1 paragraph.

2 .. THE COURT: in the comprehensiveness of the
3 development provided if the designs stated were
4 revised such revision shall-r-you say that is in
5 conflict with the vesting?

6 THE WITNESS: Yes, sir. In other words, that
7 they changed their standard, the plan has to be
8 changed as well, there is no way you can live with
9 that. Further down the page installation of im-
10 provements and guarantee agreements, there is an
11 extraordinary section in that it says that prior
12 to filing for a final application for a final sub-
13 division or site plan approval, the applicant shall
14 have installed the improvements required with some
15 exceptions, but only primarily sidewalks and some
16 minor improvements. What it means is that based
17 upon a preliminary plat, you are supposed to go in
18 and make your improvements prior to making the pro-
19 ject financable. I have to take my final plat
20 approvals in order to get the thing financed, in
21 order to have my building permits, et cetera. There
22 is no way in the world you can get secure money
23 with this kind of a paragraph involved. It is
24 applicable perhaps for single-family developers
25 where they have to put in some road or curb or

something on a road but there is no way in the world that this is deliverable in any major development.

BY MR. HERBERT:

Q Mr. Rahenkarop, you are referring for the record to section 602.6, are you not? A Yes, section A of that. In other words, you are supposed to build before you get a site plan approval or final approval. That is unbelievable. You are also supposed to do the offtracb improvements prior to filing for the final submission of plat approval, that is unbelievable. You have to have the final, in other words, in order to proceed.

THE COURT: But that takes you full circle, if you have to build before you can file, then you have to have a building permit before you can build, one cannot do anything, .

THE WITNESS: It is a catch-22, exactly.

THE COURT: I got that feeling on the next page, final column, final plat and final site plan, 602.7. Page 14.

THE WITNESS: Yes.

THE COURT: And what column?

THE WITNESS: Middle column, 602.7. I am looking at item B, it says on the bottom it shall schedule a hearing of the application following the

??

1 procedures of 303 which we refer back to, and then
2 if you look at C, it says the Planning Board shall
3 require substantial agreement. I am sorry, if the
4 Planning Board requires any substantial amendment
5 to the layout improvements proposed, et cetera,
6 basically what this does is give total discretion
7 to the Planning Board without requiring the findings
8 of fact and the various statutory requirements tied
9 to 40:55D-50. This is the same catch-22 game again
10 and in fact in the final plat, in the final site
11 plan review, there is no hearing required under
12 >
13 40:55D-50 unless there is a deviation from the
14 preliminary approved plan, so there is no hearing
15 required at all in the final plats.

16 THE COURT: Under the proposed ordinance.

17 THE WITNESS: There is no hearing required under
18 the municipal land use act, it has been added in
19 here as an additional step and there is simply no
20 reason for it. In other words, it says the Planning
21 Board shall schedule a hearing of the application
22 following procedures, et cetera. There is no hear-
23 ing required on the final plat unless it deviates
24 from the preliminary of that which is approved.

25 On the third column on the same page there
is language about the sketch plat, 603.1. We think

1 all of that should be struck,

2 BY MR. HERBERT:

3 Q Can you explain why you believe this should be struck,
4 please?

5 A Because the sketch plat procedures are
6 not enabled or are in exaction simply by taking more time
7 there is simply no framework for that procedure.

8 THE COURT: You will notice there for the
9 record that 603.1 again is the printed typed
10 situation?

11 THE WITNESS: Yes.

12 ^ THE COURT: And is the-

13 THE WITNESS: What number, 602.1?

14 THE COURT: 603.1, I am looking at your book.

15 THE WITNESS: Yes, sir.

16 TRE COURT: It is part of J-4, on page 2 there-
17 of, column' 2. So therefore it is not affected, I
18 gather, by the proposed land use ordinance.

19 THE WITNESS: I don't think so.

20 THE COURT: And it comes from the December 1976
21 land use ordinance.

22 THE WITNESS: Yes.

23 THE COURT: It looks very similar to the old
24 ordinances under the old 40:55-1, very similar,
25 it looks like the oldboiler claim taken out of the
old 40:55-1 which is seen in the old Madison and

lit. laurel.

THE WITNESS: Yen, that is true. F&ge 15, I read over the procedure several times for a preliminary plat, what is missing is-

Q For the record, is there a section number to that?

A No, because there is no section.

Q Is it 603.3? A 603.2 is the preliminary plat procedure.. What is missing is there is no procedure for planned development preliminary plat tied to the regulated state code with 40:55D-39 or 55-45. That is the densities, time vesting and so forth,

THE COURT: Well, 40:55D-39 begins at 29.1 discretionary contents of ordinance.

THE WITNESS: Yes, agreed. However, it would be my conclusion that it talks in item C of the provisions for planned development that if one adopts a planned development thereafter that items 1 through 6 must be there as part of it and can't themselves be discretionary as well. Otherwise it circumvents the original PUD enabling act from •67. So you can't call it a PUD or planned development unless you have incorporated items 1 through 6. If you could, there simply isn't going to be any planned development and I don't believe that they are discretionary if you do planned development.

THE COURT: Let's go back a moment, please, for my guidance- The planned unit development act of '67, isn't that incorporated in the new 40:55?

[THE WITNESS: Through the language of items 1 through 6 it is reasonably followed, I might say it is not as clear as it should be, it is not as well done as it should have been.

THE COURT: But that act has been repealed, has it not?

THE WITNESS: Yes, with this.

THE COURT: That act is no longer in effect?

THE WITNESS: Yes, but in most cases they use citations from the original act, in fact the authority for this section is down on the bottom of page 38 and in there he has cited the PUD ordinance; the '67 act.

THE COURT: But if they have left it an ordinance requiring approval of the Planning Board as to subdivisions or site plans or both may include the following, may include the following, and then they jump to C provisions for planned development, may include-

THE WITNESS; Agreed.

THE COURT: And that would even carry through into D if it is over a period of years idea.

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THE WITNESS: Yes.

THE COURT: All right. What is next?

THE WITNESS: Page 16 is the 603.4, the preliminary site plan review and it is a problem we anticipated when the state land use law was being talked about that the site plan review could simply be an additional procedure and an additional exaction in terms of time requirements, I am referring to 40:55-41 and I would suggest that the whole checklist of requirements here is quite redundant from the preliminary plat, and further, that there is no time sequence tied into the original sections on how long this review could take place. So in fact this could be an ad hoc time delay procedure and is exactly or very nearly the same checklist as that which should be reviewed in the preliminary plat.

Further, in section R, about three-quarters of the way down the page, it says preliminary architectural plans for the proposed buildings and structures, et cetera, shall be submitted. That is explicitly excepted from the site plan review section in the municipal planning act.

THE COURT: Do you have the citation for that?

THE WITNESS? 40:55-40:55D-41. And it says explicitly that the site plan ordinance shall be

1 limited to the following four and then lists four
2 factors. The site plan ordinance was meant to
3 review fairly specific kinds of items after the
4 preliminary plat was reviewed and reviewed, it is
5 not an additional make worse process.

6 THE COURT: And this preliminary site plan re-
7 view under 603.4 rather than being limited to four
8 categories, extends from A through U?

9 THE WITNESS: Through U.

10 THE COURT: I know it is through me,

11 THE WITNESS: Not you, meaning you, the letter
12 U.

13 Also, item T on the site plan review says the
14 Planning Board may require any additional information
15 which is reasonably necessary, et cetera. That is
16 a basically open-ended, total open-ended comment
17 and I don't see how-it is possible within the con-
18 text of the land use law and again it makes work.

19 Section-on page 17, section 604.1 on trac[^]
20 installation for subdivisions, I apologize for
21 being redundant on some of these things, they have
22 been b[^] consolidating some of these codes together,
23 some of these things are mentioned three and four
24 times. I have to cover them each time to be accurate.
25 601 onsite, it says prior to the granting of final

1 approval, the applicant shall-it is the same note
2 I made before on 602.6 (a) -

3 Q And that has to do with- A You are
4 supposed to build the things Elfior to getting final approval.

5 Page 19, onsite installation for site plans, you are also
6 supposed to have constructed all of the onsite materials
7 and all of the onsite construction, I don't know how you can
8 deliver the electric and telephone company, that is, I am
9 talking about 604.2, three-quarters of the way down the page-

10 THE COURT: 604.2 (m) ?

11 THE WITNESS: No, it is a paragraph, 604.2 on-
12 site installations or site plans, page 19. 604.2
13 is ontrack installations, that is what I am talking
14 about.

15 THE COURT: 604.2?

16 THE WITNESS: Yes, the particular thing I was
17 concerned about was the developer being responsible
18 for other public agencies delivering on time, i.e.,
19 the electric and telephone company. In my experience
20 that has been totally impossible and this could
21 end up holding up the project for a substantial
22 period of time and it is a very unusual procedure
23 in any case.

24 Page 20, 605, offtrac, improvements, it is the
25 same problem having to do prJLor to construction

1 having an application for final approval, having
2 to do the construction and it is referred back to
3 602.6(a).

4 THE COURT: Page 20?

5 THE WITNESS: Page 20. 605, offtract improve-
6 ments.

7 THE COURT: All right, 605, offtrect~.

8 THE WITNESS: It is the same comment as before.
9 605-1, allocation of cost criteria for determining
10 allocation, the municipal land use law, and I am
11 looking down about five lines where it says the
12 information shall be determined by the Planning
13 Board, the municipal land use act says it shall be
14 determined by the governing body in 40:55B-42,
15 not the Planning Board or at least in the definition
16 section it# does not include Planning Board as a
17 governing body-as I can understand it> or interpret-it.

18 Further, they have added language compared to
19 40:55D-42 on page 39, they have added that these
20 allocations of cost shall be based on the increase
21 in market values of the property affected and any
22 other benefits concerned. The needs created by the
23 applicant, population land use projections for the
24 general area of the applicant's property and other
25 areas to be served by the offsite offtracfc improve-

ments, that is totally different language than is
in the municipal land use law. In the municipal
land use law they talk about reasonable and fair,
and allocating equitably across the area. Also
in the municipal land use law it says that the
standards shall not be altered subsequent to pre-
liminary approval.

BY MR. HERBERT:

Q Mr. Rahenkamp, you are referring to a section?

A 4a:55D-42. Contributions for offtract water-sewerage,
et cetera. And there is a line which says which standard
shall not be altered subsequent to preliminary approval, so
as far as I can understand that does do the vesting that is
necessary offtract* at least.

THE COURT: What do you say is wrong with this
ordinance, in 605.1?

THE WITNESS: What is wrong with it?- It has
added extraordinary language, it has added alloca-
tion of the cost across the area being tied not
only to the things tied in the municipal land use
ordinance, but also to market value. I am not sure
how they did the equations on that. Any other
benefits conferred which is sort of an open-ended
assessment they can factor in on anything they want.
That whole paragraph that they are after is extra-

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ordinarily different than the municipal land use law.

THE COURT: If they set up the criteria in
40:55-

THE WITNESS: Where are you talking to, I am
sorry.

THE COURT: In 605.1.

THE WITNESS: Right.

THE COURT: At the end or in the middle of
the paragraph they talk about other benefits in-
ferred, the needs created by the application,
population of land use projection on the general
area of the applicant's property and other areas
to be served by the offtract improvements. The
estimated time of construction of the offsite im-
provements and the condition that periods of useful-
ness which periods may be based upon the criteria
of the statute, and the offtract improvements shall
be consistent with the requirements. If you go to
that, this is the adoption of the capital improve-
ments program-

THE WITNESS: But they haven't enabled the
capital" improvement program.

THE COURT: That is what I was getting to.

THE WITNESS: Yes.

THE COURT: They have incorporated the capital

1 improvement program in one part but not in the other.

2 THE WITNESS: Yes.

3 i THE COURT: Query: have they enabled it by
4 implication?

5 THE WITNESS: That goes to the point on page
6 21/ 605.3, the amount of the contribution and
7 basically the point is the following: on the first
8 hand the town wishes to avoid any capital improve-
9 ments, they have zero capital improvements budget
10 now and basically they want to lay all of the cost
11 on the newcomers. Secondly, they have zoned the
12 PUD's remotely or in areas that are not served now
13 or at least served in a very difficult way and then
14 they want to charge the landowner the cost of
15 making the improvement, so what they have done is
16 lay all of- the costs against the PUD applicant
17 and further, they have then declined to join the
18 regional facilities and they had the opportunity
19 on the one end of town, they declined that so they
20 had to go into a force main and if they had joined
21 the regional agency then there would have been
22 public funds involved thereby reducing the cost to
23 the remaining properties. So in every way they
24 reduced the cost exaction by making it extraordinarily
25 difficult for anybody to proceed and then on the

1 municipal basis they aren't willing to provide the
2 services themselves.

3 ; Section E on that same page, midway down—no,
4 a third of the way down, it says that the offtrac[^]
5 improvements to be constructed—I am sorry.

6 THE COURT: That is not E.

7 THE WITNESS: Yes, where it says or the de-
8 termination made. Wait, I am getting there, if the
9 offtract improvements to be constructed as a local
10 improvement, no improvement shall be granted—in
11 other words, if the developer does not volunteer
12 and agree then the Planning Board wouldn't give
13 agreement, wouldn't give approval, and basically by
14 making an excessive claim on the allocation of cost,
15 could get to a standoff and therefore you are back
16 into a catch-22.

17 In other words, they could say to the developer
18 your allocated cost will be \$3,000 an acre or an
19 extraordinarily high number, the developer says well,
20 I don't accept that, what that does is force it into
21 a standoff and there is no remedy for it.

22 THE COURT: What section 605 are you in?

23 THE WITNESS: I am in 605(e).

24 THE COURT: 605 is 2,3, 4.

25 THE WITNESS: 605-4, and I am on section E.

1 THE.COURT: The Planning Board, the applicant
2 and Planning Board cannot agree-

3 I THE WITNESS: Yes.

4 THE COURT: With respect to the applicant's
5 appropriate share of the actual cost of the offtract
6 improvement, or a determination made by an officer
7 charged with the duty of making special benefits,
8 if the offtract improvements to be constructed as
9 a local improvement, no approval shall be granted
10 provided however that the applicant may challenge
11 such determination and seek to have it revised
12 with the appropriate judicial proceedings as to
13 the subdivision approval.

14 THE WITNESS: In other words, by making an
15 excessive claim, the applicant and the Planning
16 Board wouldn't agree, therefore they would not give
17 an approval, therefore it would have to go into
18 litigation, et cetera. So all the Planning Board
19 would have to do is simply raise the calculation
20 to an extraordinarily high number.

21 THE COURT: As soon as they did that they would
22 be right in court.

23 THE WITNESS: Sure, but that is an exaction
24 if it is not.

25 THE COURT: The other point I can't agree,

1 I don't understand about this public improvement.
2 No approval shall be granted, I don't understand
3 that, if you have an offtract improvement which
4 is a public improvement, wha.t does that have to
5 do with no improvement?

6 THE WITNESS: Nell, the public has not done
7 improvements generally, what they normally would
8 anticipate is the developer will do it or else put
9 up an escrow fund for the township to approve it,
10 so therefore it would have to be a public improve-
11 ment.

12 THE COURT: And it says if it is a public im-
13 provement no approval will be granted,

14 THE WITNESS: I don't understand it either and
15 I am saying that.

16 THE COURT: If you are fortunate enough as a
17 developer to get something which happens to fit as
18 a public improvement which benefits the whole town-
19 ship, how can that lead to a "no approval decision"
20 as you read the ordinance and based upon 3'our ex-
21 perience, how can that lead to that development?
22 Isn't that incongruous?

23 THE WITNESS: Well, I can't understand it.

24 THE COURT: That makes two of us then.

25 THE WITNESS: That is the concensus.

1 THE COURT: If I don't understand it and you
2 don't understand it either—

3 MR. CAIN: I lost you, are you on 605.4E?

4 THE COURT: Yes.

5 MR. CAIN: It says local.

6 THE COURT: If the offtract improvements to
7 be satisfactory open improvement, no approval will
8 be granted, how does that equate? If you are lucky
9 enough as a developer to get something which is a
10 local improvement, why should that prevent approval
11 from being given to subdivision application?

12 MR. CAIN: I thought, and I had read this
13 before, but I thought the point was if you had a
14 general versus a local, the general would be a
15 public expense and if it is local it will be
16 assessed to the immediate owners. I think that is
17 the generic term you use.

18 THE COURT: Even taking it that way.

19 MR. CAIN: And previously it was said in the
20 event the developer and the planner don't agree
21 and if it will be a local improvement rather than
22 a general improvement then they have reached a
23 longer point.

24 THE WITNESS: But the point is in the municipal
25 law you can give a conditional approval and there-

1 after one can proceed to get cleaned up whatever
2 has to be done. In other words, the Planning Board
3 could get planned development in. In fact, the
4 municipal land use law sets a procedure to do so,
5 and give a conditional approval subject to sewer
6 and water being available, et cetera, rather than
7 do that they have put in this kind of language which
8 just puts you into an endless open-ended negotiation.

9 THE COURT: It is now 11 o'clock, Miss Klapp,
10 is it time for your break?

11 THE COURT REPORTER: Yes.

12 THE COURT: We will only go to page 92, I
13 gather that is the last number I can see here?

14 THE WITNESS: Yes.

15 THE COURT: Are we going through all of those?

16 THE WITNESS: We are about three-quarters of
17 _____ the way through the heavy stuff.

18 THE COURT: Then we will take our break at this
19 point.

20 [Whereupon, a short recess was taken.]

21
22 DIRECT EXAMINATION BY MR. HERBERT (continued):

23 Q Mr. Rahenkamp, we left off at section 605 of the
24 ordinance P-91. Would you proceed from there, please?

25 A On the bottom of the page 21, conformance to master plan,

1 et cetera, there is no exception made for PUD's and it is con-
2 trary to the flexibility of PUD's. The citation would be
3 40:55E-3.9 (c) and 40:55E-34 which talk to the point of flexi-
4 bility for PUD's, and they are not excepted in the design
5 review standards that I can see.

6 Page 22, item 7, grades of arterial streets, et cetera.
7 There are grades of 8 per cent and 10 per cent, I don't
8 believe that is flexible enough and the township as a matter
9 of fact with many of the grades being substantially greater
10 and in fact it is contradicted on page 24-

11 THE COURT: Don't leave 22 yet until I find out
12 what number you are on.

13 THE WITNESS: I am sorry, 22-7, grade of
14 arterial streets at 8 and 10 per cent..

15 THE COURT: In other words, at this site on
16 the west side 8 per cent and 10 per cent grades
17 would be impractical?

18 THE WITNESS: Yes and in fact in most areas
19 of the township, and it says that they shall conform
20 which makes it fairly difficult and it is contra-
21 dicted on page 24, it says that you can go up to
22 15 percent, so in fact they are not consistent.
23 The one on page 24 we find agreeable-

24 THE COURT: Page 24?

25 THE WITNESS: Page 24, item H-3, existing
grades, et cetera. That is in the new ordinance.

1 Down on the bottom of 22, item No. 3 on frontage,
2 it says each lot must front upon an approved street
3 at least 50-foot in width. It excepts the prospect
4 of having B, or condominium units which would not
5 have a front yard.

6 Page 28, 609, selling before final approval,
7 they have left out an important line from the muni-
8 cipal planning act, 40:55D-55 on page 21, they have
9 left out the conclusion of the sentence, an owner
10 or agent, any land which forms a part of the sub-
11 division, they put a period there or at least left
12 out for which municipal approval is required by
13 ordinance pursuant to this act. What that means is
14 that if a land holding corporation sells to a
15 development corporation which is the usual thing
16 on a PUD, that the way this is written, it prohibits
17 you from doing that, the way the municipal planning -
18 act or the municipal land use law allows you to do
19 it they obviously would let you do it conditioned
20 upon getting conditional approvals. I: . * ::'
21 I— THE COURT: If I read the two together, 609 to
22 me reads almost line-by-line.

23 THE WITNESS: Except they left out—I know I
24 read it three times myself, they left out for which
25 municipal approval is required by ordinance for this

1 act so they did put it in line-by-line but they left
2 out that one key piece.

3 THE COURT: You say the language for which
4 municipal approval was required by ordinance, they
5 left it out subject to this act? And you say the
6 elimination of that language does what?

7 THE WITNESS: The way I read it it means that
8 you couldn't sell conditioned to, in other words,
9 the normal procedure in a PUD is that a land manage-
10 ment or a land development organization would initially
11 develop the land thereafter and sell individual
12 sections to builders, and normally that would be
13 sold conditioned upon final approvals or credit
14 or whatever. By leaving that out, at least as I
15 read it, it could be constructed to say that you
16 simply couldn't sell the land at all, that you
17 couldn't transfer the land at all*

18 THE COURT: Well, based on that would you need
19 municipal approval before you could sell it off in
20 sections?

21 THE WITNESS: That is my understanding of it,
22 the way it is written, yes.

23 THE COURT: I didn't read it that way.

24 THE WITNESS: You could and then we wouldn't
25 have to worry about it.

1 THE COURT: If final approval is granted, any
2 person transfers or sells—they left out or agrees
3 to transfer or sell, they have left that out, and
4 then they go on except pursuant to an agreement
5 expressly conditioned upon final subdivision approval,
6 which is the same as the act.

7 THE WITNESS: Yes, exactly.

8 THE COURT: As owner or agents, any land which
9 forms part of a subdivision is exactly right.

10 THE WITNESS: Yep.

11 THE COURT: And then the language omitted is
12 for which approval is omitted by the act and picks
13 up the act again such person is subject to a penalty
14 not to exceed a thousand dollars.

15 THE WITNESS: Correct.

16 THE COURT: Each lot disposition is so made
17 and deemed a separate violation.

18 THE WITNESS: Right.

19 THE COURT: Before you could transfer out, you
20 have to have municipal approval anyhow.

21 THE WITNESS: No, you could transfer out sub-
22 ject to,

23 THE COURT: You could subdivide a section
24 and sell it without municipal approval, you would
25 have to go through the same machinery anyhow.

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THE WITNESS: .Okay.

THE COURT: Because if you¹ didn't have any ordinance, you wouldn't need any municipal approval, but you have an ordinance therefore you need municipal approval. The language is not that critical, you are required to do what you are required to do anyhow and you agree to sell conditioned upon an agreement, it is conditioned upon final subdivision. So you have to apply for municipal approval to do it. You have to expressly except the conditions of the subdivision approval and then if it weren't granted, then you would have, I assume, another prerogative writ case,

THE WITNESS: So it is not consequence that it is left out-

THE COURT: The machinery is exactly the same.

MR. HERBERT: Except, Your Honor, if I may, in the municipal land use statute it would allow an ordinance to be adopted to provide for a procedure not necessitating an ordinance or a resolution to be adopted by the municipal governing body every time you wanted to sell out or convey out prior to final approval, whereas here it does not make any reference to setting that up in an ordinance.

THE COURT: We got all of this first, before you

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could sell out, so this ordinance becomes that ordinance, you have got the machinery in this ordinance,

MR. HERBERT: In the nature, of argument, but I don't believe the testimony bears that out, but that of course is for Your Honor to determine.

THE COURT: I can see that on a Friday morning for summary judgment not lasting very long.

THE WITNESS: I agree. Page 35. He are now done with this first packet, we are now working on the zoning ordinance, or article 7 of the zoning regulations, page 35, every lot must have a front, rear and side yard, again it does not deal with the simple townhouses or garden apartments, further, it has language in the last three lines, I am talking now about 702*1, 20 yards, we are talking about increasing on the front yard on a formula basis which would suggest that any type, the front is set back, unless it is related to health or safety that it costs about three dollars a linear foot for every foot of additional setback. So that is an exaction unless it is defensible, unless there is some sound problem or a water problem or whatever. These kinds of formulas tied into ordinances have carried on for years, but there is no logic in them and no justi-

1 fication for them in most cases,

2 THE COURT! That is the required front yard
3 shall be increased by one-half the difference between
4 the width of the street and said greater width.

5 That is the formula.

6 THE WITNESS: Yes, sir. Yes, it has no relation-
7 ship to any health or safety standards that I know
8 of, and the other point is it requires side yards
9 up to the top line which townhouses obviously
10 wouldn't have, nor would condominium apartments.

11 Page 40, No. 704, paragraph G and leading on
12 multi-family dwellings requires five cars for every
13 two dwellings or two-and-a-half per unit. Our ex-
14 perience is that only two units, two cars per unit
15 are required, therefore the extra parking unit is
16 an exaction.

17 THE COURT: What section on page 40?

18 MR. HERBERT: 704.1.

19 THE COURT: I am looking at that multi-family
20 dwelling, for each two dwelling units, is that what
21 you are talking about?

22 THE WITNESS: Right. It is a very high parking
23 rate, sir.

24 BY MR. HERBERT:

25 Q Mr. Rahenkamp, just staying on that for a moment,

1 I notice above that there are parking requirements for one
2 and two-family dwelling units? h Yes.

3 Q Is that a similar restriction or is it less or more?

4 A No, I think that is defensible.

5 Q Well, based upon a comparison of the two, is it
6 fair to say that the multi-family parking dwelling would
7 be more? A It is in our experience, our experience

8 is normally we require three parking spaces for a single-family
9 house rather than two and in the multi-family would normally
10 have one-and-one-eighth to two parking spaces per unit.

11 Page 43. 705.2, commercial and recreational facilities
12 requires that the structure should be 200 foot from the
13 property line. It is not related to our particular site, but
14 it does relate to the PUD and mobile home areas in that it
15 is an extraordinary exaction, 200 foot along the side of the
16 long linear tract that they have identified for mobile homes,
17 for instance, that is an acre way, that would extraordinarily
18 take out a piece of the ground.

19 THE COURT: 705?

20 THE WITNESS: 705.2. And I am looking at
21 item B, any permanent structure or facility shall
22 be located at least 200 foot from the property line.

23 THE COURT: Page 43?

24 THE WITNESS: Yes, page 43.

25 THE COURT: 705.2D reads any property so used

shall front on arterial or collector streets, and access shall be restricted to said major street.

THE WITNESS: Something wrong,

THE COURT: Yes, I think so. . That was B as in boy?

THE WITNESS: Right*

THE COURT: This starts out commercial recreational facilities shall have a minimum lot area of five acres.

THE WITNESS: Yes, sir.

THE COURT: B as in boy, any permanent structure or facility shall be located within at least 200 feet from the property line.

THE WITNESS: Right. The significance of that is that in the first place the mobile home areas and the CR- areas are talked to as satisfying the least cost housing requirements. If we look at P-74 and in particular the one area of mobile homes that we had addressed before, this is a long linear tract up along Route 31 and if you had the 200 foot setback following along that tract you would have virtually no land left.

THE COURT: That was presented but I understood for the record it is pointing to me P-74 the area which is the northwest area of the map at the left-

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hand side as you look at it the area along Route 31 as it goes up and into Warren County and is the .area where he indicates that it is a narrow, almost appendage and if you were to construct mobile homes in that area with 200 foot setback you would be out of the township practically. Is that your point?

THE WITNESS: Well, it is 200 foot setback from the property lines so in both cases you are coming in an acre from either side, so you would have a linear strip in the middle of the tract that you could build on.

THE COURT: Well, that is 200 feet on one side of the road, 200 feet on the other side of the road, so that is 200-by-200, but for the total distance it is almost more acres, isn't it?

THE WITNESS: Yes, substantially, I didn't do the calculation. Further, I would say there is no relationship between the 200 feet between health and safety, on the property lines there are no buffering problems that I know of. There is simply no consistency, there is no tie to health and safety, so it is an exaction.

On page 50,. we have covered the mobile homes so I wouldn't do that again, I will comment there are no exactions in the mobile home park requirements

1 that make it very difficult to produce least cost
2 housing under the ordinance.

3 I On'page 62 under 706.6A-2, I'm sorry, A-3,
4 is an item called building coverage. I have no
5 problems with building coverage as one of the per-
6 formance standards but I do in that it is not tied
7 to the NAR analysis and I don't see in terms of a
8 10 per cent lot area covered any relationship, for
9 instance, with topography or soil or slopes or
10 any of the key elements. In other words, the on
11 purse is not related to health and safety and there-
12 fore this kind of a 10 per cent number becomes an
13 exaction because it critically controls the amount
14 of coverage one can put on the ground. It may be
15 defensible but not in this construction.

16 Further down on the same page under building
17 requirements, item D-2, units per building, it says
18 that there should be no dwelling structure shall
19 contain more than 12 dwelling units. I suggest
20 that that is an exaction in the first place, there
21 is no health, safety problems to putting that many
22 units per building, it is defensible in any way
23 whatsoever and further, any time you break between
24 buildings.it costs about \$50 per foot of break
25 between the buildings so it increases substantially

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the cost of the community. In other words, you are having to do duplicate in-walls, you are having to carry the utilities, the road and everything else for those linear feet and it is extraordinarily expensive.

Item 3, building plans and elevation shall show a variation in exterior design. That is a situation because in fact repetition reduces the cost, and I think it is not an unreasonable requirement. I think it is an unreasonable requirement of the code*

Page 63, minimum floor area, each dwelling unit » shall have a minimum floor area of 500 plus 150, this is backdoorway of putting in bedroom counts; in other words, what it does is tie 650 foot to a one-bedroom unit and 800 square feet to a two-bedroom unit, there is no health, safety, welfare relationship of square footage to area of habitation and in fact the mobile homes would require different amounts of areas so there is an inconsistency even built into the code and my understanding is that based on the Glassboro v. Malino, that many bedroom and square footage counts were struck down.

On the next line it says floor areas, floors and ceilings, et cetera, shall have sound classi-

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1 fications. I agree with that as a basic standard,
2 however, the Planning Board is the board who will
3 do the assessment and I wonder if their expertise
4 is to do that, normally that would be the building
5 inspector or some extraordinarily well-rounded
6 person, not the Planning Board, that is an' unusual
7 place to put it.

8 The next, room density, this goes to the point
9 of bedroom controls as well and based upon Madison
10 on 516 as well as Glassboro, I don't think bedroom
11 controls are any more applicable and they should be
12 struck.

13 Page 64, item H, landscaping and open space,
14 item No*. 1, I am saying the minimum of 50 per cent
15 of the entire tract shall be in common open space,
16 that is an exaction. It is an extraordinarily large
17 amount of open space which may well be volunteered
18 in some cases, but if 50 per cent were required
19 that would place an extraordinary burden on the
20 homeowners¹ association, for instance, 28 to 25 per
21 cent is the usual number in most of the PUD
22 ordinances in the state.

23 Page 65 at the top of the page, item I on
24 utilities, item 1-1, the developer shall furnish
25 as a condition acceptable water served facilities

based upon a written agreement and written approval from appropriate town authorities. This is the same catch-22 we addressed before, you can't get an agreement from the state in particular to even put you on an evaluation until you have agreement of zoning or until you have a conditional approval on zoning. So you can't get standing to get state review until you have got the conditional approval, so by not giving you a conditional approval and saying you must have a written agreement, there is no way in the world they can deliver and they know it. And that ties us too and in fact they can and are able to do approvals under section 665D-22 which says the exact reverse of what has been written here. *

Just as an unusual thing, item 3 on laundry facilities, they say they have to be inside of the building, they have made to me the point about energy conservation but in fact this contradicts it.

Page 70, requirements for multi-family housing, 709.5, talking to the gross density of eight dwelling units per acre, that is an exaction because it is too low and in fact eight dwelling units per acre is not offensive to health, safety, there is no

1 logic to it whatsoever that I can find, it does the
2* same thing with 16 dwelling units per building, I
3 don't know why it is 16 here and 12 on the other
4, and it is still an exaction.

5 Further, it says on exterior exposure, the
6 building shall only have one exterior exposure com-
7 pared to section 706,6 which says it shall have
8 two exterior exposures, if one is right in terms
9 of health and safety, then one is wrong. They are
10 exactly opposite*

11 THE COURT: 706.6 versus 709.5-2C, is that
12 the idea?

13 »

14 THE WITNESS: Yes, it is item E-60 on page 63.

15 THE COURT: Well, 709 deals with the require-
16 ments for multi-family dwellings.

17 THE WITNESS: Yes.

18 THE COURT: Let me see if I can follow you,
19 they have to meet the requirements of 706.7?

20 THE WITNESS: Yes.

21 THE COURT: I don't have :it.

22 THE WITNESS: Neither do I, I can't help you
23 on that.

24 THE COURT: Let's go into the proposed one.

25 THE WITNESS: I beg your pardon?

THE COURT: I have to go back into that.

1 THE .WITNESS: It must be a typo, it possibly
2 means 706.6, which are all of the conditions that
3 I went into before.

4 THE COURT: There is a 706.7, it is just not
5 in your synthesis, that is all, and the exhibit is
6 set forth, I want to try to compare what you are
7 comparing on your page 70 and I have to make reference
8 to this. 709.5. Requirements for multi-family
9 dwellings, that is your synthesis at page 70 -

10 - THE WITNESS: Yes, it reads multi-family
11 dwellings shall meet the requirements of section
12 706.7. 706.7, again, is labeled requirements for
13 multi-family dwellings, whenever permitted in this
14 article, multi-family dwellings except as provided
15 in 706.6 will meet the following requirements. 706.6

16 That is on page 62, it deals with mixed cluster-
17 ing of the R-3 zone, so that is not our problem, I
18 don't believe.

19 THE COURT: Area and density requirements
20 except in the R-3 zone, the cluster shall be a mini-
21 mum of 25 acres, growth density, there should be
22 no more than four dwelling units per acre, building
23 coverage, total ground area of all buildings shall
24 not exceed 10 per cent. Setback requirements 100
25 feet, this is between buildings, 5 feet plus one-

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and-a-half for each foot of opposite building with all to the maximum of 75 feet. It doesn't apply to U-shaped buildings. It is a revision of the dwelling units, there is the variation of exterior design, exterior walls.

THE WITNESS: Most are the same as we covered in 706.6.

THE COURT: 709, they shall have more than 8 dwellings per unit, I see one situation where you could have gross density of 4 and another one of 8, are you saying that 709.5 will conflict with 706.6?

THE WITNESS: I am saying in both cases there is no logic to the number and no health and safety tied to the numbers,

THE COURT: Let's strip the logic a little bit more, gross density under 706,6 units, gross density under 709.5, eight. 707.5, 707.6-

THE WITNESS: It is, isn't it?

THE COURT: Wait a minute, units per 12 under D-2, 12, 16 versus 12, and the distance between the buildings of 707.6 includes the conflict of 709.5C, one exterior, suppose the other situation wants two plus this distance between buildings but is inapplicable to the U-shaped buildings?

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THE WITNESS: Yes.

THE COURT: My only point is if one is defensible in terms of health and safety then the other one can't be. Or neither could be,

THE WITNESS: Or neither could be. You will be pleased to turn to page 89, I am sure that any pages*

THE COURT: Is that the scheduled zoning requirements?

THE WITNESS: We went through this, my contention would be that there is an inadequate tie between the municipal land use law, the 40:55-39 (e) section and 40:55-30 in terms of enabling PUD's and in terms of setting down the basic framework that you make your application to the point that the findings of fact and the vesting, et cetera, all of that, the procedural stuff, is not covered anywhere and compounded by the fact that the permitted uses and further the checklist of the information is simply extraordinarily inadequate related to those laws. So in fact they have enabled PUD's, it doesn't exist as a PUD, it is labeled that but it is not real.

THE COURT: Well they have enabled PDRD.

THE WITNESS: Theoretically they have enabled

1 both, PUD and PURD but in fact it is not delivered
2 within the context of state laws, but there is no
3 procedure for it, it doesn't advise you that they
4 have tied it into a three-year standing the same
5 as a conventional subdivision. There is no pro-
6 vision for findings of fact, et cetera, so that
7 in fact there is no such thing as PUD or they are
8 not enabling PUD or PURD, but they have labeled
9 it that, but it is not delivered, this is an
10 "extraordinarily delivered checklist,

11 BY MR. HERBERT:

12 Q Any other requirements? A In minimum size
13 <

14 of PUD and PURD in the municipal planning act they talk to
15 the point of ten and five acres or PUD and PURD, that is
16 40:55D-8, the town requires 50 acres.

17 THE COURT: Where are we looking now?

18 THE WITNESS: On 717.2, development standards,
19 item D, minimum size of PUD and PURD.

20 THE COURT: Fifty acres, the act itself says 10.

21 THE WITNESS: It says 10 for PUD and 5 for PURD,
22 the larger they are the more difficult it is for
23 one to assemble the land to do it. On page 860
24 the gross residential density, the gross residential
25 density shall not exceed three dwelling units per
acre, that is low, particularly in light of Madison

1 on page 505 of Madison, they chastized Mt. Laurel
2 for having lots of 93.75 square feet which would
3 give you a net density of 4.7 units per acre and
4 they say that that is too high.

5 THE COURT: Khat page is that?

6 • THE WITNESS: 505 quoting Justice Hall, noting
7 the minimum size lots of 90375 to 20,000 cannot be
8 called small lots and amount to low density housing,
9 9 point being at 3 dwelling units per acre, that is
10 not delivering least cost housing, it is low density
11 and it is even less than the single-family develop-
12 ments in Mt. Laurel which was cited for not allow-
13 ing high income housing, and the normal standards
14 in the state would be 7 to 8 units per gross acre.

15 Item F, distribution flowing unit price, says
16 20 per cent should be in single-family, 40 per cent,
17 no more than 40 per cent in that, that is a totally
18 arbitrary percentage count. There is no basis what-
19 ever in terms of health and safety for those kinds
20 of numbers.

21 Paragraph 8, item J, common open space require-
22 ments, they require a 30 per cent of the gross tract
23 shall be in common open space. While we do comply
24 with that I would label that an exaction to the
25 point that 20 to 25 is usual. The higher the per-
centage of open space, the higher the monthly cost

1 of the homeowners' association, therefore noro
2 difficult. The bottom of the lino item and on
3 utilities we are in the same catch-22 as we have
4 cited before needing preliminary approval in order
5 to get standing. They are saying they would not
6 give a PUD unless you have got in writing the agree-
7 ments and procedure.

8 BY MR. HEE3ERT:

9 Q Mr. Rnhenkamp, while there are other items they
10 are what you would label as exactions which you haven't
11 covered in your testimony. A I think I have covered
12 most of them.

13 Q During the hiatus of the trial did you pay a visit
14 to the sites which have been identified by the township as
15 areas of potential least cost housing? A Yes.

16 Q And would you describe those visits and what did
17 you conclude and if you would like to use what has been identi-
18 fied as P-74 or some other document, please do so.

19 A All right. Ke are working from exhibit P-54i Particular
20 problems, this has been identified as an ROM with multi-family
21 options.

22 THE COURT: ROM in a small kind of checkered box?

23 THE WITNESS: Yes, at the intersection of
24 Route 22 and 78 and on the north side it shows the
25 North Jersey Power & Light Company transmission line.

1 THE COURT: What is the checkered box mean?

2 THE WITNESS: It has a multi-family option, the
3
4 point in this case is that this is a relatively un-
5
6 inhabited area, the noise problems because of the
7
8 expressway, because of the side slope facing the
9
10 expressway would be rather bad and it has no tree
11
12 cover and it is not a very desirable site for multi-
13
14 family at all, it shouldn't have housing on it,

15 Q Mr. Rahenkarcp, just for clarification, when did you
16
17 visit these areas? A About a week-and-a-half ago,
18
19 I don't recall the date.

20 Q This was your most recent visit? A Yes,
21
22 the particular reason I went is I went to doublecheck and some
23
24 of the things in the plan and see how they are tied together.
25
26 We also took a look at the area identified as CR-2 abutting
27
28 the township, Lebanon Township, and looked at that in terms
29
30 of a slope, and if you will recall the environmental composite
31
32 showed, if it is a steep area, which it is, it is very steep
33
34 and difficult to build on.

35 Q Mr. Rahenkamp, when you said the Township of Lebanon,
36
37 do you mean the Borough of High Bridge? A No, I
38
39 mean the Township of Lebanon is abutting it to the north over
40
41 here and High Bridge is on the eastern side.

42 THE COURT: That is where it will go from the
43
44 setback also?
45

1 THE WITNESS: It has a 200-foot setback and
2 in addition there is a power line in the back, I
3 don't know where it comes from or if it can be
4 measured, but if it is 200 feet there and 200 feet
5 there, there is not a lot of area left to build in.

6 Q Did you visit any other sites? A We
7 visited several others but I don't think anything extraordinary
8 came up in them. We visited the R-3 area abutting Lebanon
9 and we went down into the flood plain, a substantial amount of
10 the tract is in the flood plain as is indicated on the environ-
11 mental constraint plan.

12 Q And for the purposes of the record, would you identify
13 that R-3 district in terms of its location on the map?

14 A All right. It is south of 22 and north of the New Jersey
15 Power & Light transmission line, and abutting to the east the
16 Borough of Lebanon.

17 THE COURT: It is shown on the right-hand side
18 of the map as you face the map?

19 THE WITNESS: It was indicated as one of the
20 mobile homes conditional units and a breaker or
21 PUD with the amount of flood plain would be very
22 difficult. In addition, if you will recall, we had
23 discussion about the prospect of the sewer line being
24 able to go down the creek instead of having to go
25 up as a force main on the county road. The force

1 main would be right here and the units would be below
2 • that so you would have to pump to get there to get
3 an exaction. It is difficult to get there and there
4 is no logic to it.

5 Q Mr. Rahenkamp, did you have occasion to study a re-
6 port written by Mr. Sean Riley who has been listed as an expert
7 witness for the defendants in this case? A Yes.

8 Q And first, what was the nature of the document you
9 examined? A Well, we reviewed both the NRI and his
10 comments on our PUD operation.

11 Q And you have identified the NRI previously as the
12 National Resource Inventory? A Yes, sir.

13 Q And what did that document state, do you have any
14 idea?

15 THE COURT: We never marked the Riley report,
16 have you?. Have you marked the Riley report so far?

17 MR. HERBERT: No, it has not been.

18 • THE COURT: You are referring to something that
19 has not been identified, you are on rebuttal now, it
20 seems to me not on your main case.

21 MR. HERBERT: That is correct, I had made the
22 comment earlier that because of expert witnesses we
23 may be going into our rebuttal areas simply to allow
24 us to have one expert on at a time. If Your Honor
25 would desire, we can simply not get into this area

1 at all.

2 THE COURT; I think if you feel rebuttal is
3 necessary, put it on at the proper time. The last
4 time we had a case like that a lawyer trying a case
5 before Judge Herrigel began immediately his defense
6 to the counterclaim on the case. Judge Kerrigel went
7 to the hospital that afternoon and didn't come back
8 for three months..

9 MR. HERBERT: We have no further questions of
10 this witness, then.

11 THE COURT: Cross examination will begin at
12 1:15.

13 MR. HERBERT: If I may, for the record, I have
14 had typed up during the hiatus all of the plaintiff's
15 exhibits which have been marked.

16 THE COURT: Do you have a copy of this, gentle-
17 men?

18 •; ' MR. CAIN: Just got it.

19 THE COURT: I will give you an hour and 15 minutes
20 to look thi,ngs over.

21 MR. CAIN: One thing, I have been awaiting the
22 transcript from the night session.

23 THE COURT: Well, I just got one myself.

24 MR. CAIN: We will do the best we can, you know,
25 with my notes on cross examination, but I took less

1 notes because we expected to have the* transcript.
2 We did have Miss Klapp's transcript in plenty of
3 time.

4 MR. HERBERT: We were all similarly in that
5 situation, Your Honor. May I ask if Counsel, I
6 don't want to handcuff them, but can I assume that
7 they will be taking at least the rest of the after-
8 noon for Mr, Rahenkamp? We don't know whether or
9 not to bring another witness in or not.

10 THE COURT* I would say previous experience
11 with these two gentlemen, you are safe for this
12 afternoon.

13 MR. HERBERT: When we return I would like to
14 move various exhibits into evidence.

15 MR. SUTTONS I have not had an opportunity to
16 examine the exhibits, some of these exhibits were
17 offered in evidence already.

18 THE COURT: He can make the motion and I will
19 reserve ruling on it until tomorrow morning and you
20 will have all night to look at it.

21 MR. SUTTON: Yes.

22 [Whereupon, a luncheon recess was taken.]
23
24
25

AFTERNOON SESSION

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

4 THE COURT: Mr. Sutton, you are first.

5 MR* SUTTON: Your Honor has already ruled upon
6 Mr. Rahenkamp being able to testify as an expert
7 witness, however I would like to explore his back-
8 ground somewhat further on the basis of the weight
9 to be given to his testimony. He has gone over
10 our ordinances, our own planner will do the same
11 thing, but I just want to get that explanation before
12 we begin.

13 THE COURT: You are sure we didn't cover that
14 right at the beginning? We were all over it.

15 MR. SUTTON: I will not spend much time, it is
16 all short,-but there are some questions I would like
17 to ask. At the beginning, the main points I was
18 trying to make is that Mr. Rahenkamp admittedly did
19 not have a license.

20 THE COURT: I will not go back over that. I am
21 not going back over it.

22 MR. SUTTON: I didn't want to go into that
23 any further, but I do want to go into some detail
24 on the work he has done, the amount of work on PUD's,
25 how much work.

1 THE COURT: We did that already right at the
2 beginning, he named the developments, named the
3 places, all of that, I will not go back over it.
4 Cross examination now will be limited to the substance
5 of the testimony, no background. I already covered
6 the background wholly and entirely.
7

8 CROSS EXAMINATION BY MR. SUTTON:

9 Q Mr. Rahenkamp, you testified that you had visited
10 certain of the areas around Clinton Township that provide for
11 higher density; is that right? A Yes.

12 Q And you personally visited these areas?

13 A Yes, sir.

14 Q When did you visit these areas? A About
15 a week-and-a-half ago.

16 Q Did you visit them at any other time? A No,
17 they were just designated within the last two weeks, three weeks.

18 Q Now, did you have your schedule or your diary as to
19 the date when you visited these areas? A Thursday,
20 June 16,

21 Q That was the only day you visited these areas?

22 A On these specific sites, yes.

23 Q And did you drive up that morning from Mt. Laurel?

24 A I think I drove from my office.

25 THE COURT: Does it make any difference from

1 whence he came?

2 A. No, as a matter of fact I drove from the Department of
3 Community Affairs.

4 Q Where is that located? A In Trenton,

5 Q And what time did you get to the areas?

6 A I was up here at 1 o'clock.

7 Q At 1 o'clock? A Yeah, wait a minute, I'm
8 sorry--yeah;

9 Q Did you stop at the Round Valley office first?

10 A Yes.

11 Q How long were you there? A Fifteen, twenty
12 minutes.

13 Q Did someone go with you to these areas?

14 A Yes.

15 Q Who went with you? A Jim Dishner.

16 Q And what areas did you visit first?

17 A The CR-1, CR-2 area up near Spruce Run up 31.

18 Q And when did you arrive at that area, if you know?

19 A Shortly thereafter.

20 Q And when you got to the area, what did you do
21 specifically, what inspection did you make?

22 A We checked to see where the manhole was on the force main,
23 we rode around, there is a parallel service road running
24 around the C-2 area along 31, we went up there and then we
25 went down to the intersection so that we could see longitudinally

1 at the site.

2 Q Did you walk the land? A No.

3 Q . And then you went to the other R-3 tract; is that
4 correct, the tract designated R-3? A Yes, then we
5 went to the C-1 east or Lebanon.

6 Q And again did your inspection consist of riding
7 along the area? A Yes, we took the service road
8 down into the site, down to the creek.

9 Q And you didn't walk over the area at all?

10 A No.

11 Q Did you get out of your car? A Yes.

12 Q And you testified, I believe, that the R-3 area
13 would not be, in your judgment, suitable for mobile homes?

14 A I testified that the environmental composite sheet showed
15 that it was very difficult to build in and therefore very
16 expensive and very difficult, yes.

17 Q What you are referring to, then, is the topography
18 of the land; is that correct? A f Topography, flood
19 plain, a good portion of it as you know is in flood plain.

20 Q Have you ever visited the mobile home camp in High
21 Bridge? A Solitude?

22 Q Yes. J A Yes.

23 Q You have? A Yes.

24 Q That would be since I took your deposition; is that
25 not correct? A Yes.

1 Q But I recall in your deposition you had not been
2 there. A That is correct.

3 Q And what is the topography there? A Very
4 steep.

5 Q And there is a camp on that? In that area there is
6 a camp, is that not correct? A There are mobile homes,
7 yes.

8 Q Do you know if at least part of this R-3 area is the
9 same area where a Mr. Konya wanted to build a trailer or mobile
10 home park? A I don't know of that.

11 MR. SUTTON: On that point, Your Honor, I am
12 not positive although I think there has been testi-
13 mony, I will check into that. I don't want to make
14 a representation that it is, but we will present
15 something on that.

16 THE COURT: I didn't hear that case so I don't
17 know.

18 MR. SUTTON: Again I think that is part of a
19 Konya tract but we will have our witnesses testify
20 to that.

21 Q Mr, Rahenkamp, for land to be zoned for industry
22 or land to be zoned for ROM, what other characteristics should
23 it have? A Reasonably good access, you don't want
24 trucks going through residential neighborhoods, it should be
25 reasonably flat so you don't have to do extraordinary grading

1 for unusually large homes. It should be designed for reason-
2 able population needs so employees don't have to drive too
3 far.

4 Q Now, this area owned by Round Valley relative to
5 this suit, does it not have all of the necessary physical
6 characteristics? A It has the access and it has the
7 relatively flat topography, it obviously doesn't have the
8 population support.

9 Q But you do state it does have the necessary physical
10 characteristics to be a good ROM area? A Yes,

11 Q And you are familiar with New York Life that, is now
12 in Clinton Township; is that right?

13 A Yes.

14 Q And that is located also near an intersection; is
15 that not correct? A Yes.

16 Q And Best Company, are you familiar with that?

17 A Yes.

18 Q And Readington Township- A Yes.

19 Q And that also is relatively close to the intersection;
20 is that not correct? A Yes.

21 Q " Now, when you say there is not the population base,
22 what you are referring to is there are not people who are
23 available to work in this area; is that correct?

24 A No, what I am saying is with the number of acres soned
25 for ROM and the number of offices, plants, whatever that would

1 be generated by it, that the population of people who would
2 be the workers in those places have no available housing
3 reasonably close to the site.

4 Q Now, the Round Valley tract which is west of the
5 site- A The golf course site.

6 Q Yes, would generate even under our present zone or
7 the proposed zoning almost 1,000 dwelling units; is that not
8 correct? A Yes.

9 Q And these people, of course, would have to have a
10 place to work; is that not correct? A Yes, sir.

11 Q And the closer the location of their employment
12 the better it would be; is that not correct?

13 A Definitely.

14 Q Now, I believe you also testified in the depositions
15 that you have to do some overzoning for ROM, I believe you
16 used the words there should be some buffers; is that not
17 correct? A Overzoning for ROM?

18 Q Perhaps overzoning is not the correct word, there
19 should be buffer, there should be more land in the zone that
20 you expect to be covered by ROM.

21 MR. HERBERT: If Counsel is referring to
22 depositibns or any transcripts, I would like him
23 to give a page and line.

24 THE COURT: Are you referring to a transcript?

25 MR. SUTTON: I am referring to the transcript,

1 Your Honor, I am not certain if I have it exactly
2 available, I would refer to page 46 of Mr. Rahenkamp's
3 testimony.

4 THE COURT,: Just tell me the date, page 46, but
5 what date? What transcript?

6 MR. SUTTON: It was March 19, 1977,

7 THE COURT: That is a exposition?.

8 MR. SUTTON: Yes, it is.

9 THE COURT: At what line would that be?

10 MR. SUTTON: The lower half of the page, Mr.
11 Sterns said should or is.

12 THE COURT: Beginning at line 14 on page 46, Mr.
13 Sterns quotes, "Should be or is."

14 THE WITNESS: Okay, now I am with you. What
15 was your question?

16 BY MR. SUTTON:

17 . Q My question was that you had testified at depositions
18 that in designating ROM you should allow some additional
19 cushion.

20 A Yes, and I said if the county projects
21 the demand for the year 2000, it is 450 acres that you might
22 need some slightly larger portion of that, but not to the
23 point of 2400.

24 THE COURT: Where do you say that?

25 THE WITNESS* That is a good question, I
thought I had.

1 THE-COURT: Yes, on the next page. "Our total
2 amount was about 450 acres that was disputed over
3 " the whole county if I recall properly distribution
4 for Clinton Township was about 240 acres,"

5 THE WITNESS: 250.

6 THE COURT: Page 47/ lines 1 to 6.

7 Q Mr. Rahenkamp, on page 46, I asked the question,
8 in other words you have to make the ROM zone somewhat larger
9 than is needed like any important zone? is that correct, any
10 important zone in the community/ and your answer was if that
11 is the direction, yes, in fact there is a definite definable
12 market we should have a cushion in there for at least a six-

13
14 year master, plan life now under the municipal planning act.
15 Then you went on with the rest of what you said; is that
16 correct?

A Yes, sir.

17 THE COURT: In this proposed situation, what
18 do you say the Township is allowing so I will get
19 the full context of this. You say the county master
20 plan says 450 acres for the whole county, Clinton
21 was allocated 250 acres of county plan, how much
22 does Clinton Township set aside for itself?

23 THE WITNESS: Approximately 2400 acres.

24 THE COURT: 2400 acres?

25 THE WITNESS: Yes, sir.

THE COURT: Almost ten times as much as the

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county plan.

THE WITNESS: Yes, sir. •

Q Mr. Rahenkamp, in determining zoning areas, is it not proper to take into consideration the zoning of neighboring municipalities? A It is required by the municipal law, yes.

Q Have you studied the zoning ordinances of the Township of Tewksbury, the Township of Lebanon and the Township of Union? A No.

Q ~ You do not know how much area they have zoned for industry or if they have any area zoned for industry; is that correct? A No.

Q But Clinton Township does have the right to look at their zoning for industry in determining how much area they would zone for industry or ROM; is that right?

A To relate it to the reasonable needs/ yes.

Q And of course this land, area of Round Valley being near an intersection is quite accessible to quite a number of other municipalities; is that not correct?

A Yes.

Q In determining the need for industry, on what reports did you rely? A The needs for industry?

Q Yes. A The accounting report.

Q Did you obtain a report from Mr. Cox as to manpower?

A Not to my recollection.

1 Q Did you obtain any statistics as to whether or not
2 more and more people were driving further and further to work
3 as time elapsed? A Did we specifically do the

4 studies?

5 Q Yes. A No, I believe Mr. Abahoshi did. .;. .

6 Q It is correct, is it not, that over the past decade
7 that people are driving further and further from Clinton
8 Township to the places of employment?

9 MR. HERBERT: I object. The previous question
10 was whether or not he conducted any studies, he said
11 he didn't, Mr. Abahoshi conducted six studies, there-
12 fore there is no foundation for asking the question
13 on cross examination.

14 THE COURT: He is an expert. If he knows.

15 Q Did you study Mr. Abahoshi's report?

16 A We read it, yes..

17 Q And in fact was your firm the firm that recommended
18 Mr. Abahoshi to Round Valley as an expert?

19 A Did we recommend him to Round Valley, no.

20 Q You didn't? A No.

21 THE COURT: You might note in today's news
22 that President Carter is seeking rationing power
23 from congress, apropos to that, of gasoline.

24 Q My question is, I was asking over the past decade
25 is it correct in Clinton Township more and more people are

1 driving further and further to work.

2 A With the completion of the expressways, obviously Clinton
3 Township now is accessible to a broader market, yes.

4 Q My question was are they driving further and further
5 to work? A With the completion of the expressways,

6 obviously they can drive further, yes.

7 Q But even with the expressways, the further they
8 drive the more gasoline they use; is that correct?

9 A Surely.

10 Q . Now, Mr. Rahenkamp, did you make any study to de-
11 termine where the people who would live in this proposed
12 development would work? A Chris ^Abahoshi made the

13 studies, yes.

14 Q And I believe you had mentioned certain industries
15 where the people would work; I believe you mentioned Ethicon
16 and you mentioned RCA- A A T & T , yes.

17 Q Now, did you make any study to determine how many
18 people who work at each of these industries or plants are
19 looking for housing? A Did we make the study? No.

20 Q Did you make any study as to vacant land available
21 for high density housing and areas closer to the site such as
22 in Readington Township in Somerset County?

23 MR. HERBERT: What cities is he referring to,
24 New York City or Imlaystown, or what?

25 MR. SUTTON: I am referring to the cities you

1 city places of employment such as Elizabeth and Newark? is
2 that not correct? A Well, talking about the places
3 of employment, I think we talked to A T & T and some of the
4 ones within reasonably close distance. We didn't talk about
5 the ones in Elizabeth and Newark,

6 In addition, most or many of the sites, at least in
7 Somerset, and some of the other counties, are not as accessible
8 as this site, so that they are not in addition, many of them
9 have no sewer or water so they are not exactly comparable.

10 Q Well, you have to make that of course a very
11 general statement, you couldn't say specifically land area by
12 land area and tell me what the characteristics are.

13 A We can get the state report.

14 Q What type of study did you make of Clinton Township?

15 A Of the entire township?

16 Q Yes. A The exhibits that we put on which we
17 have done in the last three or four months.

18 THE COURT: Did you do a topo study and popula-
19 tion study, is that what you are talking about?

20 MR. SUTTON: Did you make a study of the ground
21 water in each township?

22 OHE 'WITNESS: Of course not, no.

23 Q In other words, you didn't make the type of study
24 you would make if you were preparing a land use plan; is that
25 right? A For the entire town, no.

1 Q And your study of the entire township, what did it
2 consist of principally, studying the ordinances?

3 A The ordinances, the master plan, the NRA, the information
4 that the town generated.

5 Q And that is a much more limited study, of course,
6 than in preparing a land use plan where you might work over
7 a period of the number of years and you may have many con-
8 ferences and contact many agencies; is that not correct?

9 A Probably, yes,

10 Q ~ Much more limited? . A Yes. .

11 Q You had commented on the three-and-a-half acre
12 areas or the areas zoned for three-and-a-half acres, do you
13 know the amount of ground water in those particular areas?

14 A No,

15 Q And is it not proper to take into consideration the
16 amount of ground water where sewers are not available?

17 A Are you talking now ground water for water supply for
18 the units or are you talking sewage or-

19 Q I am talking about the ground water to supply the
20 town. A You are talking about water supply?

21 Q Yes. A So you are saying basically each
22 site should generate enough water for that unit on that site;
23 is that what you are saying, and you are asking me if that
24 is appropriate?

25 Q Generally speaking, yes. A No, I don't think

1 that is particularly appropriate* In fact, that kind of comment
2 was made in the NRI essentially each site should be supported
3 by its own water within the site and frankly that seems like
4 an extraordinary parochial way to look at it. If we followed
5 that theory, we should have high rises on the pine barrens
6 because of the extreme shortage of water supply, so I don't
7 buy that theory at all.

8 Q You didn't agree with that theory, where there are
9 no, there is no public water and no public sewers?

10 A Well, obviously the town has the option of extending the
11 lines to supply those areas or allowing people to one way or
12 the other gather the water together. In other words, to
13 remedy their own problem, but it doesn't mean each lot has
14 to be self-supporting.

15 O Let's assume the State Department of Geology said
16 in certain areas there is enough water to support one dwelling
17 provided it is zoned for, say, three acres. There is no
18 public water, there is no public sewers, would you say that
19 that area should be zoned this?

20 MR. HERBERT: I will object to hypotheticals
21 not based on specific facts in the record.

22 THE COURT: It goes to hydrology. He testified
23 as to certain water recharge areas and the completion
24 especially on the eastern side of Route 31.

25 MR. HERBERT: Except the hypothetical I didn't

1 that is a holding zone and then have zero budget, have no
2 capital budget program to bring services to it, essentially
3 you have a holding zone that seems to be indefensible.

4 If it were in Colorado perhaps it would be a bit different.

5 Q Aren't there many people who live in townships such
6 as Clinton Township who want lots of three-and-a-half acres?

7 A Sure, all the more power to them.

8 Q And is there anything wrong with zoning that provides
9 such lots for these people who want the lots and can afford
10 to pay for them? A No, obviously not as long as
11 their proportion is reasonable in terms of people demanding
12 that kind of lifestyle.

13 Q Do you know how much water Round Valley's proposed
14 development would utilize? A I can pull out the
15 Horton report and check it if you like.

16 MR. HERBERT: Your Honor, I just want to make
17 note of the fact that we have a water expert. This
18 is generating into an area not covered by direct,
19 it is getting into an area that will be covered by
20 one of our expert witnesses. We have no objection
21 to this Court if it wants to have these kinds of
22 questions and answers to be asked, but obviously
23 Mr. Rahenkamp will have to be testifying from other
24 documents that will be qualified by experts and will
25 be presented by them, so I just would make the

comment that we would prefer the experts who wrote those reports be cross examined on those reports.

THE COURT: Yes, I can see why you would prefer it, I will allow broad latitude on cross and if we run into a problem about these reports, it is a test of his projection and compatible therewith. I don't want to cut Mr. Sutton off any area he wants wants to explain, let him explain.

A In the report of March 8, 1977, it indicates the gallons per day at the end of the ten years based on a population 9,744.

Q Do you also have available a study or do you know from examining a study as to how much ground water there is beneath this tract of land as it was zoned by Round Valley, Inc?

A According to the Horton study, about three-quarters of that water could be supplied from the site. It probably-ish't the preferred way to do it, by the way; but " " it could be supplied by the site of about 750 gallons a day.

Q That is a considerably higher amount than shown by the watershed studies; is that not correct?

A I don't recall the final watershed report, I read carefully the Horton report and he was up around 750,000 gallons.

THE COURT: The balance would come from this loop system that you described?

THE WITNESS: Yes, the point is that the Town

1 . of Clinton has a water line running right directly
2 past the site, if I am not mistaken it is either a
3 9 or 10-inch line that goes out to the regional high
4 school and in our discussions with them back in '74
5 they would prefer it even to be incorporated into
6 their system, if I am not mistaken as well as the
7 line running up River Road so that they asked us at
8 that time to loop them and however they did say we
9 need sewerage capacity which we accommodated or at
10 least said we would accommodate and well, we volunteered
11 to bring supplemental water to it, that is, to some
12 wells on our site to supplement the water.

13 As a watershed, however, there is no gross water
14 deficit as a watershed.

15 Q Well the Clinton water supply, this provides by well,
16 also, is that not correct? A Yes.

17 Q And this proposed Round Valley development is of
18 course very close to the Town of Clinton; is that not correct?

19 A Yes.

20 Q And so you have to use some care since this is a high
21 density area as to what the ground water supply is in that area?

-22 is that not correct? A It is certainly one of the.
23 factors, there is no question about that.

24 Q Mr. Rahenkamp, you testified that relative to mobile
25 homes, is it your—under our ordinance of course we provide

1 for a considerable number of mobile home units that can be
2 built. Now-

3 MR. HERBERT: I am going to object to that, Your
4 Honor. He is making a statement by way of argument.
5 Our testimony is to the effect that it is just the
6 contrary.

7 THE COURT: I recollect that. It is Mr. Sutton's
8 belief that notwithstanding, however, there are
9 potentially a number of mobile home sites allowable
10 - under the proposed ordinance. It is the expert's
11 testimony that that isn't true.

12 MR. HERBERT: That is correct.

13 THE COURT: So I gather Mr. Sutton wants to
14 challenge that.

15 MR. HERBERT: But in his question he is including
16 a conclusion which is in the nature of testimony
17 and not in the record.

18 THE COURT: * He is assuming a conclusion which
19 hasn't been made. He can assume it.

20 All right, Mr. Sutton, I know what you are
21 driving at.

22 Q Mobile homes are a type of housing that should be
23 provided in a municipality; is that not correct?

24 A I am not a particular advocate of mobile homes under
25 any circumstances. We have done them and we have incorporated

1 them, they are not the optimum way for one to live. There are
2 better ways to do it for the same cost.

3 Q Have you read the New Jersey Supreme Court case of
4 Vickers? I am referring to the dissent by Justice Hall, I
5 would like to read this sentence and ask you if you agree or
6 disagree.

7 MR. HERBERT: Your Honor, I now get the point,
8 the Vickers decision was rendered around 1960 or
9 1961, maybe earlier, Justice Hall later came into
10 the majority on the court, I don't know what this
11 is getting to, this is a decision that was rendered
12 about 16 or 17 years ago.

13 MR. SUTTON: I want to read one sentence and
14 ask him if he agrees or disagrees,

15 THE COURT: You read the sentence and before
16 you answer the question, we will see if it is ob-
17 jectible.

18 Q "Trailer living is an equivocally respectful special
19 type of housing adopted by choice by several million in this
20 country today,"

21 THE COURT: Do you agree or disagree with that?

22 THE WITNESS: Mercy, I would agree with the con-
23 clusion but not the preamble, it is not the most
24 healthy, desirable way to live. It is a valid in-
25 clusionary piece of the entire zoning picture, so no

1 doubt there would have to be and will be mobile homes.
2 I just don't think that it is the way to solve the
3 low-income housing or moderate-income housing, low-
4 cost housing projects. The point is that we do have
5 basically for a considerable amount of money per
6 month for the residents, so there is a way, but it
7 is not the desirable way.

8 Q This is a statement by Justice Hall and I think you
9 will concede that there are people whose opinions are, though,
10 that the mobile homes are a fine type of housing; is that not
11 right?

A I certainly respect Justice Hall.

12 • THE COURT: Chief Justice Weintraub describes
13 schizophrenia in State v. Maitlin and says it was
14 very good law but very bad psychiatry, and I don't
15 think Justice Hall ever lived in a trailer.

MR, CAIN: Neither did Justice Weintraub.

16 THE COURT: I don't think he lived in a trailer
17 either, nor an insane asylum.
18

19 Q There has been considerable improvement in mobile
20 homes since 1960, '61, '62; is that not correct?

21 A Yes, that is true, they are much better.

22 Q What is the present population of Clinton Township?

23 A If I recall correctly, it is about 8500 from their land
24 use-report or land use plan—I am sorry, 6500.

25 Q Sixty-five hundred? A Yes.

1 Q And this proposed development would bring how many
2 people into the town? A Approximately 97 00_ 10,000,
3 over ten years, about a thousand a year.

4 Q And that would more than double the population;
5 isn't that correct? A Yes.

6 Q And is it not correct that the New Jersey cases
7 state that any township has the right to provide for orderly
8 growth and not be overwhelmed by population growth?

9 MR. HERBERT: What case is Counsel referring to?

10 MR. SUTTON: One of the cases I am referring
11 to is the Mt. Laurel case and I don't have the case
12 before me but I did pull from it in my brief, and
13 my recollection is that there is a paragraph in there
14 that says that the township does not have to be over-
15 whelmed by development. I am paraphrasing, it is
16 in my brief.. By voracious developers and land
17 speculators.

18 MR. HERBERT: I object to any allusion by
19 voracious land developers and so forth.

20 MR. SUTTON: I am trying to quote from the para-
21 graph and as I recall, the word voracious was used
22 and land speculators was used in my brief.

23 THE COURT: I would prefer if you have the book
24 and page, I don't know if voracious land developers
25 in the sense of gastronomical strides or what, I get

1 a picture of a huge man with a fat cigar eating a
2 huge meal in the middle of a field. I don't think
3 • that has anything to do with what we are talking
4 about,

5 MR. SUTTO-N: I will be glad to bring the para-
6 graph in and read the paragraph to him so there will
7 be no misconception.

8 THE COURT: You may not be on cross examination
9 tomorrow, hopefully*

10 THE WITNESS: Can I answer your question?

11 THE COURT: If you have the exact quote.

12 THE WITNESS: I can't have the quote but I have
13 one very close to it on page 501 in Madison, they
14 talk about the explosive growth in Madison being
15 506 per cent, 1,700 in 1950 to 48,000 in 1970 and
16 Madison was struck down as not accommodating the
17 fair share, so if that is not voracious growth, you
18 are saying 100 per cent increase is extraordinary,
19 that doesn't seem very extraordinary to me. If
20 so, you would be growing slower at that rate than
21 either Madison or Mt. Laurel.

22 Q You have Madison and Mt. Laurel and Madison and
23 Clinton Township and population growth; is that not correct?

24 A Yes, sir.

25 Q Over a period of time? A Yes, sir.

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1 Q Now, in order to make a completely meaningful com-
2 parison, you have to have certain factors that are similar
3 to all of these townships; is that not correct?

4 A Yes, sir.

5 Q Now, considering Mt. Laurel which you undoubtedly are
6 very familiar with, how far is Mt. Laurel from Philadelphia?

7 A About a 25-minute travel time and about, I think, 10 to
8 15 miles.

9 Q How far is it from Camden? A Oh, perhaps
10 9 to 12 miles, let's work backwards, the 20 miles from Mt. Laurel
11 goes into Philadelphia,, so it is obviously within 20 miles
12 and Camden would be perhaps half-way.

13 Q And there are other cities in that area, also, are
14 there not? A Cities, you mean incorporated cities?

15 Q Yes. A Camden is the only one that I know of.

16 Q But Camden has quite a considerable sprawl, does it
17 not, from what you could say? A You mean is there
18 suburban sprawl, yes, certainly.

19 Q And Mt. Laurel, therefore, in Mt. Laurel there is
20 also bus transportation,,, is that not correct?

21 A No.

22 Q To these areas? A No, I don't believe so.

23 Q Within 10 miles of Philadelphia there is not bus
24 service to Mt. Laurel- A No, I don't believe so,
25 there is a Trailways line and that is about it, there is none

1 I know of, there is some from Moorestown which is mileage, by
2 the way.

3 Q If people lived in Mt. Laurel they would have to
4 drive the 10 miles to get into Philadelphia? is that correct?

5 MR. HERBERT: That is incorrect.

6 THE COURT: Re said 15 to 20, Camden was 10.

7 Q Can I have that again? How far is Mt. Laurel from
8 Philadelphia? A Well, the 20-mile radius from Mt. Laurel
9 case just gets into the lower tip of Philadelphia, gets you
10 into center city.

11 Q Well, within the 20-mile radius you do have employ-
12 ment areas; is that not correct? A Yes.

13 Q Now, when we talk about a 20-mile radius of the Round
14 Valley tract, there are no towns that compare, or no cities
15 that compare; is that correct?. You have a completely
16 different situation- A I must say I don't know how
17 Somerville or Bound Brook or the cities on the edge of that
18 radius would be and obviously they are not Camdens but they
19 are cities, I expect, and they are incorporated cities and
20 there are jobs there. •

21 Q Do you agree with a 20-mile radius as far as that
22 is concerned? A It is not the most scientific method
23 but it is extraordinarily accurate. I evaluated it within
24 several towns and the 20-mile radius comes up consistent as the
25 prime radius of people driving and so forth and the maximum

1 length.it seems<to be relevant, although not scientifically-

2 Q About the maximum especially in an energy crisis,
3 is that not cprrect, on the average for people who drive to
4 Work? A It is about the distance that the majority

5 of them would drive though in terms of the energy crisis there
6 is some question whether we should upgrade the railroad and
7 the longer term transactions, almost like the Swedish new towns
8 or some of the things in Newark where we have got entirely
9 heavy communication or transportation which substantially re-
10 duces the energy to the crisis.

11 Q Would you say with the energy crisis the radius should
12 be less than 20 miles? A Nell, you have got to do,

13 you can't just ask a casual question like that because there
14 are several difficult points in the first place, the auto-
15 mobile is very inefficient and even with minor technological
16 changes it can be made extraordinarily more efficient.

17 In addition as the population intensities get higher in Trenton
18 and Newark and so forth, it becomes hot spots and that may
19 outweigh the situation of people getting closer together, New
20 York must transfer water from a fairly large region to service
21 the city that requires an extraordinary amount of energy,
22 getting rid of the sewerage or solid waste requires an extra-
23 ordinary amount of energy so in balance, the probabilities
24 that we are talking about, some kind of controlled sprawl as
25 being the most energy efficient pattern, clustering the jobs

1 and houses closer together, but districting them so that they
2 don't create environment hos spots.

3 Q You didn't make this study as to where these people
4 would work, Mr. Abahoshi made that study; is that not correct?

5 A Yes.

6 Q Would you agree that industry—that you want to
7 attract industry, you cannot have what you would call—you
8 cannot mix industry with residence because of the fact that
9 they would not, industry might not want to settle in the area.

10 A Do I agree with that?

11 Q Yes. A No.

12 Q Thatysu should try to have an area that is rela-
13 tively zoned for industry, relatively free of residences at
14 the present time? A No, I don't agree with that at
15 all. In fact, our experience with PUD's is including Columbia
16 which is quite the opposite, that the industry and the
17 residences as long as they are proper performance standards
18 as your code incorporates, that they should be and are compati-
19 ble. In fact, the big industry is Ethieon and some of these
20 others is almost of the old estate, they have enough green
21 space around them that they are good neighbors. New York Life
22 is a good neighbor, it has no problems with the residents
23 close to it.

24 Q You are saying even on the same side of the road?

25 A Certainly.

1 Q Are you familiar with any law; which says industry
2 may shun use with discordant uses side by side?

3
4 A You didn't say that if it is a packing plant or rendering
5 plant or livestock, you may not be as compatible neighbor,
6 so there should be performance standards applied, but ROM type
7 uses as you define them generally would be quite compatible
8 with general uses. They incorporate that in the PUD code, they
9 allow that in the ROM uses right in the PUD.

10 Q But if you are going to be zoned for industry, is it
11 not correct that it is better to zone land that is generally
12 principally vacant? A Generally I would zone land that
13 is vacant for industry, yes.

14 Q Now, in commenting upon the one zone on the map, you
15 said that it overlooks the highway, that there would be highway
16 noise and that that would not be ideal for high density
17 residences? is that correct, sir? A Do you mean the
18 area of ROM, one, at the intersection of 78 and 22?

19 Q That is correct, right? A Yes.

20 Q And now would the same thing be true of the Round
21 Valley tract that that is relatively close to the highways in
22 that there would be a noise from the highways in effect?

23 A Yes, that is why we used the golf course to buffer the
24 noise on the bottom side and the particular, the trees at the
25 intersection or up on the knoll at the intersection of 31 and 78
have been included in the open space and the reserve treed

1 areas in order to buffer the sound and buffer the point on
2 that ROM tract. There are no trees and in fact you can see
3 the site front 78. You can see it as you come up the intersectsⁿ
4 and it is a side slope facing into the expressway so that the
5 noise is what actually goes directly to the units and you would
6 have no buffering, at least for the foreseeable future, so it
7 is a fairly desirable site.

8 Q Isn't the same thing true with the Round Valley tract
9 east of 31, that land is relatively flat and there is nothing
10 to buffer it from the noise? A Oh, no, in terms of
11 the expressway, 78, it is well back from the expressway so
12 you are not going to have noises from that. Are you talking
13 about noises?

14 Q I am talking now about 31. J A Noises from
15 31, there is a fairly good hedgerow along 31 and you obviously
16 will not get the noises from 31 that you get from 78, in
17 addition, you have sound performance standards on the sound
18 in the ordinance, which we need that kind of thing.

19 Q Have you ever driven on both 31 and Route 78 or do
20 you have some comparison of the amount of traffic on the two
21 routes in this particular area? A I have driven them
22 both but you have no numerical scientific base from which to
23 operate.

24 Q You don't know whether traffic might be just heavy
25 on 31 and 78? A I expect the volumes are probably

1 comparable but the noise is the question. The problem is one
2 of grades, whether or not the automobiles or trucks are shift-
3 ing, how many trucks there are, if there is a proportionate
4 mix of the movements, so it is more simply volume, you know,
5 in front of our site, by the way you are downgrade pretty
6 much so you wouldn't have the same noises that you would have
7 from 78.

8 Q Isn't it correct that you have residences that you
9 necessarily don't want the ground to be too flat, in fact in
10 certain mobile home units they try to make contours because
11 it is very monotonous for the people to just live on flat
12 tracts of land? isn't that correct?

13 A We prefer
14 tracts that are not dead flat. I must say if the alternate
15 is mobile homes, the mobile home is the least easy to work
16 in the difficult topography, because they are very long and
17 you have to bring them in, you know, that long length, you
18 have to bring it in on different slopes. If you take a look
19 at Solitude and see what additional grading job they have
20 done with it but they are on steep slopes and the number of
21 trees that died because of it and the erosion that has come
22 from it, I think you get some sense of what happens when you
23 put mobile homes on very steep slopes. It is not particularly
24 desirable.

25 Q Would you say about Solitude it is quite scenic be-
cause of the area? A I would say it is scenic despite

1 the construction, it -is a terrible site to have put those kind
2 of units on it. There are very few trees left on the site, if
3 you look at it I guess there are not more than 10 per cent
4 of the trees covering that was originally there. It is an
5 abomination, and the site costs are also, by the way, because
6 of the steep slopes, the site costs are extraordinarily high.

7 0 Have you studied the cost of the units?

8 A In Solitude/ no. You mean specifically cost accounting, no.

9 THE COURT: Didn't they go bankrupt?

10 THE WITNESS: I believe so, yes.

11 MR. SUTTON: There are financial problems, I
12 have no doubt. Of course I don't want to speculate
13 what the causes- are.

14 THE COURT: But we are talking about the cost and
15 grading, I have been there and I have seen the cutting
16 they had to do to put up those things and now I
17 connect the fact that they are in bankruptcy.

18 MR. SUTTON: The only thing I was thinking is
19 that I have also driven over there, in fact I re-
20 present a client who is going to purchase one and
21 I thought it was a rather scenic area, that is why
22 I asked the question. You may agree or disagree,
23 I don't know.

24 THE COURTS He says it is a very poor site for
25 mobile homes, the trees have died, the grading job
and so on.

1 Q But High Eridge is an unusually difficult topography;
2 is that correct? A Yes, it is, I would suppose 20
3 and 25 per cent slopes on the average, yes, it is very
4 difficult.

5 Q But they still did build in that area and then still
6 have- A Anybody can build anywhere, that doesn't
7 mean it is least cost housing or a desirable way to resolve
8 the problem. If I recall properly, those units sell for
9 \$30,000 each and if they can't make it at that because they
10 are on a difficult site, that doesn't resolve the least cost
11 housing problem at all.

12 Q Now, when we talk about least cost housing, is it
13 your interpretation as a planner of the Madison Township case
14 that all housing in the township must be least cost housing
15 or that a certain amount of least cost housing within minimum
16 standards has to be provided? A My sense of it would
17 be that no, not all housing has to be, however, other housing
18 which you regulate would have to relate to health and safety
19 requirements or standards, and take other steps further while
20 the Court addresses the filtering down process, yes, some of
21 the housing may be more expensive than least cost by market
22 demand, but it would generate or free up units that would be
23 least cost, so it addresses two issues, in order to satisfy
24 the requirements of least cost you can only regulate in terms
25 of health and safety, I think, or in terms of some defensible

mechanism. And secondly, that you would have to accommodate enough housing volume that it would generate and free up the housing market so that the filtering down process could work.

Q Now, as a planner, of course, you have to make a determination as to how much least cost housing must be provided, now, would it be correct to interpret the Madison Township case to say that the municipalities have to supply a certain amount of what they call least cost housing with minimum standards for public safety but they do not certainly have to provide all housing the least' cost?

A .No, that is the opposite of what I am saying. I am saying it is 99 per cent of the housing in this town does have to accommodate health and safety justification/ it exceeds that, it is an exaction, and further, a portion of the housing can be used as a zone for more expensive housing, but even at that you are talking about 70 or 80 per cent of the market has to be available in least cost housing. The Madison case talks even of \$17,000 a year, so you are getting way into the housing area. So I don't think it is a matter of coming up with a small fixed number or any fixed number, I think the difference between Mt. Laurel and Madison is that in Mt. Laurel they were talking about a fair share portion, a mixed portion of low and moderate income, Madison doesn't do that, they talk about what is your gross volume of housing, what does that have to be, that is your fair share, and you have to allow

1 that to come in substantially larger numbers even then. The
2 fair share of the bottom line number.

3 My interpretation is the Court said that you need more
4 than that which is required to make sure there is flexibility
5 and make sure that you can accommodate the whole market and
6 there is flexibility in accommodating it, not that it is fixed
7 down one place, I think this contradicts Madison as a matter
8 of fact.

9 Q What you are saying then, your interpretation is
10 that the municipality must provide for most of the housing
11 with the absolute barest minimum standards; is that correct?

12 A No, you put it in the wrong characterization. I would
13 suggest to you that based on your NRI and based upon perform-
14 ance standards and the information that you have at hand, we
15 are not talking about the minimum bare standards, we are
16 talking about defensible logical reasonable standards that you
17 can defend, so it is not, you know, a sort of bottom line
18 bare bones thing at all.

19 Q Now, who determines what areas should be zoned for
20 least cost housing?

21 THE COURT: Do you mean mentally?

22 Q Does the municipality make a determination as to
23 where areas for least cost housing should be located?

24 A If the town could logically defend the districting on
25 the basis of information and arrive at a district, I would say

1 the town could proceed to do that.

2 Q A planner gives guidance to the town, as I understand
3 your testimony, but the municipality makes its own determination
4 as to where this district should be located and if they are
5 reasonable districts they should be upheld; is that right?

6 A You are going a little beyond where I would go. It is
7 not for me to determine whether they would be upheld. The
8 question is would the district be defensible based on an in-
9 formation base, I would have, would they have standards of
10 their use be related to health, safety information, et cetera.
11 I would suppose if you could put enough information together
12 you could defend' them. In addition, in relation to maximum,
13 you would have to allocate substantially more area even than
14 your bottom line fair share in order to maintain flexibility
15 in the market.

16 Q But the municipality makes the ultimate determination
17 provided that the areas are defenseless; is that right?

18 A If you could logically do so I suspect by the way no
19 municipality could. In other words, that you district it as a
20 specific use. It is probably indefensible. It could probably
21 have a whole series of uses in a district, each one of which
22 would be equally defensible.

23 Q Mr. Rahenkamp, as I understand, Your Honor, this
24 comparative study given to us this morning, our planner is
25 not present so I can't deal with it very well on cross exami-

1 nation, I am going to give it to our planner and then I will
2 have to deal with it principally on his direct examination-

3 THE COURT: I can see principally that this is
4 a battle of the experts more or less. The lawyers
5 I think, what the lawyers are doing is depending
6 upon their main case put forth by the proponent
7 of their particular positions on direct rather
8 than the cross examination which might be more
9 apropos in a criminal case. Since this is a
10 sociological investigation I am not suggesting that
11 you curtail your cross examination, but I do feel
12 the main thrust of your case will come from this
13 Mr. O'Grady after you have gotten through prelimina-
14 ries. Fine, but I think we should get through with
15 the situation and get to where your position is
16 vis-a-vis this.

17 MR. SUTTON: I want to give some explanation
18 why I am not going into detail because I don't like
19 to cross examine-

20 THE COURT: I gave you the opportunity as a
21 vehicle on direct, that is the way it will shape up.
22 Mr. O'Grady will go on-

23 MR. HERBERT: Your Honor, I think it is import-
24 ant to point out for the record that this document
25 which has been identified as P-91 is a document

1 in effect which was produced by the defendants* We
2 took the position that we ought to have our own
3 synthesis so I didn't think it would be correct to
4 A, say it is a study or B, leave the court with the
5 impression that somehow counsel for the defendant
6 did not have the same material available to them.
7 As a matter of fact, they had this material available
8 to them much in advance of plaintiff in that they
9 were counsel to the very experts who produced it.
10 So I think the record ought to reflect that.

11 TEE COURT; I do, I think it is a critique in
12 the system thereof that they didn't do that before
13 nor did they come across these concepts before. I
14 assume that will be the subject of much discussion
15 with Mr. O'Grady and I assume the constructive parts
16 therein will be fairly discussed with him, perhaps
17 with some fruitful results,

18 MR, HERBERT: Mr, Rahenkamp's testimony was a
19 critique. The document P-91 was a document which
20 again is a synthesis of the defendant's own views
21 or documents.

22 MR. SUTTON: The one point I am making is that
23 Mr. R&henkamp has made comments upon the ordinances
24 that were not made to us and reports, I understand
25 our proposed zoning ordinance did not get to you

1 until sometime the week of the 31st and then you had
2 to spend some time on it and there are comments that
3 are not in the deposition and in which we made many
4 an examination,

5 THE COURT: Mr. O'Grady will handle it, though,
6 I assume, isn't that right?

7 MR. SUTTON: Yes, The point I am making is we
8 will have to defer to Mr. O'Grady.

9 THE COURT: I thought you should. About 20 .
10 minutes ago I thought you should.

U MR. SUTTON: That ends my cross examination,

12 THE COURT: We are deferring to Mr. O'Grady.
13 Would you like a break now?

14 THE COURT REPORTER: Yes.

15 [Whereupon, a short recess was taken.]
16

17 CROSS EXAMINATION BY MR. CAIN:

18 MR. CAIN: Your Honor, I happened to have been
19 leafing through the Mt. Laurel case and the word
20 "voracious".hopped out and hit me in the face, it
21 is at page 191* It is in the first paragraph on
22 page 191, the word "voracious" in referring to
23 voracious land speculators and developers. ,

24 THE COURT: 67 N.J. 191 refers to the word
25 "voracious". I assume in the colloquial sense.

1 MR, CAINI I don't think it was referring to
2 gastronomies.

3 j. THE COURT I recently saw a picture of Mr.
4 Levitt and he didn't seem to be too voracious to me
5 at the age of 70, he celebrated his 25th anniversary
6 of Levitto-vm, Pennsylvania,

7 Q Mr. Rahenkamp, you indicated, I don't want to cover
8 the testimony of Mr. Sutton, but it is your position, then,
9 that you did not consider mobile homes to be a desirable form
10 of least cost housing? A There are more desirable
11 ways to provide least cost housing.

12 Q The position is, then, that you can provide comparable
13 housing at a lower monthly cost by more conventional means?

14 A Yes.

15 Q And is your Round Valley PUD-Beaverbrook proposal
16 an example of that? A A portion of it, yes.

17 Q What portion of your project would you say would pro-
18 vide comparable housing at no greater cost than mobile homes?

19 A Let me get my numbers. . The garden apartments would
20 certainly fit that category, they are about 51 per cent of
21 the units, and the average sale price was listed at 21,900.

22 Q Is that your 1977 price? Or is that your 1974 price?

23 A These are '77.

24 Q Twenty-nine-nine? A Yes, that is average now.

25 Q Yes, sir. A And the bottom line on housejj

1 we have not refined it down that much, maybe Mr. Abahoshi has.

2 Q And have you planned some of the garden apartments
3 on the westerly side of Route 31 or are they all on the easter-
4 ly side? A Both sides.

5 Q And I understand the density of your proposal was
6 4 to 4.6 units? A About 4.5.

7 Q Four point five units per acre? A Yes.

8 Q And you can achieve, then, that 29,900 garden apart-
9 ment at the density of 4.5 per acre? A Yes, sir.

10 Q On the westerly side of Route 31? A The
U answer is yes. I'm sorry, I thought I said that,

12 Q Again, quoting from Mt. Laurel decision at page 202,
13 paragraph 5, near the top, the Court is going through a list
14 of problems with ordinances and under 5 it says, "Prohibition
15 of mobile homes¹¹, and that goes to say mobile homes over an
16 alternate less expensive form of housing.. They have long since
17 ceased to be mere "house trailers" but have become an import-
18 ant form of mass produced semi-permanent housing. Indeed
19 for many persons it may be the only form of new housing avail-
20 able. A Perhaps you misread me, but I didn't say
21 the township prohibits mobile homes, I said they may be one
22 of the ways but I would think they are less desirable than
23 the alternate ways.

24 Q But they are an alternative? A Yes, and in
25 fact even required by the Gloucester Township case.

1 Q But your proposition is that in PUD's you can find
2 other, by more conventional weans to try to meet?

3 A Yes, the point is you can build better quality low cost
4 housing than mobile homes.

5 Q Do you recall on your 29,900 garden apartment what
6 the configuration was of rooms, in terras of bedrooms, or was
7 that just an average figure? A That is an average, we
8 have not fixed that down, we would not usually fix it down
9 until there is an ordinance against which we can make appli-
10 cation.

11 Q And do you recall the square foot area of garden
12 apartments? A The average square footage was 683_f
13 that is for 1,821 units.

14 Q Now, on the mobile homes, they make some of these
15 that are put together, don't they? A Yes, double.

16 Q And aren't they approximately 24, 25 feet by 55 or
17 60 once you get them bolted together? A Usually when
18 they are double, they normally go 12-by-36, that is the con-
19 ventional measuring rod, sometimes they go 14, but usually
20 it is not the whole 50 or '60, the conventional double wide
21 unit is 12-by-36. j

22 Q I wasn't being- A I understand.

23 ¹ THE COUP.T: Times two.

24 THE V^TITKESS: Times two because you are attach-
25 ing two together.

1 THE COURT: So it is 24-by-72?

2 THE WITNESS: No, 24 by 35 or 36, if you double
3 it, it is 72 so you get to square footage.

4 THE COURT: I am trying to get that.

5 Q In effect, then, you could probably achieve a larger
6 square foot area on one of the double widths in some of the
7 garden apartments, wouldn't you? A If it is double
8 wide, that is true, double wide is usually a two-bedroom unit,
9 sometimes three.

10 Q And while we are on least cost housing, I didn't
11 presume to be an expert on this, I think we are all learning,
12 I am not quite sure what your interpretation is of the muni-
13 cipality's obligation as to least cost housing. I am trying
14 to follow your conversation with Mr. Sutton and I think I got
15 out of it that you should make whatever the majority of the
16 demands for housing, whatever your greatest demand for housing
17 was should be provided at the least cost possible, or did I
18 just fall asleep or something?

19 A That is approximately right. The point is there was an
20 adjustment or change between Mt. Laurel and Madison. In Mt.
21 Laurel they addressed low and moderate low-cost housing and
22 they tried to give it a fixed number. They had problems
23 defining region, they had several semantic problems trying to
24 define exactly what that number would be and their whole
25 string of theories as to how to do it. As Madison was heard

1 it became more and more apparent that that low-moderate was
2 really not the problem, that low-moderate alone sort of had
3 this bottom line number, number one because of the lack of
4 federal subsidy, number two, because in fact the problem is
5 one of gross volume, therefore getting enough houses on the
6 market, therefore the trickle down theory does work, that the
7 gross number was far more important than the identification
8 of this low-moderate number, so-

9 Q Can I stop you right there? A Sure.

10 Q Are you in effect saying then that the courts have
11 pretty much concluded and so do the planning experts after that
12 you cannot supply low income or low or moderate income, just
13 through the zoning process, is that a fair statement? It re-
14 quires other help other than just reducing that?

15 A Yes, I think it is basically an accurate statement with
16 one caveat, that being, that obviously the bottom line priced
17 houses if, it can be required to do so more than is necessary
18 to accommodate the fair share. Do you know what I mean?
19 In other words, if the codes are onerous thereby increasing
20 the amount that would force them out of the low-moderate
21 or low range, therefore the town can, their only mechanisms.
22 affect the low-moderate portion of the market.

23 Q They can't achieve it but they can affect it?

24 A Yes. There is language in, I can't recall whether it was
25 Hat. Laurel or Madison saying that the towns may well set up

1 housing authorities and probably they ought to be more affirma-
2 tive in getting on that kind rather than- simply sitting with
3 a dead hand situation, that in fact they could and perhaps
4 would be required eventually to set up housing authorities
5 and get on with the process.

6 Q Would you agree that that is a better way to approach
7 low income and perhaps low-moderate income, just to focus
8 on some kind of subsidized housing instead of authorities?

9 A I am not sure based upon the experience in New York I
10 am not sure that is the answer that I have, that housing become
11 very expensive. I think the Madison has concluded and I
12 would agree with it, that we have to depend on free market
13 and market builders approach to get the housing supplies and
14 we can't only be working with a low income stock and it is
15 not worth categorizing that alone and it is not worth approach-
16 ing the problem as Mt.. Laurel did, but it is more appropriate
17 to do it as Madison did. Let's talk about the whole gross
18 market and they ought not to require any more cost at any of
19 those houses than is defensible, that makes sense in terms of
20 health and safety.

21 THE COURT: Well, that thing in St. Louis provjes
22 that if you have entire federal subsidies you have
23 shambles and if you have shambles in ten years you
24 spend five or six million more to refurbish it and
25 you destroy it at the end of ten more.

1 THE WITNESS: We have worked on public housing
2 and it is a disaster, that just isn't the solution.

3 Q I think that is probably true, I think other counties
4 have encountered that, too, I think the Arabs, or Israelis
5 had the same problem, they had to educate them first.

6 THE COURT: That was an exodus beyond yours.

7 MR. HERBERT: I hope he is not talking about
8 the Palistinians because they are still out there.

9 Q What studies did you make or did you read, Mr. Rahen-
10 kamp, showing the demand in Clinton Township or in the region
11 or area as a matter of fact, for any particular type of
12 housing?

13 A What studies? We read the state
14 housing report on fair share allocation, we read the county
15 report and we read Abahoshi's report, those were the prime
16 pieces.

17 Q I guess we-will have Mr. Abahoshi here later, so based
18 on the more standard thing that you read officially, what is
19 the housing demand in terms of percentage of units in Clinton
20 Township for the non-single-family residential housing?

21 A I don't recall. Are you referring to a specific document
22 or what?

23 Q I am asking you, what I am trying to develop ~ I
24 will tell you exactly where I am going, I am trying to find
25 out based on your theory that you should provide least cost
housing for the majority of the housing demand, I am trying

1 to find but what these housing lands are or what your inter-
2 pretation or what your knowledge is of the housing demand in
3 Clinton Township percentagewise.

4 A' I would basically defer to Abahoshi on that and I would
5 basically agree with the theory he applied to it, I think his
6 declaration of region is an appropriate one. I think the
7 state basis of region is an appropriate one stating the county
8 is a region itself. I don't think that is indefensible, I
9 would have to refer to Abahoshi the way he puts the theory, I
10 concur with the theory he generated and developed.

11 Q You don't know what the percentage of number of
12 people coming into the township to live want garden apartments
13 or townhouses or single-family residences?

14 A Well, that is not an accurate way to state what happens.
15 What happens is you have to relate to disposable income as
16 well and there is a trickle down between the types so that
17 if one could afford, let's say, \$50,000, he has a little more
18 flexibility in the unit type, even, that he may take a less
19 expensive unit* So there is no proper characterization.

20 Q I understand that, but I would also propose that if
21 you are going to depend upon private industry to develop the
22 housing and if I can infer from your testimony that it is
23 better to use that housing and then have some sort of subsidi-
24 zation within the private framework rather than the so-called
25 public housing- A Right.

1 Q And private industryfcingwhat it is, following de-
2 mands, supply and demand, and that when you are going to sign
3 a municipality you are going to have to have some idea of
4 what kind of demand you will have for garden apartments, town-
5 houses and single-family houses. A Perhaps you
6 should, I would submit that that kind of statistical evaluation
7 is not all that helpful. You can grossly bracket it in, no
8 doubt we can determine what the bottom line is, no doubt we
9 can take a look at the whole State of Jersey to see what the
10 gross demand is with regard to the number of jobs, but there
11 are fairly consistent ratios, but when you come down to a
12 localized situation, I don't believe that you can conclude
13 that there are a number of garden apartments and townhouses
14 or single families that you would zone the town to accommodate
15 that. I doubt very much that you could find any logical basis
16 to that. That is why. in fact it is very difficult to simply
17 isolate a district and say that is the kind of unit there be-
18 cause in fact the market demand changes. The available incomes
19 change, the subsidies change. As the codes have changed from
20 all of the homes over.-the last four or five years, the demand
21 for that has changed. As the savings and loan industry takes
22 a look at homes that have changed, so it is so much, there are
23 so many variations within the game, I don't think a town can
24 say all right, give a number and whatever the district is out.
25 I don't think that that can stand.

1 Q I wasn't talking about district and house, I an
2 paying putting one unit here and one there, your theory is it
3 is better to mix these into some type of planned community.

4 A That is true.

5 Q I wasn't talking about districts, I was trying to figure
6 out how you as a planner are going to turn these theories
7 into a practical zoning ordinance so that we don't have the
8 opposite of this one in here where somebody is coming in saying
9 you have got too much of a municipality zoned for apartments
10 and townhouses and in Hunterdon County there is not that demand.
11 We want more single-family houses.

12 A It is probably inappropriate to fix down those numbers.

13 My point is if it simply said look, the land will carry a
14 certain intensity of land use, certain automobile movements,
15 et cetera, that you can get it in a range of 1-to-3 to the
16 acre and thereafter make a decision rather than fixing down
17 a given density and a given land use type which probably
18 would not be defensible for very long because of the variables
19 I talked to. So I don't think that you can specifically dis-
20 tribute an area and defend that for any length of time at all.

21 THE COURT: Doesn't that apply to your own use?

22 THE WITNESS Yes, in fact that is the test we
23 went through, we said we have a specific site, we
24 asked the marketing people to generate what they
25 thought the marketing demand would be and thereafter

we looked at the impact to see whether it would fit. No matter that it was distributed in whatever way it was, the critical test were we going to have negative impact or could we be accommodated or could we resolve any problems with it.

THE COURT: If you have your way, you will have a re-districting and then you will say you can't defend that, either.

THE WITNESS: No, I don't believe that that is * true because the fact-

THE COURT: Isn't that what you just said. You can't defend anything too long.

THE WITNESS: We still have to relate it to health and safety and impact and we have to measure those, if they are negative impacts or positive, we will have to either resolve the negative impacts or we can't proceed.

THE COURT: All right, Mr. Cain.

MR. CAIN: You got more particularly to the point than I did, Your Honor. Thank you.

BY MR. CAIN:

Q That is exactly the type thing that I was wrestling with, talk about a large tract of land and they had to make some marketing decisions to see if he would be able to have 41 per cent, for example, of your units, garden apartments out

of 10,000 or our of 500 and couldn't the municipality, isn't there some machinery whereby the municipality can provide some kind of factors in working out practical work' with the zoning ordinance? A Probably not, the point is a specific developer can control the variables enough so he narrows it down, but the township has far more variables than complies with a specific thing, with a specific piece of ground and it is improbable that any town can get to that same level of specificity and justify it for any length of time. The variables are too extraordinary, any changes that occur. For instance, if you perceive they will survive or if the school capacities change or the road:is improved on 31, whatever, these are all changes in the' capacities available in terms of health and safety and therefore theoretically we can at least allow a higher intensity of land use and therefore the town couldn't easily adjust to these variables and I would suggest to fix it down doesn't really make any sense at all.

Q Are you familiar with the Prel application in Raritan Township? A .No.

Q That is a PRD in Raritan Township of, I believe, somewhere between 600 and a thousand units. You are not familiar with that, you didn't make a study of that?

A No, sir.

Q Are you aware of any other applications in planning

1 boards or potential development in the county? You made a
2 study in this application, A , The only one we have
3 worked with is Lambertville.

4 THE COURT: We do have some others besides
5 Prel, do we not?

6 MR. CAIN: I believe there are five active
7 applications in Raritan Township, PRD's. of approxi-
8 mately 600-plus units. The point I am making, Mr.
9 Rahenkamp, is that with respect to Prel, Prel
10 - recently came in and changed their phasing schedule,
11 just by way of example, and you can see if you agree,
12 changed their phasing schedule to build more of
13 the single-family housing first because there wasn't
14 a demand now for the garden apartments or townhouses,
15 and this is a change in their application and if
16 you study it, you will see it is on file a change
17 in their application from the original schedule
18 that they came in with four years ago.

19 Now, this is a reaction of a private developer
20 to demand and if that is the case, then how can Round
21 Valley with such a proposal here which provides
22 3500 units, how do you know it is going to be
23 economically feasible?

24 MR. HERBERT: Your Honor, I will object. First
25 of all, the witness has already testified, I believe,

1 twice that he is not aware of the Prel application.

2 Secondly, the question contained within it
3 a hypothetical concerning an assumption as to why
4 a particular developer which Mr. Rahenkamp has al-
5 ready testified he doesn't know about, why a parti-
6 cular developer did what it did. We have no proof,
7 nothing even remotely in the evidence to show that
8 that indeed was the reason why they changed the
9 application. I would therefore object to the question.

10 THE COURT: Probably the way to put it, Mr. Cain,
11 is ask him to assume. He can assume anything,

12 MR. CAIN: Well, I think the question was it can
13 stand without the preamble, Your Honor, the basic
14 question was how does Round Valley know that its
15 plan of 3500 units with 41 per cent apartments is
16 economically feasible?

17 A How do we know that? Because we have run an analysis.

18 Q And there will be the market for these?

19 A Obviously you are looking closely at demographic and
20 generate that, our experience, we do master planning for be-
21 tween 20 and 25,000 units a year. We have got, I believe, one
22 PUD under construction, they have been successful. We have
23 yet to have a bankruptcy on any of them and so I suspect we
24 do it as tightly as we can and the numbers are fairly con-
25 servative and they are able to generate that. Further, if we

1 did garden apartments'and do townhouses or do units that are
2 closer together, we do them with many characteristics of
3 single-family as possible. Most of the garden apartments
4 and townhouses in this project are directly abutting open
5 space so the tradeoff to go from a single-family where you
6 have got a back yard to a townhouse or apartment with a golf
7 course is a reasonable one to make. To me, without these
8 kinds of benefits it has been done and it has not been
9 successful in the market. Ours have been consistently.

10 THE COURT: Well, you build into that population
11 explosion, do you not?

12 THE WITNESS: Critical shortage of houses, not
13 just in New Jersey but especially in Hunterdon County.

14 THE COURT: Then you build all these factors
15 into this; is that correct?

16 THE WITNESS: Yes.

17 THE COURT: That is part of the market analysis?

18 THE WITNESS: Yes.

19 THE COURT: Even at that, isn't the flexibility
20 building these PUD contracts over ten years anyhow?

21 THE WITNESS: In fact that is the change that
22 is notable in the 1967 PUD to the new municipal law,
23 what they have tried to do is incorporate more
24 flexibility so there could be adjustments down
25 through the years.

1 BY MR. CAIN:

2 Q Now, the westerly side of the tract, the golf course
3 side, under the proposed township ordinance I think it is
4 three gross units per acre? A Yes.

5 Q I believe it develops exactly a thousand units?
6 Assuming we mold the open space which I think you already
7 have open, there has been testimony on that, in your opinion,
8 Mr. Rahenkamp, can that westerly side, the Beaverbrook side,
9 be developed practically with the thousand units, 1,000 units
10 PUD's? A Could it be developed as a thousand-unit
11 PUD?

12 Q Yes. A Yes.

13 , Q Or is that too small a PUD? A No, it is
14 adequate size. The question is, by the way, whether or not
15 the golf course would be saved in that context and the proba-
16 bility is it would not. In other words, there is not enough
17 developable land there to generate the thousand units except
18 that you would have to move a lot of soil, et cetera, and do
19 it in a very difficult way so the probability is the golf
20 course would not be saved and the probability of three to the
21 acre on that site, even taking your present proposal which is
22 at the rate of 4.5 units, has some 1400 units, I believe, on
23 the westerly side.

24 Q And on the golf course? A But almost no
25 single-family there, proportionately it was relatively more

1 single-family, the normal persons if you require 10 per cent
 2 single-family is that they will take a third of the buildable
 3 land because they require relatively flatter ground, for
 4 instance, than the garden apartments and towns.

5 Q Then you didn't intend to put any of the single
 6 families on the westerly side? A No, that is not
 7 true, because it is not up to 10 per cent of the thousand
 8 units or a hundred units.

9 Q .What per cent of the 1400 units? A Let's
 10 get that.

11 THE COURT: That is exhibit P-v;hat?

12 THE WITNESS: P-8. We have 42 single-family
 13 lots on that side.

14 Q Forty-two. Then single-family units out of whatever
 15 the total was--

16 THE COURTS Fourteen hundred.

17 Q Obviously what we are doing is getting more of the
 18 gardens and towns on a difficult topo overlooking the golf
 19 course with more singles on the other side of the road where
 20 it is flatter, I think that is a good idea, that is why we
 21 are developing this question.

22 THE COURT: Getting more towns and gardens
 23 on the difficult topo; is that the idea?

24 A " On the golf course with the views and so on.

25 Q Assuming you had 42 single-faraily houses on the westerly

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1 side and 950 units* of apartments or townhouses, can^ you still
2 save the golf course? A Probably not because the land
3 price would have to be written over all the units, if you will
4 recall the site improvements and the land cost itself generated
5 a higher cost per unit on the golf course side than on the
6 east side, so it would be marginal, let's say that.

7 Q I was giving you my arithmetic, it is even less,
8 about a 5 per cent single-family homes out of your thousand
9 units. A But it is only a thousand units compared
10 to the 1400 that you had so you need enough units to write
11 for the cost of the land on the golf course, it is about
12 150 acres* We need enough units to write the cost of that .
13 off to observe the cost of the course.

14 Q It is already built? A Oh, yes, but
15 the land has been covered, the raw land itself has value, it
16 is not at zero value, going into the equation.

17 Q Well, you are saying, then, that at 1400 units with
18 42 houses, single-family houses, you can save the golf course?

19 A What I am saying, if you will recall the testimony, is
20 that the two have to be treated together, number one, that
21 you can't split the two apart. You need the cash flow from
22 both of them to make the project go. By splitting it apart
23 three to the acre it is marginal and we have never ever looked
24 at them as separate parcels, we have to look, at them as integral
25 parcels, we need the balance of the singles and the gardens

1 so we have not carried out that study and I don't think-

2 Q i&l right. I am considering ones on one side of the
3 highway And one on the other and one is on the other for the
4 purposes of these questions, I am trying to treat them sepa-
5 rately because I can't analyze them unless I do. I understand
6 Round Valley's position that they need the whole thing in
7 order to make part of it work.

8 A Sure.

9 Q But I am not quite sure I understand that. The 1400
10 units including two houses with the golf course standing alone,
11 forgetting ~~the~~ easterly side is. or is not economically feasible?

12 A If all of the land were not having to be carried, perhaps
13 it would be. In other words, if you would take simply the
14 land there separately, perhaps it would be, but In fact that
15 is not the case, the land is together as a package, therefore
16 you arc having to consider all of the land and put that into
17 whatever your sections would be, it would still be improbable,

18 Q Let's assume it isn't, but Mr. Dishner previously
19 testified that they weren't considering the cost of similar
20 lands in question, they were not taking into consideration the
21 cost of the easterly land in figuring out the feasibility of
22 development in tie westerly land. A I don't believe
23 that that is an accurate statement. I don't think he said that.

24 THE COURT: It doesn't ring with me.

25 A I can tell you our cash flow analysis has been based on

1 a total land care, it has never been separated to my knowledge.

2 Q When and I asked Kr. Dishner to develop the westerly
3 side from the standpoint of being feasible under the proposed
4 zoning and I believe you said no, the thousand-unit PUD would
5 not be feasible.

6 THE COURT: Then he got into the 1400 units,
7 why that is what that was.

8 MR. CAIN: Your Honor, I believe the testimony
9 was that the 1400 units was feasible if it was a
10 component part of both sides of the road and I
11 believe that was Mr. Dishner's testimony.

12 THE COURT: Do we have his testimony transcribed?

13 MR. HERBERT: It is not transcribed.

14 MR. CAIN: Suppose we transfer it to a later
15 time, I would like Mr. Rahenkamp's testimony.

16 THE COURT: He already told you it was not
17 feasible from his point.

18 Q You are saying, then, at a density of 4,6-

19 A 4.5.

20 Q At 4.5, you cannot develop the westerly side feasibly?

21 A Carrying all of the land, right.

22 Q Carrying all of the land. A Of course,
23 because all of the land is in one hand package, you are carry-
24 ing the land, yes.

25 Q Where are we going to stop, Round Valley has other

1 lands other than this 790 acres, how much are we carrying here?

2 \ Yes, but between these two sites, you understand, we
3 are doing density transfers and we are transferring back and
4 forth. We are meeting the continuity of the two sides is
5 critical to carry the cost of opening up the site and the
6 cost of carrying out the project, so you can't simply just
7 casually split them apart, they are intimately locked in making
8 sure the project is feasible. You can't just casually say
9 all right, don't worry about that land. You are having to
10 carry both those parcels of ground as an integral part of the
11 package.

12 Q And carrying it on the tract up to Boston, U.S. Life?

13 A You can take it as you will, what we have to do is say
14 look, we have a golf course of 150 acres and open space, we
15 would like to retain, we have sewer and water to service this
16 area and it makes sense and it is the right application to put
17 the two together and in fact the whole thing is necessary to
18 carry those costs. In addition you have got to balance out
19 the units from both sides of the road in order to take advantage
20 of those things and in order to get the cost and bring it down.

21 Q You say the way you approach the project and the
*22 study you made and the elements you have taken into consideration
23 in developing your plan are all based upon treating the wester-
24 ly and easterly side as one total development?

25 A And I am saying the cash flow indications, the two have

1 to be considered together;

2 THE COURT: Over the ten-year period.

3 THE WITNESS: Over the ten years.

4 THE COURT: That is it as to both sides, over
5 ten years.

6 Q Why, now, so that the only project then which you
7 addressed yourself to was the development of the entire thing,
8 you did not address yourself to the development of the westerly
9 side. A Separate, no.

10 Q Separately, or the easterly side separately?

11 A No, sir.

12 Q Now, Round Valley put the westerly side, it was there
13 before zoning, wasn't it? A Westerly side was, yes.

14 Q Which was a density of one unit per acre?

15 A With a cluster provision, yes.

16 Q And you made a study of the ordinance at the time
17 they approached this, there wasn't even a cluster provision
18 in existence, was there? Didn't that come along in '74?

19 A I thought there was, yes, it did come along in '74*. We
20 knew it was in the wind and we assumed it would be there when
21 we made our application.

22 Q But at the time they bought the property and built
23 the golf course it was in a one-acre zone?

24 MR. HERBERT: I don't believe there is any

25 testimony that Round Valley built the golf course,

1 it was there before they purchased the land,

2 THE COURT: Besverbrook Country Club bought it,
3 Beaverbrook was the vendor, Round Valley bought
4 it, it was already established- I had that in
5 Danzig v. Round Valley case*

6 Q And the westerly portion of the property was pur-
7 chased with this golf course already on it with the entire
8 tract zoned one acre? A Yes.

9 Q Now, assuming, Mr. Rahenkamp, that you did not have
10 to carry the expenses of the easterly side, that is that land,
11 that your project was to look at the westerly side of the
12 Beaverbrook tract, the way it is now, and under the proposed
13 zoning could you develop a feasible PUD, PRD, under the proposed
14 Clinton Township plan at approximately three to the acre or
15 garden apartments-multi-family? A Yes. Could we
16 generate a PUD plan that would-

17 Q If that were your project, if Round Valley said
18 Mr. Rahenkamp, here is the proposed ordinance and here is the
19 Beaverbrook tract, it is yours, figuratively speaking, it has
20 this nice golf course on it, give us a PRD, can you come up
21 with a viable? I think that is the terra that was used-a
22 viable thousand-unit PRD over there? A Perhaps,
23 I would have to do an analysis of the sewer, water, the road
24 costs, et cetera, on Route 31 and see what level of front end
25 cost we would have to carry.

1 Q I am assuming that you would have the same external
2 problems. A I understand. Perhaps it would obviously

3 require some detail to handle that, but perhaps we could,

4 Q You are an expert in PUD's, I am satisfied on that.

5 A Yes.

6 Q And I gather, the reason I phrase the question in
7 that wanner and be so limited because you are concerned about
8 the carrying costs of the Gobel farm, is that a fact, that ia
9 where I assume we are heading, that is why I asked the question,
10 if you Isolate the westerly side.

11 A I understand the context of the question, the difficulty
12 is to casually lip shoot on something like that where you are
13 dealing with perhaps 15 variables so it would be a matter of
14 baking the cost of improving the land, servicing it properly,
15 at cetera, against what the market would support in terms of
16 unit prices to see if there is a match. At that point I could
17 conclude yes, there is, or no, there isn't.

18 Q Just based upon what you know now, you wouldn't rule
19 it out? A No, I said perhaps.

20 Q You wouldn't turn down the job and say there is
21 just no way we can do it? A Probably- not, no.

22 Q Now, in your experience in PUD's, do you get into
23 commercial and industrial PUD's also? A Yes, we have.

24 Q Or just residential? A No, we have

25 industrial-commercial.

1 Q And just following Mr. Sutton's questions a little bit
 2 further, I think you indicated before they had substantial
 3 characteristics physically, if you recall the tract there,
 4 if you were given a project on the easterly side to develop
 5 a ROM or planned ROM development without having to worry, now,
 6 about the westerly side and the expense of all of those over
 7 there, could you within those parameters of the proposed zoning
 8 ordinance develop a viable ROM development into the industrial
 9 zone on the easterly side? A no.

10 Q - You couldn't? A No, sir.

11 Q That is not because you are not an expert in that
 12 field? A No.
 »

13 Q You must have some reasons. A Yes, the cash
 14 flow would be too onerous, your having to carry that land,
 15 bring improvements to it when the market demand is not sufficient to
 16 absorb the land quickly enough to carry those costs*

17 Q Can't that about the same problem that you had before?

18 A No, the residential demand is obviously greater than the
 19 industrial demand or ROM demand so that it would be expensive
 20 to bring and open the site up and thereafter if you are not
 21 making the land down quickly enough, you would have a very
 22 high cost to carry, so it would be a very difficult one to
 23 make work, so I would say no, we couldn't generate a plan to
 24 proceed on that basis.

25 Q Isn't that actually the case that you don't have

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and I am not asking you to rush, believe me.

MR. CAIN: I only intend to spend an hour.

THE COURT: I think you can have Abahoshi here around 10 o'clock or 10:30. If not, he won't mind listening.

I, Jacqueline Klapp, Official Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by me at the time, place and on the date hereinbefore set forth.

Jacqueline Klapp.