

ML2 - Round Valley, Inc. v.  
Twp of Clinton

9/14/77

Transcript of proceedings

witnesses

- Herma Lechner
- Sean Reilly

p 153

ML 0004385

A-2963-77  
A 1941-1979  
1979

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON  
COUNTY  
DOCKET NO. L-29710-74 P.W.  
A-2963-77

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3 ROUND VALLEY, INC., a :  
4 corporation of the State :  
5 of New Jersey, :

6 Plaintiff, :

7 vs. :

8 TOWNSHIP OF CLINTON, a :  
9 municipal corporation of :  
10 the State of New Jersey, :  
11 TOWNSHIP COUNCIL OF :  
12 CLINTON and PLANNING :  
13 BOARD OF THE TOWNSHIP OF :  
14 CLINTON, :

15 Defendants.:

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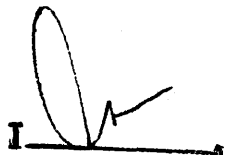
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APPELLATE DIVISION  
DEC 15 1978  
TRANSCRIPT OF PROCEEDINGS  
\* Clerk  
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JUSPELLE DIVISION  
DEC 15 1978  
CM  
Elizabeth W. Laughlin  
Clerk  
Wednesday - December 14, 1978  
Hunterdon County Courthouse  
Flemington, New Jersey

17 B E F O R E : HONORABLE THOMAS J. BEETEL, J.C.C.

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

19 MESSRS. STERNS, HERBERT & WEINROTH,  
20 BY: MICHAEL J. HERBERT, ESQ.,  
21 For the Plaintiff.

22 MESSRS. FELTER & CAIN,  
23 BY: ROGER M. CAIN, ESQ.,  
24 For Township Council for the  
25 Township of Clinton.



26 FRANCIS P. SUTTON, ESQ.,  
27 For Planning Board for the Township  
28 of Clinton.

29 Nancy J. Foster, C S J.

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WITNESSES

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Direct - Lechner

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THE COURT: Gentlemen, Mr. Gain has called and said that he will be considerably late\* He has to go to his office for some other matter. He indicated that it is all right to go ahead in his absence. I understand that Mr\* Sutton indicates that that's all right since he will be carrying the Municipality\*s burden at this point. Ia that all right with you, Mr. Sutton?

MR\* SUTTON: Yes, it is.

THE COURT: Is it all right with you?

MR\* HERBERT: Yes, your Honor.

HERMIA M\* LECHNER, duly sworn.

DIRECT EXAMINATION BY MR\* SUTTON:

Q Mrs\* Lechner, are you presently the Mayor of Clinton Township?

A Yes, I am.

Q For what period of time have you been Mayor?

A I've been Mayor since January 1, 1976.

Q . Will you tell us your educational background?

A I'm a graduate of New Jersey State College with a B.S. Degree in education and a Supervisory Certificate in teaching.

Direct - Lechner

1 Q Will you tell us any graduate courses  
2 that you took or any seminars, also.

3  
4 A In 1933 I took graduate work in administra-  
5 tion at New York University, and that was not for  
6 credit, and in 1937 graduate courses in guidance at  
7 Rutgers University. From 1959 to the present time  
8 my education has consisted of various seminars and  
9 conferences mostly in the area of natural sciences  
10 and environmental concerns\*

11 Q What has been your professional  
12 employment?

13 V A From 1932 to 1941 I was a teacher in my  
14 qualified fields for four years in the State Home  
15 For Girls in Trenton and six years at Red Bank  
16 High School. Then from 1937 to 1959 I was the owner  
17 and director of the Echo Hill Camp for Girls here  
18 v/18 in Hunterdon County. The program had emphasis on  
19 outdoor living and environmental education. Since  
20 then from 1951 to 1970 I served as a volunteer  
21 demonstration teacher in environmental education in  
22 the elementary schools in Hunterdon and Morris  
23 County.

24 Q Mrs. Lechner, would you tell us any  
25 other related affiliations and also any papers that  
you authored?

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1 MR. HERBERT: Your Honor, I know that  
2 I made an objection yesterday as to the  
3 educational background of the various members  
4 of the Planning Board and your Honor stated  
5 that it would go to find out the general  
6 background. Now, we're getting into what  
7 appears to be some foundation for expertise.  
8 I think it should be pointed out that Mrs.  
9 Lechner has never been offered as a potential  
10 expert witness. She hasn't prepared any  
11 report. At deposition she admitted she  
12 wasn't an expert and I think it would be  
13 improper to try to present her at this time  
14 as any kind of an expert. Therefore, I  
15 believe that anything beyond what has been  
16 gone into in some depth already would be  
17 improper.

18 MR. SUTTON: Your Honor, I do not  
19 intend to ask Mrs. Lechner expert opinions  
20 as an expert. I do, however, feel that as a  
21 member of the Planning Board and as a member  
22 of the Township Council that her knowledge in  
23 the field of water and any affiliation she  
24 had with the State or any positions with the  
25 county are very relevant to indicate the

1 competency of a member of the Township  
2 Council\* And as Mayor she has sat on the  
3 Planning Board and she is competent as a  
4 member of the Planning Board,

5 MR. HERBERT: Your Honor, Mrs.  
6 Lechner's competence is not in question.  
7 Obviously, she's a very competent woman.  
8 What we're concerned about is the possibility  
9 of giving any kind of expert opinions which  
10 is in a separate area.

11 THE COURT: Shall not be giving any  
12 expert testimony.

13 MR, HERBERT: But I just heard an  
14 illusion by Mr. Sutton to some concerns  
15 about water and if the intention of Mr.  
16 Sutton is to have Mrs\* Lechner testify in  
17 the area of water or water quality then I  
18 would object. She's never been presented in  
19 any manner, shape or form in discovery as an  
20 expert in that area. As far as her competence  
21 is concerned, your Honor, that's not a  
22 question. Nor was it a question with Mrs.  
23 Neighbor.

24 MR. SUTTON: Again, I would like to  
25 indicate Mrs. Lechner's background -- I do not

1 expect to ask any opinions of Mrs, Lechner  
2 as an expert, but, as I stated, I think this  
3 is very relevant to indicate the ability and  
4 competence of both the Planning Board and the  
5 TownshipsCouncil.

6 THE COURT: Well, to the extent that  
7 she's a member of the Planning Board re-  
8 quired by statute that would be placed on  
9 the Planning Board I don't feel anything  
10 wrong ascertaining what her background was,  
11 her input was in the plan. Secondly, which  
12 is the point and to that extent factually,  
13 as to her knowledge and I feel she may be  
14 able to testify as that is related to input  
15 which eventually came into the Land Use Plan.  
16 You can continue, Mr. Sutton.

17 Q You may answer the question.

18 A In 1959 X served as a Chairman of Organizing  
19 Committee for the South Branch Watershed Association  
20 and Executive Secretary of that organization until  
21 1967 and as Executive Vice President to the present  
22 date. And in this capacity I've had the following  
23 involvements:

24 I represented the Hunterdon County  
25 Freeholders at the Round Valley-Spruce Run operational



Direct - Lechner

1 hearings in 1962 and 1964? on Floods and Flood Plains

2 I represented the County Freeholders at the Corp

3 of Engineers flood hearings on the Raritan Valley

4 in 1962 and I assisted local communities in pre-

5 paration of flood plain delineation applications at

6 the suggestion of the Division of Water Resources?

7 I was an invited speaker on "A Citizen's Views On

8 Water" at the First International Water Quality

9 Symposium in 1965, sponsored by the Water Condition-

10 ing Association International? I've been the guest

11 lecturer for training courses for environmental

12 commission members in Rutgers University from 1971

13 to 1977? I wrote a paper on the "Constraints Of

14 The Water Resource On Land Use In Headwaters Regions"

15 for Public Forum called "Water Down The Drain ~

16 Dollars Out Of Your Pocket" in 1973; I was author

17 of a funding application and coordinator of a

18 "Regional Storm Water Management Study For Clinton

19 and Readington Townships and Lebanon Borough" in

20 1972 to 1974? and I published a small article on

21 "Small Stream Protection" for the Hew Jersey Federa-

22 tion Planner in 1970? I developed a check list

23 for Environmental Commission Subdivision Review in

24 1974? I compiled a pamphlet on the care of septic

25 systems for homeowners in 1975, this was not an

**m**

Direct - Lechner

1 original work it was a compilation; "Design of  
 2 Septic Disposal Systems in the Highland-Piedmont  
 3 Geological Interface" is a research proposal to  
 4 the VE.A.P. which is receiving favorable considera\*-  
 5 tion at the present timej and I served as a Round-  
 6 table Consultant for a "Day and A Half of Planning"  
 7 sponsored by the New Jersey Federation of Planning  
 8 Officials at the municipal officers annual convention  
 9 and this has been annually since the inception of  
 10 that program several years ago.

11 Q Mrs. Lechner, would you also tell us  
 12 any positions you have held with either a municipality,  
 13 a county or with the State.

14 A I was a member of the original Clinton  
 15 Township Environmental Commission and -served from  
 16 the time of its creation until 1975, the end of  
 17 1975 when I took over my duties as Mayor. I was a  
 18 member of the Township Committee in 1971. That was  
 19 an elective position. And, of course, Mayor of  
 20 Clinton Township in 1976. I was appointed as a  
 21 member of the New Jersey Water Policy and Supply  
 22 Council in 1966. Presently, I serve on that council  
 23 as Chairman of the Flood Committee and currently as  
 24 acting Chairman of the Council. I served as a  
 25 Director of the Hunterdon County Soil Conservation

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Direct - Lechner

1 District from 1971 to 1976. I was on the Hunterdon  
2 County Planning Board for the same period of time.  
3 I served on the Hunterdon County Welfare Board from  
4 1953 to 1968. I was a member of the Department of  
5 Environmental Protection Task Force for environmental  
6 guidelines on interceptor sewer line construction and  
7 that task force worked during the year 1972. And,  
8 subsequently! I served as Chairman of what was known  
9 as Task Force Number 2 which concerned itself with  
10 the Regional Water Quality Planning guidelines and  
11 that was in 1973. I was a member of the Governor's  
12 Committee to evaluate Tocks Island Dam in 1975,  
13 New Jersey representative to the National Conference  
14 on Sediment in 1971, that was with the Department  
15 of Agriculture, and a member of the Interdepartmental  
16 Study Group which concerned the Department of  
17 Agriculture and the Department of Environmental  
18 Protection on Erosion and Sediment Control in New  
19 Jersey in 1971 which represented New Jersey state law  
20 which is now in effect and also the model ordinances.

21 Q J Mrs. Lechner, would you be able to go  
22 into the scope of the work that you did in the  
23 positions you held, State positions you held?

24 MR. HERBERT: Your Honor, I object.

25 THE COURTS I think that we've had

W;-9.ft

Direct - Lechner

1 enough of that. I'm satisfied with Mrs.  
2 Lechner's background. Let's get something  
3 in regard to the Land Use Plan.

4 MR. SUTTON: I just have the current  
5 affiliations.

6 THE COURT: I just ruled, Mr. Sutton.  
7 Let's go.

8 BY MR» SUTTON:

9 Q Mayor Lechner, would you tell us your  
10 current affiliations -

11 THE COURT: Mr. Sutton, I just  
12 indicated I think that that is irrelevant  
13 at this point. Let's go on to something  
14 relevant.

15 MR. SUTTON: Perhaps we can have  
16 this paper marked.

17 THE COURT: Show it to Mr. Herbert.

18 MR. HERBERT: I have no problem.

19 THE COURT: Mark it DPBall.

20 (Qualifications of Hermia Lechner  
21 marked DPB-11 in evidence.)

22 Q Mrs. Lechner, would you tell us,  
23 again, the period of time that you've been Mayor of  
24 Clinton Township?

25 A Since January 1, 1976 until the present.

Direct - Lechner

1 Q Prior to becoming Mayor of Clinton  
2 Township, did you serve on the Clinton Township  
3 Council?

4 A Yes.

5 Q Would you tell us the period of  
6 time that you served on the Township Council?  
7

8 h One year, calender year, of 1971.

9 Q During the period of time that you  
10 were Mayor were any ordinances passed or any  
11 amendments to ordinances passed that pertained to  
12 soiling or planning?

13 A Yes, there were.

14 Q Would you tell us these ordinances  
15 and the amendments at this point.

16 A I do not want to go into the new revised  
17 zoning ordinances which I want to go into more  
18 detail at a later time.

19 THE COURT: Did something happen in  
20 1971?

21 MR. SUTTONJ This will be 1966,<sup>8</sup>76  
22 . and 77.

23 THE COURTS Well, she said she was on  
24 the Town Council in 1971.

25 MR, HERBERT: But I'm not going to go  
into the ordinances that were passed during

1 that period. It would be the later period.

2 THE COURTS I still don't know what  
3 period you're talking about.

4 MR\* SUTTON: I'm talking about the  
5 period since Mrs. Lechner was Mayor from  
6 January 1, 1976 to the present time.

7 THE COURTS To date?

8 MR, SUTTON: Yes.

9 BY MR. SUTTON:

10 Q Will you tell us the various  
11 ordinances and amendments that were passed during  
12 that period of time?

13 A Yes. In February, 1976, we adopted a  
14 **surface** water management ordinance. That ordinance  
15 **was the** outgrowth of the surface water management  
16 study. April 1, 1976, a road and improvement  
17 ordinance was adopted. This concerned a subdivision  
18 land use ordinance. June 3, 1976, a revised  
19 subdivision ordinance was adopted. December 30,  
20 1976, the land use ordinance which was the pro-  
21 cedural portipn to conform with the Land Use Law  
22 that we had to do during that year. And, also,  
23 of course, the new zoning ordinance was passed  
24 which we will go into later. That was September 1,  
25 **1977.**

1 Q During the time you were Mayor of  
2 Clinton Township, did you receive any communications  
3 from Round Valley, Inc., relative to the proposed  
4 P.U.D.?

5 A No.

6 Q Did any matter concerning Round Valley,  
7 Inc., come before the Township Council during the  
8 period of time that you were Mayor?

9 A Yes. In January, 1977. It would have been  
10 January 19th with the Council regarding the Round  
11 Valley, Incorporated matter.

12 Q As Mayor you also sat on the Clinton  
13 Township Planning Board. Is that correct?

14 A That is correct.

15 Q For what period of time was this?

16 A For the same period of time that I've been  
17 Mayor which is since January 1, 1976.

18 Q Did you attend work sessions or  
19 meetings relative to the Land Use Plan?

20 A Yes, I did.

21 Q Would you tell us, first of all, each  
22 of the work sessions that you attended relative to  
23 the Land Use Plan?

24 A The ones I have noted are January 13, there  
25 was an initial preliminary proposal, February 3rd,

1 Interim Report One, Two, Three and Four were matters  
2 that were worked on and I was in attendance, March  
3 2nd was a joint meeting with what we called "M.U.D."  
4 which is the Municipal Utility Department concerning  
5 sewers, March 30th, April the 20th, this is all  
6 1976, this was on the revised subdivision ordinance,  
7 May the 4th, May the 14th, June 1st, June 25. Do  
8 you want just work sessions? July 6th was a public  
9 hearing.

10 Q Yes, and also the public hearings.

11 A July 6th was a public hearing. July 20th  
12 was a regular meeting. There was some discussion  
13 there of the Land Use Plan following it. September  
14 7<sup>t</sup>, September 21, October 5, October 26th, second  
15 public hearing. There was a meeting October 18th,  
16 but I was absent. November 2nd, November 16th.

17 Q That was the public hearing where the  
18 Land Use Plan was adopted?

19 A Yes. November 29 was with Round Valley, Inc.,  
20 and through two meetings in December, but I was away  
21 at the time so I did not attend those.

22 Q Now, without going into the dates of  
23 the meetings did you also attend work sessions  
24 relative to the Surface Water Management ordinances  
25 that were in preparation and the Road Improvement



1 ordinances that were in preparation?

2 A Particularly, the Surface Water Management  
3 ordinance, it was the one I was most familiar with.  
4 I attended work sessions on the Road Improvement,  
5 but the expertise mostly on that we left to the  
6 engineer because that was engineering.

7 Q Now, after the Land Use Plan was  
8 adopted, as a member of the Planning Board sitting  
9 as Mayor, did you also attend work sessions relative  
10 to the revised zoning ordinance?

11 A Yes.

12 Q Would you tell us the different work  
13 sessions that you attended?

14 A First, I was absent on January 12th -

15 THE COURT: I'm sorry. Were you  
16 present then?

17 THE WITNESS\* No, I was absent on  
18 January 12th. I know what the minutes were.  
19 February 1, I missed meetings during February,  
20 I was in the hospital except for regular  
21 meetings,., April 5 on the zoning ordinance and  
22 I'm afraid that during that time I had to  
23 catch up afterwards, I had eye surgery and  
24 I was unable to read. April 25 the v/ork  
25 session, May the 3rd, May 18, there was a

1 meeting that I was absent. May 24th was a  
2 public meeting not a hearing but a public  
3 information meeting followed by a work  
4 session. May 31 was a special meeting  
5 where in the ordinance was recommended to  
6 the Council. And then meetings since then  
7 I've been in attendance but they did not  
8 concern themselves with the Land Use  
9 ordinance.

10 BY MR, SUTTONS

11 Q Now, Mayor Lechner, the Planning Board  
12 recommended the zoning ordinance to the Township  
13 Council. Is that correct?

14 A Right.

15 Q Were there hearings before the Township  
16 Council on the zoning ordinance?

17 A Yes.

18 Q Will you tell us the dates of the  
19 hearings, the first public hearing or the public  
20 hearing, I should say, was on August 4, 1977 and  
21 were comments made by the public at the time?

22 A Yes, there were.

23 Q Were there any comments by anyone  
24 from Round Valley, Inc.?

25 MR. HERBERT: Your Honor, are we going

1 to go through this? I object. We have  
2 gone through this attempt by the defendant  
3 to somehow bring out the facts that we  
4 didn't attend certain meetings and so forth.  
5 We were in litigation, your Honor. As a  
6 matter of fact, these meetings took place  
7 after this very trial began.

8 THE COURT: What's the point, Mr.  
9 Sutton, in trying to bring out the fact  
10 that Round Valley did not attend when they  
11 were in active litigation nor did they have  
12 the contact with your client for whom they<sup>1</sup>re  
13 forbidden to have the contact as a matter of  
14 disciplinary ruling governing contact of  
15 attorneys having direct contact with clients  
16 of the adversary\* I don't know the point  
17 of indicating why litigants should go to  
18 litigate when we're here in a proceeding in  
19 lieu of prerogative writ. I don't really  
20 understand your point.

21 MR\* SUTTONS Well, I'll withdraw the  
22 question.

23 BY MR. SUTTON:

24 Q Mayor Lechner, were there comments by  
25 the public?

1 A Yes, there were,

2 Q And as a result of the comments, was  
3 there a meeting, a joint meeting with the Planning  
4 Board?

5 A Yes, there was.

6 Q Was there a further hearing on the  
7 ordinance?

8 A There was not a further hearing on the  
9 ordinance. There was one hearing. The hearing  
10 was closed. We took all comments and reviewed it  
11 with the Planning Board and then the Council made  
12 its decisions following that.

13 Q Has the zoning ordinance now been  
14 passed?

15 A Yes •

16 MR. SUTTON: May I have this marked,  
17 Ordinance 124-77?

18 THE COURT: DPB-12 for identification.  
19 Do you object to put it into evidence?

20 MR. HERBERT: May I just glance at  
21 it. I'm sure I don't. No objection, your  
22 Honor.

23 THE COURT: All right. It will be put  
24 into evidence.

25 (Ordinance Number 124-77 marked

Direct - Lechner

1 DPB-12 in evidence.)

2 MR, SUTTONS Your Honor, yesterday we  
3 marked certain maps, the Land Use Hap and  
4 the Zoning Map for identification, I under-  
5 stand that Mr. Herbert has no objection to  
6 having these maps placed now into evidence.

7 MR. HERBERT: That's correct, your  
8 Honor•

9 THE COURT: Please mark them.

10 (Maps marked DPB-3 through 9 marked  
11 in evidence.)

12 Q Mrs. Lechner, I show you DPB-12 and  
13 ask you if that is the zoning ordinance and the  
14 amendments?

15 A Yes.

16 Q Were the amendments made as a result  
17 of the discussions of the public hearing that was  
18 held?

19 A Yes.

20 Q What form of government does Clinton  
21 Township have?

22 A It's a Mayor-Council form of government.

23 Q How many members are on the governmental  
24 body?

25 A There are four Council members and Mayor.

1 A Mayor is elected separately from the Council  
2 members.

3 Q Would you tell us the names of the  
4 individual members and their occupations?

5 A Mr, Gosch (phonetic) who is a retired  
6 metallurgical engineer, Mr. Hey (phonetic) is a  
7 financial consultant with stocks and bonds, Mr.  
8 Fuekas (phonetic) is a research director with Ortho  
9 Products and Mr. Lindabury (phonetic) is in personnel  
10 management. I do not know the name of the company  
11 right now.

12 MR. SUTTON: I would like to have  
13 this paper marked for identification.

14 (Document entitled, "375th Meeting,  
15 September 20, 1976, Number 29," marked  
16 DPB-13 for identification.)

17 Q Mrs. Lechner, I show you a paper marked  
18 DPB-13 and ask you to identify it.

19 A This is from the minutes of the New Jersey  
20 Water Policy and Supply Council for the meeting of  
21 September 20, 1976, and it is marked pages 29 and 30  
22 of that.

23 MR. HERBERT: Your Honor, I'm going to  
24 object. I don't even know what this document  
25 is. We've never been told about it. We've

Direct - Lechner

1 asked for all memoranda in the Interrogatorie<sup>^</sup>  
2 any reports, materials, minutes of any kind.  
3 They have not been supplied to the State  
✓ 4 and we would ask that any allusion to this  
5 document -- I have no idea what it is and  
✓ 6 what it contains have not been alluded to  
7 in testimony.

8 MR. SUTTONJ Your Honor, I know that  
9 there are documents given to us during the  
10 trial and we were told that we would have a  
11 chance to read them. I have no objection  
12 to Mr. Herbert taking his time and reading  
13 this document at this time.

14 MR\* HERBERTS Your Honor, I know the  
15 Court has on record a letter sent to the  
16 Court\* I believe, on September 2nd by  
17 counsel indicating the long history of  
18 discovery in this matter. The fact is that  
19 when documents were produced by the plaintiffs  
20 at trial in the case in chief it was in  
21 response to questions asked by defendants<sup>f</sup>  
22 counsel. I think we've gone through con-  
23 secutive order concerning discovery. Those  
24 orders were extended to counsel for the  
25 defendants and this isn't getting into the

1 area of new exports or reports. This is  
2 getting into a document that's been around  
3 for almost a year which we haven't been able  
4 to see. Now, we had experts available. They  
5 went over all documents that could have been  
6 used. We went over all of our basic studies  
7 back in March of 1977 and here we are almost  
8 half way through the defendants<sup>1</sup> case and  
9 they<sup>1</sup>re producing a document which is almost  
10 a year old.

11 MR, SUTTONT Your Honor, I believe  
12 that Dr. Horton referred to this document.  
13 This is a public resolution. It's a public  
14 document. It's not something that was  
15 prepared privately and I think that any public  
16 document, whether it is a statute or whether  
17 it is case law or whether it is in the form  
18 of resolution is something that would be  
19 admissible. It is a public document.

20 MR. HERBERT: Your Honor, it isn't  
21 the question of admissibility. It is a  
22 question of notice. We have asked for all  
23 materials including public documents that  
24 the defendants would rely upon. This  
25 document here was not indicated as such.



1 THE COURT: Please look at it, Mr.  
2 Herbert, and see if Dr. Horton did rely  
3 upon it or did refer to it in any way. And,  
4 Mr. Sutton, would you kindly point out where  
5 his testimony did refer to it.

6 MR. SUTTON: Mr. Cain told me about  
7 it.

8 THE COURT: Do you have any notes  
9 indicating where he did refer to it, Mr.  
10 Cain?

11 MR\* CAIN: Your Honor, perhaps it  
12 would be appropriate to wait until counsel  
13 -- yes, on cross-examination of Dr. Horton  
14 I referred to this policy of the State and  
15 he was familiar with it and did testify to  
16 some extent about it. I don't recall if it  
17 was marked for identification at that time.  
18 We did have it in court. The same subject  
19 was also discussed with the other expert.  
20 So it's not a new subject.

21 MR. HERBERT: It isn't a question of  
22 being a new subject, your Honor, it is a  
23 question of being a document never revealed  
24 to us until this very date and we had no idea  
25 that a moment ago I was asking Mr. Sutton

1 whether or not he was going to have any  
2 testimony in the water area. Apparently,  
3 now, we're going to get it. We're going to  
4 get it in the form of Mrs. Lechner not only  
5 being a Mayor of this Township, but also a  
6 member of the State.

7 THE COURT: She was on the Planning  
8 Board at the same time she was a member, but  
9 I'm concerned with regard to the surprise  
10 possibility.

11 MR. HERBERT: Your Honor, I just  
12 renew my objection. I would also character-  
13 ize that as clearly a public document and,  
14 secondly, not an expert report.

15 THE COURT: Let's see it. I don't  
✓ 16 recall that there's any allusion to it. I  
17 have reviewed my notes of Dr. Horton's  
18 testimony. I find no allusion to this. My  
19 notes, on cross-examination by you, Mr.  
20 Cain, on your cross-examination, was exten-  
21 sive, J

22 MR. CAIN: Yes, your Honor. This was  
23 the resolution with respect to the non-  
24 degradation policy.

25 THE COURT: Well, much was said about

**A**

non-degradation, but this was never alluded to specifically. And it was never identified at that time. You never gave your adversary an opportunity to go into the merits of the document: in other words, the opportunity to investigate, the opportunity to rebut, the opportunity to discuss is being taken from your adversary at this point. If you wish to you may pass on to another subject.

I'll have to sustain the objection at this time\* Provide your adversary with a copy thereof and we can have a continuous record to that point of testimony.

MR. SUTTON: Very well.

THE COURT: I'll mark this only for Identification at this time sustaining the objection for reasons I just indicated.

BY MR. SUTTONS

Q Mrs. Lechner, how long have you been involved in work so far as planning, specifically concerning Clintown Township?

A In the early 1950's I was one of perhaps a dozen people who then approached the Township Committee and recommended and urged them to get involved in planning. There was no planning in the

Direct - Lechner

1 Township or county at that time. Since that time  
2 I have been actively interested as a citizen in the  
3 planning process in the Township and county.

4 MR. SUTTON: Your Honor, that would  
5 conclude my questions as Planning Board  
6 attorney. X understand Mr. Cain wants to  
7 ask some questions concerning it.

8 THE COURT: Yes. Let's get to the  
9 Municipality first.

10 MR. CAIN: Your Honor, first could I  
11 make sure I understand the Court's ruling  
12 with respect to counsel's objection to this  
13 document?

14 THE COURT: I sustained it for the  
15 reasons that I gave.

16 MR. CAIN: You said they will be  
17 provided with a copy of it.

18 THE COURT: I'm not going to provide  
19 it. I just marked it for identification.  
20 If you want to serve a copy to your opponents  
21 -- if you want to ask for a continuance to  
22 later present that document to them you may.  
23 I'll give you an opportunity at a later date  
24 if you think this is, one, relevant, two,  
25 material and three, not self-serving you

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certainly may#

MR. CAINS Well, that is our position.

THE COURT: That's it. All three of those things.

MR. CAINS Then we will serve a copy on them and we do consider it relevant and material so then it is self-serving than other admissible evidence in this trial.

MR. HERBERT: Is that comment made seriously because we can get into the author of that document if we want to. I mean, is counsel really serious about this self-serving element. Can we get into that right now?

THE COURT: You'll be getting a copy of the document perhaps when I go on jury trials next week. Take such discovery as you wish and if you want to explore who the author of that resolution was, was it discussed, was it reviewed, what's the basis for it, who moved it, who sent it, you may.

MR, CAIN: And further, your Honor, since this was no surprise to their expert I would like an opportunity to review the deposition because I believe this may have been

Cross - Lechner

1 discussed upon discovery when Mr. Sterns  
2 or Mr. Herbert extensively questioned  
3 Mrs» Lechner «  
4

5 MR. HERBERT: Your Honor, the problem  
6 with a statement such as that is when they're  
7 left unrebutted on the record it creates a  
8 problem. You've ruled already,

9 THE COURT: Are we finished with this  
10 direct? We'll take a break and you can both  
11 look at the deposition and then you can place  
12 upon the record what the deposition revealed.

13 MR. CAIN: May I proceed, your Honor?

14 THE COURT: You can proceed.

15 CROSS-EXAMINATION BY MR\* CAIN:

16 Q Mrs. Lechner, during the time that you  
17 were on Council or as a member of Council as Mayor  
18 would you tell us what action was taken by Council  
19 or what action was taken during your administration  
20 later with respect to the provision of water and  
21 sewer facilities in the Township of Clinton?

22 A You want during the time that I was Mayor or  
23 do you want me to go back to 1970?

24 Q Go back to 1971, if you recall.

25 A Yes. As I recall in 1971 there was a rather  
overall survey authorized of the Township to

Cross - Lechner

1 Mr. Bogart who was the Township Engineer to develop  
2 sewer areas, areas that we felt sometime or that he  
3 felt sometime in the future might possibly be  
4 sewerred and these were indicated, I think, as Areas  
5 one, two, three, possibly, four, five. But it was  
6 a schematic kind of thing not anything that would  
7 lead to development of a plan. It was just the  
8 first thrusts of saying if we were to sewer as much  
9 as the Township as we feel possibly could be sewerred  
10 this was laid out.

11 Q Was it reduced to a sketch of some  
12 sort?

13 A It was made into a sketch, yes.

14 Q You attended some of the prior  
15 testimony\* Would this be, to the best of your  
16 knowledge, the same sketch that some of the  
17 plaintiffs' witnesses have referred to; the Planning  
18 Board office and Mr. Bogart's office?

19 A Yes, it possibly was\*

20 Q Do you recall if in 1971 there were  
21 discussions as to the formation of other methods,  
22 other bodies for handling sewers in the Township of  
23 Clinton other than leaving it to Council?

24 A I don't believe as early as '71 there was any  
25 discussion of that during that time.

1 I came a little bit later.

2 Q In 1971, do you recall whether the  
3 NH10, which has been previously alluded to, do you  
4 recall if that was underway yet?

5 A No, it was not.

6 Q How long have you been a resident of  
7 Clinton Township?

8 A We purchased our property in 1936 and moved  
9 here as permanent residence about 1942.

10 Q I would like to go very briefly prior  
11 to 1971 and ask you, only if you have a recollection  
12 of it, do you recall the events at the time of the  
13 construction of the Clinton Town Sewer Plan and  
14 the participation of the Clinton Township in that  
15 project?

16 A Yes, I recall that.

17 Q Could you tell us what you know then  
18 about the plans for the participation of the  
19 municipalities for that?

20 A The exact percentages I would leave with  
21 Mayor Smithes testimony that I was not cognizant of  
22 except that Clinton Township would have part in  
23 that plan. The proposals came in '66, '64, there-  
24 abouts. I remember attending a public meeting, I  
25 believe, in 1965 on the entire matter and we were



1 zeroing there in the area of what is now referred to  
2 basically as Area Two which is Annandale and that  
3 is the area that was to have been brought into the  
4 plan at that time,

5 Q Do you recall whether Clinton Township  
6 participated in the plans, the engineering plans  
7 and, I believe, the Western (phonetic)?

8 A Yes, I believe engineering plans were drawn  
9 at that time and it was to the point of deciding,  
10 making the vote that we're going to go this way  
✓ 11 and go into it and would have been with the Municipi-  
12 pal.: Utility Department not an authority. In  
13 other words, the Township Committee would have been  
14 in the sewer business, so to speak.

15 Q Well, do you recall what the governing  
16 body's position was with respect to sewerage  
17 Annandale at that time?

18 A I think, in general, they wanted it sewerage  
19 and the vote, as I recall, at that meeting was, I  
20 believe, two to one that they would do it and then  
21 it was challenged.

22 Q What happened?

23 A It was challenged by, basically, one citizen  
24 of the Township who was an attorney who said it  
25 should go to referendum and objected to everyone in

1 the Township being held responsible for the financial  
2 sewerage of Annandale\* It was on that basis that  
3 referendum was held and, of course, it was voted  
4 down in the referendum and that's why Clinton  
5 Township did not sewer Annandale.

6 Q Nevertheless, the plant was built?

7 A The plant was built without Clinton Township's  
8 participation\*.

9 Q Irrespective of Clinton Township's  
10 participation in the actual construction has Clinton  
11 Township been a customer of the Clinton Town sewer  
12 plant?

13 A Yes. To the developments that have taken  
14 place and for a time I believe a certain amount of  
15 space was reserved as Mr\* Smith testified yesterday.

16 Q Allocated for Clinton?

17 A Yes, for the use of the Township.

18 Q Do you recall whether or not the  
19 original capacity of the plant was based upon the  
20 area, any Clinton Township area being a sewer?

21 A I believe it was because it was a total  
22 package at the time and it was unfortunate that the  
23 Township did not continue as part,

24 Q Now, subsequent to 1965 and, again,  
25 subsequent to 1971, Mayor, what action was taken by

Cross - Lechner

1 you or by Council with respect to sewerage any  
2 portion of the municipality?

3 A Towards the end of 1971, the latter half of  
4 the year, a study committee was set up jointly with  
5 the Borough of Lebanon and Readington Township as  
6 far as sewerage was there, I was on that committee  
7 for the first two meetings or so and then when I  
8 left the Township Council I was no longer on that-  
9 So there was a hiatus in my knowledge from that time  
10 until I came back to become Mayor in 1976, That  
11 watershed came originally from Pettycoat Lane East.

12 Q Has that been the dividing -•

13 A That's dividing the watershed between the  
14 south branch of the Raritan and the Rockaway Creek  
15 System.

16 THE COURT: It's on the opposite side  
17 of the Township as this proposed plan?

18 THE WITNESS: It's on the East end  
19 of the Township.

20 Q How, you said there was a hiatus. Do  
21 you have any further knowledge of the program made  
22 by this study committee to the present time?

23 A Yes.

24 Q What results, if any, have been  
25 accomplished?

1 A AS I came into office as Mayor they had  
2 about completed Phase One of that study and they  
3 had their first report, so it was up for some kind  
4 of action on the part of the Township at that time.  
5 I think it was one public hearing just before I  
6 took office and possibly a couple of meetings -  
7 one meeting afterward on the thing. But this was  
8 the E.E.A.S. report which is supposedly the  
9 Environmental Evaluation of Alternative Study and  
10 alternatives selected and so forth.

11 Q Was an environmental expert engaged  
12 by this group?

13 A It was done by a group from Rutgers who put  
14 together the group of people, supposedly who knew  
15 what they were doing and who studied things and caiao  
16 up with their alternatives.

17 Q Do you know where that plant was  
18 supposed to be located?

19 A Yes. It is proposed in the Whitehouse  
20 vicinity in the Rockaway Creek.

21 Q Jn what municipality?

22 A That would have been in Readington Township.

23 Q Do you know the status of the study or  
24 the construction of the plant at this point?

25 A It is quite far down on the priority list, I

1 believe.

2 Q Now, Mr. Rahenkarap has testified  
3 that Clinton Township refused to join in with  
4 Readington Township and I wonder if you have any  
5 knowledge as Mayor as to what happened with respect  
6 to the participation of Clinton Township in that  
7 group and in that plant?

8 A Yes. It was not that Clinton Township  
9 refused to participate on a review of the study of  
10 alternatives. We questioned very seriously and  
11 we were not the only ones who questioned whether the  
12 study had been done as completely as it should  
13 have been done and if the alternative had been  
14 looked at as completely as they should have been.  
15 For one thing there had been no survey of the  
16 functioning or malfunctioning of septic systems in  
17 the Blossom Hill area which was to have been  
18 sewerred as part of this. There was a long inter-  
19 ceptor line with nothing on it which would be from  
20 Lebanon to Whitehouse. The alternatives of doing  
21 something in between the large system and something  
22 to the east of Lebanon had been discarded rather  
23 perfunctorily. These things were all reported by  
24 us and by others to the EPA\* Region Two and our  
25 dissatisfaction on it. It was on that basis that we

Cross r Lechner

1 voted down that proposal.

2 Q Nevertheless, what is happening  
3 respecting the construction of the plant?

4 A I believe Lebanon, if I'm correct -

5 MR. HERBERT: I object, your Honor.  
6 It's speculation.

7 THE WITNESS: It's not speculation.

8 MR. HERBERT: Your Honor, I have an  
9 objection.

10 THE WITNESS: I-MI change the answer.

11 Q Mrs. Lechner, please try to confine  
12 yourself to things that you know of.

13 A Lebanon and Readington have approved moving  
14 ahead without Clinton Township.

15 Q Is it anticipated that when the plant  
16 is constructed that Clinton Township would be a  
17 customer rather than a participant in the construction  
18 of the plant?

19 A I have no knowledge of that.

20 Q Do you have any knowledge of whether  
21 that plant would sewer those areas or any of those  
22 areas to the east of Lebanon which have been desig-  
23 nated for residential options with public sewers?

24 A Yes, I would say so.

25 Q Now, Mayor, directing ourselves to the

1 other watershed which would be west to Pettycoat  
2 Lane\* Is that correct?

3 A Yes.

4 Q Is that the watershed which is  
5 sewerred by the Clinton Town plant?

6 A The areas that would be branched, I think,  
7 to go to an S.T.P. would necessarily go either to a  
8 Clinton Town plant or another plant in that vicinity.

9 Q It's been a long time since the  
10 testimony earlier this summer, but S.T-P. is a  
11 Standard Treatment Plant.

12 A Yes.

13 Q What action has been taken by Council  
14 with respect to machinery for sewerred, the machinery  
15 itself for sewerred any areas of the Township?

16 A The Township Council early in 1976 established  
17 a Sewer Authority.

18 Q Was that during the time you were  
19 Mayor?

20 A It had been started before I came into  
21 office and it was consummated right at the very  
22 beginning of my time.

23 Q Then the actual appointment of members  
24 to the body, were they made prior to or during your  
25 administration?

8

1 A They were made during my administration.

2 Q Who are the members of the Sewer  
3 Authority at this point?

4 A Dr. Hudson is the Chairman, Mr. Wilson from  
5 Annandale, Mr. Vinsette (phonetic) from the Oak  
6 Knolls area, Mr. Delaney, he's a new member and  
7 there's one other. It slips my mind at the moment.

8 Q You mentioned "M.U.D." before. What  
9 is M.U.D.?

10 A It is short for Municipal Utilities Depart-  
11 ment. It was a study committee essentially.

12 Q Does that committee have anything to  
13 do with the establishment of the Clinton Township  
14 sewer?

15 A Yes. It was their recommendation that the  
16 Sewer Authority be -

17 Q Is or is not the Sewer Authority an  
18 autonomous body under the statute of the State of  
19 New Jersey?

20 A Yes, it is.

21 Q Since they were created is the function  
22 for sewerage municipalities been that of the Authority  
23 or that of the Council?

24 A That of the Authority at this time.

25 Q If you know, has the Sewer Authority



1 or anybody else continued to be a member of the  
2  
3 NH10 group that you mentioned before?

4 A The Township is involved in the NH10. It  
5  
6 I was an overlap here between the creation of the  
7 Authority and the functioning of the Township of  
8 the NH10. So the NH10 has essentially has continued  
9 as a Township function,

10 " THE COURT\* Is that a function of the  
11 Sewer Authority or a function of the Council?  
12 We're separating this thing;

13 THE WITNESS: Well, the Council is  
14 currently represented on the NH10;

15 Q Is there a liason between Council and  
16 the Sewerage Authority?

17 A Yes, very definitely\*

18 Q What id the status of the HH10 study,  
19 if you know?

20 A Well, the NH10 has been more or less in  
21 abeyance for some time now due to funding and there  
22 has been certain pulling back on that inasmuch as  
23 basin studies which are known as the 201 Plan that  
24 were being pushed ahead to completion so that these  
25 201<sup>f</sup>s as they are called, is what NH10 comes under,  
has been soft-pedaled in the areas where there'a no  
need to really push them very fast.

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Q Well, what's the difference between the 201 Study and the 208 Study?

A The 201 Study is basically one that has to do with facility and hardware in response to existing problems and the 208 Study is a basin-wide water quality strategy kind of planning.

Q Who was making that latter study, the 208 Study?

A It is under the direction, in this basin, of the Department of Environmental Protection, Division of Water Resources, Bureau of Water Pollution Control. Mr. Ike (phonetic) is the head of that together with a public adviser committee made up since there are representatives throughout the study area.

Q If you know, what is the status of that study?

A That study is moving along quite well. It has a target date of early 1978, I believe.

Q What is the purpose of that study?

A That study is to serve as a basis for the 201 planning and it involves not so much sewerage, it is just the entire water resource.

Q Is it a fragmented study or does it come out in just one package?

1 A It is intended to come out in one package  
2 to involve the origins of the water supply, the  
3 **entire** availability of the resource and the manage-  
4 ment of it within the basement to end up with the  
5 **best** possible water quality that is designated for  
6 **the** river basin.

7 Q Again, if you know, are there any  
8 **partial** results of the study at this point?

9 A No.

10 Q What affect does that study have upon  
11 **construction** of the or the addition to Clinton Town?  
12 **What** affect does the 208 Study have upon addition  
13 to **or** construction in the Clinton Town Standard  
14 **Treatment** Plants?

15 MR. HERBERT: Your Honor, I'm going to  
16 object. I don't know if that's within the  
17 area of personal knowledge of Mrs, Lechner  
18 and, also, the question is rather vague,  
19 "what affect." That would be quality,  
20 quantity, it would be all kinds of areas and  
21 there are other problems with it being  
22 ambiguous. It could get into construction,  
23 what does he mean, et cetera. So I thin): it  
24 is a vague question. I think it is a question  
25 asked that may well be based upon hearsay and,

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therefore, I object.

THE COURT: I would like to see you qualify it. I want to know why you didn't ask that of Mayor Smith\*. He was the best one to be asked that question.

MR. CAIN: X believe there was testimony by Mayor Smith that nobody knew when the plant could be expanded because they had to wait for completion -- I don't know that he mentioned the 208 specifically\* But I recall he did say that going beyond the 2,000,000 gallons, 30,000 gallons you'd have to wait for future study and no one had any idea, to use his terms, -- I think I can simply rephrase it.

THE COURT: All right.

Q If you know, Mayor, is it necessary to complete the 208 Study prior to further expansion of the Clinton Town?

MR. HERBERT: I object, your Honor.

THE COURTS If she knows. How does she know? by way of hearsay, verbal study? Does she have the knowledge. If she says yes let her say yes. If she has such knowledg<sup>e</sup> how did she acquire such knowledge? officlally,

1           hearsay, by newspaper, by this report,  
2           letters, telegrams, brochures, pamphlets,  
3           seminars; meetings, et cetera. The  
4           preliminary question first,

5           Q        Are you familiar, Mrs. Lechner, with  
6           what a 208 Study is?

7           A        " Yes. ,

8           1        Q        How are you familiar with what a  
9           508 Study is?

10          A        From reading the law myself and from attending  
11          many meetings where it was discussed. The law  
12          itself was discussed, the objective of the law was  
13          discussed.

14          Q        What meetings?

15          A        In preparation for the basin planning there  
16          were seminars held at Somerset College to which  
17          all interested parties were invited and there was a  
18          discussion then by members of the team from the  
19          E.P., likewise. The same discussion was held with  
20          the Water Policy and Supply Council so there have  
21          been two exposures on my part to what would be  
22          explained for and reported and training sessions in  
23          the meaning of 208, what we're trying to do thon.

24          Q        Is it necessary to complete the 208  
25          Study prior to the expansion of the Clinton Town

1 plant?

2 MR. HERBERTS I object, your Honor.

3 ., The foundation, I heard, was one based upon  
4 hearsay and interpretation of public laws  
5 which the Court can take judicial notice  
6 of without interpretation by a lay witness.

7 THE COURT I'll be glad to read the  
V8 section of the law, Mr. Cain, if you brought  
9 it.

10 MR. CAINS That would be satisfactory,  
11 your Honor.

12 Q That is Federal Law, isn't it, Mayor?

13 A Yes, it is a part of the 72-500.

14 Q Do you have any knowledge as to when  
15 that 208 Study will be completed?

16 MR. HERBERT: I object, your Honor.  
17 No foundation.

18 THE COURTS I think she has enough  
19 orientation to at least know the date when  
20 it may be completed. She may not be able  
21 to interpret it. Does she have any knowledge  
22 of the date as to when it was to be completed?  
23 Do you know?

24 THE WITNESSS The target date is  
25 early 1978.

1 Q What function, if any, does the Water  
2 Policy Council, that you're a member of, perform  
3 with respect to the provision of either newer or  
4 water to Clinton Township and thereby indirectly to  
5 this plaintiff?

6 A All water allocations for public water  
7 supply come before the Council and the applicant  
8 must prove several things: Among them is necessity,  
9 the second thing is; he must demonstrate that he  
10 has the water to supply what he's asking for and,  
11 third, that it will not interfere with any other  
12 users or in any way contaminate the water supply and,  
13 on the other end, we need to know that the sewerage  
14 capacity is adequate to take the discharge after the  
15 use of the water. Those are all primary things that  
16 must be proven with respect to provision of water  
17 supply, public water supply.

18 Q When you say "he" -

19 A The applicant.

20 Q Would that be a municipality or utility?

21 A The utility or the municipality, whoever is  
22 the purveyor of the water.

23 Q And the same question with regard to  
24 provision of sewer.

25 A Our control of sewage is in the form of

1 policy which has been publicized to every munici-  
2 pality in the State of New Jersey at least three  
3 tiroses since I have been on the Council to the  
4 effect that no municipality -

5 MR. HERBERT: I object, your Honor.  
6 Do we have a document that she's relating to?  
7 Are we talking about a policy statement?  
8 I haven't seen a policy statement in dis-  
9 covery.

10 MR. CAIN: I asked about functioning.

11 THE COURT: The Water Policy Commiss-  
12 ion has regard to sewer and water that I thin<sup>k</sup>  
13 she's now alluding to a policy.

14 MR\* CAIN: All right. I'll rephrase  
15 it.

16 Q Directly, what action would Council  
17 be involved in specifically with respect to sewerage  
18 of Clinton Township?

19 A Where there is a question of adequate  
20 sewerage the Council requires that it be demonstrate<sup>d</sup>  
21 that sewerage be adequate before a water supply will  
22 be allocated. In areas where sewerage has not been  
23 adequate, if Council has taken the action of  
24 denying the right for any additional water hookups  
25 to a system and any additional allocation of <sup>water</sup>



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supply that is the control that the Council exercises through its water supply function on the adequacy of sewerage. It also stages the allocation of water to a supplier to be used for any particular customer on the basis of the availability of adequate sewerage.

Q Then what effect, if any, would the actual sewerage of Clinton Township have upon the water supply?

MR. HERBERT\$ I don't know this witness, first of all, has anything to do with the water policy of Council, and, secondly, this witness has not been offered as an expert and we're getting into the area of the effect sewerage would have on Clinton Township.

THE COURT: Here's a lady who's the Mayor of a particular municipality, two, she's on the Planning Board, three, there is this suit which is going to require something with regard to a water supply and we've all discussed that in order to have a water supply you have to have a sewerage system to dispose of. She's being asked about the effect of sewerage then on a water supply with regard to

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1 this particular development, as I can  
2 understand the question.

3 MR. HERBERTS Yes, your Honor, and  
4 that's clearly in the area of expertise.

5 THE COURT: I think the Mayor of a  
6 particular township better know this. She  
7 better know what the effect of water and  
8 sewerage is by a particular municipality,  
9 I don't think that requires expert knowledge.  
10 That requires regular working day knowledge  
11 with which I think she's chargeable and to  
12 ignore it might make her responsible under  
13 Title 59 of the Tort Claims Act.

14 MR. HERBERT: Your Honor, you've  
15 ruled on the area of expertise --

16 THE COURT! I don't think that's an  
17 expert opinion. I think that's knowledge  
18 she has to have. Now, whether that knowledge  
19 is correct or not that's something else you  
20 can go into,

21 MR. HERBERT: Well, obviously, she's  
22 going to answer it that they're going to have  
23 an adverse effect. Is there any question  
24 about that?

25 THE COURTS Mr, Herbert, you have to

1 know what goes up comes down, what goes in  
2 has to come out. Now, ~~that~~ doesn't\* seem to me  
3 to require any expert knowledge. Go ahead.

4 A If you're going to sewer Clinton Township  
5 you have to have water supply so you need both of  
6 those things. Additionally, if you're going to  
7 sewer an area of the Township there must be some  
8 place for those pipes to go. The Judge just said  
9 what goes in comes out. If you have something  
10 going in you have to have a way to have it go out.  
11 You have to have a place for it to go and wherever  
12 it goes it has to be the standard of water quality  
13 whether it goes through an S.T.P. or if you manage  
14 it on site or in some other alternative fashion.

15 Q Now, you mentioned some alternative  
16 fashion. What are you referring to?

17 A This will be in general. I am not technically  
18 capable in this field, but I am very interested in  
19 it and I follow it as a person who has that kind of  
20 interest and understanding. There are systems of  
21 combinations of technical treatment and using the  
22 earth as a filter either through lagooning, or  
23 land flow, sprays, irrigation. On smaller areas  
24 there is a combination of aeration and septic systems.  
25 There are a variety of these things that are workable

Cross - Lechner

1 under given conditions.

2 Q You mentioned lagooning. Is that the  
3 same thing that I've been reading about in the  
4 papers that's been approved to Tewksbury Township?

5 A Yes.

6 MR. HERBERT: Your Honor, she just  
7 testified that she's not technically  
8 capable in this field and I didn't object  
9 when she gave the examples. Now we're  
10 getting in to an exploration of what each  
11 type of this alternative is and I would  
12 submit based upon her own statement she's  
13 not an expert in this field and I would  
14 strongly object to this testimony in this  
15 area beyond what has been testified to.

16 THE COURT: We've had people testify  
17 who are somewhat expert in the field, Mr.  
18 Cain. I appreciate the Mayor's interest in  
19 the alternative systems, but we always have  
20 ideas that we pick up from the "New York  
21 Times," "Time Magazine," "Newsweek," so forth.

22 MR. CAIN: I wasn't going any further  
23 with that.

24 THE COURT: We all know there will be  
25 some type of lagooning? some good, some bad.

1           Go ahead.

2           Q           Now, you mentioned water quality.

3           Water quality of what?

4           A           Water quality of the receipt to the stream  
5           if you're going to discharge to a stream.

6           Q           Now, who passes on whether or not  
7           the stream will be affected by the sewerage?

8           A           Well, that comes under the Division of  
9           Water Resources\* Bureau of Water Pollution Control.  
10          The Bureau of Potable Water might become involved  
11          if it is an area of potable water.

12          Q           Then if there were a public problem  
13          someplace would there be a hearing that you might  
14          attend with respect to solving the problem?

15          A           The solving of that problem, as a violation,  
16          would not come before our Council. That would be  
17          handled through the Department, but the Council  
18          is cognizant of the problems and is charged with  
19          seeing the Department functions; in other words,  
20          recommending to the Commissioner what courses shall  
21          be taken.

22          Q           For example, and this is for example  
23          only, I read recently that the water supply of  
24          South Amboy or some similar town down there had been  
25          shut down and I assume now the water is turned back

1 on. But does the Water Policy Commission get  
2 involved in that?

3 A No. That is a procedure through departmental  
4 channels.

5 Q Does the Water Policy group have  
6 anything to do with quantity of water supply?

7 A Yes.

8 Q Again, for example, if there is a  
9 question as to whether or not there is sufficient  
10 water supply for a municipality and ar'ds indirectly  
11 a developer such as the plaintiff, how would the  
12 Water Policy Council get involved, if they would?

13 A Whenever an applicant comes to us for water  
14 he has to demonstrate that his wells are sufficient  
15 in capacity to supply the quantity of water that he  
16 is asking for. This means that you have to have a  
✓ 17 pumping test. During the pumping test he has to  
18 notify all other wells of similar size within a  
19 radius of several miles in certain areas to see if  
20 they have any effect on those wells. He must  
21 demonstrate to the Council that this water can be  
22 produced and it can be produced in good quality and  
23 that he needs the water? wells not giving water for  
24 which there is not a demonstrated need in the reason-  
25 able foreseeable future, usually five years.

1 Q Has the Council been involved in any  
2 applications which related to this particular  
3 plaintiff's application?

4 A No.

5 Q Has the Council been involved more  
6 generally with respect to the Township and this  
7 area of the river, South Branch , with respect to  
8 the water supply for the area or basin of which the  
9 plaintiff land is a part?

10 A Yes.

11 Q To what extent and what?

12 A Well, the two reservoirs are operated under  
13 the agency of the Council through the Bureau of  
14 Water Management\* These are the only State-owned  
15 facilities and, of course, this is surface water  
16 supply and it is available both to the Valley and  
17 for export out of the Valley at the point at Bound-  
18 brook. The river is being used as a transport  
19 channel.

20 Q Are there any plans for the utilisation  
21 of either of the reservoirs for water supply for  
22 Clinton Township?

23 A No, not at this time.

24 Q Do you know what the purpose was for  
25 the construction then of the Spruce Run Reservoir?

Kj

1 A Spruce Run Reservoir is an on stream reser-  
2 voir and it was constructed to impound water that  
3 could either be used within the Valley or to supply  
4 an anticipated shortage, which is now an actual  
5 shortage in Northeast Jersey.

6 Q How does that function?

7 A The Spruce Run Reservoir has a controlled  
8 outlet and water is discharged on demand from down-  
9 stream and then there are requirements for maintained  
10 flow in the stream which is 40 million gallons a day  
11 at the Stanton Station and 90 million gallons below  
12 Boundbrook. It is also let down to Round Valley to  
13 some extent.

14 Q Then I take it it was constructed to  
15 maintain stream flow?

16 A It was constructed, number one, for water  
17 supply as an adjunct to that recreation was to be  
18 allowed and it was not constructed for stream flow,  
19 per se, but it is a policy of the State now which is  
20 quite firmly entrenched that there shall be a  
21 minimum flow below any reservoir and that is required.  
22 There are few reservoirs of which this is not  
23 required. This is one of the things that Hunterdon  
24 County asked for and received.

25 Q Is the South Branch used for water



1 supply, for drinking purposes?

2 A Yes, At Boundbrook it has been used by  
3 Flemington up until very recently.

4 Q When did Plemington stop using it?

5 A Well, I would say within the last year or  
6 thereabouts. When I say "recently" within the last  
7 year or so they had trouble with their treatment  
8 plant,

9 Q Did Dr. Horton (phonetic) mention a  
10 Confluence Reservoir? Mayor Smith was not familiar  
11 with that. Are you familiar with what he was talking  
12 about?

13 A Yes. That's one of the State's programs.

14 Q Could you describe what that is?

15 A The Confluence Reservoir would be created  
16 by a dam just below the confluence of the Horth and  
17 South Branches of the Raritan. It would be a  
18 relatively shallow reservoir. The purpose is to  
19 impound water that is let down from Spruce Run and  
20 Round Valley to make a pumping pool. Right now it  
21 has to be caught ^as it flows by and, additionally,  
22 it would serve as a pumping pool to pump water back  
23 to Round Valley in the future at times when they  
24 needed to do that to keep the level in Round Valley.  
25 Right now the only water that goes to Round Valley is

1 the water in the river above Hamden and this would  
2 take it down to the flows that come into the river  
3 between Hamden and the Confluence.

4 Q Are there any treatment plants upstream  
5 from that Confluence Reservoir?

6 A Yes. There's the Raritan Municipal Utility  
7 Authority. They have a plant there. The Squibb  
8 Research Farm has a treatment plant\* They have a  
9 discharge to a stream. Those are, I think, the  
10 major ones that would be between Clinton.

11 Q From a standpoint of water quality  
12 does the existence of those standard treatment plants  
13 have any affect upon water that should be pumped  
14 back into Round Valley?

15 A When they are functioning as intended, they  
16 do not have a deleterious effect other than the  
17 effect of the chlorine which is residual in the  
18 effluent which has an effect on the river for some  
19 distance below the discharge.

20 Q With respect to water policy or the  
21 construction of Confluence Reservoir change in any  
22 way the standard for quality of the effluent going  
23 into the receiving stream?

24 MR. HERBERT: Your Honor, it appears  
25 to be a question asking for speculation. I,

1 of course, have a standing objection as to  
2 testimony in this entire area. But, unless  
3 there is a different statement, a finding,  
4 some kind of study, expertise, some kind of  
5 scientific judgment not just to forecast as  
6 to what might happen in the future, I'm going  
7 to object.

8 THE COURT: I think it is a well  
9 taken objection, Mr. Cain. I'll sustain  
10 the objection.

11 MR. CAIN: Well, I didn't have an  
12 opportunity to respond, but Dr. Horton has  
13 answered the question.

14 THE COURT; If you want to respond  
15 go ahead\* It is pretty much covered. If  
16 you want to respond go ahead. I don't really  
17 care.

18 MR. CAIN: I believe the question has  
19 already been answered by Dr\* Horton in his  
20 testimony. And for that reason I will  
21 withdraw it. I forgot that he had answered  
22 the question.

23 Q Mayor Lechner, Mayor Smith gave some  
24 testimony about diversion rights. Is that something  
25 handled through the Water Policy Council?

Cross - Lechner

1 A Yes, it is.

2 Q He testified that this new reservoir  
3 would give them 2.5 million gallon capacity.  
4 Perhaps you can clear up something. Is that an  
5 additional 2.5 million gallons of potential in the  
6 water supply system of Clinton Town in addition  
7 to the million and a half that he said they already  
8 have?

9 A No, it is not. It is a requirement of the  
10 Bureau of Potable Water that you have a reserve  
11 available of a day, sometimes two days is required,  
12 supply in the event that pumps break down. It is  
13 not an additional allocation of water. It is a  
14 storage just as a reservoir would be a storage. It  
15 is a storage of allocated water.

16 Q Then as far as the State is concerned  
17 the size of that water supply system at this point --

18 MR. HERBERTS Objection, leading, your  
19 Honor.

20 THE COURT: This question is leading,  
21 Mr. Cain. The objection is sustained.

22 Q Do you know then what the capacity of  
23 the Clinton Town water plant is?

24 MR. HERBERTS Objection, your Honor.

25 This question should have been asked of Mayor

1 Smith, Indeed, I think we got into that  
2 area.

3 MR. CAINs I'll withdraw that  
4 question•

5 Q Does the Water Policy Council have  
6 anything to do with the diversion rights of the  
7 water supply system in Clinton Town?

8 MR. HERBERT: Just asked and answered,  
9 your Honor\*

10 THE COURT: He asked before in regard  
11 to new reservoirs. Now he's saying in regard  
12 to Clinton Town. I assume the answer is yes,

13 THE WITNESS? It is, yes.

14 Q And according to the record, what is  
15 the capacity of the Clinton Town system?

16 MR.# HERBERT: What record is he refer-  
17 ring to?

18 MR. CAINI Of the water policy.

19 THE COURT: Just a moment. What  
20 record are you talking about?

21 MR.^ CAIN: The allocation record.

22 THE COURT: Now, was this requested  
23 in discovery?

24 MR. HERBERTS Your Honor, we have asteen  
25 for any and all documents to be relied upon.

1 We haven't been supplied with this informa-  
2 tion.

3 MR\* CAIN; I believe Mayor Smith has  
4 testified and listed in his record the  
5 diversion rights. He just didn't total them  
6 up. I'm simply asking this witness if she  
7 knows\* If it is that big of a problem to  
8 counsel I'll withdraw the question.

9 MR\* HERBERT: I think counsel is  
10 forgetting Mayor Smith was not our witness.

11 MR\* CALNT I'll withdraw the question.  
12 I don't have any further questions.

13 THE COURT: We'll reserve on the cross  
14 until we can come back.

15 (Whereupon, there is a recess.)

16 CROSS-EXAMINATION BY MR. HERBERT:

17 Q Mayor, on direct examination you  
18 indicated that you received no communication from  
19 Round Valley officials during this period of time,  
20 during the period of time, I suppose, from 1974  
21 until sometime. I would like to explore that for  
22 a moment with you. When you indicated that you did  
23 not receive any communications from Round Valley,  
24 what did you mean by that?

25 MR. SUTTON: I'm going to object to the

1 question.

2 THE COURT: Didn't we cover that? I  
3 said you were right.

4 MR\* HERBERT: Fine.

5 Q Mayor Lechner, in 1974 when the pro-  
6 posal was first made by Round Valley you attended  
7 a meeting or meetings, did you not, during that  
8 period of time at which time the Round Valley  
9 proposal was explained?

10 MR. SUTTON: Again, your Honor, I'm  
11 going to object because on direct examination  
12 I only covered the period of time when Mrs.  
13 Lechner was Mayor.

14 THE COURT: This goes to her knowledge  
15 with regard to what she knew as to the time  
16 when she became Mayor and a Planning Board  
17 member which I said was a proper basis. Go  
18 ahead.

19 A Yes.

20 Q Was that one meeting or more than one  
21 meeting?

22 A I recall two meetings where the public would  
23 have been involved, yes.

24 Q Do you recall going to Par Hills P.U.D.,  
25 I believe, in around May of 1974? Flying Hills, I'm

1 sorry.

2 A No, I did not.

3 Q Now, since those two meetings in 1974  
4 from that period of time until, I believe, November  
5 of 1976 where there was some discussion about a  
6 compromise, there were no contacts, I take it,  
7 between Round Valley and yourself?

8 A That is correct\*

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9 Q Mayor Lechner, would it be correct to  
10 say you did not review the basic Round Valley  
11 proposal which has been admitted in evidence as  
12 P-1?

13 A I have not seen this.

14 MR. SUTTON: Again, I'm objecting on  
15 the grounds that this was prior to the time  
16 that Mrs. Lechner was Mayor and sitting on  
17 the Planning Board and, in addition to that,  
18 during the period of time when she was Mayor  
19 this was -- this matter was in litigation.

20 MR\* HERBERT: The fact that it was in  
21 litigation, doesn't bar anybody from review/ing  
22 the documents that had been submitted, your  
23 Honor.

24 THE COURT: Secondly, I would regard  
25 that that fact is on file. There's no reason



Cross - Lechner

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why she shouldn't be asked if she knows about it. Mrs\* Neighbor was asked about it. Go ahead.

Q I believe your answer is no, you had not read that\* ta that correct?

A Nok

Q Mayor, do you remember the depositions that were held in this matter in March, I believe it was March 17th or March 22nd of this year, at which time you were deposed?

A Yes.

Q And at that time you were shov/n that document, were you not, and I believe your a-nswsr at that time was the same as it is right now, you had not reviewed it\* is that correct?

A That's correct.

Q Now, since March of 1977 I take it you have not reviewed it at all?

A No, I haven't reviewed it.

Q Now, Mayor, when you were asked questions by Mr. Cain on the early formation of the Clinton utility, Clinton Town utility, you made an allusion to a chart which had been dropped which showed various districts and within one of the districts was Annandale. Is that correct?

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1 A What period are you asking about?

2 Q I believe that would be back when the  
3 utility was first formed.

4 A The Clinton Town?

5 Q Yes.

6 A I did not refer to anything.

7 THE COURT: 1971, Mr. Herbert, when  
8 there was a study done by Mr. Bogart, Area  
9 One, Two, Three, Four, Five. Is that what  
10 you're referring to? Is that 1971?

11 THE WITNESS: That was 1971. The  
12 Clinton utility predates that.

13 Q And in that 1971 plan distributed by  
14 Mr. Bogart Annandale was located in District Two.  
15 Is that correct?

16 A Yes, I believe so.

17 Q What does District Two indicate?  
18 What is the significance of the various districts  
19 that were dated on that report?

20 A Basically, they were down by the watershed.

21 Q I see.

22 A Drainage area.

23 Q Now, would District Two indicate that  
24 it was an area that would be serviced ahead of other  
25 districts which were District Three, District Four,

Cross - Lechner

1 et cetera?

2 A At the time that the plans were drawn there  
3 were no priorities set that I recall.

4 Q What was the significance of designat-  
5 ing a district by number?

6 A They could have put names on it, I guess,  
7 as according to streams and that sort. It was  
8 Mr. Bogart's choice to use a number•

9 Q But Annandale was in District Two  
10 and as far as the Clinton Township officials were  
11 concerned this was the area of priority so far as  
12 future sewerage\* Is that correct?

13 A I don't know if the officials took any  
14 official position at that time\*

15 Q Well, did Mr. Bogart indicate to you  
16 that Annandale would be the priority area within  
17 Clinton Township as far as future sewerage service  
18 by the Clinton utility?

19 A I would have to go back and see my minutes  
20 on it at that time. At the time that this was done  
21 it was, more or less, towards the end of my first  
22 term on Council so that it was presented as a  
23 study that had been done.

24 Q Would that have been presented to  
25 the Town Council of the Township of Clinton?

1 A Yes.

2 Q In 1971?

3 A Yes, it would have been '71 because I  
4 wouldn't have seen it if I had been -- would have  
5 no reason to have looked at it.

6 Q Do you recall a month in 1971?

7 A Oh, no.

8 Q Now, you were asked a number of  
9 questions by Mr, Cain about your involvement on  
10 the Water Policy Council.

11 A Yes.

12 Q Would it be correct to say, based upon  
13 what you testified today, that you and other members  
14 of the Water Policy Council would have the authority  
15 in the future to act upon allegations that would be  
16 made either by Round Valley or by the Clinton utility  
17 for the area now owned by Round Valley?

18 A The business of the Water Policy Council  
19 involves quantity and quality of water justified  
20 by need and if an allocation were to be made, which  
21 often happens, a utility is related to a development  
22 then in that case there is some detail about the  
23 development as far as water supply and sewage dis-  
24 posal.

25 Q In that event, you would sit RO a womb©r

Cross - Lechner  
Recross - Lechner  
1 of the Water Policy Council making a determination

n 1  
\* by such arrangements. Is that correct?

3 A Yes. All determinations are made by the  
4 Council as a whole.

6 Q And that may well involve Round Valley  
in this case. Is that so?

7 A Could be if they were involved.

8 Q Well, Mayor, are you aware of the fact  
9 that you as a member of the Township Council of  
10 Clinton and as a member of the Planning Board of  
11 Clinton are a defendant in this matter?

12 A Yes,

13 MR» HERBERTS I have no further  
14 questions.

15 THE COURT! Limit it to the scope of  
16 the cross-examination. Anything else to be  
17 asked?

18 MR\* CAINS Just briefly.

19 RECROSS EXAMINATION BY MR. CAIN\*

20 Q During your term on the Water Policy  
21 Council, Mayor Lechner, has Round Valley or any of  
22 Its representatives appeared before the Water Policy  
no

24 MR# HERBERTS Asked and answered on  
direct.

25 A No.

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Q Has the Town of Clinton, which is the water supplier, made any application for any allocations or diversion rights which could supply this development?

MR. HERBERT: I object. Asked and answered on direct.

THE COURT: Mayor Smith said there was none.

MR. CAIN: Then I failed to understand the question.

THE COURT: It would be set up for some future date, Mr. Cain.

MR. CAIN: No further questions.

THE COURT: Any questions on any of these three areas asked?

MR\* SUTTON: I have no further questions.

THE COURT: Thank you.

(Whereupon, the witness is excused.)

THE COURT: Let's break for lunch now.

(Whereupon, there is a luncheon recess.)

SEAN MICHAEL REILLY, SENIOR,  
duly sworn.

DIRECT EXAMINATION BY MR. SUTTON:

Q Mr. Reilly, what is your present occupation?

Direct - Reilly

1 A I'm the Executive Director of the South Branch  
2 Watershed Association.

3 Q How long have you held that position?

4 A Approximately five years.

5 Q Will you tell us your educational  
6 background?

7 A I have a Bachelor of Science from Manhattan  
8 College with a major in Education and Science and  
9 a Master of Arts degree in Education from Kean  
10 College.

11 Q And since graduating from college,  
12 what has your working background been?

13 A For five years I taught Physical Biology  
14 and Earth Sciences and Environmental Sciences in  
15 various New Jersey and New York schools hholding  
16 teaching certificates in both of those states.  
17 After that time I spent the last five years as  
18 Executive Director of the South Branch Watershed  
19 Association\*

20 Q What work does this entail?

21 A Basically, my role with the Association is  
22 to be fully aware of local, county, state and  
23 federal laws which in any way affect the quantity  
24 and quality of the Watershed's water resources.  
25 That is the overall role, the professional activities

1 that I have engaged in for the past five years. I  
2 **have** prepared 13 natural resources inventories in  
3 Hunterdon, Morris and Somerset County obtaining  
4 for the municipalities 50% funding from the State  
5 Department of Environmental Protection and from  
6 the Pord Foundation. These studies, which I have  
7 on here, are regional inventories and Clinton  
8 Township is one of the natural resource inventories  
9 I have completed.

10 Q Could you give us some specific  
11 information as to what the study entails, what is  
12 covered?

13 A The term "natural resource inventory"  
14 describes what it is. It is an inventory of the  
15 natural resources of a community or region. In  
16 this case we studied five. The first time we  
17 studied five municipalities as a region. The second  
18 time we studied six municipalities as a region and  
19 Clinton Township was included with the second six  
20 we did.

21 In it we looked at all of the availabl  
22 information published on the resources of the  
23 Township, specifically that it be geology, soils,  
24 tapography, water quality. Air pollution studies,  
25 if any are available, specifically relating to the



1 municipality, ground water analysis, is also a part  
2 of that study,

3 Q What other work have you done under  
4 your present position?

5 A In related projects to the natural resource  
6 inventory I have conducted environmental zoning  
7 analyses of two municipalities using their natural  
8 resource inventory. The basic concept of that  
9 study for Tewksbury and East Amwell Township was to  
10 look at their existing zoning and match it up with  
11 their natural resource limitations and file reports  
12 with the municipality stating whether or not each  
13 specific zone in the municipality supported or was  
14 in conflict with the natural resource constraint of  
15 the municipality.

16 These particular studies are now being  
17 used by East Amwell and Tewksbuzy in their master  
18 planning process\* We have been scheduled to do the  
19 same analysis for Clinton Township and Lebanon  
20 Township,

21 Q Have you prepared any writings?

22 A Yes, several. The principal writings have  
23 been the two texts; the one I referred to, the  
24 Natural Resource Inventory Regional Project prepared  
25 for the Environmental Commission of several

1 municipalities. That text embodies the natural  
2 resource information and the use of that natural  
3 resource information.

4 Q Is there anything further on your  
5 background that you have not covered?

6 A Yes. In preparing the studies over the past  
7 five years I have a long working relationship with  
8 the New Jersey Department of Environmental Protection  
9 in the Division of Water Resources in the Bureau  
10 of Geology working with the State Soil Conservation  
11 Service and the Hunterdon County Soil Conservation  
12 District as well as with us geology survey people  
13 gathering all of the information available that is  
14 published by scientists and agencies of outstanding  
15 reputation to put it in a form that is usable by the  
16 local municipalities. The text that I referred to  
17 a minute ago, the natural resource inventory, that  
18 text is currently being used as a state of art  
19 inventory text in Rutgers University and in other  
20 community colleges and it is currently the text  
21 Dr\* Horton is using in one of his courses.

22 I have been a frequent guest lecturer  
23 at the various Rutgers University planning courses  
24 and Environmental Science courses at Cook College.

25 I am a member of the Citizen's Advisory Committee

1 to the New Jersey Department of Environmental  
2 Protection, Division of Water Resources. I recommend  
3 ed the natural resource management standards that  
4 are now contained in the Hunterdon County Master  
5 Plan. They're an outgrowth of the standards we  
6 prepared for the natural resource inventory we  
7 prepared for Clinton Township. I have just recently  
8 been notified by the Office of Environmental Educa-  
9 tion in Washington Township that a proposal I  
10 prepared for a regional storm water in the upper  
11 Raritan River Basin has been funded a \$10,000 grant  
12 to conduct a series of conferences and workshops  
13 for all of the municipalities in the upper Raritan  
14 Basin\* Essentially, the scope of the conference  
15 is to give municipalities an official tool that they  
16 can use to manage storm waters now rather than  
17 waiting for large Federal or regional projects later  
18 on\*

19                   Within the past several weeks I have  
20 just been hired by the Department of Environmental  
21 Protection for three days out of the five day work  
22 week to coordinate the Commissioner's role on the  
23 Governor's Executive Order Number 56, which is the  
24 Pinelands Review Committee. That is the Environmental  
25 Protection response to the Governor's Executive

Direct - Reilly

1 Order regarding the preservation and envelopment of  
2 the Pinelands.

3 Q When Clinton Township was in the  
4 process of preparing their Land Use Plan and their  
5 zoning ordinance were you requested to be of  
6 assistance to Mr. O'Grady, the Clinton Township  
7 Planner?

8 A Yes, I was\*

9 Q Will you tell us what work he did  
10 and what materials you utilized?

11 A Mr\* O'Grady and I had a conference in the  
12 midst of my preparation for the Natural Resource  
13 Inventory and in this conference or two that we  
14 had I brought the information I had gathered from  
15 the New Jersey Bureau of Geology, the Soil Con-  
16 servation Service and the United States Geology  
17 Survey\* I would like to explain that information  
18 X gave to him in some detail that I'd have to stand  
19 up over here.

20 Q Did you prepare certain maps?

21 A Yes, I brought with me the key maps we used  
22 in that discussion which are the Clinton Township  
23 Natural Resource Inventory Maps.

24 Q Well, would you take the maps and  
25 put them in, what you deem, the best order of

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presentation and then comment upon the particular naps.

MR. HERBERT: Your Honor, I object, first of all, procedurally. I don't know whether or not Mr. Reilly's being offered as an expert. If he is then I'd like to have an opportunity to find out what area he's going to be testifying about pursuant to the rules of court. Secondly, if he is going to be entered I would like to have an opportunity to voir dire and cross-examine him on this aspect.

THE COURTS Let me get some other ground rules straight first. Mr. Reilly was mentioned previously in your case and there was some discussion with regard to his report and/or findings of above. Now, number one, his name does not come to any surprise to you.

MR. HERBERT: No.

THE COURTS Two, have you been provided with the materials that you anticipate would be used?

MR. HERBERTS No, your Honor. These maps I haven't looked at them and I've never

1           seen them before.

2                   THE COURT: Any other materials should  
3           be provided, to you?

4                   MR. HERBERT: Yes. Mr\* Reilly did  
5           make available the Nature Resource Inventory  
6           which, frankly, we have no, objection to not  
7           only alluding to but have admitted that it is  
8           deemed appropriate by counsel. He also pre-  
9           pared a report after depositions on April 27th  
10          which we have which is dated May 26th. Other  
11          than that, your Honor, we have received no  
12          other information from Mr\* Reilly.

13                   THE COURT: So you have a Natural  
14          Resource Inventory\*

15                   MR\* HERBERT: Yes.

16                   THE COURT: His text that, apparently,  
17          include Clinton Township.

18                   MR\* HERBERT: Yes, your Honor.

19                   THE COURT: And you have a report\*  
20          Is that correct?

21                   MR., HERBERT: That is correct, your  
22          Honor.

23                   THE COURT: Dated when?

24                   MR. HERBERT: May 26th, 1977.

25                   THE COURT: And, apparently, y-v M.d

1 . depose him prior to that.

2 MR\* HERBERT: Yes, on April 21, 1977  
3 and at that time he had just been contacted  
4 and did not have an opportunity to review  
5 all of the material, as I remember the  
6 depositions.

7 THE COURT: Do your maps, then, Mr.  
8 Reilly, explain this material, that is, your  
9 Natural Resource Inventory and your report?  
10 Is that what these are about?

11 THE WITNESS: Yes. These maps are  
12 the ones referred to in the report v/e submitted  
13 and these maps have been on public display  
14 at the Clinton Township Municipal Building  
15 since June of 1976.

16 MR. HERBERT: Your Honor, the fact  
17 that they may be on display doesn't eliminate  
18 the obligation on the part of the Defense  
19 Counsel to tell us what they're going to be  
20 relying upon in court. To have something  
21 reduced in size and in N.R.I, which we have  
22 had since, I believe, April or May is one  
23 thing. To bring in charts for the first time  
24 that I've never seen before today is quite  
25 another thing.

1 THE COURT: Let me ask Mr. Reilly  
2 something. Are those maps also contained  
3 in N\*R.X. book?

4 THE WITNESS: No. There are no  
5 graphic recommendations. In order to use  
6 the Natural Resource Inventory you must use  
7 the test and go to the municipal offices and  
8 ask to use whatever map you're going to use.  
9 So anyone reading this would know that in  
10 order to look at the maps that we're referring  
11 to and have referred to in each of our  
12 subsequent reports you'd have to go to the  
13 municipality with this.

14 THE COURT: And N.R.I, text would put  
15 you on notice of the fact that there are  
16 key maps?

17 THE WITNESS: Definitely.

18 MR. HERBERT: Well, your Honor, the  
19 Interrogatories requests of Defense Counsel  
20 to provide us with any and all materials,  
21 et cetera,, that they're going to be relying  
22 upon in trial. Now, to read a document which,  
23 I would submit, I'm just looking at a couple  
24 of hundred pages, places the burden on the  
25 plaintiff to make it their responsibility of



1 going forth and seeking out these maps  
2 that are alluded to I think is quite another  
3 thing\* "The obligation under the Rules of  
4 Discovery, as I understand it, is upon the  
5 defendants who are going to be relying upon  
6 this at trial and it is in violation of the  
7 order of this court and in the Interrogatories  
8 that have been propounded now about six or  
9 seven months of these defendants\*

10 THE COURT: I think you misconstrued  
11 that ruling. The general Rule of Discovery  
12 is that you're given the opportunity to view  
13 and to copy on your own as well. It is not  
14 always the obligation of the adversary to  
15 provide you with copies of everything as long  
16 as they give you the opportunity to inspect  
17 and to copy\*

18 MR\* HERBERTS I agree, your Honor.  
19 I agree with you that it shouldn't be the  
20 burden of the defendant on a public document  
21 to reproduce it and present it to the plain-  
22 tiff. But in this case we weren't told by  
23 the defendants that they were going to be  
24 relying upon these maps, "they're available  
25 here," as we have done in our case, and "you

1 can copy them at your expense." As a matter  
2 of fact, with few exceptions, with respect  
3 to our documents, we not only made them  
4 available to the defendants, but we copied  
5 them and gave them at no cost to the defen-  
6 dants. Now we're told that because there  
/7 might be an allusion to a document of several  
v  
8 hundred pages and in N.R.I, that we were  
9 placed on some kind of notice, even though  
10 the defendants knew they were going to use it  
11 at trial.

12 THE COURT: Do you want to question  
13 the witness?

14 MR. HERBERT: No, your Honor. I would  
15 ask that the witness not be able to testify  
16 at this late juncture in the trial about  
17 maps and materials that have not been reveale<sup>d</sup>  
18 prior to this time.

19 Your Honor, one other point is that as  
20 I explained when we were putting our case on  
21 in direct, in chief we had witnesses available  
22 I expert witnesses, to go over the materials  
23 that were exposed at depositions and prior to  
24 trial so that we could prepare those witnesses  
25 in the nature of rebuttal in our case in

1 chief to meet anything that would be coming  
2 up by the defendants. Now, after we put our  
3 case in they're coming forth with maps which  
4 have never been revealed as far as reliance  
5 upon them and now we have to go back and  
6 perhaps ask for a suspension of testimony  
7 of this witness to go back to our experts  
8 to deal with it and I think that is unfair.

9 MR. SUTTON: Your Honor, I would like  
10 to make the following point: One point is  
11 that we both served Interrogatories and I  
12 would be very happy to present to the Court  
13 the answers that Round Valley gave to our  
14 Interrogatories\* They were so sketchy they  
15 were disgraceful. We gave more extensive  
16 answers. I'll be glad to present your answers  
17 along with our answers.

18 MR. HERBERTS Please do so. I'd be  
19 willing, your Honor, if he -

20 THE COURT: Just a moment. Would  
21 you let him finish. You speak, Mr. Sutton,  
22 and then you may be heard, Mr. Herbert.

23 MR\* SUTTON: Secondly, Mr. Rahenkamp  
24 came to court. He had a series of drawings\*  
25 He presented these drawings. I don't recall

Direct - Reilly

1 seeing these drawings. There's been a  
2 tremendous amount of material in this case.

3 Thirdly, there was a day set aside  
4 >  
5 when Mr. Sterns or Mr. Herbert could come to  
6 the Municipal Building when our planner was  
7 there and any material that our planner had  
8 utilized they could have seen. This material  
9 was all available.

10 Next\* this report was submitted and  
11 the report would have given notice that  
12 certain maps were utilized by Mr. Reilly  
13 in advising Mr. O'Grady\* I can't understand  
14 how they can plead surprise.

15 MR. HERBERTS Your Honor, I'd be  
16 glad to have the Court review our answers  
17 to their Interrogatories versus theirs.

18 THE COURT: My answer is very simple.  
19 If you plead surprise I'll grant you to  
20 continue this witness. That's the way I'm  
21 going to handle it. I'm not going to strike  
22 the witness from testifying. I'm going to  
23 overcome any surprise technique by using the  
24 continuance technique.

25 MR. HERBERT: Your Honor, the problem  
with respect to our position is each day that

1 we're in trial and each day the outcome of  
2 this case is prolonged we're put at a severe  
3 disadvantage and it is most unfair. On the  
4 one hand, if we proceed it would prejudice,  
5 no doubt, our case because of surprise.  
6 On the other hand, if we are granted an  
7 extension then it is going to be prolonged  
8 and, therefore, I don't think it is fair,  
9 your Honor.

10 I think this witness ought to be  
11 precluded from dealing with charts, maps  
12 and records which had not been revealed by  
13 the defendants.

14 THE COURT: I think there's adequate  
15 reason which I have explained on a sociolo-  
16 gical connection. The question is the impact  
17 that this case has on a particular area to  
18 use that particular technique. If you don't  
19 agree with it then you have your remedy. You  
20 may appeal for an Interlocutory Appeal if you  
21 want.

22 MR, HERBERT: Your Honor, Mr. Sutton  
23 had made comments which, of course, are most  
24 unfair.

25 THE COURT: The comments of counsel

1 when a hearing is going on this long are  
2 somewhat bitter and it doesn't bother me or  
3 influence me in any way.

4 MR\* HERBERT: I do want to mention  
5 that Mr. Rahenkamp alluded to charts and  
6 maps. First of all, the charts and maps  
7 which were alluded to were brought up in  
8 P-1 which has been in the possession of the  
9 defendants since January, 1974. They were  
10 provided again to the defendants in this  
11 case in August, 1975, by way of answers to  
12 Interrogatories.

13 THE COURTS I don't have any problem  
14 with that.

15 MR. CAIN\* Your Honor, briefly, I  
16 hope that we were operating on a plain a  
17 little higher than this, but as long as Mr.  
18 Herbert has mentioned it: It is true that  
19 certain of the plaintiff's maps which were  
20 brought up were on a small case, but there  
21 were numerous charts which were brought in.  
22 I do not believe that I saw at deposition or  
23 prior to trial the comparison charts between

24 THE COURTS We're off on a tangent.  
25 We really don't need that type of situation.

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The ruling has been made. Do you have anything else to say about the ruling? Does anyone want to be heard? Do you understand what I've ruled?

MR. CAIN: We consider him as an expert witness.

THE COURT: Thank you. Do you understand that ruling, Mr. Herbert?

MR. HERBERT! Pine.

THE COURT: What do you want to do?

MR. HERBERT: I have to consult with my client, your Honor.

MR. SUTTON: May I say one thing? The Land Use Plan does contain certain rulings.

THE COURT: Thank you.

MR. HERBERT: Your Honor, as to the question of proceeding with testimony about the charts, you've heard arguments, you've made a ruling giving us an option. We frankly find that it is economically impossible to delay the trial given the interest of our clients and with our objection noted on the record we would have no objection to proceeding with the trial.

THE COURT: Of course, you're reserving

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your right of rebuttal.

MR. HERBERT: Yes, your Honor.

THE COURT: All right. Proceed, Mr. Sutton.

MR. SUTTON: I believe that Mr. Herbert wanted to question Mr. Reilly on his expertise.

THE COURT: What area is he testifying on?

MR. SUTTON: The areas are the areas covered in Mr\* Reilly<sup>f</sup>s report.

THE COURT: The report of May 26, 1977?

MR. SUTTON: Yes. Those would be the areas.

MR. HERBERT: Your Honor, this report covers general environmental considerations including township zoning water resources issues related to the proposed Beaverbrook P.U.D., the management of storm water quantity and quality, P.U\*D. water supply, disposal of sewerage on site or off site and the problem I have is that its major categories, more or less, are in outline form. It doesn't go into any extensive reports and I would like to know is Mr, Reilly

PERMANENT JUDGE, BOSTON, R.I. 07002 - FORM 2048



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being produced as a water expert?

THE COURT: Ask him.

MR. HERBERT: Well, I would like to know if they're making a proffer as to his expertise.

THE COURT: What about it,- Mr. Sutton?

MR. SUTTON: I advised that I was going to cover all the points in Mr. Reilly's report and he would give opinion testimony in regard to all of the points.

THE COURT: I gather you're offering him as an expert in these areas. Is that right, Mr. Sutton?

MR\* SUTTON: That is correct, Judge.

MR\* HERBERT: Your Honor, this report is an outline of seven pages listing just headings. Do I understand the ruling of the Court earlier that no opinions can be given which are not in an expert report prior to this time?

THE COURT: That's the normal ruling in the sense that an expert report has to be provided or if there's been an oral report the contents thereof has to be released by

1 counsel to the adversary counsel.

2 MR. SUTTON: We will not ask for any  
3 opinion that is not given in this report.  
4 There may be some expansion of testimony.  
5 I may point out that Mr. Mallack (phonetic)  
6 had a four-page report. There was considerable  
7 direct testimony. He was on the stand almost  
8 two days, as I recall.

9 MR. HERBERT: I think we're getting  
10 back into something else. I would like to  
11 just ask a few questions of Mr. Reilly.

12 THE COURT: Voir dire on his  
13 qualifications.

14 VOXR DIRE BY MR. HERBERTS

15 Q Mr. Reilly, you received your  
16 Bachelor's Degree from Manhattan College and you  
17 majored in education. Is that not correct?

18 A That is correct.

19 Q And you had a minor in Chemistry.  
20 Is that so?

21 A That is correct.

22 Q Now, you got a Masters Degree what  
23 was once known as Newark State College, now Kean  
24 State College thereafter. Is that not so?

25 A That is correct.

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Q And isn't it correct that that Masters Degree was in education?

A Correct\*

Q Isn't it correct that from the time you received your Bachelor's Degree until the present time you have not taken any courses in Physical Science or Chemistry?

A That's correct.

Q Now, aside from having a license or certificate in the State of New Jersey or in the State of Hew York to teach you have no other certificates or licenses\* Is that correct?

A That is correct\*

MR\* HERBERT! Your Honor, I would certainly object to Mr. Reilly giving any testimony, particularly in the nature of the expertise in the areas such as water quality. Certainly, the area of water quality some of the physical sciences Mr. Reilly does not have the educational background to testify as an expert in these areas.

MR. SUTTONS Mr\* Reilly has worked in these fields. He's done executive work for municipalities, for the counties, for the State in these fields and I think if you've

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been with the South Branch watershed for five years working with all those various elements and I think that under the circumstances he's very well qualified.

THE COURT: I have this problem, Mr. Suttonj the fact that he's worked for somebody does not make him a hydrologist. Some of his testimony will concern, probably, a hydrological problem. Number two, he's not a mechanical engineer or a chemical engineer or, apparently, any type of engineer yet part of his testimony is going to discuss disposal of sewage, storm water management. Again, traditionally, I've always heard engineers testify with regard to that and the last time I had someone testify to that he was a chemist and this gentleman doesn't seem to satisfy me in any of those categories based on his education that he received in Manhattan and at Kean State College, both of ~~whose~~ being in education. I do not feel in that particular regard we have a teacher in effect testifying to hydraulics nor could I have a teacher testify as an engineer, nor could I have a teacher testify as an ecologist,

1 nor would I allow a teacher to testify as a  
2 lawyer unless he was exactly that. So far  
3 the objection is well taken. If you want to  
4 explore something further with Mr. Reilly  
5 by way of which you want to qualify him, you'  
6 may do so. But now it is not enough to  
7 qualify him.

8 MR. CAIN\* May I be heard? I believe  
9 I heard a long list of subject matter which  
10 Mr. Reilly has gone through. It shows that  
11 he has taught in these fields and has worked  
12 in the field and it has not been a stumbling  
13 block or impediment here with respect to  
14 witnesses in this case. Licenses, for example,  
15 have not been critical since we have had a  
16 planner testify who does not hold a planner's  
17 license in the State of New Jersey.

18 THE COURT! That man is a planner and  
19 he gave his reasons why he would not take  
20 the license in New Jersey.

21 MR. CAIN: I understand that.

22 THE COURT: But that man was a planner.

23 MR» CAIN: Your Honor, I'm not  
24 criticising the Court.

25 THE COURT: That man was a planner.

1 This man is a teacher. He's not a hydrolo-  
2 gist. 116\*8 not an engineer\*

3 MR\* CAIN: He's more than a teacher  
4 just as Mr. Mallack was more than a sociolo-  
5 gist.

6 THE COURTS He writes and gathers  
7 material and he may be come some type of  
8 research teacher. I don't know\* Maybe  
9 he switched occupations by self-training  
10 in the sense that he's now a research person  
11 and can write very well. But that does not  
12 make him a hydrologist or anything else.  
13 I offered the opportunity to respond, Mr.  
14 Sutton, that if you can qualify him as any  
15 of those things which you believe are the  
16 areas of his expertise which is being  
17 offered, I'm willing to listen. But I'm  
18 not willing to argue anything further on it.

19 MR. CAINs I wasn't going to argue.

20 THE COURT\* But if you want to offer  
21 some additional material, if you want to  
22 qualify him, go ahead.

23 MR. CAIN: My response, for the  
24 record, is that I feel considering his back-  
25 ground he has just testified to I think the

1 prima facie proffer is made and I believe  
2 the burden falls on Mr. Herbert if he feels  
3 he's not qualified to ask him some questions  
4 in these particular areas and if he doesn't  
5 think he knows anything about hydrology let  
6 him ask some questions and see if he knows  
7 something about hydrology or not. The prima  
8 facie offer has been made. I think the  
9 purpose of voir dire is for him now to come  
10 back and say, "Well, you just had a degree  
11 in education," to come back and ask him some  
12 questions, technical questions, which v/ould  
13 determine whether he's qualified -

14 MR-\* HERBERTS Your Honor, my under-  
15 standing of getting into the kind of details  
16 that Mr« Cain is suggesting that goes to  
17 Credibility, that doesn't go to competency  
18 as an expert. Competency as an expert is  
19 delved into on voir dire under the Rules  
20 of Court to ascertain educational background,  
21 to ascertain what kind of formal degrees,  
22 licenses, certificates, et cetera, and I would  
23 say, and I have a great deal of respect for  
24 the N.R.I, that's been developed, et cetera,  
25 I would say that clearly when you talk about

1 these highly sensitive areas, highly detailed  
2 areas, scientific and engineering areas,  
3 that Mr. Reilly simply does not have the  
4 background and expertise to testify in these  
5 areas.

6 THE COURT: The objection is well  
7 taken, but giving the opportunity to Mr.  
8 Cain to further interrogate Mr. Reilly and  
9 see if he can qualify him as a hydrologist,  
10 or whatever\*

11 BY MR. SUTTOJT

12 Q Mr\* Reilly, you stated that you pre-  
13 pared certain materials in book form for municipal-  
14 ities\* Is that correct?

15 A That ia correct.

16 Q Now, will you tell me what municipal-  
17 ities?

18 A Alexandria, Bethlehem, Branchburg, Clinton,  
19 Lebanon and Washington Township.

20 Q And the material you prepared is in  
21 the box that you^have with you. Is that correct?

22 A Yes.

23 Q How, would you tell us what this box  
24 contains in more detail?

25 A The Natural Resource Inventory information



1 which I think is pertinent. The information I have  
2 today, which is pertinent to this trial, is that  
3 information on soils and geology and topography  
4 principally that I gave to the planner in his  
5 deliberations, the information which the planner did  
6 not have. The reason he came to me was that much of  
7 this has to be gathered on a piecemeal research type  
8 basis, go into the State Bureau of Geology, Division  
9 of Water Resources, and so forth. There is no other  
10 way to get this other than to research it out piece  
11 by piece because heretofore very little information  
12 has been gathered on municipal natural resources.  
13 The subject which I was prepared to speak on today,  
14 just recently you can get a degree in it, heretofore  
15 you could not get a degree in environmental sciences  
16 or environmental planning. X ~~am~~ not an Geologist  
17 and don't intend to testify as an ecologist.

18 Q Where is your background now?

19 A The background?

20 Q On what you feel that you are qualified  
21 to testify.

22 A It is the basic scientific training as a  
23 teacher of science and over the past five years I  
24 probably have gained more knowledge and information  
25 of the natural resources of Hunterdon County than

1 anyone else in the county\*

2 Q What specific work have you done in  
3 order to gain this knowledge and information?

4 A It is difficult to summarize five years on  
5 a daily gathering of research, but since I came to  
6 the Watershed Association I prepared proposals which  
7 initiated these Natural Resource Inventories and  
8 I've been doing them ever since\* So five years  
9 worth of data gathering for planners in municipalities  
10 is what I've been doing and the reports that I  
11 prepared have the areas where I've gained expertise  
12 working with the State of New Jersey and the 208  
13 facilities and working with Dr. Horton on a variety  
14 of conferences and projects\*

15 There are two ways to become an expert  
16 or experienced\* One is by working in the field and  
17 one is by getting an education\* I chose to work.  
18 in the field and that's about all i can offer as my  
19 expertise is five years of working in the field,  
20 gathering the information that the planners are using

21 Q No.w, Mr\* Reilly, this booklet, to what  
22 sources did you go to gather the material in the  
23 booklet? I would like to have a clear idea to just  
24 try to picture exactly what you did in compiling  
25 the material that went into that booklet and the

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basis for your thinking that it's valid.

THE COURT: Have the booklet marked for identification.

MR. HERBERT: Your Honor, it's already been offered as P-67.

THE COURT: In evidence or for identification?

MR. CAIN: I believe Dr. Horton put it in when he talked about --

THE COURT: Then it's in evidence? If it's in evidence, and that's what he's here for to testify that he's the author of that book, we've already passed the point of what's in the booklet then that's already in the case.

MR. HERBERT: Your Honor, we have no objection, obviously, since we have --

THE COURT: Well, apparently, it is in evidence«

MR. SUTTON: Well, Dr. Horton apparently felt that it had sufficient validity to place it in evidence.

THE COURT: Then it is in evidence. What further need do you have of this witness?

Direct - Reilly

1 MR, STJTONi I want to cover the  
2 material that's in Mr. Ileilly's report.

3 THE COURTi I think what you should  
4 probably do is offer him as an expert in  
5 research. His research has been accepted.  
6 If he's not going to testify to any opinions  
7 as an ecologist, hydrologist or engineer --  
8 he already said he will not, he doesn't  
9 pretend to profess that kind of expertise -  
10 what further need do you have of this  
11 witness? He's going to give no testimony  
12 in regard to expertise in ecology, hydrology  
13 or engineering.

14 MR. SUTTON: May I ask this, your  
15 Honor, wasn't that what Mr. Aka Hoshi was,  
16 a gatherer of material and he gave an opinion.  
17 I carft distinguish between Mr. Reilly  
18 gathering information and giving an opinion  
19 and Mr. Aka Hoshi who was also a gatherer of  
20 information.

21 j THE COURT: Very close, I'll grant you  
22 but I find that there's a difference and I  
23 find that there's a distinction. What further  
24 need do you have of this witness?

25 MR. SUTTON: Well, his work was utiliz

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Direct - Reilly

1 in the preparation of Land Use Plan and  
2 these various drawings were prepared by  
3 Mr. Reilly and I think that would be helpful  
4 to go over these drawings having comments  
5 what he supplied to Mr. O'Grady as a back-  
6 ground to what Mr. O'Grady is going to  
7 testify to.

8 THE COURT: Part of the research,  
9 gathering information material, no problem.  
10 But no expert opinion.

11 MR. CAIN: May I be heard a moment?  
12 I'm not sure that that's the way it will  
13 happen. I'd like to ask Mr. Reilly: I  
14 didn't hear you say before that you didn't  
15 intend to give any opinions with respect to  
16 water quality or sewer treatment in these  
17 areas\* Did I misunderstand something?

18 THE COURT: I said that.

19 MR. CAIN: But you said that he said  
20 it.

21 THE COURT: He said that he didn't  
22 pretend to be an ecologist, therefore, I  
23 expect that he wouldn't give any opinions  
24 as to that. He said he was not a hydrologist,  
25 therefore, I wouldn't expect him to give any

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1 opinion as a hydrologist. He said he was  
2 not an engineer, therefore, I would expect  
3 him not to give any opinion as an engineer.

4 MR\* CAIN: Well --

5 THE COURT: It is rather clear. He  
6 said he's a teacher who has gone in the  
7 field and has learned in the field how to  
8 gather information, apparently.

9 MR. CAIN: He may be giving opinions  
10 with respect to quality of a stream in which  
11 he may be very well qualified for even though  
12 he isn't a geologist or a hydrologist and  
13 I thought that was the purpose of his  
14 examination.

15 THE COURTS He ^s also not a geologist.

16 MR\* CAIN: He's also not an attorney  
17 and I think we could add a lot of things to  
18 the list.

19 THE COURT: He is what he is.

20 MR\* CAIN: But before we preclude him  
21 we should find out what opinions he thinks  
22 that he's going to be offering and then make  
23 sure that we understand what his background  
24 is in that particular area\* From what I've  
25 heard so far Mr. Reilly is much more than just

1 a researcher unless you're going to consider  
2 any scientist just to be a gatherer of  
3 information.

4 THE COURTS I think you're blunting  
5 the sharp point, Mr. Cain. I've already  
6 ruled. If you want to use him to show  
7 what information that was turned over to  
8 Mr. O'Grady that Mr. O»Grady used in his  
9 Land Use Plan and Mr. O'Grady will testify  
10 to it, fine. No opinions please.

11 BY MR. SUTTON:

12 Q Mr. Reilly, did you prepare certain  
13 material to assist Mr. O'Grady in the preparation  
14 of the Land Use Plan, the zoning ordinance?

15 A That is correct.

16 Q Would you tell us what material you  
17 prepared?

18 A Yes •

19 MR« SUTTON: Perhaps we could have  
20 each of these marked.

21 THE COURTS Yes, please.

22 A This is the Ground Water Geology Map of  
23 the Clinton Township Natural Resource Inventory.  
24 In my discussion with Mr. O'Grady one of the primary  
25 points of interest had to be the utilization of water

1 resources.

2 MR, HERBERT: Your Honor, with respect  
3 to #r. Reilly, I understood your Honor's  
4 ruling as simply presenting what he provided  
5 to Mr\* O'Grady. I have a feeling that Mr\*  
6 Reilly is going to get into why he offered  
7 certain things, what was the concern of  
8 the nap, what was his concern and if that's  
9 what he's about to do, your Honor, then I  
10 would submit that that's opinion testimony,

11 THE COURT: He's not going to give  
12 any opinion, but I've already indicated  
13 that he's being allowed to say what materials  
14 were turned over to Mr, O'Grady in the  
15 preparation of the Land Use Plan, You should  
16 be allowed to explain the basis of why that  
17 material was turned over to Mr, O'Grady in  
18 order to establish the annexes\* Three,  
19 if it is based upon another study which he  
20 gathered by way of research he has in the  
21 N,R,I., fine. He's not to give opinions  
22 with regard to what his opinion is of the  
23 opinions of other people. But if he took  
24 those opinions and incorporated it in this  
25 map which he's prepared without overlaying an



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opinion of his own, fine.

MR. HERBERT! Thank you, your Honor.

! MR. CAINJ I want to formally object to precluding Mr. Reilly from any opinions because I think that's not appropriate. It has been determined already that he has certain areas of expertise and I just anticipate Mr. Herbert jumping up every couple of minutes all the time.

THE COURTS It does look like a peaceful afternoon, doesn't it?

But we have to live with those things. Go ahead, sir.

MR. CAINS I would think that we should take them as they come and I only object to his being precluded in advance. It is very difficult to give a scientist to give any kind of testimony without -

THE COURT: Now, wait a minute, Mr. Cain. I've already ruled once. I've ruled that he's a teacher. Even though he's got a minor in chemistry doesn't make him a scientist. He's not an ecologist. I'm going to repeat it for the last time. He's not a hydrologist, he's not a geologist and he's

1 not an engineer\* Therefore, as to these  
2 sciences he's not any one of them. Is that  
3 clear?

4 MR. CAIN: Well, that's clear but -

5 THE COURT: Let's go on.

6 A The source of this map is a Special Report  
7 24 from the Jersey Bureau of Geology. It is the  
8 one which Mr\* Rahenkamp and Mr. Horton had gotten  
9 their information from, geology from.

10 THE COURT: Source of the map was  
U geology.

12 MR. SUTTON: Special Report No. 24,  
13 New Jersey Bureau of Geology -

14 MR. HERBERT: Excuse me, your Honor.  
15 This is not an objection but, merely, could  
16 the exhibit be marked?

17 THE COURT: Yes. I would like to  
18 get it marked\* What we're looking at is a  
19 map which appears to be transparent so as  
20 we see in the courtroom it has some type of  
21 plexiglass to which the light is coming and  
22 then this map is of Hunterdon County and is  
23 multi colored and, apparently, has a legend  
24 over on the right which explains the different  
25 colors•

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THE WITNESS: It is not of Hunterdon County. It is just the municipality of Clinton Township.

THE COURT: All right. Just of Clinton Township.

(Ground Water Geology Map marked DJPB-14 for identification.)

A The information I gathered and presented to Mr. O'Grady on this map was a breakdown of the different rock types in the municipality and their water bearing characteristics as expressed in Special Report 24 and in the text of the Natural Resource Inventory which has some oral communication\* from geologists in the Bureau of Geology.

Basically, what the data shows from this map and this is, by the way, an exact blowup by the map taken out of the report, it is not a reproduction it is a photographic blowup of the exact map, it shows, in the codes, a very hard rock called the Precambrian rock which is a water short rock\*

MR. HERBERT: Your Honor, he's now getting into what Precambrian rock is. He's giving interpretations. He's giving scientific testimony, your Honor. It is opinion.

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1 It is outside your ruling. I have no  
2 objection to him simply saying that this  
3 defines Precambrian rock and leave it there.  
4 But when he gets into an interpretation of  
5 what Precambrian rock is I object.

6 THE COURT: Based upon his research  
7 he can tell me what a Precambrian rock is.  
8 Now, you're getting a little too tight.  
9 Up to now I've been with you on his  
10 expertise, but don't tighten it down too  
11 hard. The best way to break a good nut is  
12 to squeeze it too hard.

13 MR. HERBERTS Thank you.

14 A The information I will give you is of none  
15 of my own generation. It is precisely what is  
16 available from the Bureau of Geology and what I  
17 transmitted to Mr. O'Grady.

18 THE COURTS You gathered it by your  
19 research?

20 THE WITNESS? Correct.

21 THE COURTS All right, go ahead.

22 A I gave to Mr. O'Grady the following informa-  
23 tion I collected: The Precambrian rock, as coded  
24 in orange is a very hard rock and is water short in  
25 terms of ground water supply,, The blue code is

Direct - Reilly

1 Brunswick Shala rock and is highly fractured and  
 2 is a better water supply aquifer. The green code  
 3 is Kittatinny Limestone\* it is the best aquifer in  
 4 the municipality. The orange in the southwest  
 5 corner of the municipality is a Sandstone and it  
 6 has an equivalent ground water supply to the  
 7 Brunswick Shale in the same respect.

8 THE COURT: What was the green rock?

9 THE WITNESS: Kittatinny Limestone.

10 The orange is the Stockton Sandstone. Again,  
 11 it is one of the best aquifers in the  
 12 municipality. There are several other  
 13 small sections of various colors; purple,  
 14 hot pink and yellow. All of those are very  
 15 water short rocks in the same category as  
 16 the Precambrian. They're called the  
 17 Martinsburg Shale which is the purple.  
 18 The hot pink would be the Border Conglomerate.  
 19 The yellow is the Hardyston Quartzite.

20 In the summary! I explained to Mr.  
 21 O'Grady that I have the categories of various  
 22 water short areas in the municipality and  
 23 other categories of areas which have the  
 24 more bountiful supply. If you took and  
 25 circled all the orange, yellow, hot pink,

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1 .to gallons per day per square mile and then  
2 when you divide it up the amount of water  
3 used in a home you get a lot size.

4 THE COURT: You have to make that  
5 calculation?

6 THE WITNESS: Yes, your Honor. May I  
7 make a clarification? Special Report 24,  
8 when I talked about there was an updating,  
9 Special Report 24 had lot sizes in the range  
10 of two and a half acres in these rock types  
11 because at that time there was more water  
12 in it then they found out, subsequently from  
13 the 1965 drought for which they analyzed  
14 after this report was put together. They  
15 found out that they were too low on that and  
16 since expanded the lot sizes in these various  
17 areas\* So they have gone through a listing  
18 or an updating based on that information.

19 THE COURT: Where is the present  
20 project?

21 THE WITNESS: The present project is  
22 right in this area here, (indicating) It  
23 contains a large segment of Kittatinny Lime-  
24 stone, some of the Hardyston Quartzite and  
25 some of the Precambrian on the eastside of

1 Route 31 and it also includes some of the  
2 Martinsburg Shale. Just the Kittatinny was  
3 bountiful the Martinsburg Shale and the  
4 Hardyston Quartzite --

5 THE COURT: Are water short but not  
6 as water short as the hard rock?

7 THE WITNESS: The Precambrian, yes.  
8 They're all in the same, what they say,  
9 ball park of about 100,000 gallons per day  
10 per square mile.

11 So based on this information my  
12 personal communications which are indicated  
13 in the Natural Resrouce Inventory with the  
14 geologist at the Bureau I got the latest  
15 update of the information and transmitted  
16 to Mr. O'Grady the fact that the geologist  
17 considered this three to four acre zoning.

18 THE COURT: When you say "this" --

19 THE WITNESS: The Precambrian, the  
20 Hardyston Quartzite, the Martinsburg Shale  
21 and the Diabase traprock all in three to four  
22 acres zoning as a safe lot size for an  
23 individual detached single family dwelling.

24 THE COURT: What is this blue area?

25 THE WITNESS: Do you want me to go over

1 the color code?

2 THE COURT: Precambrian was the  
3 orange.

4 THE WITNESS: The Hardyston Quartzite  
5 is the yellow. The Diabase is also a  
6 tan and the color is stated around Round  
7 Valley Reservoir. The one to the left is  
8 Border Conglomerates. It is the hot pink.

9 THE COURT: And what is the blue again?

10 THE WITNESS: The blue is in another  
11 category\* The blue is Brunswick Shale. The  
12 green is Kittatinny Limestone.

13 THE COURT: What is the blue opposite?

14 THE WITNESS: This blue? (indicating)

15 THE COURT: No, opposite that.

16 THE WITNESS: That's supposed to be  
17 purple. We had too many rock types in this  
18 town. That purple is the Martinsburg Shale.

19 THE COURT: All of those you consider  
20 in the same category?

21 THE WITNESS: Right, of water short  
22 aquifers.

23 THE COURT: All right. The other  
24 category of aquifers in the municipality are  
25 the Brunswick Shale, which is the blue, the



1 bright blue, you might call it, the  
2 Kittatinny Limestone, which is green, and  
3 the Stockton Sandstone which is the orange.

4 THE WITNESS: You might call it the  
5 hot orange to distinguish it from the dull  
6 orange of the Precambrian.

7 The recommended lot sizes for those  
8 range from one to one and a half acres per  
9 single family detached dwelling.

10 THE COURT: Is that your calculation  
11 or is that -

12 THE WITNESS: A combination. The  
13 report and a personal communication from the  
14 Bureau of Geology,

15 ; MR. HERBERT: Excuse me, Just by way  
16 of clarification, your Honor, could the  
17 witness be asked in response to that question  
18 that the Court just posed, did the Bureau  
19 of Geology recommend a lot size of one to  
20 one and a half acres for this rock formation?

21 THE COURT: That's what I'm trying to  
22 get at. Because he said one time he recomraenc-  
23 ed two and a half acres -\*••

24 THE WITNESS: I'll clarify that.  
25 Special Report 24, which was done in

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1967, had certain stated lot sizes. These lot sizes have since been upgraded and the two sources of that upgrading are Bulletin 73 from the Bureau of Geology and personal communications with the geologists in the Bureau. And those personal communications are lodged in the Natural Resource Inventory text\*

THE COURT: Do you have any idea where?

THE WITNESS: What page?

There are sections on geology ground water resources.

THE COURT: You want me to list the page?

THE WITNESS: That would be page 230. Section 400 of the Natural Resource Inventory, Section 400 again, general discussion and page 230 has the specifics of Clinton Township. I believe at page 231 at the bottom, the last two lines, estimate the total drought yield in this study region as 100,000 gallons per square mile. The late Joseph Miller was a senior geologist at the Department. The principal geologists were Mr. Miller, Mr. Kasabach and Mr. Doulton and

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Mr. Markewicz.

THE COURT: The specific question was:  
In these reports they actually give you the  
lot sizes?

THE WITNESS: Yes. There are tables  
her© which show the lot sizes on page 240,  
There is lot size associated with every  
rock type in the municipality,

I . . . THE COURT: All right. Does that  
clarify it, Mr. Herbert?

MR. HERBERT: Your Honor, yes.

I would like to just take a look at  
it for a moment.

The only thing, your Honor, I would  
like to note on that page 231, I think Mr,  
Reilly did testify to that, it is not in  
any way contradicting in any way what he  
said this was based upon recommendation of  
Mr. Joseph Miller. And I would like to ask  
somehow, perhaps through your Honor, whether  
or not there was a specific report other than  
the N.R.I, upon which these acreage figures  
were set forth., or was it simply a conversation  
upon which Mr. Reilly put down these figures  
in the N.R.I.- itself?

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• MR. SUTTON: Wouldn't that be appropriate in cross-examination?

MR. HERBERT: I'm getting to the point of hearsay.

MR. SUTTON: You put the book in evidence\*

MR. HERBERT: I put the book in evidence to show its existence and the fact that it was considered by our expert. I didn't say everything in here was accurate or --

THE WITNESS: Unfortunately, Mr. Miller is not around any more.

MR. CAIN: I'm having difficulty making notes because I can't figure out if we're in direct or cross.

THE COURT: We're in direct, but it is such a unique kind of area that Mr. Reilly is establishing his new area of expertise. I'm giving him the same benefit of doubt than the man that graduated.

MR. HERBERT: Your Honor, I withdraw my objection.

THE COURT: Go ahead, Mr. Cain, Mr. Reilly, Mr. Sutton or wherever you may be.

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1 I'm on page 240 on lot sizes.

2 BY MR. SUTTONx

3 i Q Have you completed advising us of  
4 the advice that you gave to Mr, O'Grady as a result  
5 of that map?

6 A Yes\* I think that reasonably explains the  
7 information that I transmitted to Mr. O'Grady.

8 THE COURT: We can review this in  
9 pieces. Do you want to cross-examine now  
10 on the geology or do you want to move on to  
11 another area and then come back?

12 MR. HERBERT: I'd rather have the  
13 whole testimony go in, your Honor.

14 THE COURT: Perhaps before Mr. Reilly  
15 testifies we should have this marked.

16 THE WITNESS: This is a Soil Map  
17 depicting steep slopes.

18 (Steep Slopes Map marked DPB-15 for  
19 identification\*)

20 A It's the Clinton Township Natural Resource  
21 Inventory Number 5.

22 Q Mr. Reilly, would you tell us who  
23 prepared this map, what it depicts and the source  
24 of the material utilized in preparing the map?

25 A This is a Soil Map prepared by the United

1 States Conservation Service for the Hunterdon County  
2 Soil Conservation Districts We obtained the nega-  
3 tive of the base map from the Soil Conservation  
4 District and using the Soil Conservation Service  
5 coding we color coded the base map for steep slopes.  
6 Each soil is marked on the map with a certain letter.  
7 The letter corresponds to a degree of slope so the  
8 color you see in green are all of the slope in  
9 zero to three percent; The colors you see in yellow  
10 are three to six percent in ranges such as that and  
11 it goes up to twenty-five percent slope and above.

12 Q Would you explain what each different  
13 color depicts as far as the slope size?

14 A Yes, This information was given to Mr.  
15 O'Grady concerning the slopes of the municipality.  
16 The green, as I said, is the lowest of the percentages  
17 and that would be your flood plains, as you can see  
18 along the streams there. The yellow is from two  
19 to six percent slope. The red is from six to  
20 twelve percent and you can see breakdown of the  
21 flood plain here and then the Township begins to  
22 rise up into the red color and the red-stripped  
23 color? the red strips being twelve percent and  
24 greater to it would be twelve percent right up to  
25 a shear cliff. It doesn't break it down any greater

1 than twelve percent\* .

2 The northern part of the Township and  
3 the western part of the Township have a majority  
4 of slopes in the six and twelve percent and twelve  
5 percent and greater. There is a flatter portion of  
6 the municipality in the center of the municipality  
7 and then you get into various deep slopes against  
8 the Round Valley Reservoir and the south of Round  
9 Valley Reservoir.

10 I urged Mr. O'Grady to look at the  
11 combination of the geology we just saw and the  
12 slopes and you would see that the steep slopes lie  
13 over the aquifers. The Precambrian rock and the  
14 Martinsburg Shale are also very steep. They're  
15 in combination with steep slopes. This factor, we  
16 were told by the geologist, is one of the reasons  
17 it also has little water supply because of the  
18 combination of hard rock and steep slopes, on page  
19 340 of the Natural Resource Inventory, when we refer  
20 to lot sizes.

21 I will note from the table on page  
22 340 that when you have steep slopes that are foresteep'  
23 and we'll get to another map where they have very  
24 tight soil, the recommendation is go to the lower  
25 lot size if it is three to four acres. We recommend

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1 it goes to the four acres when its on the steeper  
2 slope, I shouldn't say "we recommend," the  
3 geologist recommends. And that all of that  
4 information is pulled together on a variety of these  
5 maps on page 240 concerning recommended lot sizes.  
6 That basically tells the story of this map.

7 By the way, I probably wouldn't be  
8 able to do it here today, but when you overlay these  
9 maps you can see the combination of the geology of  
10 the slopes and the soil and a variety of combinations  
11 which either makes it more or less severe in terms  
12 of water supply.

13 THE COURT: Before you leave that, tell  
14 me where on that map, DPB-15, is the project  
15 in question?

16 THE WITNESS: Yes. The project in  
17 question stands approximately this area  
18 between the top of my pointer and my thumb.  
19 (indicating) It comes around the yellow area  
20 which is moderate slopes to over across the  
21 highway with a whole mixture of moderate  
22 slopes and critical slopes.

23 THE COURT: And it is on the west side  
24 where the slopes are, and so forth, where the  
25 highest density has been represented by Mr.



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O'Grady. Are you aware of that?

THE WITNESS2 That is correct, yes.

THE COURT: Mark the next map

DPB-16\*

: (Flood Plain Soils Map marked DPB-16 for identification.)

Q Mr\* Reilly, will you explain this map, state what it depicts, whether it was supplied to Mr, O'Grady and the source of the material used in preparing the map\*

A This is, again, the business map taken from the United States Soil Conservation Map prepared for Hunterdon County\* This depicts only Clinton Township. It is a photographic copy of their negative and it has been coded for flood plain soils. In addition to flood plain soils we have noted on the side of the map that the South Branch of the Raritan River has been delineated by the State of New Jersey in floods has Report No\* 11 for a specific engineered flood plan. The information I transmitted to Mr. O'Grady concerning flood plains and zoning is that the zoning plan in itself must have some kind of provision for flood plain land or some additional ordinance in the municipality needs to regulate the flood plain land. The flood plains are the flood

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1 plans with soils that have been deposited over  
2 hundreds of years from flood waters and they're  
3 noted in the recommendation you see throughout the  
4 municipality\* The streams that you see in blue on  
5 this map do not have a flood plain so that is a  
6 traditional flood plain. However, there's no way  
7 of telling how high they will flood when a storm  
8 comes down because they don't have the soils on  
9 either side\* So certain provisions are needed to  
10 protect the streams and property along the streams  
11 as well\* That basically is it for the flood plain  
12 map\* The property in question is probably here\*  
13 (indicating) This particular stream runs across.  
14 It does have some flood plains\*

15 THE COURTS What stream is that?

16 THE WITNESSS It is a tributary to  
17 Beaverbrook. It has no specific name.

18 Q Mr\* Reilly, you testified that you did  
19 supply this material to Mr. O'Grady. Is that correct^?

20 A Yes •

21 THE COURT: Mark the next one DPB-17.

22 (Depth to Bedrock Map marked DPB-17  
23 for identification.)

24 A The next map is Map No. 6 of the Natural  
25 Resource Inventory called Depth to Bedrock.

1 Q Who prepared this map?

2 A All of the soils maps are from the United  
3 States Soil Conservation Service as prepared for the  
4 Hunterdon County Soil Conservation District. It is  
5 a photocopy and we have color coded it from informa-  
6 tion produced by the Soil Conservation Service.  
7 The green code is Bedrock deeper than five feet\*  
8 The yellow code is Bedrock at three and a half feet  
9 to five feet. The red code is Bedrock at less than  
10 three and a half feet. You can see on the western  
11 portion of the Township, the central portion and  
12 the eastern portion all along Route 22, 78 and  
13 alongside of the western portion there is significant  
14 portions of shall depth to Bedrock. The information  
15 presented to Mr\* O'Grady was that here we would  
16 have septic system difficulty due to the necessity  
17 of Bedrock service as outlined in the Soil Conserva-  
18 tion publications\* When this Information is overlayed  
19 on the geology, again, it would be difficult to  
20 do. The final two maps I could put a few together  
21 and you will then see certain rock types overlying  
22 the shall depth to bed areas and it will give you a  
23 plainer, more composite picture of the limitations.

24 Q Mr. Reilly, when you mentioned  
25 "limitations" could you be more specific on some of

1 the rocks about the limitations?

2 A Well, the key consideration that I related  
3 to Mr. O'Grady for the shallow depth to Bedrock is  
4 really your septic system malfunctions. If the  
5 area is sewered such as certain areas are in the  
6 Township, if there's shallow depth to Bedrock it  
7 doesn't make any difference if the area is sewered.  
8 If it is not sewered then you have a problem with  
9 the septic effluent going into the Bedrock and then  
10 going into your ground water which is used for  
11 well water. So you have to have a very strict  
12 septic system code or very low density zoning and  
13 even low density zoning doesn't solve it because  
14 you're just spreading the pollutants a little bit  
15 further apart. You're not curing the situation.

16 THE COURTS No speculation.

17 THE WITNESS: No, sir.

18 THE COURT: Tell me about that if that's  
19 not traprock.

20 THE WITNESS: No. This is the  
21 Stockton Sandstone and this is the Brunswick  
22 Shale up here on the eastern portion of the  
23 municipality. This area through here is in  
24 the center of the municipality. I believe  
25 that's overlying the Hardyston Quartzite and

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the Precambrian rock.

THE COURT: But the area in question doesn't have any problems, does it?

THE WITNESS: On the eastside of the road there are -- it has medium depths to Bedrock and on the western side of the road it has severe limitations to septic system or severe limitations to Bedrock and as a result limitations to septic system functions\*

THE COURT: The eastside is the so-called Gobel site?

THE WITNESS: Yes. That has a moderate depth to Bedrock of three and a half to five feet and would have less severe limitations for septic system function.

THE COURT: Mark the next map DPB-18.

(Seasonal Highwater Table Map marked DPB-18 for identification.)

A This is Map No. 4 of the Clinton Township Natural Resource Inventory called the Seasonal Highwater Table\* It is again the Hunterdon County Soil Conservation District Base Map color coded for Seasonal Highwater Table\* The green code means there is a depth of water table greater than three

1 and a half feet. The yellow code is a half a foot  
2 to three and a half feet\* And the red code is a  
3 critical highwater table to where you could expect  
4 to see the Seasonal Highwater Table as zero to one  
5 foot.

6 The map speaks for itself. The  
7 majority of the municipality has a deep water table.

8 Q How does the water table affect  
9 density of dwellings on the property?

10 THE COURTS Just a moment, Mr. Sutton.  
11 How, where are we going?

12 MR. BUTTON\* Well, again, it would be  
13 based upon research.

14 THE COURT: The opinion is based on  
15 research unless there is some table here he's  
16 got a source to put his finger on.

17 MR. SUTTONS May I ask him the question  
18 of what the purpose of presenting this map  
19 to Mr. O'Grady was?

20 A To indicate areas where you would have septic  
21 system problems from highwater tables. This map  
22 shows that there should not be a limitation in terms  
23 of water, ground water, to septic system functions  
24 in large portions of the municipality.

25 In the yellow and the red areas you are

Direct - Reilly

1 going to have a serious problem with designing a  
2 septic system to function without contaminating the  
3 ground water,

4 THE COURTS Mark the next one DPB-19.

5 (Hydrologic Soils Map marked DPB-19  
6 for identification.)

7 A The next map is Map No. 7 of the Natural  
8 Resource Inventory. It is called the Hydrologic  
9 Soils Map, This map, again, is the base map from  
10 the Hunterdon County Soil Conservation District,  
11 color coded to show types of soils as they relate  
12 to transmitting rain water. Group A would be the  
13 green soils. There are no green soils in the  
14 municipality. I better explain the title block  
15 first. The Soil Conservation Service has grouped  
16 all soils into four categories in terms of the rate  
17 at which they transmit water. Group A soils would  
18 be your highest infiltration rate, as your sand and  
19 gravels. Group B would be your loamy soils. They  
20 transmit rain water well. Group C soils begin to  
21 get into your more clayey soils and they are re-  
22 stricted in the amount of water they let through.  
23 Group D soils are the lowest of all soils in terms  
24 of their ability to transmit water. They would be  
25 your hardpan soils and very tight clay soils.

1                   The map shows that we have two large  
2 **areas** with serious problems in terms of percolation  
3 or infiltration of water\* That would be in the  
4 southwest and southern quadrant of the Township and  
5 in the northeast along Route 22, 78 we have large  
6 areas with poor soils. The yellow code means that  
7 there is rather good infiltration-percolation. A  
8 good portion, at least more than the majority of  
9 the Township, has rather adequate percolation.

10                   THE COURTS   What color is that, the  
11 yellow?

12                   THE WITNESS:   The yellow?

13                   THE COURT:    What color is the loamy?

14                   THE WITNESS:   That would be in the  
15 yellow category.

16                   THE COURT:    So the green is the sandy  
17 soils?

18                   THE WITNESS:   The yellow would be the  
19 loamy soils.

20                   THE COURT:    What color is that?

21                   THE WITNESS:   That's red.   &nd the  
22 red stripes would be the clays and hardpans.

23                   THE COURT:    So the majority of the  
24 Township seems to be all right?

25                   THE WITNESS:   Yes. By the way, another

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point, each map tells the story, but when you put them all together it even tells more information\* When you overlay this over the rock type here is the Sandstone. This acts to reduce the amount of rain water which will recharge that aquifer.

For Brunswick Shale or Stockton Sandstone is that all Stockton Sandstone in the State of New Jersey is not covered by the same soil\* If you have a Group A soil covering Stockton Sandstone it gets a little of rain to be recharged. If you have a Group C overlying the Stockton Sandstone you get a much reduced infiltration and as a result a much more reduced ground water supply.

THE COURT: All right.

THE WITNESS: I haven't noted, but there are some of the lowest Group D soils in the northern part of the Township in just certain areas along the stream corridors.

THE COURT: Mark the next map DPB-20.. (Septic Suitability Map marked DPB-20 for identification.)

A The next map is Map No. 3 of the Natural Resource Inventory called Septic Suitability. The

1 base map is the Hunterdon County Soil Conservation  
2 Base Map, color coded for Septic Suitability.

3 Q Who prepared this map?

4 A These were either prepared by myself or under  
5 my direct supervision, the color coding, but the  
6 base map which is really the heart of it, was pre-  
7 pared by the Soil Conservation Service,

8 This particular map is a composite  
9 prepared by the Soil Conservation Service and it  
10 reflects how they see a septic system functioning  
11 with a composite number of factors, such as ground  
12 water, depth to Bedrock, and slope and rockiness of  
13 the soil\* They add all those together and they  
14 come up with areas which look like this, (indicating  
15 For a combination of one or all of those reasons  
16 all the red areas they show as severely limited  
17 to the function, the standard, of a normal septic  
18 system. You see here, this is that area we just saw  
19 in the Hydrologic Soils Map. Off Route 22 and 78  
20 there was a shallow depth on Bedrock. Up in here  
21 at the northern part of the Township you have some  
22 severe slopes and as a result it would be very  
23 difficult to design a septic system that would  
24 function well there\* And so goes the municipality.  
25 At least half of the municipality has a yellow code

1 map shows a variety of streams and rivers. On those  
2 streams and rivers we conducted, as a part of the  
3 Natural Resource Inventory, watersampling. In the  
4 text of the Natural Resource Inventory it will note  
5 the various streams where we took water sampling,  
6 where we did water sampling and what the water  
7 quality was of those stream segments, that is, then  
8 related to New Jersey water quality standards.

9 I related to Mr. O'Grady that the  
10 Land Use Plan of the municipality can't develop such  
11 that it would violate the New Jersey water quality  
12 standards so that would have to be taken into account  
13 in his overall scheme, as only he as a planner could  
14 do. Now, I understand that this map has been sub-  
15 sequently reviewed and is in evidence already. Maybe  
16 I should use the one that's already in evidence than  
17 this one.

18 THE COURT: The last map Mrs. Neighbor  
19 put up.

20 MR. HERBERT: Your Honor, may I ask  
21 counsel if this is one of the maps that was  
22 prepared by Mr. Reilly or the Geology Service  
23 and given to Mr. O'Grady or is this something  
24 Mr. O'Grady prepared.

25 THE COURT: We'll get the answer to

Direct - Reilly

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this as to whether or not, since it shows all of the zones, whether or not this was prepared by Mr. O\*Grady or Mr. Reilly or both combined. Can you give us an answer to that?

THE WITNESS: Yes. This is the map prepared by Mr. O'Grady. My purpose in using it is to summarize my discussion with Mr. O'Grady as to how the Natural Resource Inventory information would be used in his deliberations.

THE COURT: And it was put into the district?

THE WITNESS: Right.

THE COURT: I think that is allowed.

MR. SUTTON: Shall we use the final map or -

THE COURT: I really don't care.

MR. HERBERT: Your Honor, as I understand it, what Mr. Reilly just said is: This is the map that Mr. O'Grady prepared based upon his conversations with Mr. Reilly. Well, I would submit, your Honor, since Mr. O'Grady prepared that report and would only know himself whether or not that indeed was

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

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Direct - Reilly

1 based upon the conversation with Mr. Reilly  
2 it would really be improper, I believe, and  
3 objectionable for Mr. Reilly to testify  
4 about this map. Mr. O'Grady, as I understand  
5 is available and I think it would be a proper  
6 subject for him to cover.

7 THE COURTS Well, did you hear what  
8 he said? He said that his sole purpose in  
9 using the last map was to show that the  
10 information which he had sent was then based  
11 on the map. Did you hear him say that?

12 MR. HERBERT! Yes, I did. But only  
13 Mr\* O'Grady would be able to testify as to  
14 whether or not this final document reflected  
15 conversations that he had with Mr. Reilly.

16 THE COURT: It would appear that since  
17 it was a bilateral conversation that they  
18 both would be able to testify to that.

19 MR. HERBERTS Except that it isn't  
20 a bilaterial map, your Honor. It was prepare\*d  
21 by Mr. O'Grady.

22 THE COURTS You missed the point. It  
23 is a joint map prepared by, a great deal of  
24 the material, by Mr. Reilly since he gave it  
25 to Mr. O'Grady.

Direct - Reilly

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MR. HERBERT: I respectfully disagree,  
your Honor,

THE COURT: Mr. Reilly, please  
continue.

A The information that I gathered for Mr. O'Grady each map was presented to Mr. O'Grady and then we discussed the overlaying of the different maps and how it would either complicate limitations for lane use or depending on what the factors overlaid and we agreed that the certain sections of the Township have the most severe limitations. And, again, Geology Map would be the best one to use to depict region\* The Geology Map shows the northern part of the Township with a severely limited rock type for water supply and slop\*\*. The area surrounding Round Valley Reservoir and south of the reservoir has showed the ssiae conditions as the norther part.

The recommendation was for Mr. O'Grady to take the three to four acre recommendation from the Natural Resource Inventory and unless water supply and sewage was available in these water short areas they should be zoned three to four acres for individual residences. And it is obvious to a great degree that is what Mr. O'Grady finally prepared.

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MR. HERBERT: Your Honor, that's an opinion,

THE COURT: Well, the R-1 Zone is, I believe, a three to four acre zone.

MR. HERBERT: That is correct, your Honor.

THE COURT: And recognizing that from the legend I have seen on the map, and it does, he says the limitations are severe geologically. He told that to Mr. O'Grady and he recommended that table from this document in evidence, which you put in evidence P-67, as page 2 from Table 4-4 has severe limitations. Severe limitations went on to the zoning map. So I find there's an "annexes" in the bilateral conversation of the two experts; one being the research man and one being the planner, where they went together to assemble the material. It goes to the reasonableness of the Land Use Plan in establishing the zone. I don't find any problem in finding that conclusion.

MR. HERBERT: You've ruled, your Honor, and my objection is so noted.

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Direct - Reilly

1 A Some of the R-2 areas, as X recommended to  
i 2 him, should be three acres and he's got them as  
3 two acres\* That's where the planner diverts from  
4 the environmental researcher. The natural resources  
5 showed it should have been 1/3. However, for  
6 whatever reason, whatever the planning reason v/as,  
7 it is somewhat different than what the environmental  
8 research showed\*

9 That's R-2 Zone that I'm talking about  
10 where there is some conflict in the central portion  
11 of the R-2 Zone just west of Round Valley. The  
12 southern part of that R-2 Zone agrees with the  
13 natural resource constraints. There was a similar  
14 problem with the R-2 Zone just south of the Borough  
15 of High Bridge In that it is a poor aquifer yet  
16 it is zoned for two acres and it was recommended  
17 in the three to four range. Rather than go through  
18 the entire map, some of the R-2 Zone we have that  
19 problem where they appear to be underzoned as from  
20 what the Natural Resource Inventory information showed  
/21 and Mr. O'Grady would have to explain the rationale  
22 for bringing them down below three to four acres.

23 The R-3 Zone, primarily, we will  
24 address the one on the southwestern part of the  
25 municipality. This one-acre zone maps the resource



1 in the mpst southerly of the southwestern portion,  
2 but it is in conflict with the ground water available  
3 in the northern portion of this area. It is zoned  
4 for one acre and the Natural Resource Inventory  
5 shows that it should be three to four acres. I  
6 understand, however, that in the text from Mr.  
7 O'Grady says that this area is most likely to be  
8 sewerred and that would be reason for overriding the  
9 limitation of the natural resources. Similar a  
10 case for the other R-3 Zones is that they're expected  
11 to be sewerred and as a result the natural resources  
12 wouldn't be the determining factor.

13 The less than one acre residential  
14 areas, the R-4 and R-5, again, have to be sewerred  
15 because the natural resources either from septic  
16 systems than water could not stand that kind of  
17 loading. And, again, those are different conclusions  
18 than the ones I gave to Mr. O'Grady so he would have  
19 to explain\*

20 THE COURT! You said they're different  
21 conclusions?

22 THE WITNESS: Than my recommendations  
23 in terms of poor natural resource limitations.  
24 He must have added additional factors, whatever they  
25 are, and he'll explain whatever they are being I

Direct - Reilly

1 didn't do any assessments in water.

2 THE COURT: It is a constraint in the  
3 area from the Natural Resource Inventory  
4 viewpoint?

5 THE WITNESS! Right. There must be  
6 some other additional information Mr. O'Grady  
7 put in to come to that conclusion.

8 THE COURT: Okay.

9 A The R.O.M. Zones, it is difficult to make  
10 an environmental rationale for what they should be  
11 zoned for because you don't know kind of industry,  
12 research or manufacturing is going to be utilizing  
13 the land so what we have been doing in the Natural  
14 Resource Inventory is that the municipality in its  
15 Planning Board process has to scrutinize very care-  
16 fully each applicant in the R.O.M. Zones to make  
17 sure they're not going to use more water or produce  
18 more sewage than the site can handle if it doesn't  
19 have those public facilities. So I had no specific  
20 recommendation on the R.O.M. Zones, environmentally,  
21 except that a cautious and a prudent planning practice  
22 should be taken when siting the structure there.

23 THE COURT: Mr. Sutton, we have covered  
24 all the maps that you gave to Mr. O'Grady.  
25 Do you have anything else of this witness?

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Direct - Reilly

1 MR. SUTTON: I probably will have just  
2 maybe a couple of more questions.

3 BY MR. SUTTONS

4 Q Is that essentially the information  
5 that you supplied to Mr. O'Grady?

6 A That is it.

7 Q You testified that you are the  
8 Director of the Watershed Association. Is that  
9 correct?

10 A That is correct.

11 Q Does the Watershed have a policy in  
12 regard to committing more water to a development  
13 that is beneath the ground of that particular  
14 devdlopment?

15 A Yes, we do.

16 Q Would you tell us what this policy is?

17 MR. HERBERT: Your Honor, he's now,  
18 I think, getting an opinion through the  
19 back door by saying what the policy of the  
20 Association for which he's Director is.

21 That's an opinion.

22 THE COURTS How do you want to handle  
23 that, Mr. Sutton? You've now switched from  
24 environmental researcher and now you're  
25 switching over, I gather, to his job as

**Direct - Reilly**

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Director of the Watershed Association. Now you're asking him about the policy.

MR. SUTTON: I'm asking him for facts not opinion.

THE COURT: The policy is the net conclusion, I would gather, of several facts. If it is a conclusion then, one, is it a lay conclusion, is it an expert conclusion or is it the conclusion of a body who met in a room one night when several people put up their hands? Is it based on some study?

MR. SUTTON: Perhaps I could ask questions in that regard.

THE COURT: First thing is they have a policy.

BY MR. SUTTON:

Q What is the basis for that policy?

What studies have you made to come to that conclusion?

MR. HERBERT: Your Honor, the conclusion is a subjective one. It is an opinion. It is a basic policy and it is objectionable. I understood this witness was going to be testifying about what he did with Mr. O'Grady and so forth.

THE COURT: I noticed that he switched.

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Direct - Reilly

1 MR. SUTTON: I understand he can  
2 testify in regard to factual matter and I  
3 think that this is not giving an opinion\*

4 THE COURT: That's not only giving  
5 an opinion it is giving somebody else's  
6 opinion of some type.

7 MR. SUTTON: Well, would it be  
8 satisfactory for Mr. Reilly to testify  
9 how the Watershed reached their particular  
10 opinion before giving the opinion?

11 MR\* HERBERT\* Your Honor, it isn't  
12 how you reached the opinion, it's the  
13 opinion that's what I'm objecting to and not  
14 only, as your Honor has indicated, not only  
15 is it an expert opinion, but it is hearsay  
16 on top of it.

17 MR. CAIN: Your Honor, may I be heard  
18 briefly.

19 THE COURTS What I'm getting at now  
20 is double teaming in regard to this situation.  
21 Mr. Sutton started it. Do you think he's  
22 not carrying the ball well enough and you  
23 want to come in? One of you is going to talk  
24 on behalf of the municipality, I'm tired of  
25 this double teaming. Who's making the offer,

Direct - Reilly

1 you, Mr. Sutton or you, Mr. Cain? It is your  
2 witness.

3 MR. SUTTONS We represent different  
4 bodies.

5 THE COURT: You represent one  
6 municipality even though it has a head and  
7 it may have feet. But it is one body  
8 politics.

9 MR. SUTTONS One of the problems I  
10 have here is that Dr. Horton already testified  
11 in regard to this. Now, we want Mr. Reilly  
12 to testify as a rebuttal witness to what  
13 Dr. Horton had testified.

14 THE COURTS Fine. Dr. Horton is,  
15 I gather, a hydrologist «

16 MR\* HERBERTS Yes, he was, your Honor.

17 THE COURTS If I'm not mistaken. I'm  
18 positive that's how he qualified himself.

19 MR. CAINS A geologist.

20 MR. HERBERT: The area of geology  
21 covers a variety of subdisciplinesj one of  
22 them being hydrology in this case and his  
23 expertise happens to be in the area of  
24 hydraulics related to geology.

25 THE COURT: Now, we have already

1 , -t established that Mr. Reilly is testifying  
2 even though he may not be a hydrologist or  
3 engaged in hydrology.

4 MR. SUTTON: It seems to me that the  
5 Watershed would have a policy in this regard\*  
6 Now, they work with various persons. They  
7 work with the State Geologist. They work  
8 with other people And I wanted to ask him  
9 what the basis for his policy is. I think  
10 it has probative value.

11 THE COURT: You're assuming that there  
12 is a policy.

13 MR. SUTTON! Yes. His report says  
14 that there is a policy.

15 THE COURT: All right. I gather that  
16 this policy is in some type of a written  
17 report, some type of a form reached sometime,  
18 I gather during his five year tenure or prior  
19 thereto. Is that correct?

20 MR. SUTTON: Well, I'm reading from  
21 Mr. Reilly's report where he refers to a  
22 policy. Now, I wanted to ask Mr. Reilly to  
23 tell us what the basis for this information  
24 was in this report.

25 MR. HERBERT? Your Honor, I don't want

1 to argue\* Further, I think you've ruled  
2 clearly on the subject.

3 THE COURTS No, I didn't. I'm still  
4 trying to.

5 Is the South Branch of the Watershed  
6 some type of an official body?

7 MR\* SUTTON: Let me ask Mr. Reilly.

8 THE COURT\* I see they have a big  
9 building up on the highway and so forth. It  
10 is some type of a -- was an official --

11 THE WITNESS: It is non-profit. It  
12 is a 5013C Citizens Organization, tax exempt  
13 organization.

14 THE COURT: 5013C?

15 THE WITNESS: That's tax exempt code,  
16 Internal Revenue code. It is a public  
17 interest organization.

18 THE COURT: What is the function of  
19 the public organization as distinguished from,  
20 Bay, the Boy Scouts, which is also a public  
21 interest organization or the Red Cross?

22 THE WITNESS: The document filed with  
23 the Internal Revenue Service lists us as a  
24 Scientific Educational Organization which  
25 deals with the natural environment of the

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h Branch of the Raritan River's Watershed,  
that would come under various programs  
activities that we would deal with all  
ating to gathering scientific information  
it would relate to the quantity and quality  
I the water which flows through the Watershe

THE COURT: So it is not an official  
dy of the State of New Jersey?

THE WITNESSt No.

THE COURT: Nor of any municipality?

THE WITNESS: No.

THE COURT: It is a voluntary  
rganization of citizens?

THE WITNESS: Correct.

THE COURT: And they have a policy,  
i gather, with regard to what Mr. Sutton is  
iriving at?

THE WITNESS: The policy might, most  
accurately, be reflected in the Natural  
Resource Inventory and the various sections  
in it which deal with a policy of water  
resource management.

THE COURT: And it's already in the  
report?

THE WITNESS: Correct.

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THE COURT: Can you point to a page?

THE WITNESS: Yes.

THE COURT: I'll go through my notes here and give you the pages. What page is it?

THE WITNESS: Page 188C, page 275 and page 267.

THE COURT: Do you say that this basis reflects the policy of this voluntary organization then the policy is already been placed in evidence.

MR. HERBERT: Yes, your Honor.

THE COURT: Page 188C, 275 and 267?

MR\* HERBERT: Yes, your Honor.

MR. SUTTON: One of the problems is that Mr. Reilly cannot testify. I understand that Dr, Horton has already testified in attempting to rebut this information.

THE COURT: Well, why don't you go and get a man to testify such as Dr. Horton if you want to meet head by head, line by line. That's what you have to do, but if you haven't got him by now then I'm afraid you're not going to have him because the case is going to conclude one of these years and I am

1 inclined to think it is going to be completed,  
2 if not in September, then in October at the  
3 latest.

4 BY MR\* SUTTONS

5 Q Mr. Reilly, you referred to a  
6 Bulletin 73 and another bulletin. Are you able to  
7 supply those bulletins?

8 A I have here today Bulletin 73 from the  
9 Bureau of Geology and Topography, yes. Special  
10 Report 24 I do not have yet.

11 MR. SUTTON\* I think it might be  
12 helpful if those reports could be marked  
13 in evidence since Mr. Reilly has testified  
14 in regard to those reports. Do you have any  
15 objection?

16 MR. HERBERTS Your Honor, could I just  
17 confer with Mr. Dishner (phonetic) for a  
18 moment, please?

19 THE COURTS 73 and 24?

20 THE WITNESS: Special Report 24 and  
21 Bulletin 73, both from the Bureau of Geology  
22 and Topography.

23 THE COURT: They're both official  
24 records?

25 MR. CAIN: Wasn't there an update?

Direct - Reilly

1 THE WITNESSS Bulletin 73 is the most  
2 updated one.

3 MR. HERBERTS Your Honor, we have no  
4 problem to Bulletin 24 since we were aware of  
5 that document. I think it was testified to  
6 by pr« Horton\* As to Bulletin 73, your Honor,  
7 I would simply like to reserve our position  
8 on it until I have an opportunity to examine  
9 it.

10 THE COURTS All right. Have them  
11 marked for identification when they're  
12 available,. If they're both official records.

13 MR. HERBERT: I understand, your Honor.

14 THE COURTS And you vnderstand the  
15 Rules of Evidence, official records are  
16 admissible.

17 MR. HERBERTS Yes. I think it is an  
18 exception to the hearsay rule, your Honor,  
19 but the question is only as to 73 as to  
20 whether or not we were aware if it was going  
21 to, be relied upon by the defendants.

22 THE COURTS All right. Mark Bulletin  
23 73 DPB-22 for identification.

24 (Bulletin 73 marked BPB-22 for  
25 identification.)

Direct - Reilly

1 THE COURT: Special Report No. 24  
2 he does not have. Is that correct? He  
3 does not have that and that's going to be

4 DPB-23 for identification. They're both  
5 marked for identification. One is in hand,  
6 that is 22 and 23 is not in hand.

7 Are you through now, Mr. Sutton?

8 MR. SUTTON: I have a couple of more  
9 questions.

10 I understand your Honor has ruled on  
11 the policy question of -

12 THE COURT: He said that it is con-  
13 tained in the report on pages 188C, 275  
14 and 267. We went through that. And the  
15 report is already in evidence.

16 BY MR. SUTTON:

17 Q Mr. Reilly, I believe you testified  
18 that the Clinton Township Planning Board contracted  
19 with the Watershed Association in January of this  
20 year to do a detailed environmental zoning analysis.  
21 Is that correct?

22 A That is correct.

23 Q What would this analysis involve?

24 A This analysis will take the Natural Resource  
25 Inventory information which I have just presented and

1 ; do a detailed zone by zone analysis of the existing  
2 zoning plan so that when we're done we'll have a  
3 matrix for each zone showing whether it supports or  
4 is in conflict with the natural resources underlying  
5 that zone.

6 The Planning Board hopes to use this  
7 as a detailed Environmental Land Use Statement,  
8 if you will, to support Mr. O'Grady's work.

9 Q Has the Watershed Association  
10 commenced work on this?

11 A We have about 80 to 90 percent of the mapping  
12 completed, but the analysis has not yet started.

13 Q Are you able now to tell us approxi-  
14 mately when the work will be completed?

15 A As soon as I complete the other two that I'm  
16 doing. It is very difficult to say.

17 Q Are working on others for other  
18 municipalities?

19 A Yes. I'm finishing Tewksbury and I have to  
20 finish a Natural Resource Inventory for West Amwell  
21 and for Holland township. It would be in the realm  
22 of a couple of months at least.

23 MR\* SUTTON: The reason I have a  
24 problem, your Honor, I had an outline of  
25 questions and then in view of the fact that I

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was not able to ask questions involving opinion/ I have to change my thinking somewhat.

That's all the questions I have.

THE COURT: Do you have any further direct you feel has not been brought out, Mr. Cain?

MR\* CAIN: I would like to do that when we continue. I would assume that Mr. Reilly would be back in view of the cross-examination. Of course, if that's not going to happen then - I could have just a few quick questions for him in the morning.

THE COURT: I assume then we would begin with Mr. Reilly in the morning since now it is five minutes of four. Mr. Herbert would like to have all of your direct out of the way before he goes to cross, I gather. That's it. Be baak tomorrow morning.

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C E R T I F I C A T E

I, NANCY J. FOSTER,  
a Shorthand Reporter of the State of New Jersey,  
do hereby state that the foregoing is a true  
and accurate transcript of my stenographic notes  
of the within proceedings, to the best of my ability.

*Nancy J. Foster, C.S.R.*  
NANCY J. FOSTER, C.S.R.