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Round valley v.
Twp of Clinton

10-5-77

Transcript of Testimony by
Robert O'Grady


pgs 176

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL
HUNTERDON COUNTY
DOCKET NO, L-29710-7¹IPW


Louise
Gargano
10-25-77

ROUND VALLHY, INC.,

Plaintiff,

vs.

TOWNSHIP OF CLINTON, TOWNSHIP
COUNCIL OF CLINTON and PLANNING
BOARD OF CLINTON,

Defendants.

TRANSCRIPT OF TESTIMONY
OF
ROBERT J. O'GRADY

FILED

M.PELLME DIVISION

REC'D
rr VIT

October 5, 1977
Hunterdon- County Courthbunjr'i' c.k
Pleinip;ton, New Jersey

CM
Elizabeth W. Sauglin
Clerk

B E F O R E :

HONORABLE THOMAS J. BEETEL, J.C.C. Temporarily A-saip

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

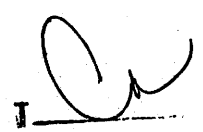
MESSRS. STERNS, HERBERT & V/EINROTH
BY: MICHAEL J. HERBERT, ESQ.,
Por the Plaintiff.

MESSRS. PELTER & CAIN
BY: ROGER M. CAIN, ESQ.,
Por Defendants Township of Clinton and Township
Council of Clinton.

LEO MANKIEWICZ

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West Oranne, New Jersey 07052



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A P P E A R A N C E S : c o n t ' d .

FRANCIS P. SUTTON, ESQ.,
For the Defendant Planning Board of Clinton.

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INDEX

WITNESS

DIRECT

CROSS

ROBERT J. O'ORADY

BY MR. SUTTON

2

BY MR. HERBERT

26

INDEX OF EXHIBITS

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DPB-42	Report	2	26

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THE COURT: All right, Mr, Sutton.

MR. SUTTON: Your Honor, I viill want to refer to some **reports** that have already been submitted by Mr. O^fGrady, and I think it would be well to have **them marked at this** time.

THE COURT: Have they been marked for identification at all?

MR. SUTTON: I do not believe so,

THE COURT: Suppose you begin it that way.

MR. SUTTON: Tour Ifoner, these are reports of Mr. O'Grady dated May 4th_f 1977, May 11th, 1977, May 26th, 1977, and August 11th, 1977. **They have been supplied** to Mr. Herbert.

THE COURT: All right. Begin marking them, the May 4th first.

(DPB-39, 40, 41 and 42 marked for identificatl)3i

R O B E R T J . O ' G R A D Y ,

previously sworn, resumes the stand,

DIRECT EXAMINATION BY
MR. SUTTON (CONTINUED):

Q Mr. O'Grady, I show you reports entitled DPB-39 through 42, four reports and ask you if you prepared these reports?

A Yes, I prepared all of then.

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1 Q Mr. O'Orady, are you familiar with **the** law
2 as set forth in the Mount Laurel case relative to providir
3 avariety of housing?

4 MR, HERBERT; Your Honor, that's been
5 asked and answered yesterday.

6 THE COURT: You did cover that yesterday.

7 MR. SUTTON: No. I covered Madison on least
8 cost.

9 THE COURT: All right. You're now on Mount
10 Laurel?

11 MR. SUTTON: I'm now on Mount Laurel.

12 THE WITNESS: I think I have an understanding
13 of what the Mount Laurel decision says.

14
15 BY MR. SUTTON:

16 Q Mr: O'Grady, would you read—and this is
17 number 20 of which I think is a direct quote from **the** case
18 of the headnote on zoning, which covers the variety, would
19 you read this?

20 THE COURT: What pa^e are you on?

21 THE WITNESS: 155.

22 MR. SUTTON: It's the headnote, but I believe
23 it¹⁸ a direct quote of that part.

24 THE COURT! Let's be sure. 155, number
25 20?

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1 THE WITNESS! Yes, at the bottom of the page.

2 THE COURT: It's on pane 210.

3 THE WITNESS--: "Every developing piunicipality
4 has at least a duty to consider regional housing
5 needs--" Is that what you're talking about?

6 THE COURT: 210 is where it begins, "Every
7 developing municipality--"

8 THE WITNESS: The page you opened the book
9 for me to read was 155.

10 MR, SUTTON: That is a headnote, your Honor,
11 but I think it's a direct quote.

12 THE COURT: I don't think it is. Unless
13 you could show me it is a direct quote, I'm not
14 inclined to take these headnotes as direct quotes
15 in the case.

16 MRL HERBERT: It's indicated on page 187
17 of the Opinion, which 1B the basic holding of the
18 house.

19 THE COURT: "By way of summary--" okay.
20 23 is supposed to be embraced in there. "As a
21 developing municipality--" I think you better go
22 to page 187, Mr. O'Grady, and look at the bracket
23 there, 20-23.

24 THE WITNESS: Yes, I have it.

25 THE COURT: Do you want to read that to yourself?

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for a moment, and be sure you understand it?

THE WITNESS: I've read down to the bottom of the page.

MR. SUTTON: Mr. O'Grady, does the Clinton Township ordinance provide a variety of housing as set forth in the Mount Laurel case?

MR. HERBERT: Your Honor, that's a legal interpretation. That's the ultimate conclusion of this case.

THE COURT: Let's rephrase it. Did he, in his planning, attempt to fulfill this criteria?

BY MR. SUTTON:

Q All right. Mr. O'Grady, did you and your planning consultants attempt to fulfill this criteria and the new Clinton Township Land Use Plan and Ordinance?

A Yes, I did.

Q And will you tell us now—and you can refer to your report, if you'll tell us the date of the report and the exhibit number—which indicates the variety of housing as provided by our ordinance?

A In my report dated May 26th, 1977, which is DPB-41, and on the second page of that letter, we list the number and types of dwelling units that could be accommodated within Clinton Township at that time under the proposed

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zoning.

Q And would you tell us what they are?

A Yes. In summary, ranged from single-family homes on three and a half acre lots down to multi-family dwellinf units at eight units to the acre. In the R-1 zone, we were providing for 1,100 one-family homes, the R-2, 1,100 one-family homes,

THE COURT: Hold it. In the R-1, you had 1100 and what?

THE WITNESS: Just 1,100 one-family homes. This would be at three and a half acres,

THE COURT: All right, next one,

A In the R-2 zone, 1,100 one-family homes at two-acre lots. In the R-3 zone, and this assumes planned unit residential development, 2,5^0 mixed housing units. These would be a mix of single-family apartments and townhouses, predominantly in the townhouse and apartment variety. Additionally, 1,700 one-family homes on one-acre lots in the R-3 zone in areas not designated for P.U.R.D. That 1,700 figure does not include the potential for multi-family development under the mixed residential cluste which, under the clustering provisions, you would be allowed an equal number of mult1-family units, a number equal to the number of single-family units. In the R-4 zone, a potential for 152 multi-family units* In the R-5 z<

III



r.>

1 76 two-family units, and again, this has an exclusion.
2 This would exclude the additional potential for conversions
3 of existing single-family homes.

4 In the CI-1 zone, under the P.U.D. option, 189 mixed
5 housing units at three units to the acre, again in a
6 combination of single-family townhouses and apartments.

7 MR. HERBERT: Excuse me. Is the witness
8 . reading from DPW-^1?

9 THE WITNESS: **Yes**, I am.

10 THE COURT: Page 2.

11 MR. HERBERT: These figures are wrong. The
12 figures seem to be in error. That's why I'm asking,
13 but I can cross-examine him on it.

14 THE COURT: Do you want to tell him what
15 figures you're talking about? Why stand on ceremony
16 if you've got some wrong figures? Let's find out.

17 MR. HERBERT: I was reading from another
18 document, your Honor. I apologize.

19 THE COURT: Try May 26th, 1977.

20 MR. HERBERT: Thank you, your Honor.

21 THE COURT: Is that the one?

22 MR. HERBERT: Yes, your Honor.

23 THE COURT: **Does** it look the same now?

24 He began at the top with 1,100 in the R-1, one-family,
25 three and a half acres. Does that check?

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d?

MR.HERBERT! Yes, your Honor.

THE COURT: He Just stopped at 189 mixed in the CI-1, three dwelling units per acre townhouse apartments.. That is a P.U.D, option. Do you agree with that, now?

MR. HERBERT! Yes, your Honor.

THE COURT: Okay, go ahead.

A All right. In the CI-2 zone, zoning provides for 612 mobile home units with a density of four units per acre. In the CR-1 zone, 680 multi-family units, at eight units to the acre.

THE COURT: Could I have that again, please?

A In the CR-1 zone, 680 multi-family units at eight units to the acre. In the CR-2, 752 multi-family units a^ eight units to the acre; and in one relatively small n.O.M.- zone, a P.U.D. option or P.U.R.D. option, 117 multi-family units, three units to the acre-pardon me, a correction. That should not be P.U.R.D. option. It should be a multi-family option in that R.O.M.-1 zone. So, the ordinance provides for, I think, a wide variety of single-family homes. It provides for two-family homes. It provides for multi-family or apartment development and townhouse development, and it provides for mobile homes. I would consider that a considerable variety, much greater variety and more liberal variety of housing than I can find in my

PENNSYLVANIA BAR EXAMINATIONS
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1 experience in other urban and suburban and rural municipalities.

2 Q Mr, O'Grady, did you study the zoning of the
3 neighboring municipalities in preparing the Land Use Plan
4 and the 1977 revised zoning regulations?

5 A Yes. As part of our study in connection with the
6 Land Use Plan, we reviewed the zoning ordinances, zoning
7 maps of all of the municipalities surrounding or abutting
8 Clinton Township, with particular concern to areas immediateJLy
9 adjoining the Township, and we have also reviewed in general
10 the zoning provisions of those municipalities.

11 Q Mr, O'Grady, do any of the neighboring townships
12 supply the opportunity to construct a variety of least
13 cost housing as Clinton Township?

14 A None of the municipalities surrounding the Township
15 provide the variety or near the variety that is provided
16 for there by Clinton Township.

17 Q Now, are some of the Townships so situated
18 that geographically, they are not totally suitable for
19 R.O.M. and in fact, do not have any provision for R.O.M.?

20 MR, HERBERT: I think they call that a leading
21 question.

22
23 BY MR. SUTTON:

24 Q Mr. O'Grady, did you study the neighboring
25 townships as to whether or not they had provision for an

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R.O.M. zone?

A Yes.

Q Are there townships, neighboring townships that do not have provision for an R.O.M, zone?

A Yes, Of course, the term R.O.M. is a broad one. Some municipalities may have different names for the particular zone that might allow or be intended for the same types of uses that we have in Clinton Township, but my recollection--and I do have some notes on it, but my recollection is that there is no provision for R.O.M. in I believe, Tewksbury, Franklin Township, Raritan Township, if I'm not mistaken, Lebanon Township. I believe Readington has provision for R.O.M., if I recall. In the Borough of Lebanon, the small Borough of Lebanon, there is provision for R.O.M. and Union Township has areas zoned for--I don't recall the exact zoning classification, but it would allow for R.O.M. type of development.

Q Now, the other part of my question: Because of location, are some of these municipalities suited or not suited for R.O.M.?

MR. HERBERT: Excuse me. I didn't understand.

THE COURT: Because of location, are some of these other municipalities suited or not suited for R.O.M., Tewksbury, Franklin, Raritan, Lebanon. Go ahead. Do you understand the question?

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THE WITNESSt ?es. I understand the question.

THE COURT: Go ahead.

A In terms of what I would consider to be one of the most basic requirements for R.O.M. location, that being access to major transportation facilities, I would say that some of the townships would not be the most suitable areas or locations for that type of development, Tewksbury Township, for example, which doesn't have direct access or access to 287 as I recall, Franklin or—pardon me—Route 78, Franklin Township does not have exceptionally good access to Route 78, except that at a very northerly point, sort of a point in the Township formed by the boundary line of Union Township and the Town of Clinton.

Lebanon Township is relatively remote from access to major Interstate Highway 78. Areas south of the Township of Clinton, such as Raritan Township—access there is primarily Route 31, and I don't think, as I recall—I'm not even sure that Raritan Township does have frontage on Route 31.

THE COURT: It goes right through.

MR. CAINs Yes.

THE COURT* And then, 202 goes right off from it, right on off to Somerville.

THE WITNESS: Yes. It cuts in below, somewhere

1 below the Township to 31. I was **thinking** at the
2 **Clinton** Township boundary—it's Readington Townnhip
3 right there, but below that, it cuts across the*-
4 highway.

5 MR. SUTTON: Your Honor, I wanted to refer
6 to the State Development Guide Plan. I believe that
7 has been marked.

8 THE COURT: 36 for identification.
9 **That's the one you had the opportunity to read now.**

10 MR. SUTTON: Yes, rather quickly, but
11 nevertheless.

12 MR. HERBERT: Wait a minute. I thought we
13 **were playing by rules of** the game **set** by Mr. Sutton
14 when he said he wanted to bring that back up when
15 Vt O'Grady—I mean—

16 THE COURT: —Mr. Ginman.

17 MR. HERBERT: Mr. Ginman. I'm sorry.

18 THE COURT: We're sort of bypassing the
19 gate. You said yesterday, one, you didn't want to
20 have anything read to Mr. Ginman until you had the
21 chance to read the whole document, and after you read
22 it, you wanted to discuss it again with Mr. Ginman.
23 Now **you're skipping past** that **and** you're—that witness
24 has not been through **his** cross-examination yet.
25 Cross has been suspended and your redirect is not

1 completed. Now you're doubling back to use that,
2 that you haven't put into the case yet and objected
3 to even consider it. How do you want to handle this?

4 MR. SUTTON: I can make an offer of proof.
5 There's an area that says, "The Clinton Corridor."
6 I wanted to have Mr. O'Grady read this and ask him
7 whether this area—

8 THE COURT: Tell us what page you're on.

9 MR. SUTTON: It's on page 66*

10 THE COURT: Page 66*1

11 MR. HERBERT: That's the exact area, your
12 Honor, I wanted to ask questions about of Mr.
13 Olnman yesterday and was precluded from doing so
14 by the objection of Mr. Sutton.

15 MR. SUTTON: The only reason was I had not
16 read the Report.

17 THE COURT: All right. You're then familiar
18 with these various areas, page 66—what's your
19 offer of proof?

20 MR. SUTTON: Your Honor, I wanted to ask
21 Mr. O'Grady to read this part, to look at the drawing
22 and ask him whether or not, in the preparation of
23 the Land Use Plan and the revised zoning provisions *
24 he and the Planning Board did or did not consider
25 this a growth area. That's all.

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MR. HERBERT: Well, you don't need the report to ask that question, your Honor.

THE COURT: Well, the map has been marked, I think the map itself.

MR. CAIN! Yes, Mr. Malech.

THE COURT: Malech used it and Ginman used it, and I think the map, already itself in evidence, will embrace that concept.

MR. HERBERT: Your Honor, in the Land Use Plan submitted as J-3, Mr. O'Grady has indicated that Clinton Township is one of the most rapidly developing areas. That's already been submitted, your Honor, and of course, this has been submitted and he can address that, but I would have none-

THE COURT: The concept is still the same. I have no problem with it. Go ahead.

MR. SUTTON: Your Honor, I'm willing to address the drawing and have it, if it's available.

THE COURT: Was it Mr. Ginman's drawing? That was a map taken out of the summary report, which was marked.

MR. SUTTON: Your Honor, on page 62, the page has been marked and that indicates the extension of Clinton Township.

MR. CAIN: DPB-36.

1 THE COURT: 34-Is that the one?

2 MR. BUTTON: Yes, sir.

3 THE COURT: All right, here, Mr. button.

4 (Whereupon, Mr, button hands the document to
5 Mr. O'Orady.)

6 THE COURT: Now, if the witness is now
7 referring to DPB-3'*, the map, this is page 62,
8 map 12 in the exhibit for identification, DPB-36,
9 but **the map is in evidence. All right.**

10

11 BY MR. BUTTON:

12 Q Mr, O'Grady, my question was, in preparing
13 the land use plan and the revised zoning provisions,
14 did you and did the Planning Board consider this, what
15 is designated as the Clinton Corridor as a growth area?

16 A Yes. I would say that there was a very clear im-
17 pression and agreement that by virtue, primarily of Route
18 78, that Clinton Township was a growth area in a growth
19 corridor, a westward movement of present and future growth
20 along the Route 78 corridor. I think that agreement or
21 recognition, that Clinton Township was in an area-or a
22 growth corridor, had a great deal to do with the land use
23 decisions that **were made by the Planning Board, in terms**
24 **of the** location of zones and to a degree, higher density
25 housing.

1 Q Mr. O'Grady, can you give us an opinion as
2 to whether or not the Round Valley proposal would
3 constitute an overintensive and too sudden development
4 for the Township?

5 MR, HERBERT; Your Honor, it assumes a number
6 of facts which haven't been brought out by this
7 witness. It is somewhat the ultimate conclusion
8 of the case, and obviously, it is also leading.
9 I think it's an objectionable question, your Honor.

10 THE COURT: Have it read back, again, because
11 I didn't get all of it, because the objection cut
12 in before I could really—could I have it again,
13 please?

14 (Whereupon, Mr. button's last question is
15 read back.)

16 THE COURT: Well, first of all, it assumes
17 that the Round Valley proposal is overintensive.
18 Number two, it assumes, also, that it would be
19 too sudden, and then it offers a choice whether or
20 not, and since he's your witness, I can guess
21 without too much doubt that he would say it is
22 overintensive and it is too sudden. To that extent,
23 that's the third objection, in that it is leading.
24 If you want to ask him to discuss the Round Valley
25 proposal in general, in terms of density, in terms

1 of timeliness, in terms of the present, future and
2 so forth, In light of the fact that you Just made
3 in the growth corridor. I gather this question is
4 meant to be in contrast tothat or development
5 thereof. Perhaps you can rephrase the question,
6 but as such, I would sustain the objection.

7
8 BY MR. SUTTON:

9 Q Mr. O'Grady, did you cover the point of
10 intensiveness of Round Valley development in any of your
11 reports?

12 MR, HERBERT: Your Honor, that assumes
13 that **there was**, in **fact**, an **aspect** of intensiveness.
14 I don^ft, aside from an allusion in P-25, I see
15 nothing at all. It assumes a fact not in evidence,
16 your Honor, that Is the issue of intensivenessu.

17 MR. SUTTON: I didn't say "overintenBlve,"
18 your Hnor. I said-

19 THE COURT: I know. You cut it down from
20 overintensive to Just intensive.

21 MR. SUTTON: Exactly.

22 THE COURT: Both pictures somehow Rive you
23 the picture of **a** crowded Japanese ghetto. Would you
24 Just try to back up a notch and develop your facts
25 slowly? Let's start with the basic, does he know

1 what the Intensity of the Round Valley proposal
2 is, on the east or west side, how many dwelling
3 units per acre-

4 MR, SUTTON: I thought he had covered that,
5 your Honor, again,

6 THE COURT: I think you're going to have
7 to build it up by induction.
8

9 BY MR. SUTTON:

10 Q Mr. O'Grady, do you know what the intensity
11 was that was proposed by Round Valley and their proposal
12 for development on their property of 790 acres?

13 A The Round Valley proposal involved I believe a total
14 of 790 acres of land. I'm trying to think of--I think that
15 is approximately 3 percent, a little more than 3 percent
16 of the total area of the Township of Clinton, at an average
17 density of the proposed development of 4.5 dwelling units
18 to the acre. That would produce, I think as I recall these
19 figures, somewhere near 3,600 dwelling units, and we
20 have estimated a population of approximately 10,000 people
21 resulting from the development,

22 Q And in your report, did you make a comment
23 relative to the intensity of the Round Valley Development?

24 MR. HERBERT: What report is he referring to,
25 your Honor?

1 MR. **BUTTON:** Do you have **the report in front**
2 **of you?**

3 • **THE COURT:** **In** any of the reports, did you
4 make such **a** comment? **If** so, which report and what
5 **was your comment?**

6
7 BY MR. **SUTTON:**

8 Q Did you make **a** comment in any reports, Mr,
9 **O'Grady?**

10 A We made comment on this matter perhaps in more than
11 one report, but specifically in the DPB-^2, dated August
12 **11th, 1977.**

13 Q **And would you tell us or read for us the**
14 **comment you made?**

15 **THE COURT:** **Would** you **wait** Just a moment so
16 Mr. Herbert can locate **it?** Page **11-7**, DPB-42.

17 **MR. HERBERT:** **That's a four-page statement on**
18 **the Round Valley proposal submitted after this case**
19 **had been under way for about three months.**

20 **THE COURT:** All right..

21 **MR. HERBERT:** In trial.

22 **THE COURT:** In that contention.

23 **MR. HERBERT:** Thank you.

24 **THE COURT:** I gather after the evidence was in
25 by the plaintiff, this report came forth? Well, that's

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all right. The Judge is getting your attention.

Gbahead,

A The statement I was referring to is on page eight, I believe. It's a nine-page letter. It indicates, reading from page eight, starting with the last two paragraphs,

"The Round Valley proposal envisions the development of approximately 3,559 dwelling units, representing about 10,000 persons, presumably to be constructed over a ten-year period. These 3,559 dwelling units are further purported to represent least cost housing.

"Clinton Township's present population, January 1, 1976 is estimated to be only 6,500 persons. County projections indicate a growth to 14,000 by the year 2,000 and the land use plan estimates a growth by that year to between 12,500 and 15,000. If there is any validity to these projections, the Round Valley development would far exceed the Township's total housing need by the year 2,000, and as a result, would greatly exceed the least cost housing need. Furthermore, the population resulting from the Round Valley development represent 14 percent of the total population growth projected for the County by the County Planning Board by the year 2,000." Continuing then on page 9:

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1 "The foregoing consideration strongly
2 suggests the lack of a sufficient market for the
3 3,559 dwelling units. Round Valley will be competing
4 with other properties in the Township and with
5 other municipalities for new homebuyers, which
6 also makes questionable the need for this amount
7 of housing. Raritan Township alone has over
8 2,000 units proposed in planned developments,
9 now before its planning board."

10 MR. SUTTON: I am almost through, your
11 Honor.

12 Q Mr. O'Grady, I believe yesterday there was
13 some testimony as to granting certain leeway from the
14 zoning provisions and I'd like to show you a provision
15 from the Land Use Plan and ask you if you would read
16 that into the record, and tell us whether that gives
17 the Planning Board any leeway from the zoning provisions?

18 A This is from 40:55d-51.

19 Q Would you read the provision and then tell
20 us your provision?

21 A Yes.

22 "Exception in Application of Subdivision or
23 Site Plan Regulation, Simultaneous Review and
24 Approval. A. The Planning Board, whether acting
25 upon applications for preliminary, or major subdivision

1 approval, shall have the power to grant such
2 exceptions from the requirements for subdivision
3 approval as may be reasonable and within the general
4 purpose and Intent of the provisions for subdivision
5 review and approval of an ordinance adopted pursuant
6 to this article. If the little enforcement of one
7 or more provisions of the ordinance isn't practicable
8 or will exact undue hardship because of peculiar
9 conditions pertaining to the land in question."

10 Rather than reading Paragraph B, it reads exactly the same
11 except that it replaces the* word "site plan" for ^{lf}subdivisio|n."

12 Q Yes. My question was, does that statute give
13 certain leeway to the Planning Board on a development
14 to grant variances where there could be hardship or where
15 it would come within provisions of the statute?

16 A It gives the Planning Board the authority to grant
17 exceptions, rather than variances, but exceptions to
18 requirements for subdivision and site plan approval,
19 if there are unusual circumstances relating to the land
20 that would result in a hardship on the applicant.

21 Q Mr. O'Grady, would you also look at Section
22 d-60a, which I believe is the variance section of the
23 statute,

24 A I'm looking at it.

25 Q Is that the variance section?

1 A Yes. This is under Article 7 of the statute, which
2 is entitled "Ancillary Powers of the Planning Board."

3 Q And would you read that provision, please?

4 MR. HERBERT: Your Honor, I think the Court
5 can take judicial **notice** of a **statute**. It seems
6 to me these questions are irrelevant. If he can
7 tie it into the ordinance, we'll stipulate that
8 there are provisions for exceptions by planning
9 boards and there are provisions for variances and
10 exceptions by the planning boards as to both zoning
11 application and subdivision application. The
12 issue is, where in the ordinance does it provide
13 the kind of flexibility that allegedly Clinton Town-
14 ship provides,

15 THE COURT: Well, I think what we're talking
16 about, Mr. Herbert, is Mr. Rahenkamp indicated that
17 these requirements in the ordinance were exactions
18 in the sense that the front yard requirement setback
19 off the site split between buildings and so forth
20 were exactions. I think what the defense is saying
21 is that, assuming it is an exaction, that, in the
22 possible review of the application for subdivision
23 and/or site plan, that they have the—the Planning
24 Board has the power. It is no longer rigidly bound
25 by the ordinance, literally, to make various moves

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with regard to the situation.

Whether or not in forcing an applicant to seek that discretionary power and exercise thereof is in itself an exaction, remains an open question.

MR* HERBERT: Yes, your Honor. I was going to comment that if, first of all, it's speculative as to what the Board is or is not going to do in the future, and indeed, if that was any appropriate defense or even relevant to this case, then there would be--then no zoning ordinances would ever be subject to any attack, on thn theory, "Well, you can always get a variance," and that's never been an accepted defense in the Courts of New Jersey.

MR. SUTTON: As a pnrt of our case, we merely want to admit the statute to your Honor's attention.

THE COURT: The old question becomes, are you getting something that's a matter of right or are you going to be subject to the tender mercy of a planning board and an exercise of its- discretlon. That's always the problem. Sometimes they are very tender and very compassionate. Other times, very literal, but at least you're pointing out there is the power to do so, and the defense might be if they refused to exercise that power, whether they refuse to exercise arbitrarily and capriciously.

1 I understand what you're driving at, and I think
2 It's a legitimate point. Oo ahead,

3 MR. SUTTON: Your Honor, I am through with
4 the direct examination, except that I would like
5 to ask that the four reports that have been
6 submitted be placed into evidence. They have
7 been supplied previously to both counsel and I believe
8 your Honor has also had copies.

9 THE COURT: The four reports in lieu of
10 direct testimony with regard to the subject contained
11 therein, along the lines of attempting to shorten
12 the testimony.

13 MR. SUTTON: There are certain statistics
14 in these and I think that they would be helpful.
15 I believe we did the same thing with the plaintiff's
16 case.

17 THE COURT: We did do that with the plaintiff's r
18 case, in the sense it moves the thing along a little
19 more rapidly, rather than read these statistics,
20 if that's what you mean.

21 MR. SUTTON: Some of them may have been placed
22 in after, but they're all together there and I think
23 they vrould all be helpful.

24 MR. HERBERT: I have no objection. I Just
25 want to point out that they do appear to be cumulative,

1 basically. Practically every page has been testified!
2 to, but I have no objection.

3 THE COURT: No objection. Let them be
4 marked.

5 (DPB-39, '10, 111 and *12 marked Into evidence.)
6

7 CROSS-EXAMINATION
8 BY MR. HERBERT?

9 Q Mr.,^{0f}Brady, I'd like to begin the cross-
10 examination by discussing some of the items that you talked
11 about at the conclusion of the direct examination. You
12 testified that you did a review of the surrounding townships
13 as to R.O.M. zoning in the appropriateness of R.O.M. use,
14 is that correct?

15 A Yes.

16 Q And you concluded no doubt from, I gather,
17 that with respect to those other communities, Clinton Town-
18 ship would be more appropriate a location for R.O.M. in the
19 future?

20 A In general, that's my opinion, yes.

21 Q All right. How long has Route 78 extended
22 through Clinton Township?

23 A I do not recall the precise year, but I believe it
24 was back in the late 1960s, at least that it was continued
25 through Union Township, so I would have to just guesstimate

1 that It's been a good ten years.

2 Q And how long;—I'm certain that you are
3 aware of the fact that Route 22 has run through Clinton
4 Township for many, many years,

5 A Yes,

6 Q And these are the factors, that is, the location
7 of those main highways plus Route 31, that you conclude
8 that Clinton Township would be a very appropriate site for
9 R.O.M. in the future?

10 A Yes.

11 Q All right. Now, there are 1,771 R.O.M.
12 acres zoned as such in the new zoning map, Is that not
13 correct?

14 A I would have to refer to my notes, which do not
15 quite agree with that figure. I, 1,150 acres, according
16 to my calculations in July of 1977, which is based on the
17 current zoning map,

18 Q Well, there's also two districts called
19 OD districts, are there not?

20 A Yes.

21 Q And they are 93 and 13 acres?

22 A Correct. J

23 Q And we have a commercial and industrial
24 district of 707 acres, is that not so? Let me see if I can
25 assist you. I'm reading from your May 11th, 1977 report,

1 which enumerates the various proposed acreage usages in
2 the Town.

3 A Well, I don't have that before me. Tho letter, I
4 believe it was marked Jn evidence before. In any event,
5 I updated those figures to some degree because there were
6 some changes, I believe, since May.

7 Q Well, didn't you testify on direct thnt
8 those changes were insignificant?

9 A I thought generally, they were insignificant.
10 I have a letter here, now. Is that Hay 11th?

11 Q Yes, please.

12 A And your last reference was to the-

13 Q CI-1 district of 707 acres.

14 A Yes. That figure is now reduced to 66-f).

15 Q All right. If you add the 66() and the
16 93 acres-93 and 3 acres for office and business, what
17 does that bring you to?

18 A 660-that would bo 753, close to 800,

19 Q Now, when you combine that with the approximat|el;
20 I believe It was 1,454 R.O.M. acres, what does that bring
21 you to?

22 A About 2,250 acres.

23 Q Now, aside from the approximately 100 acres
24 for New York Life and small acreage from New Jersey Dell
25 Telephone, there were a couple of acres-would It be correct

1 to say those are the only R.O.M. usages In the Town, presently?

2 A As I recall, they are.

3 Q It's a rather small amount of what you've
4 zoned for.

5 A It's small in terms of the amount of total amount of
6 land zoned for those uses.

7 Q Now, you said that you looked around at the
8 other towns and you concluded that they were either not
9 appropriate or not as desirable or they didn't have R.O.M,
10 usages, and you named a few. One of the communities you
11 named was Tewksbury.

12 A Yes.

13 Q Are you aware of the Best Company?

14 A Yes.

15 Q Are you aware of the fact that the Rest
16 Company is located in Tewksbury?

17 A Yes.

18 Q Do you happen to know the acreage of the
19 Best Company?

20 A No, I do not.

21 Q So, I take it that your answer to that
22 question about Tewksbury is incorrect, isn't that so?

23 A Yes. I think I mentioned that I did not have the
24 notes at my beckon call at the moment.

25 Q But yet, you did conclude, based on whatever
notes you did have available that tin to surrounding

1 communities, Clinton Township was either more appropriate
2 for R.O.M. usages or that these other communities did not
3 have R.O.M. presently within their boundaries.

4 A Yes. With reference to the other communities, I
5 was talking from recollection and I believe I could have
6 been to some degree in error, in exactly what they provided
7 in the way of R.O.M. zoning, but I would still maintain
8 that of the municipalities generally surrounding Clinton
9 Township, that Clinton Township would, in my opinion, appear
10 to be more suitably located or more desirably located, in
11 terms of potentially encouraging R.O.M. use.

12 Q How about another town you named, Raritan
13 Township? Are you aware of the commercial and office
14 business district running right up along either side
15 of Route 31?

16 A Yes.

17 Q And also the commercial and industrial
18 district on Route 22 that goes through Raritan Township—
19 I'm sorry, 202, and you're aware of the fact that 202
20 runs through Raritan Township?

21 A Yes.

22 Q And have you looked at the nonresidential
23 usages along Route 202?

24 A I'm not exactly sure where physically being
25 along Route 202, when I am in Raritan Township, and when

1 I'm not in Raritan Township.

2

THE COURT! I've Just made arrangements.

3

We've got a back courtroom. We're going to really

4

hurt here. We'll go back there for at least an

5

hour. Perhaps by that time, this drilling will

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stop. You're not getting the answers. The reporter

7

is having difficulty. This gentleman is having

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difficulty. It sort of presents a physical diffi-

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culty for us.

10

(The last question is read back by the

11

reporter.)

12

13

BY MR. HERBERT:

14

Q I want to now move to other examples, and

15

other examples had to do with the lack of least cost

16

housing in surrounding communities, and you named a

17

number of communities, but you failed to mention Union

18

Township at all, where that is.

19

A Yes.

20

Q And isn't it true that Union Township abuts

21

Clinton Township?

22

A Yes.

23

Q Did you ever hear of a project called Union

24

Gap?

25

A Yes, I've seen it.

1 Q Do you happen to know what the price range
2 of housing there is?

3 A I recall about a year ago visiting Union Gap Village
4 and looking at the model units and seeing the price list.
5 It seems to me that they ranged somewhere in the thirties
6 up, but I don't recall the precise figures.

7 Q I take it you wouldn't classify that as
8 least cost housing?

9 MR. SUTTON: Your Honor, I think my questions
10 related to a variety of housing,

11 THE COURT: It's all part of the mixed
12 least cost. It's all the concept.

13 MR. SUTTON: And I don't think there was
14 any testimony that other townships did not have
15 least cost housing, I think it was the variety
16 that the testimony went to.

17 THE COURT: You compared these—if you compare
18 them, then you're saying they're all apples, and
19 he's examining the apples in the barrel. Go ahead.

20 BY MR. HERBERT:

21 Q Mr. O'Grady, you spent a great deal of time
22 talking about mobile homes being somewhat of an answer to
23 the least cost housing problem isn't that correct?

24 A Yes.

25 Q Did you ever hear of a place called Solitude

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Village?

A Is this the development in High Bridge?

Q I'm asking you, sir.

A I believe there's a development in High Bridge called Solitude,

Q Do you happen to know what the price of the mobile home units are in High Bridge?

A No, I don't.

Q Isn't it a fact that High Bridge abuts Clinton Township?

A That's a fact,

Q And do you happen to know how many units there are in Solitude Village?

A No, I don't.

Q When you concluded that mobile homes would be an appropriate least cost housing solution or part of the solution for Clinton Township, did you ever bother to look at what the prices were in Solitude Village?

A I did not look at what the prices were there.

Q Did you ever examine those units to see whether or not they were appropriate living accommodation for families that were contemplated?

A I have examined mobile homes, not in Solitude Village, other than to drive up there on the streets,

Q What's the density of Solitude Village?

1 A I don't recall, I think at one time I knew that
2 figure, but I don't recall it.

3 Q Now, you ntil stand by your observation that
4 mobile homes are an appropriate least cost housing—I
5 use the term "solution," "remedy"?

6 A I feel they very well can be part of the solution
7 to the least cost housing problem.

8 Q Well, do you still stand by your answer that
9 **other communities are not providing least cost housing**
10 in the surrounding area?

11 A I did not say--

12 THE COURT: I don't think he ever said—he
13 compared R.O.M.s.

14 MR. HERBERT: He also went into least cost
15 housing that they don't provide.

16 THE COURT: He just said their variety is
17 greater than the surrounding communities. That
18 was his answer, as I recall it.

19
20 BY MR. HERBERT:

21 Q When you're talking about variety, you mean
22 three and a half acres that Clinton Township provides
23 for—if you'll bear with me--

24 MR. SUTTON: Excuse me, I would object,
25 your Honor. The problem that I, have here 1B constant

1 mls8statements of what Mr. O'Grady said. I asked
 2 the question about the least cost housing, and Mr,
 3 O'Grady specifically went down the lint of what
 4 we considered least cost housing and there was
 5 never any mention of three and a half acres. It's
 6 in one of the reports,

7 MR. HERBERT: Your Honor-

8 THE COURT: Wait a minute. Excuse me, again.

9 By talking about the Mount Laurel decision, and
 10 his familiarity therewith and then the page 189,
 11 the criteria for the variety and choice of housing,
 12 then he said, "Yes, we did try to fulfill that."
 13 Then he referred to his report of 5-26-77, DPB-41,
 14 page 2, and he Hats the number and tvpe of
 15 dwelling units and he began, single, three and a
 16 half acres, multi-family, einJit acres, something
 17 like that, multi-family, eight dwelling units,
 18 something like that. Then he began, 11,000 in
 19 R-1, one-family, three and a half acres, 1,100 and
 20 then and R-2, then he went through all his variety.
 21 Then he said there's a wide variety with regard to
 22 single, two-family apartments, townhouses and mobile
 23 homes. It's greater than the number of rural munici-
 24 palities, including the neighboring municipalities.
 25 Now that's the contention in which this flows.

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1 MR. SUTTON: That is correct, your Honor, but
2 there were two elements of testimony, one where he
3 testified "This is our least cost," and another,
4 "Thin is our variety."

5 MR, HERBERT: I'm on variety, your Honor,
6 if I can assist Mr. Sutton,

7 THE COURT: Let's try and listen to what
8 the witness has testified to. Let's go on,
9

10 BY MR. HERBERT:

11 Q Mr. O'Grady, could you look at your report
12 dated May 11th, 1977. please, on the second page. It
13 enumerates, does it not, the various proposed acreages for
14 the various zones?

15 A Yes, as of that date.

16 Q Specifically, directing your attention to
17 R-1 and R-2, sir, have those acreages changed?

18 A The R-1 zone has remained the same. The R-2 zone
19 is slightly more. It is now 2,7¹. The R-3 is identical.

20 Q Well, sir, I'd Just now like to deal with this
21 variety of housing that Mr. Sutton asked you about, If
22 my calculations are correct, that would mean that in this
23 township, approximately 30 percent of the housing is zoned
24 for three and a half acres, is that not so?

25 A Approximately 30 percent of the Township is zoned for

1 lots with a minimum lot size of three and a half acres,

2 Q Mr, O'Grady, I asked you a question.

3 THE COURT: Let him finish the question.

4 MR. HERBERT: He's about to throw in the
5 little **caveat**, your Honor, and it's unresponsive*

6 THE COURT: You get an answer, you get it all.
7 It's like buying a box of snails. You get the box
8 and the snails,

9 MR, HERBERT: Pine, your Honor. Then, I'll
10 rephrase the question.

11 MR. SUTTON: Your Honor, if the question was
12 asked-

13 THE COURT: Please let the question be
14 asked, and then object, Ask your question.

15
16 BY MR. HERBERT:

17 Q Isn't it a fact that, under the zoning
18 ordinance of Clinton Township, 30.2 percent of the acreage
19 of the Township is zoned and that's my only question-is
20 zoned for R-1, which consists of three and a half acre
21 zoning?

22 A Yes.

23 Q All right. Isn't it a fact that, as to the
24 R-2 zone, which consists of two-acre minimum lot sizes, that
25 approximately 17.3 percent of this township is zoned in that

1 category?

2 A That's correct.

3 Q Now, If I add those two figures -up, it means,
4 does it not, that approximately 50 percent or almost 50
5 percent of this Township is zoned for minimum lot **size** of
6 two acres, is that not correct?

7 A Well, approximately 47 and a half percent, yes.

8 Q Pretty close to 50 percent, though, Isn't
9 it? "

10 A Yes.

11 Q Now, is that what you meant when you talked
12 about the variety of houaing in Clinton Township?

13 A I think that's part of variety.

14 Q And you believe your Interpretation of the
15 Mount Laurel decision is that that decision held that
16 communities are to have large lot zoning, as well as
17 small lot zoning?

18 A I recall reading In Mount Laurel that the Court said
19 you could have large lot zoning,

20 II Q Do you recall what the largest lot was that
21 was the largest lot under the Mount Laurel zoning ordinance,
22 which was struck down by the Court in its decision,, the
23 largest one?

24 A As I recall, the Court said somewhere In the neighborhood
25 of a 50-foot lot was a large lot, in terms, I believe, In tekis

1 of moderate and low income,

2 Q Well, sir, if I told you that the largest
3 lot in the Mount Laurel ordinance which was struck down
4 by the Supreme Court was three-quarter acre, would it
5 refresh your recollection?

6 MR. SUTTON: Your Honor, I'm going to object
7 on the grounds^{of} relevancy. I do not see how
8 this is possibly relevant to our situation over
9 here.

10 MR. HERBERT: Your Honor, Mr. Sutton has
11 brought up on direct examination the holding of the
12 Supreme Court in Mount Laurel, which of course is
13 controlling in this case and he has elicited answers
14 from this witness to the effect that there is a
15 variety of housing available, and I am simply trying
16 to get into that decision, what it held, for the
17 purpose of comparison of the ~~Mount Laurel~~ ruling with
18 the Clinton Township situation, and apparently, Mr.
19 Sutton doesn't want to get into this area.

20 MR. SUTTON: Your Honor, I have no objection
21 to returning to that area. We said what variety we
22 provide. I'm questioning the relevancy and another
23 thing is the asking Mr. O'Grady to interpret the
24 law of the case. Now, you don't say whether this
25 area was sewered or it was not sewered. You don't f^{ive}

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him background on it, and I can't see how it's applicable at all to a situation over here.

MR. HERBERT: Am I correct-

MR. SUTTON: If you don't have sewers-

MR, HERBERT: Your Honor, we're getting closing argument. I'm asking-

MR,SUTTON: I'm willing to go over to the side and argue this, but I don't think the question is at **all proper**.

Mr. O'Crady does not have the cane in front of him. He can't read the section to familiarise himself completely with what you're referring to. He can't see whether the situation is the same as Clinton Township.

THE COURT: All we're doing in having colloquy now, so I'm eventually going to make a ruling. I feel there's nothing wrong with contrasting our fact pattern with the Mount Laurel fact pattern, because I think between the resolution, the thesis and antithesis, then we end up getting a solution. All right, go ahead.

BY MR. HERBERTS

Q Are you aware of the fact, Mr. O'Orady, that the largest lot size in Mount Laurel under the ordinance whifeh

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1 was struck down as exclusionary, was three-quarters of a
2 acre?

3 THE COURT: Show him what page and line that's
4 on.

5 MR. HERBERT: It must take me a moment.

6 THE WITNESS: I did misinterpret that
7 question previously, by the way.

8 MR. HERBERT: Well, without referring to
9 this, would that square with your recollection?

10 THE COURT: Would you rather see it?

11 THE WITNESS: I don't really recall specifically
12 what the Court said the largest lot was that was
13 exclusionary. I would assume that if
14 of an acre was exclusionary, then two acres could
15 be considered exclusionary, as well.

16 THE COURT: Are you familiar with the footnote
17 in Mount Laurel where Justice Pashman, in his
18 concurring decision, stated:

19 "The Department of Community Affairs surveyed
20 the use of exclusionary devices in municipal zoning
21 laws as of 1970. The study area included all developable
22 land in New Jersey except that in Atlantic, Cape May,
23 Cumberland, Hudson, and Salem County, and in the
24 Hackensack Meadowlands District. All figures in this
25 opinion as to the extent of use of various zoning

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provisions are based on that study,^{fl}

Are you familiar with any study that was made like that, where apparently Hunterdon County was subject to a Department of Community Affairs study, in regard to municipal exclusionary laws as of 1970?

THE WITNESS: I'm familiar with-on<? study. I thought it preceded 1970.

THE COURT: This footnote—and it mi^ht mean more to you because you're doinn; this every day—so far no one has ever alluded to that study and I wasn't aware that Hunterdon County hart boon subject to that part of the study* You might even tell us what pa^e that is.

THE WITNESS: Pare 197, footnote three.

MR* HERBERT: Your Honr, I apologise, I could take a period of time to find it, but I represent to the Court that the holding in that case did deal with a zoning ordinance, whose largest lot Rise was three-quarters of an acre, and that was struck down.

THri COURT: Mount Laurel is a rather unique community, in terms of its location and the language I was looking for 1B that each case must be handled on its on particular facts, Mr. Herbert.

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MR. HERBERT: I understand that, your Honor.

THE COURT: And the location of Mount Laurel and where it is located with Xta location, Turnpike and now, 1-295, the main Camden-Philadelphia Turnpike **interchange**, State Route 73; Routes 70 and U.S. 30. You're talking about a unique type of situation, although they have 29.2 of all the land in Mount Laurel, or 4,121, which is zoned for **Industry**, **This amounts to 2,800 more acres than were so zoned by 197**.** If you want to go into that type of situation and show some kind of an Inventory of land, here's;

"Mount Laurel, a flat, sprawling township, 22 square miles, or about 1*1,000 acres, in area on the west central edge of Burlington County. It is roughly triangular in shape, with its base, approximately eight miles long, extending in a northeasterly-southwesterly direction roughly parallel with and a few miles east of the Delaware River. Part of its southerly side abuts Cherry Hill in Camden County, That section of the Township is about seven miles from the boundary line of **the** City of Camden and not more **than** ten miles from the Benjamin Franklin Bridge crossing the river to Philadelphia."

1 Then, they show a population increase from
2 2,817 In 1950, and then after 1950, the population
3 doubled to 5,2^9- By 1970, it doubled a^ain to
4 11,221. And then they ppo on to the growth of it.
5 65 percent of the Township is still vacant land
6 or in agricultural use.

7 MR. HERBERT: Well, your Honor-

8 MR. SUTTON: Your Honor, if I bring to your
9 attention page 505, Madison Township""

10 THE COURT: We're talking about Mount Laurel
11 now, Let's try to talk about Mount Laurel now.

12 MR. SUTTON: One more word-

13 MR HERBERT: Your Honor, do these comments--
14 does this go to relevancy or is this closing
15 argument?

16 MRi SUTTON: I Just would like your Honor
17 to see this footnote. I think it would save time.

18 MR. HERBERT: Your Honor, I'm a little bit-
19 I beg the indulgence of the Court. I'm a little
20 bit confused. Mr. Sutton presents a v/itness who
21 is asked whether or not the Mount Laurel decision
22 played any part in the zoning decisions of Clinton
23 Township. He said yes, it did. He read a part
24 of the decision. He was asked a question about the
25 variety of housing in Clinton Township. Now, I'm

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trying to get into what he meant by "a variety of housing." Apparently, Mr. Sutton doesn't want me to Ret into the very case that he's inlying upon to develop his thesis about a variety of housing.

MR. SUTTON; That's not it. You're dealing with large lot size, that anything over three-quarters was struck down and Madison Township-

THE COURT: Now Mr. Sutton, please-. Thereto a legitimate question to the witness. Please, if the witness can answer the question, fine. If you want to get on the witness stand you may, but I indicated to you before about this-your idea what the witness should be trustifying to and we're not interested in that, Mr. Sutoru This io an expert. Your legal issues, your lepal arguments'should be saved for closing argument and for your brief. Now, let's try to confine ourselves to that.

MR. SUTTON: I understand, your Honor.

THE COURT: He asked about Mount Laurel* Now, let's stop there, Mr. Sutton.

MR. HERBERT: Your Honor, shall I proceed?

THE COURT: First of all, take a look at page I83 of Mount Laurel, pleane, everyone, and see if that's-is that the size you're talking about?

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MR, HERBERT? Your Honor, there's another zone that was the higher zone than the half-acre zone, which was a three-quarter acre zone, which was the largest lot size in the Township,

THE COURT: Try page 184*

"Akin to large lot, single-family zoning restricting the population is the zoning of a very large amount of land for industrial and related uses."

Is that what you're talking about?

MR, HERBERT: Well, your Honor, that's an entirely different subject, and that's this old industrial R.O.M., or whatever.

THE COURT: Well, I don't think it's fair to ask the question to the witness if you can't point to a specific line and page and ask him to look at it and read it. It's a little difficult. These decisions are long and if you consider both the Mount Laurel and Madison, they take up practically a whole report.

MR. HERBERT: Pine. I'll look it over during the lunch hour and get back to you. Thank you.

BY MR, HERBERT:

Q Mr, O'Grady, do I take it that one of the bases

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1 for the land use and zoning decisions made was that Clinton
 2 Township is an ideal location for Industrial and manufacturi
 3 and other growth of that kind in the future?

4 A Yes. I think when I made those statements before,
 5 we were discussing the Route 78 corridor and the Clinton
 6 corridor, I think as was referred to in that State map that
 7 was presented to me, I was Just poinrc. to say that this agai
 8 was recognized by the Planning Board and in the fstrong belie
 9 that Clinton Township was in the path of a developing
 10 coi»ridor, and with its confluence at 78 and 31» it was in a
 11 prime area for attracting nonresidential and residential
 12 development.

13 Q Well, I'm looking at your April-I'm sorry-
 14 August 11th, 1977 letter, on pa^e 5. It lists a variety
 15 of-and it's DPB-*J2, It lists a variety of zones that
 16 would accommodate, according to you, least cost housing.
 17 I would like to deal with three of those zones for a
 18 moment! CI-2, CR-1 and CR-2, Wow, if my calculations are
 19 correct, that comes to 2,076 of the 2,120 least cost
 20 housing units that you calculate could be accommodated
 21 by Clinton Township,

22 THE COURT: 2,076 of what?

23 MR. HERBERT: Of 2,120.

24 A 2,042, I believe of the 2,120.

25 Q Are these, I would calculate, about 97 percent

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1 of the area where least cost housing would be accommodated?

2 Are these permitted uses or are they conditional uses?

3 A The multi-family development In the CIR-1 and CR-2
4 zones are permitted uses. The mobile homes permitted in
5 CI-2, also permitted in CR-2, would be conditional, unaru

6 Q Now, can any one of these--and I'm Just
7 throwing a calculation, 97 percent of the least cost
8 housing that you calculate--can any one of those be
9 constructed without sanitary sewers?

10 A At these particular densities, they would either need
11 a connection to a sanitary sewer nyntera or the development
12 of some form of centralized or on-3ite sewage disposal
13 system as opposed to individual septic systems for each
14 unit or building,

15 Q Where in the zoning ordinance does It provide
16 fir on-site sewage treatment in the diotricks?

17 A The ordinance does not provide specifically for
18 on-site disposal systems. The ordinance simply says that
19 the applicant shall provide for suitable disposal, suitable
20 sanitary sewage disposal under the pending requirements
21 on the D.E.P. and local health authority.

22 Q Now, I know you're not an engineer, but do you
23 really believe that you can have on-site treatment
24 facilities for residential usages at eight units per
25 acre?

1 A Again, as you said, I'm not an engineer. I don't
2 know that it would be possible.

3 Q Isn't it a fair assumption to believe that
4 these, some 97 percent of the areas where the least cost
5 housing would be accommodated would be through service
6 by standard treatment plants?

7 A I think if there is a sanitary sewer treatment plant
8 in the vicinity with capacity, that that would be the
9 logical thing that would happen, tie into the treatment
10 plant. Without the plant, and given a substantial demand,
11 it might very well be possible that a developer would find
12 some means of providing for an alternate means of sanitary
13 sewage disposal.

14 Q In your extensive experience as a planner
15 can you cite one example of a developer providing on-site
16 sewage disposal at the density of eight units per acre?

17 A I'm trying to recall the name and location of a
18 development somewhere down in the Trenton area, and there
19 was a single-family development and it received considerable
20 publicity and was advertised as the "house without a bell,"
21 and within this development of single-family homes, they
22 had a house that looked just like every other house in
23 the development but it was a sewage disposal system for
24 that development. It was a single-family development.
25 I would estimate the lots were about 15,000 square feet in

1 size. So, that is one example where the developer has
2 provided for an on-site disposal system.

3 THE COURT: You said "low density."

4 THE WITNESS: Well, relatively ftotr denoity.

5 15,000 **square-foot lots**—that¹⁸ three to an acre,

6 THE COURT: That's three to an acre?

7 THE WITNESS: Yes.

8 THE COURT: The question was eight.

9 THE WITNESS: Three to an acre as opposed
10 to eight.

11

12 BY MR. HERBERT:

13 Q Mr. O'Grady, where would, among: the 1,45**
14 acres of R.O.M. and the 136 aceren of office and business
15 and the approximately 620 acres of commercial and industrial
16 zones—where would the sewage be provided for these
17 areas if they were developed?

18 A I think it would depend upon specifically which
19 zone and which location you would be talking about.
20 I think in the R.O.M. zones for the most part, with the
21 possible exception being the small R.O.M.-1 zone, lihmedlately
22 east of Annandale—^that we would beriiyinf; upon nome type
23 of on-site treatment. The zones provide for very large
24 lots, relatively low land covering, and it should be
25 poasiUe to develop on-sito disposal systems within those

1 zones. Certain portions of the commercial development,
2 I think, logically and conveniently, could tie into
3 ultimately, tie into existing sanitary sewer systems,
4 which go to the Clinton plant, I'm speaking now of portions
5 of the northerly part of Route 31 down into Clinton Point
6 area, that general vicinity.

7 Q .Mr. O'Gracly, what would happen if these
8 areas were fully developed? I know only a hundred acres
9 or so have been developed now, but suppose that these
10 areas were fully developed and you didn't get sewage to
11 these 97 percent of the areas where you're going to have
12 least cost housing. Where are the folks who are going
13 to work in these areas—where are they going to live?

14 A I'm a little bit confused by your question. At
15 what point in time are you talking about, as far as when
16 are they going to be developed?

17 A All right* Let's take the 1,^00 and according to
18 your last calculation, 1,47*1 acres of R.O.M. Let's assume
19 it's developed in the next five years.

20 A I think if it's developed in the next five years,
21 then we have to do a lot of replanning.

22 Q That of course is because presently, there
23 isn't least cost housing areas provided for those R.O.M.
24 zones, isn't that so?

25 MR. SUTTON: Your Honor, I'd like to object

1 to the question because of the assumption, "During
2 the next five years."

3 THE COURT: You can ask him an assumption.
4 He can ask hypothetical questions.

5 A • I think we have to make other assumptions or
6 some calculations to determine how many people there
7 would be generated—how many residents would be generated
8 from the total development of the R.O.M. areas, to find
9 out if we had enough housing provided for them.

10 Q Let's take 1,7^ acre3 of J.U.T.,, including
11 the Gobel site, which is part of the Round Valley property.
12 Let's assume they're fully developed. Do you have any
13 idea how many people would be working if those areas were
14 fully developed?

15 A No. We haven't made any calculation of that
16 nature, because the plan did not envision—the Land Use
17 Plan of the Township did not envision the total development
18 of those areas within five years or ten years or perhaps
19 15 years.

20 Q Oh. In other words, the R.O.M. areas may
21 well remain largely undeveloped for 15 year, in that
22 your testimony?

23 A It's possible that they will.

24 Q And that's based upon prior experience,
25 I take it, in Clinton Township?

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1 A No. I don't think it's based on prior experience
 2 in Clinton Township. I recognize the fact that a relatively
 3 small percentage of the R.O.M. zone has been developed
 4 up to the present time. I think what we have is a develop-
 5 ment corridor along 78 as opposed to one that has developed
 6 or been developing over a long period of time, I think
 7 it's a relatively new direction or pressure of direction
 8 for growth along the 78 corridor, through Clinton Township.
 9 It may be that in 15 years, there will still be a large
 10 amount of R.O.M. zone vacant. However, m one example,
 11 I think you mentioned 1,400 acres, we have one tract of
 12 110 acres. Out of that 110 acres, already consumed by
 13 one industry, it wouldn't take very many industries to
 14 considerably deplete the amount of available R.O.M. land,
 15 based upon the experience in Clinton Township.

16 Q Well, maybe my mathematics are in error, but
 17 that's approximately—something on the order of 7 percent
 18 of your total R.O.M. zoned land that has been developed,
 19 isn't that correct?

20 A 7 to 10, probably, if you include the telephone
 21 company.

22 Q And you think that that other 90 percent
 23 may well be developed very rapidly?

24 A I don't know exactly what you mean by "very rapidly."

25 Q Within 15 years.

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1 A Within 15 years, it's conceivable that quite a number
2 of industries could move into the area. I would not
3 expect that it would totally be developed.

4 Q Now, Mr, O'Grady, let's assume it is totally
5 developed, that somehow the pattern of the past is changed
6 and we have complete development of the 1,456 or 500 acres
7 of R.O.M. within ten years. How many Jobs would that
8 create?

9 A I haven't made any calculation as to how many Jobs,

10 Q Without even a calculation, I ask you the
11 question, absent sewers to those 97 percent of the least
12 cost areas that you testified about, where are those
13 folks who work in those industries and commerce—where
14 are they going to live?

15 THE COURT: Why not give him—make a calculation.

16 He's got two situations now. I gather he's got
17 the telephone company and this New York Life,
18 You're assuming that kind of a development, Mr.
19 O'Grady, in all fairness to you, that many employees,
20 that large a site being taken?

21 THE WITNESS: I think we would—to get a
22 I general idea how many employees we have per acre,
23 see what our potential population growth might be,
24 and assume we're going to house them all in
25 Clinton Township, then determine whether or not we

1 have provided enough zoning for the housing needs
2 of those people in Clinton Township, and I'm not
3 prepared to, in my mind at thin particular point,
4 make those calculations.

5 THE COURT: And also the fact that there
6 are figures that show people coming into Hunterdon
7 County as well as out of the County.

8 THE WITNESS: That's correct.

9 THE COURT: You have too many variables.
10 If you wanted to sit here and make a calculation,
11 all right, but there's too many unknowns.

12
13 BY MR. HERBERT:

14 Q Mr. O'Orady, did ymever study-find out how
15 many people work in New York Life?

16 A Again one 'of those figures that is not in my head
17 at the moment. I knew the figure and heard the figure
18 several times, but I do not know the total employment at
19 this moment or can't recall.

20 Q Do you happen to know where those folks
21 live?

22 A No. I don't think I know any of them.

23 Q Well, you don't have to know them to know where
24 they live, is that correct?

25 A Sorry.

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1 Q That's all right. You can be Just as nasty
2 as I can, I'll permit it. I mean, I didn't mean that as
3 a-

4 Mr, O'Grady, you were asked to read 67 N.J. and 67
5 N.J. 187, and I'm going to ask you to Just take a sentence
6 out of that--on that page out of context. You can read
7 the whole thing if you want to, two sentences. This one
8 starting with "certainly" and this one with "the amount of
9 land."

10 THE COURT: Excuse me. You pointed to--

11 THE WITNESS: 67 N.J. 187, your Honor.

12 THE COURT: "Certainly," where?

13 THE WITNESS: About the middle of the second
14 paragraph.

15 THE COURT: "Certainly when a municipality
16 zones for'a district--" Read it all over. I've
17 got to take a message.

18 THE WITNESS: Shall I read it aloud?

19 THE COURT: Read it to yourself. I'll be back
20 in a minute,

21 (Whereupon, the Judge leaves for a short while
22 and returns.)

23 MR. HERBERT? I appreciate the concern of
24 the Court on our cross-examination.

25 THE COURT: It was a very touchy area and I wa^it

1 to make sure we're all hearing it with the least
2 Jangled nerves as possible.

3 Do you know where you are? You had him
4 reading 67 N.J. at the word, "Certainly."

5
6 BY MR. HERBERT:

7 Q Mr. O'Grady, I have just asked you to take
8 two sentences from that page, and if **you would read** them
9 **for the record—I know that they're only parts** of an
10 overall paragraph. If the Court wishes to, I'll have
11 Mr. O'Orady read the entire paragraph.

12 THE COURT: It's up to the witness. I can
13 follow.

14 Q Could you read those two sentences, please?

15 A "Certainly when a municipality zones for
16 industry and commerce for local tax benefit purposes,
17 iu without questibn must zone to permit adequate
18 housing within the means of the employees involved
19 in such uses. If planned unit developments are
20 authorized, one would assume that each must include
21 a reasonable amount of low and moderate income
22 housing in its residential "mix," unless opportunity
23 **for such housing has already been realistically**
24 provided for elsewhere in the municipality."

25 Q Mr. O'Grady, doesn't that indie^{ate} to you that

1 when a community zones for industry or commerce as Clinton
2 Township has, based upon certain assumptions, growth
3 corridors, et cetera, that it also has an obligation to
4 provide housing for the people who would work in those
5 industries?

6 A That's exactly what it says, from what I just read.

7 Q And you testified a moment ago that you believe
8 it would be realistic to assume that within 15 years, I
9 gather, that most of the 1,456 acres of R.O.M. would be
10 developed?

11 A I don't know whether I used the word "most," I think
12 I said "a large portion" of it.

13 Q Now, do you have any idea—I ask you again—
14 do you have any idea whether people who would be working
15 in those same industries would live?

16 A I would have to assume that they would be located
17 within—most of them would be located within relatively
18 convenient commuting distance, other places near the
19 employment, either within the municipality itself or
20 within, approximately, say up to roughly a half an hour
21 commuting distance, most of them.

22 Q Well, how about Clinton Township itself?
23 Let's zero in on that. Where in Clinton Township would
24 these people live? Where do you calculate that they would
25 live?

1 A Well, again we don't know the precise number or
2 potential number that could result from—and I think you
3 said total development of the R.O.M. areas—we don't
4 anticipate In the land use plan that this development
5 Is going to come that rapidly, that population growth Is
6 going to come that rapidly. We're talking about, I think,
7 developing a plan for a relatively short range of time,
8 that even the State law recognizes this and requires
9 that each six years, the municipality renew Its development
10 regulations and its master plan. Certainly, the Township
11 of Clinton is going to have to be reviewing its master
12 plan and zoning regulations periodically, periodically taklnjg
13 the pulse of the community and check on the development
14 progress that's been made in the development of the
15 community, find out if adjustments are needed and where
16 those adjustments are needed.

17 Q In that review, I take It you would look at
18 what kind of people and how many had been actually working in
19 those R.O.M, industries when they're developed.

20 A Yes. I would assume that this would certainly be
21 done, if we had a significant amount of that type of
22 development. It would be important to do it.

23 Q But yet, you didn't do it here, Isn't that
24 so?

25 A We did not do it here. I think when we started

1 developing the land use plan, the New York Life building
2 was under construction and not occupied.

3 Q When was it occupied?

4 A I believe it was occupied in 1976.

5 Q And I'm reading documents here dated August
6 11th, 1977 that you wrote. From the time it wa³ occupied
7 until you wrote these documents, did you ever bother to
8 what
9 examine/the composition of the vfork force was at New York
10 Life?

11 A I think I answered that before.

12 Q The answer is "No," I take it?

13 A Yes, that's right.

14 Q Now, do you believe that there's an overabundance
15 of R.O.M. zoning within Clinton Township?

16 A No, I don't.

17 Q Mr. O'Grady, isn't it a fact that in February,
18 1976, you wrote, according to your testimony on direct,
19 a proposal—and I'm reading now from Exhibit P-51g, specific^ALy
20 page 7, talking about R.O.M., P.U.D. option: "There are
21 approximately 100 acres involved, which when considered in
22 conjunction with other R.O.M. industrial and commercial
23 zones, would exceed the probable needs of the Township."

24 Do you remember saying that or writing that?

25 A What was the date of the letter?

Q Letter—according to your testimony, it's a

1 proposal on February, 1976,

2 A Yes. I think I recall the letter.

3 Q And I'd like you to read the next sentence
4 for the record, please. It's at the bottom of the page.

5 A "This amount of nonresidential zoning could place
6 severe restrictions on property owners for reasonable
7 utilization of their land within a reasonable period of
8 time. Therefore, a more flexible zoning approach is
9 recommended.

10 Q Now, when you made that proposal, you were
11 talking about, among other places, the Gobal tract of the
12 Round Valley land, were you not?

13 A Yes..

14 Q And this was written by you, wasn't it?

15 A Yes, it was,

16 Q What made you change your mind, Mr.
17 O'Grady?

18 A In the process of reviewing the initial Master
19 Plan, one dated January 1976, there were a number of changes
20 made to the plan, and one of those changes was to eliminate
21 a very large industrial area from the easterly side of the
22 Borough of Lebanon. As a result, the elimination of,
23 **for** example, P.U.D. option from the R.O«M» zone on the
24 Gbbal area was, in a sense, a trade-off with the reduction,
25 where elimination of the Industrial zone east of Lebanon,

1 designation of that area for P.U.D.

2 Q Well, I'd like--do we have a zoning map?

3 THE COURT: Bring the last map in. It's on
4 the board out there,

5 Q Mr. O'Grady, while the bailiff is doing that,
6 I'm going to ask you specifically if you can identify
7 where that industrial zone was.

8 A You're talking about--

9 Q But, while that's being done, I'll move
10 on.

11 THE COURT: Before you move on, there
12 was a "trade-off"? Who suggested the "trade-off"?
13 Was it your idea? Was it someone else's idea?
14 What was the basis for this "trade-off"? I gather
15 from what you're telling me, you viewed something
16 and you made a recommendation based upon everything
17 you had, then there's something that occurs over in
18 this industrial zone and then you "trade off"?

19 THE WITNESS: Right.

20 THE COURT: I'd like to explore that, if
21 I may, because I'm not really--

22 MR. HERBERT: I was only suggesting it
23 not to delay. Pine.

24 THE COURT: Pine.

25 THE WITNESS: I think also that entire letter

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has to be read, too, to get some of the background which I'll attempt to do verbally, but in any event, in the January 1976 Land Use Plan, we made a recommendation to the Planning Board that they consider number one, maintaining the R.O.M. zoning of the (lobel tract and adjoining tracts of land, which is the easterly Round Valley site. We pointed out in that letter that we felt that that was a prime industrial or R.O.M. site of the Township, but we had some reservations that the amount of land zoned for K.O.M., considering other areas of the Township zoned for R.O.M. and non-residential uses.

THE COURT: Some restrictions about the amount of land for R.O.M.?

THE WITNESS: There was some concern that we had--some concern that the Township had perhaps too much land zoned for R.O.M. in terms of the potential demands. As a result, we suspected they consider that the Oobel tract and adjoining tracts of land be continued in an R.O.M. designation but with an option for planned unit development. This would entail the 25 percent of the land, I believe, that had been reserved for R.O.M. uses, but that the balance of the land could be developed for planned

1 residential development. This was thoroughly dis-
 2 cussed by the Planning Board and for a number of
 3 reasons. The had concern with designating that
 4 area with a P.U.D. option, one of them being that
 5 they felt—and I quite agree with them that it is
 6 the prime industrial or R.O.H. site in the Township
 7 because of its topography, its size, its highway
 8 accessibility and relatively good environmental
 9 physical characteristics—also they were concerned
 10 that this was the concentration of too many people
 11 in one aroaof the Township, alon^ with P.U.D.
 12 across the street, Allendale and the Town of Clinton
 13 development all within a relatively small concentrateld
 14 area; also, that this R.O.M, site was farther removed
 15 from utilities. There were other reasons as well,
 16 as far as—

17 THE COURT: This site was removed from utilities

18 THE WITNESS: Farther removed from access to
 19 utilities.

20 THE COURT: This Oobel site?

21 THE WITNESS: That's correct. This was one
 22 of the concerns or considerations.

23 BY MR. HERBERT:

24 Q Mr. O'Grady, may I just ask you a question?

25 Does that assume that R.O.M. does not need utilities?

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MR. SUTTON: Your Honor, wouldn't it be better to let him finish his answer?

THE COURT: He's telling me now that this Gobel site is too far removed from utilities. That was one of the considerations that the Planning Board had at that time.

Okay. Your question was—lead-off question was "What changed your mind?"

A , I think, in addition to the fact that It's a greater distance from existing utility systems, particularly sanitary sewers than some of the other areas, there was additional concern, too, I think, that, with the concentration of these people and given that, it could be tied into the Clinton Sanitary sewer plant, that we were still overloading the capacity of that sewer plait and also, if the plant could be expanded, it was the South Branch River or could the South Branch River take the effluent from the plant after all this development. I think this was one of the concerns registered by the members of the Planning Board.

THE COURT: Isn't that the nearest R.O.M. site to Clinton, even on the present map that we're now loking at, DPB what, Mr, Cain?

MR. CAIN: 9.

THE COURT: Is that the nearest to Clinton

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of all R.O.M.?

THE WITNESS: Of all R.O.M., It is probably the nearest to the Town of Clinton,

THE COURT: So that n--I'm having difficulty saying this--R.O.M. site was removed from utilities?

THE WITNESS: The site was a greater distance than--

THE COURT: How about the R.O.M.-1 out there. Can't that be--that would be less proximate than this site?

THE WITNESS: What I was referring to is that it was a farther distance. What I meant to suggest was that it was a farther distance from utilities than the P.U.D. or the P.U.R.D. right on the opposite side of Route 31. I was not talking of it in terms of other R.O.M. sites, and I apologize.

THE COURT: I couldn't get that to compute. All right, then the west side of the so-called Beaver Brook Country Club.

THE WITNESS: Yes.

THE COURT: But it's one highway'away.

THE WITNESS: Yes.

THE COURT? Yes. So, it's not that great.

THE WITNESS: Well, immediately across the street, but then the tract goes relatively deep, and

1 you're going greater distance. In any event,
 2 at the same time, the Planning Board felt that
 3 with the direction of anticipated residential growth,
 4 primarily coming from the east in a westward
 5 movement, that a logical—perhaps more logical
 6 area for planned unit development or concentration
 7 of new development would be somewhere in the
 8 Route 78, 22 area in the easterly end of the Township.

9 THE COURT: There doesn't exist any sewers?

10 THE WITNESS: There doesn't exist any
 11 sewers at this time.

12 THE COURT: So now, you should be closer to
 13 the sewers for one purpose, but you're afraid of
 14 too much concentration. Therefore, you push it
 15 all the way to the; east, where there isn't any and
 16 they're not adjoining any plant at all to sewer
 17 this supposed corridor of influence. Now, didn't
 18 that impress you as somewhat of an exclusionary
 19 barrier?

20 THE -WITNESS: I don't know that it's an
 21 exclusionary barrier,

22 THE COURT: Well, it certainly isn't an
 23 inclusionary barrier.

24 THE WITNESS: Well, certainly.

25 THE COURT: Well, If it isn't one, it's going

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1 to be the other. Isn't that logic? *

2 THE WITNESS: Well, if you assume that everyth:ng
3 in the Township that's goin^ to take place in the
4 way of a high density development is going to
5 go into the Clinton plant, perhaps that is good
6 logic.

7 THE COURT: Well, in the Montgomery Township
8 case, there they complained because—the developer
9 complained because everything was concentrated in
10 which
11 one area, /the Planning Board thought was a good
12 idea, to concentrate, and the developer wanted
13 it scattered out throughout the Township and he
14 was complaining the Mount Laurel question, because—
15 and it was concentrated and should have been 3cattered.
16 Hero we have got it the opposite. It's scattered
17 and there's an objection against concentration.
18 I think we have to get off the schizophrenia type
19 planning and say there is a growing corridor and
20 everybody has to take their fair share, and how
21 do you go about doing it and you know, fully get
22 some kind of realism into .this. Then, by excluding
23 out, even with legislation, excluding out sites,
24 you're controlling the use of people's land which
25 they own and perhaps, interferes with their right to
own property. Now, you're the professional. You're

1 doing this all the time. How do you go about this,
2 because I'm trying to put myself in your position,
3 and back when you're asked to develop a land use
4 plan, and all these cases are occurring, the local
5 law is in flux and you've got a corridor coming at
6 you and you freely admit this is a corridor, that's
7 one of the fastest developing areas, so forth,
8 according to your land use plan. How do you go
9 about accommodating that or do you accommodate it
10 politically? You recommend something and the Planning
11 Board says, "Look, this is what we want." Are you
12 Just being used or do you stand behind this? I
13 want to find out where you are as a professional.

14 THE WITNESS: I certainly in my own opinion
15 don't feel I'm being used.

16 THE COURT; But you can see if you come in
17 with a recommendation, you're the professional and
18 then it Just metaphysically changes, so what was
19 one essence now becomes another essence. I'd like
20 to know how that comes about how you Justify it.
21 If it's defensible, you go ahead and do it.

22 THE WITNESS: I would not want to characterize
23 the January, 1976 Land Use Plan and I think I stated
24 this in my depositions as a firm type of recommendation
25 on ~~my~~ part, but rather as an initial 3step towards

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getting the Planning Board to consider alternatives and make final decisions.

THE COURT: Right.

THE WITNESS: But what we have developed here ultimately is a total plan of the Township which, in this particular westerly end, we say the Clinton-Annandale area, contains quite a variety of uses. We have problems beyond utilities. We have problems for example, of overconcentration of population. We pointed to 10,000 people that would result if both sides of Route 31, both the Beaver Brook and the Gobel side or tract were developed for planned residential development at four and a half units to the acre, 10,000 people within roughly three percent of the total area of the Township. We felt, or the Planning Board felt, we concurred that this was much too great a concentration for that area, that we had to think in terms of ultimate development in the long range future of concentrations, also where to perhaps place them in areas. While there may not be sewers now, there very well could be opportunity for sewers in the future for the development of some other alternate form of sewage disposal.

THE COURT: And then that impressed you as a

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planner, I Rather. You felt that was a valid consideration, therefore, density, I believe?

THE WITNESS: Yes, plus the fact that the area was selected as an alternative for P.U.D. development on the easterly side of Annandale, was in a logical path of movement along; the 78 corridor. It was also accessible and fairly close to other R.O.M. zoning, where people would be working,

THE COURT: Let me ask you this now. How many people could be concentrated in the so-called Beaver Brook side, is that R-3?

MR. CAIN: H-3, with a P.U.D. option.

THE COURT: Could you concentrate on that side of the road?

THE WITNESS: Taken the Denver Brook site, which is 320 acres and assuming the proposed density of Round Valley, four and a half—if you have a pencil, your Honor, could you multiply 320 by 4.5?

THE COURT: What I do always is supply you with a pencil. I'll check you rather than you check me.

THE WITNESS: Okay. About 1,440 dwelling units.

THE COURT: Times three?

THE WITNESS* I would multiply that by probably

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1 three as a maximum, assuming a mix of housing.

2 THE COURT: 5,320 people.

3 THE WITNESS: I^fd prefer *4,320.

4 THE COURT: Okay, now, if you develop the
5 R.O.M. on the other side completely, which I think
6 Mr. Herbert was doinf^t, is it possible that 6,000
7 people could work over there?

8 THE WITNESS: I think 470 aores.

9 THE COURT: Quite a work **force**.

10 THE WITNESS: I would say that it's perhaps
11 possible the sane number of people could work over
12 there.

13 THE COURT: So, you've got 10,000 people
14 concentrated, from what you've done on your present-
15 you've got 10,000 people concentrated In that same
16 area on one side and the other side and you Rot the
17 same problem with utilities, effluent concentration,
18 and you-still pot the best of the prime land with
19 access, confluence and everything else you mentioned
20 so far. Now, my point is, how can you defend it?
21 You got 10,000 people anyhow.

22 THE WITNESS: Because it's a prime R.O.M.
23 site.

24 THE COURT: Isn't prime F.O.M. also prime
25 P.U.D.?

1 THE WITNESS: It could be.

2 THE COURT: Sure. 10,000 people either way.
3 (bahead.

4 THE WITNESS: It could be prime, but I would
5 Just **like** to also suggest that it **is** much **easier**
6 to find sites for residential development than it
7 is for R.O.M. uses. The qualities of land required
8 for R.O.M. are entirely different than for **residential**
9 **development** and you **have** a much **broader development**
10 for residential development and much narrower selection
11 for R.O.M. uses.

12
13 BY MR. HERBERT:

14 Q Mr. O'Grady, you just expressed some concern
15 about the concentration of 10,000 people in this area of
16 the 790 acres, and that was, I take it, a major concern
17 **of a planning board** which **you** agreed **with**.

18 A Yes.

19 Q Now, let's take your own calculations on
20 potential lease cost housing. What I'd like to do is
21 look at your August 11th, 1977 letter, page 5, and your
22 May 11th, 1977 letter, page 2, and I'd like you to tell me
23 how many acres would be covered by the CR-1 and CR-2
24 districts along with the CI-2 district, which is your
25 other least cost housing, the three of which comprise approx*1-

1 roately 97 percent of the potential least cost housing in
2 this Township.

3 A The letter of May the 11th, 1977 p:ives the acreage
4 of zones and the percentage of the Township after deducting
5 public lands in those zones,

6 Q Yes,

7 A The calculations In my letter of August 11th are
8 not based upon the area of the zone. They are based upon
9 the privately owned vacant properties **within** the **zone**.

10 Q I understand that.

11 A So now, what specifically again did you want me to
12 do?

13 Q Can you now take the acreage and the percentage
14 of the total private lands in Clinton Township, if the
15 97 percent of least cost housing that you calculate
16 would be locatedj if it were developed?

17 A If I could calculate the acreage, then that would
18 be located in-

19 Q V/ould you do so, please?

20 A Well, in the case of the CI-? zone, you divide
21 the 612 by four, and in the case of the CR-1 and CR-2
22 zones, you divide your 680 and 752 by eight, and that would
23 give you the acreage on which these units would be located*

24 Q Well, I'd like you to look at the May 11th,
25 page 2 and as. you look at that, you specify the acres of

1 these zones, and you specify the percentage that these
2 acres comprise of the entire privately owned land in
3 Clinton Township.

4 A Right.

5 Q Would it be correct to Bay that on May 11th,
6 you calculated that the CI-2 zone would have 170 acres?

7 A Yes.

8 Q And that comprises 1.1 percent of the privately
9 owned land in Clinton Township?

10 A Right.

11 Q And the CR-1 zone—both the CR-1 zone and the
12 CR-2 zone comprise 89 acres each, and comprise one percent
13 in total of the land area of the Township?

14 A Yes.

15 Q Now, are those figures still accurate?

16 A I believe[^] regarding the figures in my letter of
17 May 11th, that there were some minor changes which I had
18 referred to earlier, but the 89 acres in the CR-1 and
19 CR-2 remain the same.

20 Q Well, the CI-2 zone also remains the same,
21 does it not?

22 A CI-2, 170 acres remains the same, yes.

23 Q Now, my calculations are that it's 2.1 percent
24 of the entire privately owned land in this Township. Isn't
25 that so?

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A Yes,

Q Now, let's look at your August 11th letter, and you list, as I said earlier in those three zones, 2,076 units of Iea3t cost housing, isn't that correct?

A Yes.

Q All right. That means what you're planning for is 2,076 units of housing in 2 percent of the land area, privately owned land area of this Township?

A Yes, approximately so.

Q And if my calculations are correct, that's a greater concentration than the concentration the Planning Board felt was inappropriate for the Round Valley site, isn't that correct?

A It's not as great a concentration, in a sense. These are higher densities than the Planning Board has recommended for Round Valley's site, but the sites we're talking about are smaller sites. They're not confined to one particular area.

Q Well, they're confined to two acres of the entire Township,

A 2 percent,

Q 2 percent, I'm sorry, 2,1 percent, isn't that correct?

A Yes.

Q And 1 percent is in one part of the township.

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1 over here?

2 THE COURT: Referring to the map.

3 Q Over in the CR-1 and O'R-2 zone** and in the
4 northwest part of the Township and the other approximately
5 1 percent is over here in the CI-2 zone, which is on the
6 easterly border of the Township, just below Route 22,
7 isn't that correct?

8 A Yes.

9 THE COURT: From a strictly mathematical point,
10 the concentration is higher, but you're saying
11 they're scattered?

12 THE WITNESS: Right.

13

14 BY MR. HERBERT:

15 Q In your letter which has been marked as
16 P-25--do you have a copy of that? I'm sorry, I have.
17 Yes. I don't know if this is the exhibit copy, but it's--
18 this is a letter that you wrote that you testified about
19 on direct, July 21st, 1975. You wrote this letter and in
20 that letter on paragraph 3, you stated that a concern
21 in the Round Valley project--and I'm paraphrasing. You
22 can read it word for word if counsel wants, you to.
23 You did already on direct--is that the proposed development
24 would increase the present population 130 percent on only
25 3.6 percent of the Township area and that was one of the

1 main concerns, was it not, if I recollect your direct,
2 for indicating that approval should not be given at that
3 time?

4 A This was one of my concerns, yes. one of my main
5 concerns.

6 Q Well, if you take the least cost housing
7 that you calculate on 2 percent of the privately owned
8 land of this Township, and you use the same multiplier
9 effect as to the population that would be generated, that
10 is three per unit. What's the total population that's
11 created thereby?

12 A Total population of what?

13 Q Total population generated by 2,076 housing
14 units.

15 THE COURT: 6,228, I think. Is that right?

16 THE WITNESS: Yes. It shouldn't be 2,076.

17 I think it's 2,014.

18
19 BY MR. HERBERT:

20 Q Pine.

21 A But-

22 Q Let's take 2,0M, multiply by three, which is
23 the calculating factor we've been using, and what's the
24 figure that you come up with?

25 A In the neighborhood of 6,000.

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Q And you testified on direct about the population of this Township. What is it?

A 6,500, as of June 1, 1976.

Q Does it not mean that a close to doubling of the Township would be created by these two zones in 2 percent of the Township, is that correct?

A Eventually, you know, if the Township population remains stable, otherwise, except for development in those zones, in other words, in this particular letter, we were referring to the Round Valley proposal, which included a ten-year time schedule. We have no assigned time schedule for these zones. We have zoned them for certain types of housing uses and at certain densities. Obviously, even without those zones, just taking other zones in the Township that we assume they're going to be totally developed, some other zones are going to more than double in population.

Q Well, Mr. O'Grady, in July of 1975, you didn't mention these other parts of the Township development, isn't that correct? You only talked about the Round Valley site and as that related to the 130 percent increase of the present population, isn't that so?

A In this particular letter, yes.

Q And according to your testimony, that was a major reason given by both the Planning Board and yourself

1 for turning down the Round Valley proposal at that
2 stage?

3 A Yes.,

4 Q All right, but yet now you've proposed zoning
5 for almost a doubling of the population on 2 percent of
6 the land, Isn't that correct?

7 MR. SUTTON: Your Honor, I think that this
8 is going to badgering, I think.

9 THE COURT: It has the potential for doing
10 that, yes. That's pretty obvious mathematically and
11 otherwise, but he's made his point. It's exacted.
12 It's not in one place and they've made these calculations
13 legislatively and they feel that it's defensible.
14 That's his approach to it.

15 MR. HERBERT: I apologize to the Court and
16 the witness if I seem to be badgering. I don't believe
17 so.

18 THE COURT: Any more than you, Mr, Herbert.

19 MR. HERBERT: Thank you, your Honor,
20

21 BY MR. HERBERT:

22 Q Now, can I assume from that that you don't
23 foresee a development of those least cost housing units
24 within nine years?

25 A No, I don't see development of those milts within

01
nine years.

Q Why Is that?

A If you look at the population projections that have been made by the Planning Hoard or ourselves, and the **County Planning** Board, we do not see the growth in the Township taking place by the year 2,000 to the decree that all of these housing units are going to be needed. We pointed out in, I think direct testimony, that the 2,120 least cost housing units exceed tho most **liberal** estimate of the least coot housing needs by the year 2,000. We've also estimated in direct testimony that, if the Round Valley development were to take place, that the dwelling units from Bound Valley would meet 14 percent of the total housing need of the County, total every kind of housing, not only least cost housing, but upper limit cost~total housing need of the County.

Q Mr. O'Grady, on, that subject, talking about the County, what percentage of the total estimated H.O.M. for the County has been Included for Clinton Township, as far as its R.O.M.?

A Uainp: the County estimates?

Q Yes.

A Probably as much as or more than the County has estimated, as I recall, for the County need.

Q Well, Isn't the County estimate somewhere, on

1 the order of 2,700 acres R.O.M.?

2 A I'll have to rely on your recollection. I don't
3 recall the exact figure. I know that the amount of area
4 zoned—and I don't mind admitting this—that the amount of
5 area zoned in Clinton Township constitutes a large portion,
6 a very large portion of what the County has estimated as
7 the total acreage need for R.O.M. uses.

8 Q if I told you it comprised a majority, better
9 than 50 percent of the County's IUO.M. projections, would
10 that have any impact on you at all, in terms of your
11 calculations on the R.O.M. planning and 30 forth?

12 A No. I don't think it would have too much impact*
13 With all due respect to the County, I have found many
14 County projections to be way off base, not only in Hunterdon
15 County but in many other counties. I feel that projections
16 are much better made at a municipal level for a municipality
17 at the municipal level. I think regional planning groups
18 tend to overlook some local circumstances.

19 Q If that's the case, why did you Just use
20 the County population estimates in saying that you did
21 not foresee a development of least east housing units until
22 ^{fcnear} 2,0007

23 A Simply as a comparison to indicate the relationship
24 between their population estimate and ours.

25 Q Well, would it be correct, then, to nay that

1 the County estimates on population are more valid than
2 on R.O.M., then?

3 A Well, I don't know, but even if their projections
4 on R.O.M. were valid, I don't think it necessarily means
5 that the amount of land that has been zoned for R.O.M.
6 uses in Clinton Township is unreasonable. We have shown
7 here that 9.1 percent of the Township land and Township
8 privately owned land has been zoned for R.O.M. uses.
9 It's been our experience that this is not at all an unusual
10 percentage of land for industrial R.O.M. type of zoning.
11 We find many, many municipalities who have greater
12 percentages of their land areas zoned for nonresidential
13 use for industry and so forth. Even if we take the
14 total nonresidential zoning in Clinton Township, which is
15 about 20 to 22 percent, I find that this is a very common
16 percentage to be found. If you analyze the zoning maps
17 of municipalities as I have, throughout many North Jersey
18 municipalities, while all of this land in many of these
19 municipalities is not likely to be used within a five-ten-
20 fifteen-year period, I think it's important at least to
21 develop a plan which projects the longer range development
22 of the community and attempts in some way to reserve land
23 or see that land is reserved for potential nonresidential
24 use, Just as you create zones and reserve lands for
25 residential use; because obviously, every acre or square

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inch of the municipality Is not noing to be developed residentially in five, ten or fifteen years,

Q Well, there was one? piece of property that was planned to be developed in nine years, isn't that correct?

A There was one that was planned to be developed in nine years, referring to the Round Valley site, I believe. I think that's unrealistic, I don't think there is a market for it, and I think the population figures prove there is no market for it.

THE COURT: First, you use the figure 4.4 percent of the land being reserved for fl#0.M. is not unusual, then you thew .out another figure of 22 percent, I heard that figure,

THE WITNESS: Oh. It was 9.4 percent of the Township's privately owned land is zoned for R,O.M,, total nonresidential zoning, which includes, in fact, areas, commercial-residential that we could assume could be used for multi-family use and likewise, the CI-2 zone, which could be used for mobile home use, but 22 percent includes all of those and I was saying that the total of non-residential percentage of 22 percent is not at all unusual. In fact, you find even higher percentages in many communities. My point is that, while we

1 , might be overzoned for the foreseeable future R.O.M.
2 uses, we are obviously overzoned for foreseeable
3 residential uses.

4
5 BY MR, HERBERTS

6 Q Mr. O'Grady, I want you to return to what
7 you just said on cross-examination is a letter and that is,
8 of course, P-51g on page 7. Isn't it correct to say that
9 that was an interim planning proposal by you?

10 A This was, I would say an interim planning proposal,
11 as I recall.

12 MR. HERBERT; Your Honor, I'm sorry. I don't
13 mean to be rude to the witness, but-

14 Q -You've answered the question.
15 Now, what is the date of this document?
 is

16 A This document/dated February, 1976,

17 Q Now it states here that in February, 1976_f
18 that this amount of nonresidential zoning, you're talking
19 about R.O.M., " would place severe restrictions on property
20 owners for reasonable utilization of their land within
21 a reasonable period of time."

22 Now, is it your testimony that that statement has
23 changed since February, 1976?

24 A I think the statement has changed since February,
25 1976 because of the other changes that were later in the

1 land Use plan.

2 Q Now, let me ask you, Mr. O'Grady, you're
3 stating that because of a change in an Industrial area
4 on the eastern part of the Township which doesn't have
5 any zoning, that that changed your recommendation proposal
6 statement in February 1976, that there could be severe
7 restrictions on property owners because of the R.O.M.
6 zoning, is that your testimony?

9 A I believe that was my testimony, yes, due to the
10 fact that we had--well, we kept R.O.M.-1 zoning here.
11 We had eliminated industrial zoning east of Lebanon.

12 Q Well, how were the people who own that land--
13 how was the restriction, the severe restriction lifted from
14 them by another part of town bein^ zoned differently?

15 A I think the restriction would be lifted in that
16 by reducing the amount of nonresidential land, that
17 presumably you would have greater demand on the amount of land
18 that was left.

19 Q That's a presumption.

20 A That has to be a presurntion.

21 Q And do you believe that there is no longer
22 a severe restriction on the Gobel site in this case,
23 by the present R.O.M. permitted usage?

24 A It's difficult for me to say whether or not
25 there's restriction placed on the owner .of the property.

1 Q Well, that's what you said in 1976, isn't it?

2 A I said there could be, yes. I suppose there could
3 be restriction on someone own5np land in a residential
4 zone,

5 Q Wellj that's not the question, Mr. O'Grady.
6 We're talking about the question of a severe, as you put it,
7 restriction on the owner, the owners of land zoned as
8 R.O.M.

9 A Yes.

10 Q Now, you made a statement in February, 1976
11 which is, as I understand your tentimony, you no longer
12 stand by, because of a change on the easterly part of
13 town of land to an industrial usage or from industrial
14 usap,e, is that correct?

15 A Yes. It was based on Riven the amount of land
16 zoned elsewhere for R.O.M. or nonresidential uses that the
17 total amount of land at that point in tiraej which might be
18 used for nonresidential uses, could be excessive, could
19 place some limitation on the property owners.

20 Q You didn't say "some limitations," You said
21 "severe restriction."

22 A All right, "severe restrictions." My concerns, again,
23 were reduced by the fact that we were reducing the size,
24 the overall size of a nonresidential zoning by eliminating
25 that area east of Lebanon from industrial. My concern wasn't

1 expressed in a letter, wasn't intended to indicate it was
2 Just in one R.O.M.-1 zone.

3 Q Is there anything in this page which refers
4 to other parts of the Township, other than the 900 acres
5 which is now zoned as R.O.M., including the Gobel site?

6 A Well, there may not be mention of it at that
7 particular point. We're discussing a planning proposal
8 which was simply, actually a matter of putting into
9 writing or something for the Planning Board to review what
10 we had previously presented in map form.

11 Q Well, Mr. O'Grady, you testified on direct
12 that the presentation of these proposals were the result
13 of extensive studies, isn't that correct?

14 A That's correct. They were the result of extensive
15 studies and-but they were our initial preliminary thoughts
16 on the overall land use pattern for Clinton Township.

17 Q Where on this document, other than saying
18 "interim" does it say this is for draft review or anything
19 of that kind?

20 A This is the point I was trying to make before, when
21 you prevented me from continuing, because I had answered
22 the question. You wanted me to answer the question,

23 Q Well, Mr. O'Grady^ you can testify.

24 THE COURT: All right. Where does it say
25 "drafted"? Make your point.

1 A It does not say "draft," and I think I also testified
2 to this in the depositions. We first of all presented to the
3 Planning Board in January a land use map, and the Planning
4 Board suggested, I believe, we present to them in writing a
5 written description of what was presented on that particular
6 map and in fact, the policy we were following was to
7 present each study that we made in an interim report fashion
8 so that when we finally, got through with discussion of
9 everything, we had a total package together and we didn't
10 have to start then and completely write a land use plan
11 report, that all we had to do was put the package together
12 into one composite unit. So, this was simply to describe,
13 in written form, that particular land use plan, assuming
14 that that was to then be the way it was going to be adopted
15 by the Planning Board. However, it was an initial proposal.
16 It was one possible alternate approach to the development
17 of Clinton Township.

18 Q 51a through f. Well, Mr, O'Grady, that
19 document which has been identified as P-51g was the seventh
20 in a series of seven documents which you submitted to the
21 Planning Board at various times, isn't that correct?

22 A That's correct,

23 Q I represent to you that through prior testimony
24 brought out the fact that the first six of those documents
25 thereafter appeared almost word for word with one or two

1 population changes in the final land use plan, J-3«
2 Would that square with your recollection?

3 A Yes. The previous six reports were basically
4 background study investigations containing statistic
5 data and other factual type of information, whereas this
6 was dealing now with development of planning proposals,

7 Q And you previously testified that, other
8 than the P.U.D, change, the language which was removed
9 that there were only four other changes in this entire
10 chapter 7, which eventually found itself in J-3, the
11 Land Use Plan, Would you agree with that?

12 A I don't recall the precise number of changes.

13 Q Well, assuming that it was only five changes,
14 including the change in the Oobel tract, would you still
15 stand by your testimony that that document was simply a
16 document submitted just for discussion by the Planning
17 Board?

18 A Yes. That's the way it was submitted at the time.
19 This was written material that would accompany the January
20 1976 Land Use Plan map assuming that that map were to
21 become the Land Use Plan of Clinton Township. But, as
22 experience has shown in just about every municipality in
23 which we have done land use plans, we normally go into
24 the municipality with a single plan representing our initial
25 reactions or thinking, and in some cases even uncertainty

u¹uraay-cross yi
1 in certain areas, to begin discussions with the Planning
2 Board, to start their thinking in terms of possible alter-
3 natives and get their reactions to what our Initial
4 reactions were.

5 THE COURT? That goes through that process
6 and you*bring it back to your office, put it through
7 your team and you have a map. Then you go out and
8 discuss the map?

9 THE WITNESS: Yes.

10 THE COURT: What he's finding amazing is
11 the fact that when you actually-everything's pretty
12 much the same and then, except for these things
13 in report seven, it could be a coincidence, it
14 could not be coincidence. I think that¹³ what here
15 driving at. He's saying it's strange as to*-

16 Is that what you're driving at, Mr. Herbert?

17 MR. HERBERT: Yes, your Honor.

18 THE COURT: It's now Just about 12:30. I
19 think we'll be back in the main courtroom this
20 afternoon", where all our oxhiMtis are.

21 (At this point, the luncheon reeo3c was
22 taken.)

23
24 BY MR. HERBERT:

25 Q Mr. O'Orady, when we left the cross-examination,

1 we were talking about P-51g, which is the interim Land
2 Use Plan proposal, and I'd like to just ask you one or
3 two more questions about that.

4 THE COURT: Is that report number seven?

5 MR. HERBERT: Yes, your Honor.

6 Q Mr. O'Grady, in addition to the Land Use
7 Plan which has been marked as J-3, there was an addendum,
8 was there not, having to do, I believe, with environmental
9 factors attached to that report?

10 A There was what we called an environmental assessment
11 statement, which was, I guess could be called an addendum,
12 and I think may have been titled "Addendum to the Plan,"

13 Q Mr. O'Grady, I represent to you that we
14 received the P-51 exhibit, P-51 including P-51g, just
15 before the beginning of this trial, approximately May 23rd,
16 May 24th, 1977* and I want to direct your attention to
17 depositions that were conducted in this case on March 17th,
18 1977. Do you recall those depositions?

19 A Yes, I always recall working on St. Patrick's
20 Day,

21 Q I think we both do,

22 THE COURT; I do every year.

23 Q Now, I'm referring now to page 29 of the
24 depositions on that day, line 14 through line 24. And
25 would you read the question and answer passed to you by me

1 at that time, please, for the record.

2 A Yes.

3 "QUESTION: You have an earlier draft that you
4 prepared for the Land Use Plan with you?

5 "ANSWER: No, I don't. There was, we'll call it a
6 rough draft, which was submitted to the Planning Board
7 for its review and any modifications that the Board wanted
8 to make to it. We then drafted the report and printed
9 **the report, which was made available for public distribution.**"

10 Q Then I posed a question, do you recall?
11 I'm sorry. I interrupted you as I apparently have in this
12 case, and you went to give a further answer there?

13 A All **right,**

14 "ANSWER: Rut then an addendum prepared to the
15 plan and the final document, at least the one that I'm
16 looking at, incorporates the changes that were included in
17 that addendum."

18 Q Now, that addendum was referring to what
19 I just asked you about is the environmental assessment?

20 A No, I don't believe it was. The environmental
21 assessment statement was a document that had to be prepared
22 as a requirement by the State, since the Land Use Plan
23 was partially funded, I believe 50 percent funded by the
24 State.

25 Q The addendum I'm referring to is an addendum

1 that was prepared to the Land Use Plan after Its publication
2 and after the original or initial public hearing, and that
3 did not deal with chapter 7 of the Interim report, isn't
4 that correct?

5 A The addendum dealt largely, I believe, with the
6 proposal section of the land use report, which again would
7 have been report number seven for the subject matter of the
8 report number seven.

9 Q *Hot*, Mr. O'Orady, I direct your attention to
10 page 30, line 19 through page 31, line 10 of your testimony.
11 Would you be kind enough to read the questions and answers
12 posed, please?

13 A "QUESTION: The R.O.M. Designation for the easterly
14 portion of the Round Valley site, was that your initial
15 recommendation to the Planning Board?

16 A I wouldn't; call it an initial recommendation. The
17 Initial plan that we submitted to the Planning Board which
18 was, I think, basically a colored-up typo of version,
19 was the first step in sitting down with the Planning Board
20 to consider the planning alternatives and planning objectives.
21 We have before us an existing zoning map which presented
22 one view as to *hoit* the township might grow. We developed
23 the plan based on studies and investigations that we mad®,
24 which we presented more to the Planning Board as a springboard
25 fir discussions to consider possible alternatives. Numerous

1 things or areas of the Township are shown differently in
2 the initial plan as opposed to the way they were shown
3 in that colored-up initial map we presented,

4 Q And the question after that—•

5 A "QUESTION: When you presented this colored-up map,
6 I take it that your investigations and analyses, et cetera,
7 had been completed?

8 "ANSWER: We had completed the studies and invest!REt ion
9 yes.ⁿ

10 Q So at that time, you answered to the
11 effect that the only thing that you had prepared which
12 included the R.O.M. P.U.D, designation was a colored-up
13 map?

14 A Pardon me, the only thing that we had presented to t\ e
15 Planning Board at that time—

16 Q Yes—

17 A —was a colored-up map,

18 Q Yes.

19 A We had presented the colored-up map and we had
20 presented interim report number 7, which I may have
21 forgotten about at the time of those depositions.

22 Q Mr, O'Orady, I now direct your attention to
23 P^aEQ 33, lines 15 through 20. Would you read the question
24 and answer there, please? Page 33, lines 15 through 20.

25 A Line 15: "QUESTION: In addition to the map that

1 wo referred to, did you prepare any memoranda or documents
2 concerning the proposed Land Use Plan at that time?

3 "ANSWER: As I recall at that time, aid I could be
4 mistaken, but as I recall, we did not prepare any
5 written memoranda at that time."

6 Q And Mr. Q'Grady, you apparently were mistaken
7 at that time, isn't that correct?

8 A Yes. As a matter of fact, I can recall following
9 the depositions, realising that I had overlooked the
10 fact that we had prepared an interim report number 7.
11 I believe at the time, I had recalled the basic background
12 studies we had submitted, but I actually did forget this.
13 Perhaps I was negligent in not bringing my realization
14 to someone's attention.

15 Q And when did you realize that there was
16 indeed what has now been marked as P-51g in actual existence
17 at that early stage?

18 A The interim report number 7?

19 Q Yes.

20 A As I recall, it was a while after the depositions,
21 after I believe I had received a printed copy of my
22 depositions and began putting the files together in
23 connection with this particular case.

24 Q Would it be correct to say that that was
25 sometime within the month after St. Patrick's Day?

1 A I honestly do not remember the precise time.

2 Q But there did come a time that you realized
3 that Indeed, there was this Interim report which had
4 been testified to at great length--I'm not going; to go
5 over it--sometime after March 17th, isn't that correct?

6 A Yes.

7 Q I show you a letter which is dated, like
8 the exhibit, it's the May 26th, 1977 letter of Mr. O'Grady.
9 Now* Mr. O'Grady, there came a time, did there not, that
10 Mr. Sutton communicated with you that various documents
11 were requested by the plaintiffs which has not, to that
12 point, been introduced, isn't that correct?

13 A Yes*

14 Q And certain questions were asked of you, of
15 Mr. Sutton, which are answered in the May 26th letter,
16 isn't that so?

17 A Yes.

18 Q Now, I want to ask you, would you--it's
19 not that long--read me the entire text of the letter?
20 It's about a half a page, in answer to the first inquiry
21 about copies of all studies and reports relied upon in
22 the preparation of the Land Use Plan?

23 A Yes.

24 "Study performed by this office in the
25 preparation of the Land Use Plan are contained in or

1 summarized in the Land Use Plan report adopted
2 by the Planning Board on Rvember 16_f 1976,
3 and are not available in other form. Reports
4 or other documents of a public nature which we
5 have relied upon are as followsj A, Zoning ordinances
6 and master plans of surrounding municipalities;
7 B. Various studies performed by the Hunterdon •
8 County Planning Board; C. Flood Hazard reports
9 number 9 and 11, New Jersey Department of Environmental
10 Protection, Hunterdon County Soil Survey, U.S.D.A.
11 Soil Conservation Service; D, Geology and ground
12 water resources of Sussex County and the Warren
13 County portion of the Tocks Island Impact Area Bulletin
14 #73, Bureau of Geology and Topograh; E. Various
15 1960 and 1970 United States Census Reports; F. Previous
16 Township master plan reports and studies."

17 Q And then later on, on page three, you enumerated
18 preliminary land use memoranda and you enumerated them,
19 consisting of the planning proposals, February 1976 and
20 that's on page three of the document.

21 A Yes.

22 Q And you stated that copies of these reports
23 are on file with the Township Planning Board office you
24 have provided copies of to Round Valley, Inc., along with a
25 copy of tills letter, is that correct?

1 A That's correct.

2 Q Are you aware of the fact that from the time
3 of the deposition until that time, we had asked for that
4 document several times and until May 26th, it, for some
5 reason, was not produced?

6 A I was not aware. I think if I had been requested
7 to provide copies of that document, I would have done it.
8 I don't recall the specific circumstances,

9 Q Well, you did know in the depositions two
10 months earlier that we were looking for that document,
11 did you not?

12 A As I recall, in the depositions, I didn't make
13 mention of report number 7 because it was something that
14 I had overlooked or forgotten about.

15 Q As a matter of fact, in the depositions,
16 you didn't mention that there was an interim--there was
17 an interim Land Use Plan submitted to the Planning Board,
18 isn't that correct?

19 A That may be correct. I think perhaps my reason for
20 overlooking these or forgetting about them was the seven
21 interim reports ultimately ended up being one composite
22 report and I just didn't give particular attention to
23 the matter,

24 Q Except as to a couple of changes, one of which
25 happens to do with preliminary proposal to locate an R.O.M,

1 P.U.D, option on the Gobel site?

2 A Well, that was certainly one difference between the
3 initial plan and the final plan.

4 Q Mr. O'Grady, we were talking earlier about
5 the comparison of the R.O.M, zones with the County calcu-
6 lations, and is it correct to say that there was actually
7 a reduction of the R.O.M. zones in the new zoning ordinance,
8 compared to what had heretoffre been the casefr

9 A That would be correct*

10 Q Now, I show you what has been admitted into
11 evidence earlier as P-73, which is a comparison of R.O.M.
12 and industrial lands at various stages of time in Clinton
13 Township, as compared to the 1975 County Land Use Plan,
14 and would you please examine that document? I think it
15 speaks for itself and I ask whether or not you would
16 dispute the calculations on that map?

17 A Well, number one, the figures on the chart or graph
18 as it reflects 1962 and 1974 zoning, I really can't give
19 an opinion on or testify to, since I have not made any
20 calculations myself of those two zcnings--in those two
21 years, so I would be in no position to agree with or
22 dispute them. The 1976 Land Use Plan, I don't again recall
23 offhand that I made any calculations of the Land Use Plan
24 as it might have reflected R.O.M. acreage. At this point,
25 I will check my figures in front; of me with the 1977 zoning

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figures on the chart,

THE COURT: Well, Just for this? record,
1976 shows exactly what?

THE WITNESS: 1977 shows R.O.M. as 1,454
acres, and that does appear to correspond with
my figures. It shows industrial acreage at 9M.
I would have to assume that that refers to the
commercial-industrial acreage.

Q It does, Mr. O^fGrady-. I don't mean to
mislead you.

A Okay. I would say that it is very close, close
enough not to--relatively few acres difference, if there
is a difference*

Q Well, assuming that' the figures there
are correct, it indicates, does it not, that from 1962
to the present zoning ordinance, there was a reduction in
that type of use from 68 percent of the 1975 County Land
Use Plan calculations?

THE COURT: 1975•

MR. HERBERT: »75, I'm sorry.

THE COURT: Again, 1962.

MR. HERBERT: Yes, your Honor. I understand.

Q -to 57 percent as of the present time,
is that not so?

A That is what the chart indicates, .

P»!

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THE COURT: 11 percent decrease in R.O.M.?

MR. HERBERT: Well, it's an 11 percent decrease, your Honor.

THE COURT: Of nonresidential?

MR* HERBERT: That's correct.

BY MR. HERBERT:

Q But you would not dispute the fact that, based upon what you know about the County plans, that 57 percent of the total industrial and R.O.M. usage calculated in the 1975 plan is planned for in Clinton Township?

A The figures as shown **and**, assuming the figures for the County to be accurate and correct, and I don't recall specifically the County figure myself, generally, this is the case with one exception, and that is the County Land Use Plan figures indicate an acreage amount for R.O.M. and industrial, whereas the 1977 zoning figure for Clinton Township would include the commercial-industrial zones which are intended for usages other than H.O.M. and industry. In other words, certain types of commercial uses, retail uses and so forth are permitted in the commercial and industrial zones in the Township* The County figures, I am assuming, do not include estimates for commercial zoning needs or commercial acreage needs.

1 Therefore, the percentage difference or the percentage of
2 total County acreage in Clinton Township could possibly
3 be construed as being less than the 57 percent.

4 THE COURT: Are we fretting that percentage
5 by taking 2,390 over 1,200?

6 MR. HERBERT: That's correct, your Honor.

7 THE COURT: 2,393 in the acreage devoted in
8 Clinton in nonresidential, according to this
9 chart.

10 MR. HERBERT: I stand corrected, I answered
11 that way to Mr. O'Grady before. This is the
12 industrial. It does not include commercial.
13 This is industrial, 9M acres,

14 THE COURT: Plus R.O.M.

15 MR. HERBERT: 1,494.

16 THE COURT: Right, that five of you 2,398
17 over 1,200?

18 MR. HERBERT: That's correct.

19 THE COURT: 1,200 is the total supposed
20 County projected need?

21 MR. HERBERT: That's correct, your Honor.

22 THE COURT: Is it 1990 or in it when?
23 It's already less. That in the percentage.

24 You work with us. Perhaps the County doesn't
25 rely on commercial.

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THE WITNESS: I'm assuming very possibly the County figure does not include what would normally be classified as commercial zoning.

THE COURT: Then wouldn't the equation? Neither does the 1977 zoning?

THE WITNESS: I think the equation stays correct if you assume that the commercial-industrial zoning classification in the Township, those areas would all be used for industrial as opposed to commercial use,

MR. HERBERT: Your Honor, I am now looking at the document by Mr. O'Grady or prepared by Mr. O'Grady, dated May 11th, which we've gone through before. Do you have a copy of that, Mr. O'Grady?

THE WITNESS: I have a copy of that, yes.

MR. HERBERT: And in that document it lists, your Honor, a CI-1 district, which is commercial and industrial of 707 acres, and a CI-1 district, P.U.D., 67 acres, and then a CI-2 district of 170 acres and I believe, your Honor, that that comes up to approximately 940 which is what this chart is based upon. It does not--what I'm saying, your Honor, it does not include the purely commercial districts.

THE COURT: Then, the equation stays the same.

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MR. HERBERTS Yes.

THE COURT: Your ultimate conclusion is then that 57 percent of the total County projection of future need to what year?

MR. HERBERT: For the year 2,000, your Honor, and I'm referring to P-65, page 71* I apologize. I should have known that,

THE COURT: P-65, page 71, which is the County Master Plan?

MR. HERBERT: That's right.

THE COURT: Okay.

BY MR. HERBERTS

Q Now, Mr. O'Grady, you talked about discussions with various people. You mentioned Mr. Bogart. You mentioned Mr. Riley. I would like to first deal with Mr. Riley for a moment. I believe you testified that you had two discussions with him and then you had a follow-up discussion later on after the Land Use Plan was in some kind of state-some kind of preparation. Would that be correct?

A Yes.

Q Do you recall when you met Mr. Riley?

A Yes. We met first with Mr. Riley initially—if I'm not mistaken—in May of 1975. We were just initiating work on the Land Use Plan at that time. We were aware that

1 the South Branch Watershed Association was #oinR to be
 2 initiating a natural resource Inventory, information that
 3 could be useful to the plan. We didn't want to duplicate
 4 information unnecessarily and we were hoping that we cou d
 5 perhaps come to common ground on scale of maps. I beleive
 6 I may have testified to this yesterday and basically the
 7 discussion dealt with what he wan p;oinK to be doing and
 8 how he was goinp; to be doinr; It and what work we might
 9 have to do, particularly, since their schedule was a little
 10 bit behind ours.

11 Q After that initial discunslon, you, T take
 12 it, had one more discussion with him prior to the puparatioi
 13 of the Land Use Plan?

14 A We had one further discussion with him after
 15 we formulated our initial thinking, an far an zoning
 16 of the Township.

17 Q What occurred at that meeting?

18 A We sat down together at the South Branch office
 19 and reviewed the data--reviewed the tentative or proposed
 20 Land Use Plan against some of the environmental data that
 21 they had put together to date, as part of the natural
 22 resource inventory, to see whether or not the zoning
 23 classiciations as we had established them on the map,
 24 would be consistent with the environmental limitations.

25 Q What kind of data--what did the data consist of?

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1 A AB I recall, Mr, Riley had a group of colored-up
2 maps indicating various interpretations from the. County
3 Soil Survey. He had maps showing the depth to bedrock,
4 septic disposal limitations, flood plains, steep slopes,
5 data of that variety.

6 Q Do you recall when that second meeting occurred?

7 A I have that date.

8 Q Please feel free to consult with any diary,

9 A I had it noted. Probably gotten lost in the pile
10 of papers. I don't seem to have it in the group of
11 material I had here with me. I should have it down
12 on the table. If you'd like me to search it out,

13 Q Sure.

14 A For the record, the initial meeting I was referring
15 to was May 1st, 1975. The second meeting was January
16 20th, 1976.

17 Q And I take it that--to what extent did you
18 utilize the maps that were presented by Mr. Riley?

19 A At the time that I met with Mr. Riley--and this
20 was January, 1976, his maps were in relatively preliminary
21 form or relative preliminary form. We also found that
22 much of the material that he had put together as part
23 of a natural resource inventory we already had at our
24 disposal in the office. We were using the same source
25 material in many instances and they were some distance from

1 completion of the natural resource Inventory at the time,
2 so I **did** not, per se, use his map", but we did compare
3 his maps with what we had and found that in our office
4 we could rely on our own material without having to
5 borrow things from him or make trips back and forth,

6 Q And at that stage, I take it, the maps,
7 as you testified, the maps of Mr. Riley were not completed?

8 A That's correct,

9 Q And the third meeting that you had with him,
10 what took place there? That was after the Land Use
11 Plan was in some kind of development.

12 A The third meeting—and I don't have a record of
13 the date of that meeting—I'm relatively certain I did
14 meet with him a third time, but I can't support it with a
15 date—was generally to make a fairly thorough review
16 of the proposed Land Use Plan against the environmental
17 data,

18 Q Did you go over maps at that time?

19 A We went over some maps at that time, again I don't
20 think his maps were in a final state of completion.
21 It was sometime between January and May, I believe, of
22 1976, but we generally reviewed the Land Use Plan for
23 the purpose of gaining his reaction to what we were
24 proposing for our environmental plan.

25 Q But you didn't utilize his maps, the Information

1 In those maps in the preparation of the Land Use Plan,
2 is that correct?

3 A We didn't utilize these maps, per se. The data
4 that we had used,- we had the maps that we were using were a
5 different scale map and we try and work with common
6 scales whenever possible. It's a lot more convenient
7 for superimpositlon, one over the other.

8 Q Did you accept any of Mr* Riley's recommendati|ons\

9 A Mr. Riley did not make a recommendation to me at the
10 time. He simply indicated to me where there were possible
11 differences between what he had proponed on a Land Use
12 Plan versus what the environmental limitations might
13 indicate. We found, as a result of meeting, that in
14 most instances, the densities that we were recommending
15 in a township were consistent with his environmental
16 data. There were some exceptions to that, and particularly
17 in areas where there were other reasons other than
18 environmental for making recommendations for different
19 densities.

20 Q But on the whole, your plan coincided with
21 the views, materials and ckta of Mr. Riley at that time,
22 isn't that correct?

23 A I would say on the whole, perhaps to the extent
24 of an estimate of 80 percent of the Townshi?), the land
25 use proposals of the Township appeared to be consistent,

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1 aM ho soemo to bo quite gonorally satisfied from his point
2 of vlow with what wft werr nttemptlnp: to ncaompltoh.

3 Q Mr, O'Orady, I show you what has been marked
4 as DPB-21, which Is the base map topography dated June,
5 1976, and ask you whether or not that was one of the
6 maps that Mr. Riley showed you?

7 A I do not recall whether this was one of the maps
8 that Mr. Riley showed me because, as I Indicated before,
9 I knew some of the maps were not totally completed. I
10 note this is dated June, 1976. I have seen this map
11 since then but I can't testify whether or not I have
12 seen this prior to the development of the Master Plan,
13 which I think was date! about the same date, June of 1976.
14 But I have seen this particular map.

15 Q Now, in this area Just to the east of
16 Spruce Run Reservoir--and what I'm directing your attention
17 to is the area around Route 31--is that the area that's
18 now been--excuse me for a moment, please.

19 THE COURT: Is that area CR-1 and CR-2
20 at this time?

21 MR. HERBERT: Yen. I nee the other township
22 is in^J there.

23
24 BY MR. HERBERT:

25 Q Is that the area that's now CR-1 and CR-2?

1 A Yes, The area between Route 31 and the waterline
2 of Spruce Run Reservoir would be the CR-1, The area opposite
3 the easterly side of—did I say easterly side? I meant
4 westerly side. Between the westerly side of 31 and the
5 waterline of Spruce Run Reservoir is CR-1. The area on
6 the opposite or easterly side and north of County Road
7 23 generally is CR-2.

8 Q Now, I'm looking at the CR-2 district.
9 That indicates an elevation on one point of 300 feet;
10 does it not?

11 A Well, I would have to—

12 Q Perhaps I could get to the point and you could
13 take all the time you need to look at that, Mr, O'Grady,
14 Does that not indicate that on the CR-2 district, there
15 are rather severe topographical changes?

16 A It would indicate that—and there are no property
17 lines on this map, but it would indicate that at the
18 southerly portion of the CR-2 zone, there are some somewhat
19 steep grades in the vicinity of the 300-foot elevation that
20 you referred to. We show similar changes on the maps
21 in the Land Use Plan as far as the grades in the particular
22 area,

23 Q Now, is that taken into consideration when
24 you suggested densities of—I believe it's eight units
25 per acre in that area?

1 A We took the graden of the property Into consideration!,
2 yes.

3 Q Wouldn't p;rade have an effect upon the amount
4 of housing you can construct in a p;iven area?

5 A Yes, I think they would,

6 Q Now, let me ^et to the map that's been
7 prepared by Mr. Riley, DPB-16, I'm addressing now the
8 area that you now classified as CI-2, which would have
9 four homes per acre and mobile homes and et cetera. Is it
10 not correct that there is a flood plain through that area?

11 A There is a flood plain along the Rockaway Creek.
12 The Rockaway Creek forms the southerly boundary generally
13 for most of the CI-2 zone, so there Is a flood plain along
14 on the rear portion of the zone. There's also an additional
15 flood plain area extending from Route 22 down to the
16 Rockaway Creek about to the center of the zone. Viewing
17 this against the zoning map, I would say that a relatively
18 small percentage of the zone is in flood plain.

19 Q What percentage of the Gobel site is in the
20 flood plain, if any?

21 A It appears that there is only one very smS.1 area
22 in the northwesterly section of the Gobel tract, through
23 which a drainage course runs and Is indicated in flood
24 plain designation, very relatively Insignificant amount of
25 flood plain land.

1 Q Now, I show you what has been marked DPB-18
2 which is the Seasonal High Water Table for Clinton Township
3 prepared by Mr. Riley, and again addressing that area
4 that's been identified as CI-2, I notice that there's an
5 indication in yellow and represents to you that that
6 indicates moderate to severe seasonal high water table.
7 First of all, sir, is that correct as far as corresponding
8 with the CI-2 district?

9 A Could I just make a suggestion that we turn this
10 board around because the red color is coming through from
11 the diagram?

12 MR. SUTTON: Your Honor, Mr. Herbert objected
13 to Mr. O'Orady testifying to anything having to
14 do with geology, lacking the expertise, and now
15 he's asking the very questions.

16 THE COURT: What was your objection, now?

17 MR. SUTTON: Mr. Herbert stated at the
18 beginning that Mr. O'Orady did not have experience
19 in geology and therefore, he would object to anything
20 we would ask on direct examination.

21 Now, he is doing—asking such questions on
22 cross-examination.

23 THE COURT Mr. Sutton, aren't you better off
24 if you really think about—

25 MR. SUTTON: I'm not concerned about—we're

1 about to have--

2 THE COURT: Mr. Herbert opens the door, aren't
3 you free to go through it?

4 MR. SUTTON: Very well.

5 THE COURT? Sometimes you should, you know,
6 thank people for their blessings, do right ahead
7 with your geology. If he opens up the geology door,
8 go through it.

9 Secondly, Mr, Riley indicated he couldn't
10 testify to geology. Either he was leaving that
11 to the planner--he said he provided this information
12 to the planner and as to any differentiation as
13 to what his environmental inventory assimilated
14 or brought together, he took it over to the planner,
15 took limitations and densities. He said, "Talk to
16 the planner about it." Here's the planner,

17 MR. SUTTON: Again, Mr. Herbert objected
18 to Mr. Riley testifying to not having background.

19 THE COURT: Sooner or later you're going to
20 find this confuses the doors being opened for you.

21 MR. HERBERT: I'm just presenting this and
22 asking planning questions, density based upon various
23 topographical features. I'm not going to go into
24 the elements of ground water and that whole area, and
25 I believe that is clearly within Mr, Riley's testimony

1 • • • when he testified about the significant seasonal
2 rainfall.

3
4 BY MR. HERBERT:

5 Q Mr, O'Grady, when I'm looking at CI-2, I notice
6 that that has been an area described as having moderate to
7 severe seasonal high water table, Now, what impact, if
8 any would that have upon your designation of density as a
9 planner?

10 A Well, first of all, I don't know what the exact
11 percentage of the zone is indicated in yellow or moderate
12 to severe seasonal high water table category.

13 Q Excuse me, Mr. O'Grady, it does give a
14 description there, a depth of one-half to three and a half
15 feet a year, is that correct?

16 A That's correct, but I think you made a statement
17 that a very large or significant portion of the land
18 * was indicated in that yellow color and I don't know
19 what the exact percentage of that might be. It's certainly
20 part of that area and again there are no property lines
21 on this particular map. I would have to guess perhaps
22 20^{or} 30 percent of the area which is shown in moderate
23 to severe limitation in terms of seasonal high water
24 table* As to the impact or influence that this would have
25 on density, number one, certainly any area that has a season)*!

1 39 acres? I

2 THE WITNESS: In that general range.

3 THE COURT: All right, and that will give
4 you 64 acres left. Then, you're going to put
5 how many mobile homes in there, 612?

6 THE WITNESS: Yes. We're putting four dwellin^g
7 units per acre, including the wetlands, except
8 we're locating the buildings in the dry lands.

9 THE COURT: But now, what I'm trying to get
10 is, in the 64 acres there, right, with 612 mobile
11 homes?

12 THE WITNESS: Right.

13 THE COURT: Now, how many is that going to giv^e
14 you? You've got two numbers. There's got to be
15 a corresponding rate. 64 acres and 612, 103
16 equals 612. Now, when you do this, doesn't the
17 number of mobile homes per acre go up, because
18 you're not going to put them down on the flood plain?

19 THE WITNESS: I think it might be put in terms
20 of the density versus grossities.

21 THE COURT: How many are you going to get,
22 net?

23 THE WITNESS: You're talking close to 10,
24 if you're talking 64 acres and 612, a little under
25 10 perhaps, 9 point something per acre on dry land.



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THE COURT: 9.5» more or less, on dry land
net density, all right,

BY MR. HERBERT t

Q Mr, O'Grady, where in the ordinance does
it permit you to cluster mobile home3?

A It doesn't strictly refer to the term, "clustering."
It establishes so many dwelling units per acre and other
standards for the development of a mobile home park.
The Planning Board, I'm sure, would be guided in the
review of any site plan to see that the design of a site
plan were such that the dwelling units were located in
areas that did not have critical limitations,

THE COURT: Couldn't they very well say,
"We're only going to allow four, where you can
put them, that's our design, four"?

THE WITNESS: I think, to a large degree,
you have to allow the applicant to demonstrate that
he can put the maximum of four, which is allowed
by the ordinance, assuming he can demonstrate to
the Planning Board that the land he is using is of
suitable quality,

THE COURTi But, supposing the Planning Board
said, "That^fswat. We're never going to let you
put mobile homes down there, with old fdks sailing

1 away in the springtime. We say you've got to do it
2 and that's what your design h@ to be, that wetland
3 has to remain open"?

4 THE WITNESS: Presumably, that would be the
5 case, particularly if there's **delineated flood plain**
6 within which development is precluded, it may be
7 necessary in certain instances, whether it be this
8 zone or any other zone, and regardless **of** the type
9 **of housing that would be going in, that it would be**
10 impossible to perhaps come up with a maximum density
11 that the ordinance would normally allow and the owner
12 would have to be satisfied with a lower density.

13 THE COURT: Now, back to a lower density, so
14 one side, it's so many normally, and another side
15 you can got a net density with a clustered type
16 idea, but'again, it's to the discretion of the
17 Planning Board. He's liable to end up with **a density**
18 less unit per acre, less unit gross, then.

19 THE WITNESS: I think it all depends on what
20 property you're talking about.

21 THE COURT: This zone, with that flood plain,
22 30 percent of it t'fust wiped out because we've had
23 **water cases**, dbviously, **in** this County before.

24
25 BY MR. HERBERT:

Q Mr, O'Grady, did you happen to look—did counsel

1 show you a copy of an exhibit that has been marked previously
2 as P-75, which is a mobile home analysis, conducted by
3 Mr. Rahenkamp's office and is dated April 1st, 1977?

4 A No. This document looks totally unfamiliar to
5 me.

6 Q Well, from your knowledge of the area,
7 I want you to review that analysis, which is only one*
8 page of text and three or four map3, and then I'd like
9 to ask you some questions about it*

10 MR.BUTTON? Your Honor, Mr. O'Orady is
11 going to review that analysis, I think ho should
12 have a little time.

13 THE COURTS Go light ahead* Look at it.

14 A Well, I've read it and I've looked at the maps.

15 Q Well, it indicates in there that on the
16 first map in back of the text, that there are severe
17 restrictions in the CR-2 sone, in fact, throughout the
18 CR-2 zone because of topography, isn't that correct?

19 A The map that I'm looking at is very difficult
20 to read, in that the first and third categories in the
21 legend are hard to distinguish. They both look clear
22 white tome. The middle vacant, severe to moderate
23 restriction, seems to be shaded. It appears to show up,
24 whether or not that inoludes either the first or the third
25 category partially or not, I don't know. The map does not

1 indicde that the restriction is due to topography, It
2 might be assumed that it is, based upon the shading between
3 contour, lines,

4 Q Well, from your knowledge of the area upon which
5 you made some recommendations and density and whatnot,
6 would you dispute the composite limitations indicated there?

7 A Well, number one, I have to dispute the reports
8 to the extent that it applies to the CR-1 zone, which
9 user did allow mobile homes and it appears that this-

10 Q Well, let's stay CR-2 for a moment, Mr,
11 O'Grady.

12 A All right. Well, I think the primary restriction
13 on the CR-2 zone, from having examined the site and having
14 prepared maps regarding it, limitation maps, would be that
15 the topography, assuming that there would be sanitary
16 sewer and water facilities available. There are some
17 steep slopes at the very southerly end of the tract or
18 the zone, a small portion of it, and very small area of
19 slope according to this map, in the sort of northwesterly
20 portion of the site, I don't know whether this indication of
21 slope is in agreement with our maps or not,

22 Q Well, Mr. O'Grady, I represent to you that
23 that very document was drawn from your own, contained in
24 CR-3 of the Land Use Map, map after page 16, and I'd like
25 you to look at that please.

1 A Yoo.

2 Q Now, there's a little box over In the left-
3 hand side which talks about certain limitations. Could
4 you read what those limitations are as they apply to the
5 CR-2 district?

6 A I would say that predoralmntly as It applies to
7 the CR-2 zone, that there are severe limitations as
8 far as on-slte sewage disposal, severe limitations in
9 terras of foundatl6ns for dwellings, either with or without
10 foundations, and severe limitations as to road construction.

11 Q Is therteany one of those boxes which indicate
12 other than severe limitations, for what it has not been
13 described as the CR-2 zone?

14 A Small portion of the site is in another designation,
15 and the scale of this map-it is very difficult to indicate
16 or determine precisely which one, but it would appear
17 **that part** of the **area** has moderate-a small portion of
18 the area has moderate limitation,

19 Q Looking at Mr, Rahenkamp^fs map, comparing it
20 with your own map which you Just testified about, isn't
21 it correct to say that they're identical except as to
22 scale?

23 A I honestly can't tell_f Mr. Herbert, because there
24 are three categories in the legend, but two of them have
25 the same designation. They're white.

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1 THE COURT: Yours or his?

2 THE WITNESS: Hfl.

3 Q I'm talking about the first map. Maybe
4 I've got-

5 A That's the first map.

6 Q Okay, I'm sorry. It's the one that has
7 "environmental" on it, "severe, et cetera." Is that map
8 contained there?

9 A I guess that's it*

10 Q Yes. Doesn't it correspond with your own
11 map, the Land Use plan?

12 THE COURT: Page 16, the map after page 16
13 of J-3.

14 A It would appear to correspond as to limitations,
15 using the term "restriction and limitation."

16 Q Now, Mr. O'Grady, on CR-2, I'm looking at
17 your August 11, 1977 letter. You calculated that there
18 would be a density in that area of eight units per acre.
19 Do you still stand by that?

20 A Yes. This is eight units to the acre, assuming
21 multi-family development.

22 Q On land which you yourself described in your
23 own land use plan as having "severe limitations."

24 A As having "severe limitations," I think the limitations
25 can be overcome.

1 Q Well, I asked you a question before with
2 respect to the CI-2 district. When you computed the amount
3 of multi-family units for that area, did you multiply
4 eight into the available acreage to come out with the
5 total figure?

6 A We multiplied the vacant privately owned land
7 acreage by eight.

8 Q Well, if you had severe limitations throughout,
9 assuming you could construct multi-family, wouldn't that
10 mean that you well could wind up with density in excess of
11 eight units per acre?

12 A You could end up with a density in excess of
13 eight units to the acre on a portion of a given tract of
14 land. In other words, you might be concentrating
15 dwelling units to one corner, one half, one section of
16 the given tract.

17 Q Now, if we assume as we did earlier that
18 there would be three families in each unit and there
19 are 752 multi-family units, we would be calculating that
20 there would be an excess of 2,000 people living up in that
21 area, isn't that correct?

22 A Just to correct, you said three family, three persons
23 In-

24 THE COURT: In 772 units. That doesn't give
25 you 3,000. It gives you 2,256 people- living in a

1 highly restricted area.

2 MR. HERBERT: Yes, your Honor. I'll move
3 on.

4

5 BY MR. HERBERT:

6 Q Now, Mr. O'Orady, I want you to keep your
7 own map there, on J-3, and move over to the other side
8 of the road on CR-1, and would it be correct to say
9 that the major part of that area also has the same
10 kind of severe restrictions?

11 A I would say that it had severe restrictions taking
12 into consideration only the privately owned vacant land
13 of about 50 percent.

14 Q Now, when you computed your calculations on
15 August 11, 1977, that there would be 680 multi-family
16 units up there, or could be, I take it, that you were only
17 taking the privately owned land and not the land of the
18 State of New Jersey?

19 A That is correct.

20 Q I don't mean that to be a slip or anything.
21 I just wanted to make sure.

22 A No, a clarification, I understand.

23 THE COURT? Doesn't that--doesn't the point
24 of all this indicate that you're going to have a
25 higher net density? You're going, due to the re-

1 atrrlctlons, to overcome—you're going; to have
2 to push more people onto less land?

3 THE WITNESS: I think there's a difference
4 here between the CI zone that we were discussing,
5 for example, with flood plains and the characteristic | 3
6 of the land in a CR-2 zone. The primary restriction
7 I find, despite the fact that there are severe
8 limitations and a good part of that limitation could
9 be overcome with sanitary sewers, which are quite
10 accessible, I feel, to this particular area.

11 THE COURT: That's with the forced main.
12 Economically, you have another limitation, don't
13 you?

14 THE WITNESS: Perhaps there may be a certain
15 limitation there, that could perhaps be overcome,
16 but the sewers I think could be made available,
17 so that that could eliminate the septic effluent
18 limitation* As far as the slopes are concerned,
19 the amount of steep slope in both of those areas
20 is insignificant in my opinion and I have inspected
21 both sides of Route 31, CR-1 and CR-2 zones.

22
23 BY MR. HERBERT:

24 Q Well, Mr. O'Grady, why did you put in your
25 own report that there was "severe restrictions" in every



1 category?

2 A Well, I think there are severe restrictions and
3 that, in terms of what the County Soil Survey indicates,
4 their interpretation indicates that there would be some
5 **problems. There's possible severe problems,** in terms
6 of foundation and road construction, a problem probably
7 due to perhaps bedrock depth.

8 Q Well, Mr. O'Grady, you testified—

9 A **Well, Just that I don't** think it would necessarily
10 be a very severe problem, in terms of a multi-family
11 construction, which I think could overcome some of the
12 conditions of bedrock,

13 Q Mr, O'Grady, you testified earlier that
14 you believe that the zoning ordinance in the zoning map
15 is consistent with the Land Use Plan, is that correct?

16 A Yes.

17 Q Well, is the zoning map that says that
18 there should be density to the degree that you've indicated,
19 is that consistent with the Land Use Map that showed severe
20 restrictions in every category for the CR-2?

21 A I think it does, because what we have attempted
22 to do, because of these severe restrictions, ia to
23 **provide** for a type of land use, a type of housing **that**
24 would lend itself to concentration, to clustering, to
25 areas of the tract that might be more favorable for develop-

1 ment. For example, while the map might indicate severe
2 limitation throughout, it's a general type of interpretation
3 given to a given or specific soil type in a given area
4 and there can be variation** of that on any particular
5 site. Walking the sites inspecting them left me with the
6 clear impression that, at least in terms of topography,
7 there would be no problem, and rather flexible design
8 to development of multi-family housing*

9 Q Well, when you have topography and you have
10 topographical restrictions to overcome, doesn't that
11 increase the cost of housing?

12 A I think if you locate the development in areas
13 where you would not have as severe a limitation, and
14 concentrate your development into those areas, you can
15 avoid the areas with the more severe limitation.

16 Q Didn't you testify earlier that one of the
17 reasons why you restricted the Beaver Brook part of the
18 Round Valley site to a density of three was because of
19 topographical restrictions?

20 A Yes. This was one of the reasons.

21 Q Oh, So therefore, that concern was
22 applicable to the Round Valley land but was not applicable
23 to the CR-2 zone, isn't that correct?

24 A It's correct to a point. I think I also testified
25 that in my opinion, the larger the area that we're talking

1 about in terms of development, I think the lower the
2 density we have to be concerned about, because of the
3 concentrations that we're going to be getting in one
4 given area.

5 Q Well, one of the factors--and you're
6 recommending that there only be three units per acre on
7 the Beaver Brook side--was the fact that it had topographies
8 restrictions, isn't that correct?

9 A That is correct, but in the Beaver Brook area, we
10 weren't trying to provide for least cost housing and
11 we never said that we were trying to provide for least
12 cost housing in the zone, of the Beaver Brook property,
13 whereas we were attempting to provide for least cost
14 housing in the CR-2 zones,

15 Q Now, I ask you, do you know how many multi-
16 family dwellings would be constructed by Round Valley on
17 the Beaver Brook side, as contemplated in their plan?

18 A Well, I believe before, we were talking about a
19 total number of dwelling units of 1,400, roughly 1,400
20 dwelling units on the Beaver Brook side, and my recollection
21 was that somewhere in the neighborhood of 90 percent of
22 those 1,400 were multi-family.

23 Q Well, if that's the case, multi-family
24 dwellings on what is, as you describe it, an area with
25 severe topographical restrictions, isn't the Round Valley

rift
91

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1 site consistent with what you're saying Is applicable
2 to the CR-2 site?

3 A What I'm saying in terms of the limitations-

4 Q -yes-

5 A -I think you know, certainly the limitation, as
6 far as slope, septic system and RO forth per 3e, can
7 be applied to-unequally to any tract, assuming they
8 have these limitations, but it's not totally a matter of
9 environmental factors in determining the use of land
10 and the density.

11 Q In other words, what you're saying I believe,
12 is that if Round Valley's Beaver Brook side was not 300-
13 some odd acres but was rather a smaller piece, you would
14 allow density of up to eight units per acre on that side,
15 ian't that correct?

16 A Very possibly.

17 Q Now-

18 THE COURT: Wait a minute. Let me Just
19 try to understand. You're not looking for least
20 cost housing in the Round Valley Beaver Brook
21 site, and in that topographical limitation, and
22 therefore you get it down to three. Is that an
23 acceptable thesis?

24 THE WITNESS: Yes.

25 THE COURT: But therefore, since it's not

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least cost, it must be the opposite, high cost, or moderate cost, but certainly not least cost, since you're not striving for that,

THE WITNESS: Your Honor, not striving for it-- I don't think it would be the least--certainly would not be the least cost housing in the Township.

THE COURT: So it has to be more expensive than least cost.

THE WITNESS! Yes.

THE COURT: Therefore, whatever least cost might be, this isn't and therefore, within the range of more affluent, all right?

THE WITNESS: All right.

THE COURT: Since less affluent v/e would equate with the least cost, the more affluent must be able to buy that which is not least cost, at least having the potentiality, right?

THE WITNESS: Right, In other words, what you're saying, you have to make more money to live at Round Valley than in the CR-2 zone?

THE COURT: But you limit the structures there to three per unit, due to the topographical indications.

THE WITNESS: This is one reason for limiting the density.

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THE COURT: Now, I'm trying to get some kind of a conclusion. Therefore, the more affluent will be living in broader and more expensive land, more land space because they are affluent enough to afford that kind of structure, which overcomes the topographical limitation, because that's what it is designed for.

THE WITNESS: Well, it's not intended to necessarily give the affluent more land, per land,

THE COURT: You can afford more land*

THE WITNESS: But it perhaps may work out that way,

THE COURT: But now you're going to crowd less affluent people in less land with similar type of topographical limitations, because they can't afford it. That's the opposite end of your syllogism. You're going to stick 4,296 people in your CR-1 and CR-2 zones because that's what you said in your population projections, into lands with severe limitations, yet you're trying to allow the more affluent to live three dwelling units per acre. You're going to end up with a great deal of difference per acre. Yet, it's only because you can afford it,

THE WITNESS: Well, I think that's perhaps the



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whole reason for addressing the problem of least cost housing BO that we can innkc hounlnp; available and affordable for the people with moderate or lower than moderate income, annual incomes*

THE COURT: That's the goal* but why did you take a site like that with severe limitation and say that's where we're going to put It, up in the northwest corner of the Township. Here's a site right in the middle, without the limitation, and say that we're going to reserve for income-producing industrial R.O.M. What's the philosophy? How do you defend that?

THE WITNESS: I think the philosophy which I was trying to describe in my testimony yesterday had to do with the concentration that would result on such large tracts of land, and we were talking here for example, of both the east and west sections of the Round Valley site and apply the densities, four and a half units per acre proposed by Round Valley and come up with a population of 10,000 people in a given area, and the four and a half units to the acre, not necessarily any more least cost.

THE COURT: But it seems to be crowding people because you're going to take away a good part of this land because of limitations in CR-1, CR-2, CI-2.

1 Limitations limit you down to less net buildable
2 land yet available for number of dwelling units,
3 and theoretically, according to your cluster idea
4 and with this flexibility, more people could be
5 crowded onto less land, and therefore your concen-
6 tration would be greater, must greater than four and
7 a half and it's only because you want to reserve
8 apparently an inventory, a nice piece of R.O.M.
9 land without limitations, I can't get away from
10 that concept, but I want to see if you can get
11 away from it or how you can rationalize it.

12 THE WITNESS; Number one, I don't think we're
13 necessarily in a CR-1, CR-2 zones talking about
14 greater population densities or concentrations
15 of dwelling units, because of the severe limitations
16 that are found there. The severe limitations
17 as I see them, are not of the nature that would
18 necessarily require or place limitations under
19 design or location of the dwelling units. The
20 amount of steep slope in both the CR-1 and CR-2
21 is almost insignificant in terms of its total acreage
22 and I think that would be the most severe limitation
23 in terms of restricting design and layout and causing
24 concentration. Given again the availability of
25 sanitary sewers, the other limitations, I think

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probably could be overcome.

THE COURT: Just let me understand one more thing. In this CR-1 zone off of Route 31, you've got to go back 100 feet, is that correct?

THE WITNESS: That's correct.

THE COURT: How many feet back do you have to stay off of Bruce Run?

THE WITNESS; From my property line, you have to stay-

THE COURT: How many feet back from-how close would D.E.P, let you come to that shoreline?

THE WITNESS, I have no idea whether they would place any restriction on that* They perhaps would and I'm sure they would be concerned about anything happening on the property that would drain in the reservdr.

THE COURT: Right, because you can get off ground pollution, surface pollution. Now, if you take 100 feet off the front of the entire CR-1 zone, off your map, take back from the shoreline a certain amount of distance, you got a New Jersey ground easement here-what's your net bulldable upon which you're supposed to get 680 multi-family units, eight dwelling units per acre? It's a kind of a squeeze, isn't it?

#

FORM 2
PENGADK

1 THE WITNESS It may be. I think it would
2 have to be worked out for each tract of land.
3 The 100-foot setback which applies around the
4 perimeter of the property can be construed as also
5 being open space, which is part of the open space
6 which is required by the ordinance.

7 THE COURT: All right. You got your open
8 space but how much have you got net buildable
9 to make it economically feasible to put 2,040
10 people in there, in what's left?

11 THE WITNESS: I think potentially you probably
12 could—I would have to work with the site and with
13 the potential layout of the site.

14 THE COURT: When you worked out your plan,
15 did you work that out?

16 THE WITNESS: No, I did not.

17 THE COURT: Okay.

18
19 BY MR. HERBERT:

20 Q Mr. O'Orady, do you have to be any more
21 cautious in developing a site with severe limitations
22 than, let's say, an area like the Gobel site which doesn't
23 have these limitations?

24 A I think you have to be certainly more cautious
25 working with any site, depending upon the degree of

1 severity of limitations,

2 Q I'd like you to read the first paragraph
3 on the next page and page 16 of your own land use plan,
4 Identified as J-3, please.

5 A What paragraph is that?

6 Q First paragraph of page 16.

7 A All right,

8 If the fact that a given area is dominated
9 by **severe** limitations **does** not **mean** that **it cannot**
10 or should not be developed, although many of these
11 areas might best be left undisturbed. It does
12 not mean, however, that extreme caution must be
13 exercised in their development and that development
14 measures which recognize the specific limitations
15 be employed.¹¹

16 Q Still stand by that statement, Mr. Grady?

17 A Yes. I believe I do.

18 Q Okay. In other words, you have to use
19 extreme caution when you're talking about development
20 of any kind of housing in the CR-2 and CR-1 areas, isn't it
21 that so?

22 A I would say that definitely we would have to approach
23 it cautiously in terms of those limitations,

24 Q I think you used the term "extreme caution,"¹¹
25 didn't you?

A Yes. I'll still stand by the word "extreme."

O'Grady-cross

1 Q Now, you have, on your August 11th, 1977
2 letter, so many units per acre in thcae various zones,
3 and now I^fm addressing the CR-2 area. Would you categorize
4 752 multi-family homes at eight units per acre—now, would
5 mobile homes be allowed in that area?

6 A Yes, as a conditional use.

7 Q But they wouldn't be allowed at the density
8 of eight per acre, would they?

9 A No* That would be a density of four to the
10 acre,

11 Q So, in other words, if that CR-1 zone
12 was comprised solely of mobile homes, even assuming you
13 could overcome these restrictions, you would have half
14 of the 75? units or approximately 376 units, isn't that
15 correct?

16 A Yes.

17 Q Now, is there anything in the mobile home
18 section of the ordinance, and I'm referring to Section
19 705.8, which allows you to cluster those mobile homes?

20 A I think there's nothing that says you are allowed
21 to or prevented from clustering. I'm sure that you
22 would have clustering because there's an "open space"
23 provision in the regulations,

24 Q Well, you have clustering provisions
25 specified for R-3, do you not?

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A We have cluster provision for R-3_f yes.

Q But you don't have them specified in a mobile home park section of the ordinance, isn't that so?

A We have them specified only up to the point or to the extent that we require a certain percentage of the tract be maintained as permanent open space or common open space,

Q I'd like to go through 705.8 with you, for a moment.

A Would you mind if I got my ordinance?

Q I had an exhibit marked P-91, but it isn't the official ordinance.

THE COURT: Do you have your ordinance,

705.8?

Q I'm going to the development standards which are on page—I'm'sorry—it would be, Mr, O'Orady, there are two different exhibits and I don't mean to confuse you, but I'm alluding to P-91. It¹a different for you, but it's marked as 705.8b, "Development Standards." Is that so marked in your book?

A That's correct,

Q Okay. It indicates, does it not, that the minimum site size is 25 acres?

A That's right.

Q Now, did you consider that in the calculations

1 that you drafted, as far as the amount of units up in
2 the mobile home areas?

3 A Yes. We recognized the fact that there might be
4 certain properties that might not contain 25 acres, hut
5 did not preclude the possibility that properties would be
6 Joined together to come up with 25 acres.

7 Q But this precludes, absent some kind of
8 variance or whatnot, this precludes anybody developing
9 mobile home sites without 25 acres, isn't that correct?

10 A That's correct.

11 Q Let's go to the next area, "Buffer Zone,"
12 and It speaks for itself, talks about a buffer zone of
13 100 feet from the boundary line on the site. Would you
14 consider that in the calculation; of your mobile home
15 assessments, as far as the total amount of units?

16 A We estimated generally that it would be possible
17 to construct four dwelling units an acre, and still meeting
18 the 100-foot setback. We did not, as I mentioned to
19 the Judge before, make a specific analysis of each site,
20 but generally, we feel that It would be possible to do
21 that.

22 Q Even though you have a minimum mobile
23 home lot size of 5,000 feet?

24 A Yes.

25 Q Now, there's also a provision for-under

1 6_E for lot access. Doesn't that take away the area of
2 mobility that one would have to move a mobile home around
3 on a site?

4 A I think you have to have direct access to a
5 street or roadway in a mobile home park in order to
6 get the dwelling on the site,

7 Q But what I'm getting to is, wouldn't the
8 mobile home site, by its very nature, mean that there
9 would be more impervious cover or roadway consumed on a
10 site, but its very nature, as opposed to a fixed dwelling?

11 A Certainly not as opposed to a fixed dwelling. A
12 single-family house on a 5,000-square-foot lot is going
13 to have as much impervious pavement, including the roadway
14 as the mobile home site. In fact, perhaps more, because
15 the public streets which normally have wider pavements
16 than would be required in a mobile home park,

17 Q Now, who would pay for the street or roadway
18 in the mobile home park?

19 A I assume that initially, it would be the developer
20 of the property.

21 Q I should have phrased it, who eventually
22 pays, the homeowner, isn't that correct?

23 A That's usually the case in any type of residential
24 development.

25 Q You assumed a cost of I.Xy000, I believe, of a

u•uraay-crosa

1 mobile home. Does that 15,000 Include the development
2 costs, Including the construction of the on-site improve-
3 ment, street or roadway?

4 A I was basically referring to the cost of purchasing
5 a mobile home unit.

6 Q Can you tell me one place in this entire
7 area where you can buy a mobile home for \$15,000 now?

6 A No. I cannot, I have discussed prices of mobile
9 home units with architects and other people, who have
10 indicated to me that you can buy them for \$15,000,

11 Q But, of your personal knowledge,,

12 A I have not checked the prices recently myself, no,

13 Q I represent to you that there's been testimony
14 about Solitude Village to the effect that they're selling
15 in the neighborhood of \$30,000.

16 MR/SUTTON: I object.

17 THE COURT: He says he represents there
18 has been testimony.

19

20 BY MR. HERBERT:

21 Q Based upon your knowledge, would you dispute
22 that?

23 THE COURT: By whom they would like to know.

24 Q Oh, yes. It was by Mr. Rahencainp.

25 A I have no knowledge, as I think I mentioned before,

of some, of the specifics about Solitude Village« Whether or not the \$30,000 that you are quoting Includes the lot - exactly what It refers to, I don't know.

Q It's the lot and the structure on a lot, or whatever they call it, the mobile home itself,

MR. SUTTON; Your Honor, I'd like to pose this objection, I would have no objection if your Honor looked at the mobile homes at Lake Solitude.

THE COURT: I've already been there several years ago, before it went bankrupt, and at that time they were selling between \$20,000 and \$30,000.

MR. SUTTON: And they're wide, nice mobile homes. Now, there may be other varieties of mobile homes. That doesn't necessarily mean that.

THE COURT: I've seen them in Florida. I've seen them at Solitude Village and so forth, and I know what a mobile home--5,000 square feet, that's 50 by 100.

THE WITNESS: Minimum size lot.

THE COURT: 50 by 100.

THE WITNESS: I am trying to think--for most mobile homes, there would be needed perhaps larger in some instances, depending upon the wing. The unit price of \$15,000 I was referring to was going to a mobile home dealer and buying a

1 mobile home. That mobile home would then have to
2 be put upon a lot, whether the owner purchased
3 the lot or whether he rented the lot through
4 some mobile home park.

5 THE COURT: Because the double are 30 feet,
6 and you have this side line of so much off each
7 side, ten feet. There's your 50, ten on each
8 side.

9
10 BY MR. HERBERT:

11 Q So, in other words, the 15,000 figure that
12 you threw out is purchasing the unit itself, and then
13 that does not include whatever the land costs are, is
14 that correct?

15 A That would be correct,

16 Q So in other words, your figure does not
17 include the land cost, and I take it does not include
18 the land development cost, is that so?

19 A That's correct.

20 Q It doesn't include the financing charges
21 that might be applicable—strike that, please.

22 Do you know what the financing arrangements are
23 for mobile homes?

24 A I don't know specifically of my own knowledge, only
25 from hearsay.

1 Q Well, do you know if you can get financing
2 for a 25 or 30-year period for mobile homes, the same
3 way you can for fixed structures?

4 A I understand that they are normally purchased
5 through conventional mortgage type of financing.

6 Q Well, if that's the case, doesn't it affect
7 the interest rate?

8 A I think it would affect the interest rate, assuming
9 the interest rate were higher, I feel that there would
10 be compensation due to the fact that even the cost
11 of the unit and the cost for the lot, let's assume a
12 doubling of price of \$30,000, including the unit, a
13 lot free and clear at that point is, so to speak, except
14 for the financing, that that \$30,000 is a relatively
15 low price for a home that could accommodate a family, with a
16 mobile home, assuming up to a three-bedroom unit, lower
17 than any other type of housing that you could buy, and
18 assuming a person can afford housing up to, let's say,
19 two and a half times his annual income, it would seem to
20 me that somebody making \$10,000 could come close to or a
21 family ~~Jet~~ earning \$10,000 could come close to earning
22 a mobile home.

23 Q In other words, you feel that housing for
24 \$30,000 is in the least cost area?

25 A Yes, I do.

O'Grady-cross

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Q Are you aware that 51 percent of Round Valleyla dwelling units are priced at \$29,900?

A I'm aware that they're projected for pricing at \$29,900. I believe that these are--.

Q I don't mean to insult or cut you off, but are you aware of that fact?

A I'm aware of it. I'm aware of a distinction, too.

MR, SUTTON: Your Honor, I would object to this on cross-examination. We have had certain testimony--I can't understand the reason for asking Mr. O'Grady the question. Now, Mr. Herbert isn't saying that 50 percent of these units would have only one bedroom. They're not in the same category as a mobile home, and Mr. O'Grariy was not here to hear the testimony. I can't see where it has any relevancy. If anything, it's argumentative with Mr. O'Grady.

MR. HERBERT: Your Honor, he's talking about what this case is all about.

THE COURT: Mount Laurel says you're supposed to do that. That's what Madison says. You're supposed to do that in planning. It is this case. Nothing could be more relevant to discussing least cost housing and planning for It, taking a fair

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share. Your planner has a different view. He's just told Mr. Herbert that he's aware that they're at \$29,900 for 51 percent of their poposal, but he says that that doesn't qualify with regard to the mobile home.

Isn't that what you said?

THE WITNESS: Well, I think there's a distinction between-

THE COURT? Make the distinction,

THE WITNESS: I'm not repeating Mr. Sutton because it's the point I wanted to make, that you're talking about a one-bedroom apartment vs. a two or three-bedroom mobile home. The mobile home, obviously, accommodates a larger family than the one-bedroom garden apartment, and it seems to me that if you have 50 percent of your dwelling units and 50 percent of, in this case, 3,600 dwelling units as one-bedroom apartments, that you're expecting an awful lot of one and two-person family least income or low income, moderate income families. 50 percent of those dwelling units are not accommodat tr the people, perhaps, that are most in need of housing, which I think is the husband and wife with children,

BY MR. HERBERT:

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1 Q Well, let's talk about the husband and wife
2 with children. If that¹a the case, then I take it, there
3 would be more people per unit in a mobile home site,
4 according to your statement?

5 A I would expect that there probably would be more
6 people per mobile home sites on the average than in a
7 one-bedroom apartment.

8 Q Well, if that¹⁸ the case, would that mean
9 three people, four people, five people, what?

10 A I would say that it would be reasonable to assume
11 up to five people.

12 Q Well, if that's the case, then th^o density
13 that we talked about before of approximately 6,000 people
14 in these various locations, half of which are mobile
15 home sites, would actually be more in the neighborhood
16 of 7,000 or 8,000 people, is that correct?

17 A No. I don't think so, but averages don't normally
18 wrk out that way. I can show you or you can look at
19 single-family home units, strictly single-family home
20 units, which have an average number of persons per family
21 of anywhere from say, 3.2 to 3.5. These are all three
22 and four-bedroom home development units, so the average
23 is a little bit different than what the maximum might
24 be.

25 Q Mr. O'Gracy, Judge Beetel asked you some

1 questions before about CI-2 zone, and basically, as I
2 understand, there aren't sewers available there right now
3 and I'd like to now concentrate upon the CR-1 and 2 zone,
4 off in the northwest quadrant. You testified that before
5 the leat coat housing could be constructed, that there
6 would have to be adequate sewers, 13 that correct?

7 A That is correct,

8 Q Now, can you tell us by looking at the map,
9 where the sewer lines are?

10 A I believe there are sewer lines that--and certain
11 ones are forced mains--along Route 31, and I believe there's
12 a sewer line running into High Bridge along County Road
13 23, if I'm not mistaken.

14 Q Well, I know--and I mean this with respect--
15 I know that you're not an engineer, but you did talk to
16 Mr. Bogart, and did you talk to him about the utilization
17 of that forced wain?

18 A Did I discuss that utilization with him? Yes.

19 Q And was it based upon that, that you concluded
20 that there would be sewerage available in the future to
21 that site?

22 A Yes. I based my conclusion on what he advised me
23 that, from an engineering standpoint, he thought it feasible
24 to--well, it would require some while--it would require some
25 off-site construction. It would be feasible, to tie 'those

areas into the sanitary sewer.

Q Where does that forced main go as far as going south? You said it goes along Route 31. What plant does it go to?

A I'm not completely certain of the specifics, as far as that's concerned, and I believe I testified to that yesterday, but there is a forced main that I believe ultimately goes into a gravity line going to the Clinton plant.

There's also some form of forced main in connection with the Spruce Run Reservoir or--pardon me--well, no. Leave it go at that. Again, I'm not totally clear on the description as was given to me by Mr. Bogart, and this is some time ago, so I'm only sort of using guesswork at this point and relying upon his indication to me as a professional engineer that it would operate.

Q When did you have this conversation with Mr. Bogart about the location of the sewer lines to service the CR-1 and CR-2 areas?

A I think it was at least two months ago.

MR. HERBERT: Your Honor, we've been on this a long time. Mr. Bogart's going to testify and we expect him to give detailed information with regard to this point;

THE COURT: Two months ago, he talked to him.

Q And prior to that time--and that was at that

1 time you talked to him about the location of the sewer
2 lines?

3 A i Yes, and he had described to me at that time-
4 and unfortunately I did not have a map-and it was a
5 **description over** the telephone, so I did not have any
6 map for location of the sewers,

7 Q Now, Mr. O'Grady, I want you to look at
8 the various zoning maps that you testified about and I'm
9 **not** going to go through all of tho^ but I want to go
10 back to the first one. Would you RO to the board and
11 just point and perhaps with the assistance of the bailiff,
12 the first zoning map, ptease?

13 A DPB-5 is the. identification number.

14 Q And that is dated October 1st, 1976?

15 A Correct.

16 Q Nofr, I look at the maps and except **for** the
17 **dange in a little commercial area, the CR-1 and CR-2**
18 districts are **essentially** the same, isn't that correct?

19 A Yes.

20 Q Now, when this map was drawn In October
21 1st, 1976, did it permit mobile homes in those
22 districts?

23 A As I recall, there **was** a provision in the ordinance
24 for mobile homes within a commercial zone, and there was
25 commercial zoning alon^ that entire strip of Route 31 as

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1 well as, you know, another commercial zone In the Township*

2 Q In other words, you made the decision to
3 locate CR-2 and CR-1 zones up there with mobile homes,
4 approximately eight months prior to even finding out from
5 Mr. Bogart about the availability of sewers up there,
6 isn't that correct?

7 A No, I think we had knowledge of generally the
8 location of the sanitary sewers in the Township some
9 long time before that, but I did not have knowledge of
10 the specifics as far as the forced main situation. We
11 knew that there were sanitary sewers generally in this
12 area and that because of its proximity to the Town o*
13 Clinton and existing sewers in the—and also in High Bridge,
14 we felt that there was reasonable potential for considering
15 those sites for mobile home and multi-family use, and
16 at least providing for that opportunity, assuming that
17 sanitary sewers did become available.

18 Q So, in other words, you didn't rely upon
19 what Mr. Bogart told you in making these CR-1 and CR-2
20 decision, but rather general knowledge that you had
21 as to the availability of sewers in that area, isn't
22 that correct?

23 A That's correct.

24 Q Who gave you that general knowledge?

25 A I obtained the information from Mr. Bogart's office,

1 not from Mr. Bogart himself, but from, I believe, maps
2 that were—that had been given to me by his office, which
3 generally showed the sewer locations.

4 Q Did you talk to anybody there?

5 A Mr. Jenny I believe was his name.

6 THE COURT: This is before the map of October,
7 1976?

8 THE WITNESS: That's right.

9 ; ; Q Mr. Jenny, is that correct?

10 A Yes, I believe that^fs his name.

11 Q J-e-n-n-y?

12 A If I recall correctly, yes.

13 Q But you didn't talk to Mr. Bogart, isn't
14 that correct, at that time?

15 A Not on that subject of the specific location
16 of sewerage.

17 Q And the first time you talked to him about
18 this very issue was two months ago, isn't that correct?

19 A As far as, yes, as far as the more precise or
20 specific information is concerned.

21 Q So, in other words, when you made the decision
22 as to CR-1 and CR-2 with the necessity of sewerage, you
23 didn't have the kind of specific information you were
24 later to get, two months later, isn't that correct?

25 MR. SUTTON: Your Honor, Mr. Herbert has gone

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over this again and again, I think the pertinent thing is,, can this area be sewerred and Mr. Bogart's going to testify relative to-

THE COURT: All right. The planner can answer these questions. You understand the question, do you not? You may answer it.

A Generally, it was known and it was' known by me and by the Planning Board because there were'discussions about all of these areas we ware considering for different land uses and specifically in areas that we were considering multi-family mobile home development, that there was good potential for sanitary sewers. I don't think that developing the Land Use Plan or zoning map or zoning plan, that it's absolutely essential for the Planning Board to wrk out or determine the details of exactly how each particular site is going to be developed. This, in itself, would be probably a two-year project, by a separate consultant to do this. The concern I think should be that there wuld be reasonable opportunity for providing utilities, if you were going to designate particularly a piece of land for a land use that would require those utilities.

Q Well, you said, to use your words, it was "not absolutely essential" to have this kind of information, but it's a fact, is it not, it is absolutely essential to have sewers in order to develop the kind of least cost

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1 housing In those areas, Isn't that correct?

2 A I believe It's essential, given the environmental
3 limitations of the site, yes.

4 Q Okay, now, you testified that one of the
5 reasons why you recommended that there be a density of
6 three units per acre on the Beaver Brook side was the
7 size of that tract, wasn't that correct?

8 A That's correct,

9 Q Well, isn't the fact that a landowner
10 owns a large piece of property and can develop that
11 many more units on that piece of property, doesn't
12 that help lower the eventual cost of the housing?

13 A . That's probable, I suppose, all things being
14 equal, that the higher the density, presumably the
15 lower the cost of the housing should be, assuming the
16 construction of the same type of dwelling unit, assuming
17 you know, essentially similar off-track on-site Improvements,
18 that type of thing,

19 Q Assume that you have two pieces of property,
20 one, let's say, a hundred acres and the other one 300
21 acres, and assume further that all of the improvements
22 that are going to be constructed on those two sites wiJlbe
23 the same, and assume further that the profit margin to the
24 developer will be the same and the zoning is the same.
25 Now, wouldn't it be correct to say that the cost of the

1 housing on that property, with 300 units, would be less
2 than the property with only 100 units?

3 A Are we talking about the same density?

4 Q We're assuming everything is the same.
5 Except for the acreage, profit margin is the same, identical.

6 A Well, I think we could assume that, given those
7 circumstances, that the efficiencies that could be gained
8 through the greater number of units, through the purchase
9 of materials and management expenses and so forth, that
10 the cost of the units could be less.

11 Q Okay.

12 A On the 300 acre tract.

13 Q If that's the case, then when you say that
14 larger tracts, according to your direct testimony, should
15 have a lower density because of their larger tracts,
16 aren't you taking away from a potential cost savings to
17 produce least cost housing?

18 A We may be taking away from a potential savings, as
19 far as the cost of housing in strictly those terms,
20 but you know, I think there are other considerations
21 and other reasons for requiring or providing for a
22 lower density, as a tract becomes larger.

23 Q When you zoned for three units per acre
24 on the Beaver Brook side, were you considering in your
25 mind—not in your mind but in your professional opinion,

1 anything concerning the necessity to provide least cost
2 housing on that site?

3 A Very frankly, no. We were not looking at that
4 site in terms of its suitability for providing least
5 cost housing.

6 THE COURT: Which side?

7 THE WITNESS: Beaver Brook side.

8 THE COURT: We've been over that.

9 Q And, getting back for a moment, after you
10 made your initial proposal, marked as P-51p, suggesting;
11 that the Gobel site be R.O.M.-P.U.D. option, there came a
12 time that that was changed. You testified about that,
13 I'd like to ask you, when was that decision made to change
14 that location, that tentative proposal?

15 A I believe a change did not take place until about
16 three months after the initial presentation. There was
17 discussion on it. There were certain changes to the
18 map, but there was, as I recall, no final decision
19 regarding that area until about three months after the
20 initial January submission, if I'm not mistaken, and I think
21 perhaps the land use, the various land use plans by
22 referring to the dates on them, might give an indication
23 of that.

24 Q Now, since that time, whenever it was, in the
25 spring or early summer of 1976, did you ever reconsider

O'Grady-croas

1 in January of 1974. Is that one of the documents that
2 you saw?

3 A Yes, except that the copy, it appears to be what
4 I have seen--the copy that I had was a photostatic
5 reproduction, where many of the maps, as are shown
6 here, were not as clear or concise or precise, but I believe
7 what I saw was the photocopy of that report.

8 Q I know, you what has been marked as P-4,
9 which is the Round Valley feasibility report. Let me
10 ask you whether or not you saw that prior to making
11 your statement on July 21st, 1975.

12 A The Round Valley feasibility report, to the best
13 of my knowledge, was not part of the material that I had
14 in my review.

15 9. ** on that P. 25 you mentioned that
16 most of Mr. Moore's comments would appear to be valid
17 today, in terms of Sullivan's...



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1 Q Now, Mr. O'Grady, In that letter, and forgive
2 me for standing behind you, but I'm trying to move things
3 along--on page three of that plan through page seven
4 of that plan through nine, there are contained evaluations
5 of the proposed plan, does it not?

6 A Yes.

7 Q And there are several comments in there
8 and I'm not going to ask you to repeat, but I had
9 to paraphrase them to the effect that the design and
10 several other elements of the plan are excellent, isn't
11 that correct?

12 A It says, "The environmental approach to the use of
13 land and general planning considerations is excellent,"

14 Q And turn it over.

15 A "The plan and concept of general land use as related
16 to planning aspects is also excellent,"

17 ! Q The next page, it talks about other
18 elements of the plan?

19 A Yes. "The planned unit development approach to
20 implementing the plan is excellent. However, any of the
21 details, specifications are questionable and will require
22 careful study and^Jmodification."

23 Q Now, further on it talks about the necessity
24 for study of various areas, does it not? I don't want
25 you to describe them but Just state that--answer the questiofi

u"uraay-cross

1 as to whether or not there is a statement that further
2 **aspects** would have to be studied?

3 A ; Yes, generally that's what it says,

4 Q Okay. Now, when you say that most of Mr,
5 Moore's comments would appear to be valid today in terms
6 of the current submission, were you accepting the validity
7 of Mr. Moore's assessment as to the environmental
8 approach, plan approach being excellent?

9 A I can't recall specifically as to that particular
10 item, I'd say in general that I was commenting as to
11 that I agreed that the environmental approach to determining
12 the utilization of the land was a good approach. Whether
13 or not I would-

14 Q Excuse me, I'm sorry, Mr, O'Grady, the
15 term used by Mr. Moore was "excellent." Did you agree
16 with that term?

17 MR. SUTTON: Your Honor, the only thing I'd .,
18 have to say here is this is a letter. I know I
19 haven't seen it in a number of months. I don't
20 know when Mr. O'Grady last read the letter* I think
21 to be fair to Mr. O'Grady, he should have an opportunity
22 to read it, the entire letter before he testifies
23 relative to it,

24 THE COURT: P-10, it's his own letter.

25 MR, HERBERT: P-10 is their own expert, Mr.

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THE COURT: He comments upon Mr. Moore saying that Mr. Moore agrees with most of his comments, that their design is excellent right on down the line, except he says more^studies are needed. I got that three days ago or three months ago.

MR. HERBERT: I'll move along, your Honor.

THE COURT: You only have six more minutes to move along, so help yourself. But, thit much I got three months ago, I think it was June, 1977.

BY MR. HERBERT:

Q Mr. O'Orady, moving down on your statement, P-25, which is y6ur letter based, as you stated, on a general review of the materials from Round Valley, you stated today that obviously the impact of such developments demand very careful assessment, in terms of traffic, utilities, schools and other municipal facilities and services. You also stated that there was---strike that--- on traffic, did you ever take a traffic study an to what the impact of Round Valley^fs proposal would be?

A Not I.

Q Well, did you have any traffic study before yo l

1 when you made your comments here about your concern for
2 traffic?

3 A We had general information I believe, whatever the
4 latest Department of Transportation A.A.D.T. traffic
5 counts were for Route 31, 78, knowledge of traffic there,
6 you know, having observed traffic in the Township, knowledge
7 of traffic from, discussing the situation with the Planning
8 Board, and a general idea in terms of traffic movement
9 per dwelling unit that might be anticipated, knowing that
10 this would be a considerable additional impact on traffic
11 on Route 31 particularly. So, that's basically what
12 we had in mind.

13 Q Well, Mr. O'Grady, I show you what has
14 been marked as P-4 and I represent to you that that is a
15 community support facility submitted by Round Valley in
16 January of 197*». It included within that document a
17 traffic study conducted by Round Valley. Now, you've
18 already testified that you never read that document.
19 Did anybody allude to that document in your discussions
20 prior to sending your letter on July 21, 1975?

21 A To my recollection, no. I think the first time
22 that I became aware of that document--and I only recall
23 because of its vivid color--was at the depositions.

24 Q Since the depositions, have you read it?

25 A No, I haven't.

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Q Now, Mr. O'Grady, you stated that there was a concern for traffic not only as to the Hound Valley proposal, but that was one of the major concerns as far as changing the proposal, tentative proposal from R.O.M. P.U.D. to R.O.M. on the Gobel site, isn't that correct?

A Well, I think it was a consideration, yes,

Q Okay, and did you ever--did you assume when you made your recommendations--I mean the second time-- that any traffic from a P.U.D. on the Gobel side would pour out or only use Route 31?

A There would be a certain portion, perhaps a major portion, assuming the Gobel site is isolated from adjoining sites, the primary access would be to Route 31.

Q I shw you a document, P-1, and a charjb which describes the proposed Round Valley site as far as the streets and circulatory system is concerned.

A Yes.

Q Doesn't that map show that there were not only--would the access to Route 31, but access to the east?

A Yes. There would be access to what I believe is Sand Hill Road.

Q All right, did you know that when you wrote your letter on July 21st, 1975?

A Yes. I was aware of that. You know-, I've seen thi3

2 Q What assurance would there be that if that
3 area was developed fully as an R.O.M, that there would
4 also be access to the east?
5

6 A Or assurance that there wouldn't be, I think, would
7 have to come through the site plan review process.

8 Q Well, the only way to assure that would be
9 to arrange some kind of an agreement either for one
10 person to buy the entire tract or with the property owner
11 on the eastern border of the R.O.M., isn't that correct?

12 A Possibly, yes,

13 Q So, wouldn't it help the traffic situation
14 if you dealt with a landowner who owned the entire
15 Gobel site, assuring that there would be an off-site
16 improvement to divert traffic off Route 31?

17 A I agree that it would be desirable to divert
18 traffic off Route 31, but not to Sand Hill Road. I would
19 not agree with that.

20 Q Well, there was a new extension built up
21 there, wasn't there?

22 A There was.

23 Q Onto Route 22?

24 A There's a new extension built onto Route 22,
25 but not from, as I recall, this particular entrance from
Sand Hill Road into the Gobel tract, which is partway down

1 halfway down a hill on Sand Hill Road, which at that point
2 is narrow, steep, a somewhat hazardous road,

3 Q Mr. O'Grady, I'm pointing to a road, I believe
4 it's a road. Is this a road right here?

5 A Yes.

6 Q There is a road running- around the northwest
7 perimeter of Round Valley Reservoir.

8 THE COURT: You're looking at DPB what?

9 MR. HERBERT! DPB-9, your Honor.

10 THE COURT: And you're looking in the R-2
11 zone?

12 THE WITNESS: Just below it.

13 THE COURT: **Just below** the R-2 **zone adjacent**
14 to the R.O.M. Gobel tract?

15 MR. HERBERT: Yes, your Honor.

16 THE WITNESS: There is a new road. What
17 **you were pointing to, incidentally» were some**
18 form of easement, not a road, but there **is a road,**
19 the Round Valley access road, which goes out to
20 Route 22 with a jughandle.

21
22 BY MR. HERBERT:

23 ; Q If **you** look at that plan, wouldn't that
24 accommodate traffic moving from the Oobel site onto
25 Route 22 via that new road?

1 A Only accommodate them after they got off Sand Hill
2 Road. First, they've got to get into Sand Hill Road
3 and going into Sand Hill Road is a totally undesirable
4 condition and situation, in my opinion.

5 Q Well, let's look at R.O.M., the way it is
6 right now. Is there any access indicated there for
7 R.O.M. onto Sand Hill Road?

8 A As to the Gobel tract, no.

9 Q So in other words, unless a landowner
10 who develops that as an R.O.M. can buy an easement for
11 the property, there is no way an R.O.M. on the Gobel
12 site can have any other access but onto Route 31, isn't
13 that correct?

14 A I think there are alternates, other than to
15 Sand Hill Road.

16 Q Would you please—

17 A Through the appropriate connection of some form
18 of service road or connecting road through the Gobel
19 tract and then northerly down to Route 22.

20 Q But right now, that isn't present, isn't
21 that correct?

22 A That's correct.

23 Q But yet—

24 THE COURT: On-site road. The owner builds
25 his own on-site road, and goes up as an entranceway?

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THE WITNESS? It could be on-site initially, or ultimately even become a township road,

THE COURT: But, he has to build it onto it.

THE WITNESS: Right,

.MR. HERBERT: Your Honor, I have no further questions.

THE COURT: Let me Just understand. We left off something **this** morning, **if It***a my **fault***

You said that you gave up this morning when you originally had R.O*M.-P.U.D. option, you gave up some industrial land east of Lebanon?

THE WITNESS: Yes.

THE COURT: Do you recall that?

THE WITNESS: Yes.

THE COURT: Could you tell me where this land was that you "traded off"¹¹? For what?

THE WITNESS: The land that previously had been zoned for industrial use, which was placed into an R-3 zone, with a P.U.D. option is this shaded area over here.

THE COURT: That had been industrial land?

THE WITNESS: That had been industrial land* It's about the same size as the Qobel tract, give or take a few acres.

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THE COURT: But when you originally looked at it on the original colored map, whatever date that was, and collected all your material, you thought that it might have been an appropriate industrial tract, do I gather that?

THE WITNESS; That is correct,

THE COURT: What was that based on—the fact that there was industry in Lebanon near the— approximate to that area?

THE WITNESS; Primarily because some of the properties were located or had frontage on Route 22 and had commercial or simply industrial uses on them and properties did extend back to the railroad and potential for railroad access, also.

THE COURT: So that railroad access, highway access, that was to be industrial land?

THE WITNESS; Yes.

THE COURT: Now, you traded that off, same size as the Oobel piece and when you traded off and made it R-3—

THE WITNESS: R-3 with a P.U.D. option.

THE COURT: R-3 is one-family residential, 250 square foot P.U.D. option. Here's this land with a railroad situation, Route 22 and so forth back of the railroad has Route 22 and other industry

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1 already near it. That's the trade-off?

2 THE WITNESS: Let me explain in other
3 features about the tract, which will explain why
4 we decided to put—instead of putting residential
5 development here in R«O.M.-1, and putting it here
6 instead. It looks fine on the surface. We have
7 Route 22. We have some commercial routes on
8 22. We have a railroad, but we also have Rockaway
9 Creek running through the middle of this. There's
10 a flood plain area along Rockaway Creek. There are
11 some very steep sloped areas. Physically, the
12 land is not particularly suitable for industrial
13 purposes. To get to this back land, you have to
14 in some way bridge or culvert the Rockaway Creek
15 which would be quite a broad type of facility to
16 overcome the flood hazard area limitation. We felt
17 that this land, because of its physical circumstances,
18 of topography, the flood plain and getting across
19 that flood plain and Rockaway Creek, would not likely
20 be utilized for industrial purposes.

21 THE COURT: Doesn't a developer face those
22 same limitations as a residential developer?

23 THE WITNESS* A residential does face
24 some of those limitations, but either one residential
25 or industrial developer can find perhaps—find a way

1 so-called "trade-off as one of the reasons in your
2 deposition on March 17th?

3 A I don't recall. I didn't on that page, but
4 whether I did elsewhere in the deposition-

5 Q Well, perhaps you could read the depositions
6 and I take it, Mr.. Sutton will be asking you questions
7 and you could answer that question,

8 THE COURT: What page is that on?

9 MR. HERBERT: Page 32.

10 THE WITNESS: I thought I had at some point
11 in the depositions-I don't see it on that page,
12 but I'm not really certain of it.

13 THE COURT: Well, gentlemen, I think that's
14 about where we're going to stop today.

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which did not lend itself to industrial development or R.O.M. zoning, did not lend itself to standard tract development and individual tract development, would have to be a relatively large lot, but did lend itself to multi-family clustered multi-family development, through P.U.D. or P.R.D., that it would be more desirable to put the dwelling units there and take it out of an industrial category and reserve this area, which is considered prime industrial or R.O.M. for strictly that use.

THE COURT: Even though that's—even with all those other limitations, it's further away from possible connection to existing utilities?

THE WITNESS: Well, that seems to be the common opinion, but I would assume that, if anything; should happen in the way of sanitary sewers in this area between Readington- and Lebanon, that the Department of Environmental Protection is going to want to be assured that flood plain Rockaway Creek is going to be protected, and I'm sure that the Township in some way in the future, would probably be committed to becoming a customer or a partner in some kind of sewage system.

THE COURT: You might assume that, but they withdraw from it. Are you aware of that?

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THE WITNESS! I realize that, again.

THE COURT: You can't do much with a withdrawing partner.

MR, HERBERT: Your Honor, I know it's late, but in view of your Honor's questioning, I would like to ask one question.

THE COURT: I thought it was my fault this morning for interruptin and give him the point, if it's a couple of minutes. If it's another half hour-

BY MR. HERBERT:

Q Mr. O'Grady, I want to get to the depositions as to the change. I want to get to the depositions that were conducted of you on March 17th, 1977, specifically page 32.

A I have my depositions here.

Q And from lines 2 to 19, I asked you the question: What was the basis of making that change, and I represent to you that that change meant a change in the R.O.M.-P.U.D. option to R.O.M. I'd like you to read your answer there. You give three reasons, to yourself, * and then I'll ask you a question.

A Yes.

Q Isn't it a fact that you never gave this

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C E R T I F I C A T E

It LEO MANKIEWICZ,
a Shorthand Reporter of the State of New Jersey,
do hereby state that the foregoing is a true
and accurate transcript of ray stenographic notes
of the within proceedings, to the best of try ability.

Leo Mankiewicz
rt