

MM - Field v. Franklin

9/10/84

Stenographic Transcript of trial proceedings

P+1.

includes witness Hintz direct + cross  
+ 11 Fields' exhibits

P 88

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET/OCEAN COUNTIES  
Docket Nos. L-6583-84PW; L-26294-84;  
L-7517-84PW? L-14096-84PW; L-22351-84PW;  
L-25303-84PW; L-25303-84PW;  
L-33174-84PW; L-19811-84

JACK W. FIELD CO., J.H. VAN CLEFF )  
STL. JZR ASSOCIATES, FLAHA )  
CONSTRUCTION CO., BRENER ASSOCIATES, )  
WHITESTONE CONSTRUCTION CO., RAKECO )  
DEVELOPERS, INC., LEO MINDEL and )  
WOODBROOK DEVELOPMENT CO., )

STENOGRAPHIC  
TRANSCRIPT  
OF  
TRIAL  
PROCEEDINGS

Plaintiffs,

vs.

TOWNSHIP OF FRANKLIN, TOWNSHIP OF  
FRANKLIN PLANNING BOARD and  
TOWNSHIP OF FRANKLIN SEWERAGE  
AUTHORITY,

Defendants•

Places

Ocean County Courthouse  
Toss River, N.J.

Date\*

September 10, 1984

BEFORES

THE HONORABLE EUGENE D. SSRPENTELLI, J.S.C.

TRANSCRIPT ORDERED BY: ALEXANDER F. MCGIMPSEY, JR., Esq.  
Seiffert, Frisch, McGimpsey 6 Cafferty

Reported bys

DAVID G. VORSTSG, C.S.R.

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1 September 10, 1984

2 I N D E X

3 Witness

4 Name	Page	Direct	Cross	Redirect	Recross
5 Carl E. Bints					
6 MR. FRIZELL		9		133	
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8 MR. HC GIMPSEY					
9 (On voir dire)		20			
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12 MR. AUCIELLO			125		
13 MS. HIRSCH				140	

U S

16 Exhibits

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20 PJW-3	Covered Employment Data	26	70
21 PJW-4	ODEA population Projections	26	70
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24 PJW-7	Site Development Plan	61	139
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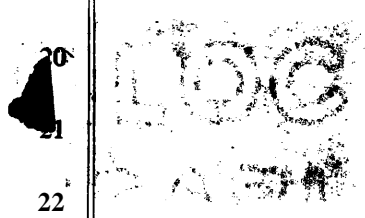
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September XO, 1984

I N D E X (CONTINUED)

Exhibits

<u>PLAINTIFF FIELDS*</u>	<u>ID.</u>	<u>EVI.</u>
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THE COURT: All right, let's go ahead. The first witness is going to be Mr, Hints?

MR. FRIZELL; Mr. Hints.

C A R L E. H I N T Z,

having been duly sworn according to law, was examined and testified as follows:

THE COURT: Yes.

MR. CAFFERTY: I don't know whether the Court wants - I have about a three-minute\* opening statement. I don't know whether the Court wanted opening statements from Counsel.

THE COURT: I wouldn't preclude them\* if you want to, we will do it.

MR. CAFFERTY: I don't know if any of the plaintiffs want to open.

THE COURT: Counsel for the plaintiff, any opening statements?

MR. FRIZELL: We will waive it.

MR. WOLFSONS we will waive it.

THE COURT: Mr. Cafferty.

MR. CAFFERTY: I have about a three-minute one. If I may.

THE COURT: Go ahead.

MR. CAFFERTY: In July of '83 the Township Council created a zoning subcommittee for the

1 purpose of preparing a zoning ordinance to  
2 implement the master plan.

3 The subcommittee met on a weekly basis with  
4 its then planning consultant from September through  
5 December, 1983. Many policy decisions were made  
6 during the period, and the contours of the  
7 ordinance were decided upon. That entire process  
8 was opened to the public pursuant to the Open  
9 Public Meetings Law, commonly known as the Sunshine  
10 Act, so that the public was well informed by  
11 December of 1983 of the broad contours of the  
12 proposed ordinance. >/

13 On January 27th of this year on the eve of  
14 the introduction of this new zoning ordinance the  
15 first of those Mount Laurel lawsuits was filed, and  
16 the hunt was on. Thereafter ten additional  
17 plaintiffs, including a plaintiff who has been  
18 late for purposes of builder's remedy and was added  
19 on as late as September 6th, participated and  
20 became participants in the lawsuit. In any event  
21 inasmuch as the plaintiffs solely controlled the  
22 timing of the filing of their complaints, there  
23 can be little doubt that it was their explicit  
24 intention to abort the process of adopting a new  
25 zoning ordinance or at least maneuver themselves

1           been acquired by the State of New Jersey for the  
2           ultimate construction of six Mile Run Reservoir.

3           Fire<sup>®</sup> planned unit developments have been  
4           approved in the Township since 1970, namely, the  
5           Call, the Bonner and the Field tracts, and the  
6           Bonner and Field tracts are under active  
7           construction with in excess of approximately 2,400  
8           units in each of those respective tracts. Since  
9           1972 Franklin Township has had a mandatory  
10          low/moderate income set aside in its zoning  
11          ordinance.

12                 Numerous multi-family dwelling units have  
13                 been approved and constructed in recent years along  
14                 Route 27.

15                 Franklin Township has had rent control in  
16                 place continuously since the mid 1970s, and  
17                 Franklin Township has had a housing authority  
18                 since, I believe, 1957. During the pendency of  
19                 this lawsuit the Court decided AKG versus Warren  
20                 and applied, in effect, the consensus or Lerraan  
21                 formula to that case.

22                 This case asks the Court to do a most  
23                 difficult thing, to look at its own child with an  
24                 open mind, willing to see the defects of that  
25                 child and willing to correct those defects. We



1 know this is a most difficult task. NO parent  
2 wants to hear that his child is not perfect, even  
3 though in his heart of hearts he may know that to  
4 be the case. So we ask this Court to be receptive  
5 and open to the evidence presented to it. We do  
6 not seek to throw away any type of formula. We  
7 ask this Court to take a step forward and not a  
8 step backward,

9  
10 This case also presents the novel issue of  
11 credits against the muster ultimately determined  
12 to be Franklin Township's fair share *am&m*,  
13 credits which arise from the actions taken by  
14 Franklin Township in the past toward its meeting  
its Mount Laurel obligation, and we ask the Court  
to consider the testimony of the Township with  
regard to the issue of credit\*

15  
16  
17 That basically concludes the opening  
18 statement of the Township, Judge.

19  
20 THE COURT: Thank you, Mr. Cafferty.

21 All right, a couple other natters off the  
22 record and then we will get going\*

23 (Informal discussion outside the record.)

24 THE COURT. All right, ready to proceed?

25 DIRECT EXAMINATION BY MR. FRIZELL:

Q Mr. Hints, do you hold any degrees,

1 educational degrees?

2 A Ye\*, X do.

3 Q What are they?

4 A I have a Bachelor of Art® in Geography, City  
5 Planning, from Rutgers University. Z have a Bachelo  
6 Science in Landscape Architecture from Rutgers IMive  
7 X have a Master's in Orban Planning with a major in  
8 Design from New York University. I have the graduat  
9 in Princeton University Graduate School of Architect  
10 and I've finished all my course requirements for a f  
11 Rutgers University in Environmental Planning.

12 Q Do you hold any licenses or other  
13 certifications in the State of Hew Jersey?  
14

1 A Yes. I'm a licensed professional planner, no  
2 1217, in the State of Hew Jersey. I'm a member of t  
3 American Institute of Certified Planners, one of the  
4 original members of that organisation. Z<sup>9</sup>m a Certif  
5 Planner by that organisation. I'm a member of the  
6 American Planning Association. I'm Chairman of the  
7 **Legislative** Committee of the Hew **Jersey** Chapter of t  
8 **American** Planning Association, and I am a member of  
9 American Landscape Architecture.

10 Q Do you have any particular experience  
11 the field of exclusionary zoning or affordable houai

12 A **Yes.**

1 Q What is It?

2 A Mil, it goes back to, I guess, my work in South  
3 Brunswick Township where X worked on a study that was  
4 funded by a grant from the State of New Jersey, Model  
5 Demonstration Program on Housing. X wrote the first  
6 section of a report on that and supervised the balance of  
7 a consultant's report on that subject. I wrote an  
8 ordinance for South Brunswick Township dealing with  
9 ordinance revisions to implement what was known as the  
10 Open Madison Case. Z wrote ordinances for East Brunswick  
11 Township that were inclusionary ordinances, and I  
12 have been involved in a series of Mount Laurel litigation  
13 work, East Brunswick Township, Old Bridge Township, -

14 THE COURT: They are having trouble hearing  
15 you. If you keep your voice up, maybe pull it  
16 forward just a little bit.

17 h - for Lawrence Township, East Brunswick Township,  
18 Old Bridge Township and have also prepared and been  
19 involved in litigation on behalf of the developers in  
20 Ringwood, in Colts Neck, Holmdel, Wall Township,  
21 Manalapan Township, Cranbury, Monroe. Z can't think of  
22 all the list.

23 Q In very brief broad terms would you just  
24 give -- what has been your work experience in planning for  
25 the past decade?

1 A Primarily as a municipal planning planner in terms  
2 of municipal planning determinations and then consulting  
3 to both private developers and municipalities in planning  
4  
5 site design and landscaping architecture and environmental  
6 planning.

7 MR. FRIZELL: Your Honor, will the Township  
8 consent to putting on a written resume rather than  
9 going through several pages of publications? Do  
10 you want to look at it?

11 MR. MC GIMPSEY: with respect to ~~what~~  
12 publications?

13 MR. FRIZELL: with respect to the whole  
14 resume.

15 THE COURT\* Could he see them?

16 MR. MC GIMPSEY: I would like to see them.

17 TBS COURT: What are the qualifications of  
18 the reports?

19 MR. FRIZELL: I<sup>1</sup> not sure.

20 THE WITNESS: X don't recall then.

21 THE COURT: If you are not sure, !\*« not  
22 sure. I've heard too many of those to remember.

23 MR. MC GIMPSBY: Your Honor, we have no  
24 objection to this going in. we would like to  
25 ask some other questions on voir dire at our turn.

THE COURTS Sure.

1 MR. AUCIELLO: The Planning Board has no  
2 objection,

3 THB COURTt All right, PJW-1.  
4

(The resume was received and marked Plaintiff:  
5 Field's Exhibit PJW-1 in evidence.)  
6

7 THB COURTs Let me just say one of my  
8 idiosyncrasies is to keep on the bench all of the  
9 exhibits that are in evidence. Xf Counsel want  
10 them, just ask me for them. X find in these cases  
particularly they have a way of getting 1691. So

**the plaintiffs' exhibits, if you want to «ee fcfcaaa**

12 at any point in time, are all contained within **one**  
13 folder until it gets too small, defendants' in a  
14 separate file made Joint exhibits. This will be  
15 broken down by each individual plaintiff.  
17

16 THB CLERKs Judge, what is that?

THB COURTi PJW-1 in evidence, resume of  
18 February 15, 1984.

19 BY MR. FRIZELL:

20 Q Mr. Hints, what is your particular background  
21 with **reference** to Franklin Township?

22 A We were retained by Franklin Township in, X  
23 believe it was, 1976 to do a study for the Hamilton  
25 Businessmen's Association. We studied the Hamilton Street  
24

Business District and prepared an analysis, market

1 studies, urban design program for ways in which and  
2 **alternate** designs also so the district could be  
3 improved and enhanced. That was prepared for both the  
4 businessmen and the Township, We were then subsequently  
5 retained or Z was retained in 1978 by Mr. Jack Field's  
6 company to cose in as an independent observer or critic,  
7 criticizer, if you will, of an application made by Mr.  
8 Field for a planned unit development in Franklin Township,  
9

10 My role was to review the submission applications  
11 made by Mr. Field to the Township @m& find any fault or  
12 default or corrections needed by those submissions too,  
13 as if I were in the planning role for the planner in  
14 Franklin Township, X think X was later involved for Mr.  
15 Field in preparing alternative design programs for his  
16 property, in preparing memorandum and reports for  
17 submission to the Township, requesting zone changes or  
18 changes in the Master Plan. X prepared an alternate  
19 Master Plan and in 1980 Master Plan undertakings, which  
20 **were** submitted to the Township. Prior to their adoption  
21 of that f t2 plan I prepared additional reports to the  
22 Township, that is, on behalf of my client, and prepared  
23 and testified for the Planning Board and Township  
24 Committee on planning matters on behalf of Mr. Field.

Q. Has your attention to Franklin Township and  
with particular attention to the Field property been

1 continuous since 1978?

2 **It That's correct.**

3" Q Just for the record, Mr. Hints, what is the  
4 approximate size of Mr. Field's properties in Franklin?

5 A It's 2,000 acres. X think it was 2,300 acres the  
6 last time X checked.

7 O Were there any particular standards or goals  
8 that were expressed to you in terms of your participation  
9 of this process?

10 A Yes. Mr. Field had always and prior to my being  
11 retained had always retained planning firms, Department of  
12 Environmental Consultants to meet an objective in build!  
13 a planned unit community, one that had a number of  
14 planning design criteria, number of goals to preserve the  
15 environment of the site, to be in fitting with the setting  
16 of Franklin Township and the region, to try to reduce  
17 traffic by alternative transportation systems on the site,  
18 a number of design and planning goals.

19 Q What about housing goals?

20 & Housing was always a part of the program of Mr.  
21 Field prior to my being retained, included plans when X  
22 was retained in 1979, also included affordable housing  
23 for the site, and as the plans evolved they always  
24 included a minimum of fifteen to twenty percent for  
25 affordable housing. As the decisions of Mount Laurel and

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so forth came forth they changed to from low cost to low and moderate income housing as defined -

MR. MC GIMPSEY: If the Court please, X don't know. It sounds to me as though we are through with voir dire and nobody's had a chance to ask any questions. Are we still on his qualifications?

THE COURT: Finished with the qualifications, Mr. Frisell?

MR. FRIZELL: Your Honor, X was going to ask Mr. Bints - first of all X haven't asked for any opinions, so he's not qualified yet. X don't have any problem if Mr. McGimpsey wants to start voir dire. X was going to ask him about his familiarity with the Urban League process in particular, but X don't have any problem if Mr. McGimpsey wants to start voir dire at this point.

THE COURT: Let's get to the point where offering him and then we will voir dire. right?

MR. FRIZELL\* Yes.

BY MR. FRIZELL:

0 Mr. Hints, you indicated in your testimony that you participated in the Urban League case, did you not?



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A X don't believe X did, but X did, yes, on behalf of test Brunswick Township.

Q All right. Xn your participation of the Urban League case did you make input to the Master's report that was filed in that case by Carla Lanaan?

A Yes, X did.

Q Would you tell us what the process was in terms of your role as a municipal or the other planners\* and your own role with respect to developers and all the planners that were involved in that ease with Miss Lerman?

THE COURT: Wait. Are we talking

different tilings here? You represented

Township in their settlement. Xs that what you are saying? THE

WITNESSa Ho. Prior to that I participated in the formulation.

THE COURT: X understand that. But which

of those two aspects are we talking about?

MR, PRIZELL: We are talking about filing e Master's report, Your Honor, on the fair e methodology by Miss Lerman.

THE COURT? Talking about the development of the consensus methodology?

MR. FRIZELL: Yes, Your Honor.

MR. MC GXMPBYJ Your Honor, I have to

1 object to this, now, if it's going to include  
2 any opinions. He is not a fact witness at this  
3 point.

4 MR\* FRISELLs x only asked what the process  
5 was, what his participation is.

6 THE COURTS So at this time the point we  
7 are talking about, the so-called consensus efforts?

8 MR. FRIZELLt Yes, Your Honor. Perhaps I  
9 am confused. I thought Miss Lerman's report was  
10 a report on the consensus ssathaoXogy, the  
11 Master report.

12 THE COURT: She also **was** involved in **the**  
13 approval of the Sast Brunswick settlement and  
14 their proposed ordinance, and I thought Mr. Hints  
15 was talking of that.

16 THE WITNESS: Yes, X was.

17 BY MR. FRIZELLi

18 Q On the consensus methodology, Mr. Hints,  
19 ~~what~~ **was**, the process involved?

20 **A** Miss Lerman contacted the various planners ^ho were  
21 ~~representing~~ **representing** various clients involved in the Urban League  
22 case. We met here, with the Judge's permission, to meet  
23 in the courtroom here when court was not being held.  
24 There were somewhere between seventeen to twenty-two  
25 planners who were involved in that. As X recall, there

1 were four days at least, full days of work that we spent  
 2 together on it. not all the planners participated in all  
 3 those days\* X was here though all those days\* In  
 4 addition, there were meetings held away from Toms River at  
 5 other places with individual planners, small group®  
 6 assigned to do a study on specific topics. We discussed  
 7 all the various aspects of the problems with the methodology  
 8 of fair share, with the definition of region in an effort  
 9 to try to bring together a consensus methodology and a  
 10 consensus on how to formulate the numbers, how to **assemble**  
 11 the information for the ease of all the parties as **well** as  
 12 for all of our planners\* ease, and in the task we had  
 13 different opinions. We voted on those and we reached a  
 14 consensus.

15 Q Was a report eventually filed which reflected  
 16 the consensus methodology?

\* 17 A **Yes.**

18 Q Was that methodology eventually reflected  
 19 in the decision by Judge Serpentelli known as the AMS  
 20 < **Associate\*** versus Warren Township?

21 MR. AC\ \* ^ C \* \* MR \* MC GIMPSEYt \* think that calls for  
 22 an opinion. He's not a fact witness here.

23 THE COURT\* X will sustain the objection.

24 MB. FRX2BLL\* voir dire, Your Honor.

25 THE COUOTt All right, volr dire.

1 VOIR DIRE EXAMINATION BY MR. MC GIMPSEY:

2  
3 Q Mr. Hints, I just want to ask you a couple  
4 questions. You indicated the Township's interests  
5 through you were represented through the years. I believe  
6 you said, I'm not sure of this, but was the last answer  
7 that you represented East Brunswick or Franklin Township  
8 or a number -

9 A At the present time I represent seven townships.

10 Q Z see.

11 A Metuchen, our firm represents Metuchen, Old Bridge  
12 Township in their litigation on Mount Laurel, **East**  
13 Brunswick Township as a consultant on general planning  
14 issues, design issues, Lawrence Township on day-to-day  
15 planning matters and landscape architecture and on their  
16 litigation, Mount Laurel Delaware Township, preparing,  
17 advising them on preparing a new Master Plan; Washington  
18 Township on their daily planning **views**, plus future  
19 planning requirements, such as preparing a master plan  
20 for them, and Morris Township in Burlington County in  
21 **their Mount** Laurel litigation.

22 Q B\*\*\* there been any developers that you  
23 represent other than Mr. Field?

A **Yes\*** Numerous developers.

24 Q For example, when did you first represent  
25 the developers?

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A Well, the first Mount Laurel case.

Q Ho. Just when did you first represent the developers?

A In - ever?

Q Yes.

A In my career?

Q Yes.

A It would have to be in 1969.

Q 1969. Have you represented developers since then off and on in the years?

A Yes.

Q Have you been under retainer by Mr\* Field since 1978 to represent him?

A Not retainer, no, but for services billed.

Q I see. As you went along?

A Right. We had no contract.

Q Here you being paid by him during the period that you were in the consensus formula conferences?

A Not to appear in the - I did not. X did not bill him hours for appearing on the consensus methodology, no.

# Were you on his payroll or were you being billed by him - did you bill him during that period of time during that, say within six months?

A I might have billed him, but it wouldn't have been any work involving the consensus methodology, no.

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Q Are you still doing work for Mr. Field at this time? Xs that correct?

A I'm here today on his behalf, yes\*

MR. MC GIMPSEY: x have no further questions\*

THE COURT: Anyone else have any questions?

All right, Mr\* Frizell.

DIRECT EXAMINATION BY MR. FRIZELL: (Continuing)

Q Mr. Hintz, based -

THE COURTS Excuse me» Off the record.

(Informal discussion outside the record\*)

Q Mr. Hints, based on your familiarity with Franklin Township and also on your familiarity with the consensus methodology, did you form an opinion as to whether or not you felt that the consensus methodology was a reasonable one to be applied in the case of Franklin Township?

A Yes, X did.

Q What was the opinion?

A that it's a very reasonable one to apply. The reason for saying so is I've also applied it in other cases. There are some exceptions to the methodology, given unusual circumstances in particular towns, but for the most part it's a very workable, very reasonable methodology. When I'm working for a developer or for a

1 town I've still applied the Biethodology. I did review it  
2 with regard to Franklin Township and felt that it was an  
appropriate one.

4 Q Did you physically or mechanically apply  
5 the formula to Franklin Township as part of your work in  
6 this case?

7 A Yes, X did.

8 Q All right. How, would you tell us, Mr. **Hintz,**  
9 what source material is required in order to apply the  
10 methodology in any given case?

11 A You need the 1980 census data for households\* You  
12 need the 1980 census information for the median household  
13 incomes. You need the growth area, which is from the  
14 1980 revised State Development Guide Plan as prepared by  
15 the New Jersey Department of Community Affairs. You need  
16 the covered equipment data by year for 1972 inclusive of  
17 the end of 1982.

18 Q Excuse me. You said, "1972 through -  
19 1982, 1982 by year to 1982. X don't believe that the  
20 although it wouldn't make such difference. We do a  
figure have been released yet for the first quarter of  
21 regression analysis on regions according to the Warren-AMG  
22 if we had those, we might throw them in.  
23 decision. X believe that -

24 Q What about the ODEA population projection?  
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A Yes. You need the population projections that are put forward by the ODEA, the Office of Demographic and Economic Analysis, which is the Department of Labor. You also have to refer to the Rutgers Study, the Center for Urban Policy Research for their headship counts for formations, families, to use that with population data prepared by the ODEA.

Q Did you bring any photocopies of the particular pages of those materials that you need to refer to?

A Yes, z did. Z brought

O Let me just mark them. Carry on, MR :. PRISBLlt Do you want to put them in an order?

THE COORTs Apparently the witness has an order.

A Z found, when Z picked them up this morning I found just so you would know, seven or the 1980 covered employment data for Somerset County is not in here, but all the other data is. We can get that. Zt includes the census data.

Q Before you go on, Mr. Hints, let me just go over the list, so we can mark them.

THE COURTt All right.

Q Would you one at a time in the order in



flints - direct

25

1 which you described, if you would, just place them in a  
2  
3 **packet and** we will have them marked JW-2 through 6 and we  
4 will come back to that.

A ihall z proceed?

5  
6 Q Just put them in order and z will have them  
7 marked.

8 A Okay.

9 THE COURT: We will go off the record.

10 (Informal discussion outside the record.)

11 MR. FRIZELL: jw-2 is the census data\* **marked**

12 (The census data was received and **affidavit.**  
**hear**

13 Plaintiff Fields<sup>9</sup> Exhibit PJW-2 for\*; ideal

14 MR. MC GLIMPSEYi Your Honor, Z can't  
15 the witness? I can't hear anything that's going  
16 on there\* Z would appreciate if they would talk.

17 THE COURT? He are trying to get them in  
18 order, so we can mark them informally and then  
19 we will complete the record with what they are.

20 ...f Do you have a stapler?

21 **Jf\*f** MR. FRIZELLi We will hold JW-3 for a

22 {^>~fi0  
23 \^|Aent and go to JW-4. Zt will be covered  
24 employment data with the exception of 1980, Your  
25 Honor, which will be placed - we will insert  
them. Apparently Mr. Hints didn't have 1980 in  
the packet for some reason.

1 You will have a chance to look at these.

2 MR. MC GIMPSEY: X know.

3 (The covered employment data was received  
4 and marked Plaintiff Fields' Exhibit PJW-4 for  
5 identification.)

6 THE COURT: Is that four?

7 MR. FRIZELLS: Four is covered employment  
8 data\*

9 Five is the ODEA population projections,  
10 JW-5.

11 (The ODSA population projections **were**  
12 received and marked Plaintiff Fields' Exhibit  
13 PJW-5 for identification.)

14 ~~MR.~~ MC GIMPSEY: **Are** these for identification?

15 ~~MR.~~ FRIZELL: X guess they are for  
16 identification. The only thing I would ask, Mr.  
17 Hints is going to testify at the pretrial. I  
18 understand that all of this stuff can be gone into  
19 in the original documents, but I thought for the  
20 **purpose** of the record and Counsel we ought to have  
21 photocopies of the particular relevant pages to  
22 this case marked in. So subject to the defense  
23 verifying that these are actual photocopies from  
24 the original documents I would offer them in  
25 evidence.

1 THE COURT: Give them a chance to look at  
2 then.

3 MR. MC GIMPSEY: We haven't had a chance to  
4 look at them. We may have no objection.

5 THE COURT: All right. So everybody has it,  
6 PJW-2 is the 1980 census data consisting of two  
7 pages. PJW-3 will be marked as page 133 of the

8  
9 Are you with me, Jim?

10 THE CLERK: Yes, sir.

11 THE COURT: PJW-4 is the covered employment  
12 data, Off the record.  
4:r'

(Informal discussion outside the record.)

14 THE COURTS we have two fours. Okay?

15 MR\* PRIZBLLS That was ay fault, Judge.

16 THE COURTS PJW-5 is the population  
17 projections of the ODEA, and I'm changing this one  
18 to PJW-6, which is the headship rate projections,

19 pages 122 and 123 of what will be nt^xx^A to  
20 hereafter as the CUPR, Center for Urban Policy  
21 Research Study, which at sow point Z suppose we  
22 should mark it since it's a study entitled  
23 "Mount Laurel XX,\* that is, Roman numeral XX,  
24 "Challenging delivery of low cost housing•"

25 (The study was received and marked

1 Plaintiff Fields\* Exhibit PJW-6 for identification.

2 BY MR, FRIZELL:

3 Q Mr. Hint2, in order to apply the methodology  
4 what ia the first thing you have to determine?

5 A You have to determine whether or not the  
6 municipality is in a growth area\* Then you determine what  
7 the region of the municipality is for present need and the  
8 region for prospective need\* With regard to present  
9 region, the region used in the case for Franklin is an  
10 eleven-county region constituting the northern eleven  
11 counties of the State of Hew Jersey. These counties  
12 include some of the more older urban centers as well as  
13 some of the growth areas, larger growth areas of the State  
14 The next step is to determine the amount of indigenous  
15 need that exists in every municipality in that region for  
16 the present need. That's calculated using the census  
17 tape files and going through those files, pulling off  
18 the information dealing with housing, of dilapidated

19  
20 A Before you go too far -  
21 ; ^ right.

22 Q - i n the present need region for Franklin  
23 Township, what is the, under the consensus methodology  
24 what is the present need region for Franklin?

25 A Eleven-county region.

1 Q Can you rattle off those eleven counties,  
2 the same eleven counties, X take it, that are in the AH6  
3 against Warren decision?

4  
5 A That's correct. X can rattle them off if you like.

6 Q How, in the process of the consensus  
7 methodology was there a study done using census information  
of each town in the eleven-county region?

8 A Yes, there was.

9 Q All right. In that study did the studiers  
10 attempt to determine - what exactly were they looking for  
11 in each of those towns?  
12

13 A - They were trying to determine surrogates fair  
14 existing housing needed based upon deteriorating  
15 dilapidated housing.  
16

17 Q What standards or surrogates for dilapidated  
housing does the consensus methodology employ?

18 A It looks at though units lacking plumbing, those  
19 units lacking, having inadequate heating, those units  
20 with overcrowding, and then it takes a look at the census  
21 in different places, the files, the STF-1 and STF-3 file  
22 to remove any duplication of those three surrogates. It  
23 also applies a factor of 82%;

24 Q Before you get to the 82% explain why the  
25 surrogates. First of all, are the surrogates applied  
26 totally - I'm calling it the disjunctive. If anyone of

1 the surrogates are present, is that considered an  
2 indicator of dilapidated units?

3 A Yes.

4 Q All right. Then what is the 82% figure that  
5 you are talking about?

6 A The 82% figure is a figure or percentage used and  
7 found in the study by Tri-State Planning Commission,  
8 people, dwellings, neighborhoods, as X recall, something  
9 to that effect, something titled to that effect indicating  
10 that those persons that are low, of low and moderate  
11 income or 82% of them in the region are living in  
12 substandard housing.

13 Q That is 82% of the substandard units are \* ;  
14 occupied by low and moderate income housing?

15 A Correct\*

16 Q Now, by doing that analysis are you  
17 discovering or revealing the so-called indigenous *iktmd*  
18 for each town in the eleven-county region?

19 A Yes.

20 Q And when that analogy is done - excuse me,  
21 that analysis is done, does the indigenous need for  
22 Franklin Township, using that method, reveal itself?

23 A Yes, it does.

24 Q What did you find that to reveal in the case  
25 of Franklin?

1 A 344 units.

2 Q Now, what is the next thing that's done in  
3 the methodology?

4 A The next thing that is done is to calculate or add  
5 up all the indigenous units for all the indigenous need  
6 for all the various towns in that region. You get a total  
7 number of substandard units\* You then go to the census  
8 information and get the total number of units in the  
9 region. You do a percentage of the two and you get a  
10 percentage equaling in the case of fcte eleven-county  
11 region 6.4%.

12 Q Does that mean that 6.4% of the total **housing**  
13 stock in the region is dilapidated under that standard?

14 A Is substandard and occupied by low and moderate  
15 houses.

16 Q Excuse me. I don't mean to say "dilapidated" \*  
17 because you are using overcrowded as one of your  
18 surrogates\*

19 A Substandard\*

20 Substandard. All right, fine. How that  
21 the regional pool has been developed what does the  
22 methodology do with it or what happens next?

23 A Then look to see on each individual town whether or  
24 not they have above the 6.4% or below the 6.4% as their  
25 indigenous need. So, for example, if a municipality has

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7% indigenous need and the region is 6.4, then there's a surplus there that should be reallocated. Xf the municipality has 5% below the 6.4%, then the municipality has the ability or is below the regional average, the regional percentage for substandard housing and, therefore, has the ability to take theoretically under the Mount Laurel XX decision, take additional housing units or to take portions of the reallocated pool.

0 Is that pooling which is the sum of those towns having greater than 6.4% of its housing stock substandard, is that pool referred to as the surplus regional need?

A Yes.

Q In the study was that pool some mathematically-

A Yes.

Q What was the total?

A The total for the region, the eleven-county region, was 35,014f 35,014.

MR. HOTT: Would you repeat that, please?

THE WITNESS: 35,014. I'm sorry. ••

•• -?#^\*! ••^'vtffc Could you explain for the court briefly, Mr. Bints, what your understanding of the reason why there is a reallocation of their present need?

A Because there was found to be a certain percentage, 6.4%, of the total housing stock of the region to be



1 substandard. Those municipalities which fall above it  
2 don't have the ability to provide for additional housing  
3 to meet that need. Those are typically the older urban  
4 areas or even some of the older suburban areas in that  
5 portion of the State\* On the other hand, those  
6 municipalities that fell below the 6.4% have the ability  
7 to provide for additional housing units to meet that  
8 reallocated or surplus need. The region is one that is  
9 characterized by older urban centers, whether it's New  
10 Brunswick or whether it's Newark or whether it's  
11 Hackensack, and then it's characterized by urban or  
12 urbanizers or suburban or suburbanizers outside those urban  
13 areas. There are strong ties between transportation for  
14 that whole region\* There's strong ties in terms of  
15 employment in that particular region, and those  
16 municipalities that have the ability to provide the  
17 space for additional housing units are, therefore, given  
18 the task of providing the room for those additional or  
19 that reallocated surplus.

20 Q was the methodology developed which would  
21 attempt to allocate that surplus regional need to those  
22 towns that are below the regional average on what was  
23 considered to be a fair basis?

24 A Yes.

25 Q What were the standards used or the

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criteria used to distribute the surplus regional need?

A That's referred to in the consensus methodology as the present need methodology or the present need calculations for that reallocated surplus. The pieces that go into that, or the indicators in the formula are the 1982 jobs as found, as reported by the Hew Jersey Department of Labor. It includes the median income of the towns, of course all the towns, the particular town you are looking at it includes the growth area as defined under the State Development Guide Plan in acres found for the counties and again found for the particular town.

Q Could you explain - well, X understand it covered jobs. You are going to take the Franklin Township covered jobs as a percentage of the covered jobs in the region?

~~employment?~~  
A correct, correct.

Q What does that reflect, just the existing  
A That reflects the existing employment. It's a percentage of employment of the region.

Q why is that fairer to allocate on the basis of high or low employment?

A Because those municipalities that have employment and, particularly, those that have higher employment are the ones that have been attracting jobs. The way the

1 methodology works is that those, therefore, or those  
2  
3 municipalities, if they haven't been providing for the  
4 housing, those municipalities are on the other hand  
5 providing for the jobs, and they should have some  
6 obligation to take that initial need that's been distributed  
7 from the surplus.

8 Q On the growth area criteria, was that, in  
9 your involvement of it, was that a first choice criterion  
10 by the planners?

11 A My own particular opinion? Ho. The vacant ~~extent~~  
12 developer land would have been the item employed, vacant v  
13 developer land in the growth area and even to *mamm*  
14 those areas of limited growth areas. But the data that's  
15 available was found too old to be used, and we then went  
16  
17 to the growth area as defined or as mapped by the State  
18 Development Guide Plan, the 1980 version. I did a lot  
19 of personal checking myself with not only the State, but  
20 also with a number of county planning boards in an effort  
21  
22 to try to uncover more current vacant developer land data,  
23  
24 f livable to do so for all the municipalities in any  
25 .given region unless I had a very small isolated region of  
only two or three counties and they happened to fall in  
the right place, would X be able to make that  
calculation. So on a state-wide basis the data is not  
just available that's current, so the growth area data

1 is current and is available,

2 Q All right. What is the fairness, if you  
3 will, of using median income information?

4  
5 A Median income information was one of the concerns  
6 that X had expressed from the very beginning when we were  
7 involved in the consensus methodology. There was a hint  
8 by some planners that we didn't need a factor or income  
9 factor or ability to pay factor. It was my opinion and  
10 the opinion shared by several others as was the consensus  
11 agreement that there should be some kind of a factor that  
12 looks at that. Z tried all different ways of approaching  
13 that particular piece of formula, and after several  
14 meetings with other planners Z felt that the most  
15 appropriate method was the median income factor.

16  
17 What that judges is typically a town that has been  
18 in the past exclusionary, it's not allowed for garden  
19 apartments, for example, over a long period of time or  
20 has not provided for lower cost housing, affordable  
21 housing typically has a higher median income than its  
22 ~~neighbor town or neighboring town somewhere else, that may~~  
23 ~~not only have inclusion, but also ability to pay, that may~~  
24 ~~have that done. So it becomes an indicator of a town's~~  
25 ~~because typically those communities are the ones with~~  
higher median income. There are towns that have better  
services. They typically have a better bond rating,

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et cetera.

Q How, if you will, Mr. Hints, I would just like to run through the numbers. What did you find in your investigation was the 1982 fourth quarter covered employment in Franklin Township?

A We found the municipal employment for 1982 for Franklin to be 11,653 covered employment jobs.

Q What was the regional employment for the same period of time?

A The number was 665,894; 665,394.

Q Are you looking -

THE COURT: Sorry\* 665,

Q Present need region?

A I'm sorry. I don't -

Q Do you want to take out your report?

THE COURT\* Mr. Frisell.

MB. FRIZELL: I have page eleven of Mr.

Hints' report.

A Yes, The job is the same, but the region is 1,244,821\* That's page eleven on the report.

Q What is the relationship in terms of percentage?

A It's .93.

Q What did you calculate the municipal growth area in acres to be, using the SDGP method?

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A 14,451.

Q What did you calculate the regional growth area to be or what the consensus methodology used as the total growth area of the region?

A I believe they are using 699,163. I may be wrong\* I'd have to check\* I don't have the consensus methodology with me.

THE COURT in any event that's your calculation?

TBS WITNESSS That's my calculation. Yes.

Q What is the relationship in terms of percentage?

A It's 2.07%,

Q All right. What is the median income of Franklin Township, using the 1980 census?

A Let me check. I didn't include it in my report.

Q Page four.

A That was the median income for the PMSA. X believe the number was 25,612, 25,912.

Q What is the regional, what was the regional median income?

A The median, the eleven-county median household Income was 24,170.

Q What's the relationship between those two figures?

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A. It<sup>1\*</sup> a factor of 1.07%.

Q. All right. Now, would you explain for the record how the median income factor is used in applying the consensus methodology?

h The median, how the median income factor is used?

Q Yes.

A You first get your percentage for the jobs and the percentage for the growth area, add the two, divide by two, and then you multiply the median income factor times that\*

Q Average?

A That average, you get a percentage. That percentage is then added to the previous two percentages, the percentage for jobs and the percentage for growth area, The three are then divided and you get an average number, an average percentage, rather, and you take that average percent and multiply times the reallocated present need,

Q What is the average of the covered jobs factors of average of the growth area factor of 2.07?

Q Multiplying that by 1.07, the median income factor, what is the result?

A It's 1.60, 1,6055.

Q Adding that factor in with the first two factors, what is the ultimate result as the allocation

1 percent the final allocation percent?

2 A It's 1.54%, rounding off.

3 Q Multiplying; that times the regional pool  
4 that you described, area, what is Franklin Township's  
5 fair share of the regional allocated surplus need?

6 A It's 539 units.

7 Q What is done in terms of the prospective  
8 need? What is the first thing that you do?

9 A I didn't finish the ---

10 Q X thought you were finished. I'm sorry,

11 A We also factored times a reallocation or vacant  
12 developable land factor of 1.2.

13 **TOB COURT: Okay.**

14 O wait a minute.

15 THE COURTj First you stage it?

16 A First you stage it, divide by three, three 6-year  
17 periods.

18 Q You stage it equally in three 6-year periods^

19 the consensus methodology was the attempt to stage  
20 it, yes, in three steps.

21 right. If you stage 539 into three  
22 equal staging periods, what is the first six-year stage  
23 allocation?

24 A It's 150 units.

25 Q Okay. And is there anything else done with



1 that 180 units after that?

2 A Then it's multiplied time® 1.2, or factored for  
3 additional vacant land, vacant developable land and  
4 reallocated excess factor to yield 216 units\*

5 0 Would you explain what that 1.4 factor  
6 represents?

7 K Yes\* Certain municipalities have or do not have  
8 the vacant developable land and will have a problem raeetin\*  
9 not only the present need allocation, but the prospective.  
10 But on the other hand, other municipalities have surplus  
11 of vacant developable land, and it\*s meant to pick up the  
12 surplus from those towns that will just not be able to  
13 meet that particular need. It's to reallocate those units  
14  
15 somewhere, so the overall need is still being met and  
satisfied on an equal basis, that is\*

16 Q In your experience was there any reason not  
17 to believe, not to think that Franklin Township was able  
18 to accommodate its, not only its fair share of the  
19 surplus needs, but also some part of the excess?

20 A Certainly not in my opinion, no\* It<sup>1</sup>a more than  
22 excess vacant land there and developable, highly  
developable.

23 Q is there any allowance for vacancies in the  
25 formula?

A Yes, there is.

1 Q What ia it?

2 A It's a 3% vacant allowance. It's based upon

3  
4 essentially an averaging of the experience that you need  
5 about i 1,5) vacancy for sales, housing and about five  
6 percent vacancy factor for rental housing in order to  
7 provide for enough flexibility and movement in the housing  
8 markets so it's an average of the 3%.

9 Q Permit me, Mr. Bints, to just go through  
10 the numbers again. Using the allocation criteria, we had  
11 539 as Franklin's municipal share of the allocation pool.

12 A Correct.

13 Q And then in the first phase of that, the  
14 first six years their fair share would be 180 units, is  
15 that correct?  
16

17 A Correct.

18 Q Allowing for 20% for the vacancy land factor  
19 raises that to 216?

20 A Correct.

21 Q And then applying it, the 3% factor for  
22 vacancy/ raises that to 222?

23 A • Correct.

24 Q Zs that then added to indigenous need to get  
25 the total?

A that has been added to the indigenous need or  
indigenous need according to ay report was 349. I beli'

1 that\*s a typo and should have been 344. That\*a consistent  
2 **with** the Urban League methodology and their report\* It's  
3 also, by the way, reported in the AMG decision as being  
4 **344.**

5 Q What is the number of the two, the total  
6 fair share?

7 A The sum of those is 222 plus 344, which is 566 units.

8 Q What is the first thing done in terms of a  
9 prospective  $nm^L$  allocation under the consensus formula?

10  
11 A The first thing that's done is to determine the  
12 region, the commutershed region as opposed to **tan present**  
**need**

13 methodology\* The prospective need is based upon a  
14 region, that is, where the region, where the canwatershed  
15 patterns are going, given free opportunity, assuming that  
16 Mount Laurel is being met for housing opportunity and in  
17 relationship to jobs\*

18 Q Now, in order to determine the commutershed  
19 under the formula, do you have to find the beginning  
20 point?

21 A **Yes**, you do.

22 In Franklin Township what beginning point  
23 do you use?

24 A The municipal complex,

25 Q Would you explain why you used the municipal  
complex as opposed to some other point?

1 A I have been involved with Franklin Township even  
2 prior to my work with Mr. Field for the township itself,  
3 doing a study on their business district. In order to do  
4 that we analysed the market district, we also analysed  
5 the township residential population, where it was located,  
6 and we do know the township intimately and subsequently  
7 have been involved in it also. There is no one central  
8 point in the municipality, there is no downtown that the  
9 town has. There is no central place, if you will, except  
10 for the municipal complex.

11 Q Is that reflected in the municipal master  
12 plan?

13 A Since 1968, yes. The 1968 plan, as X said, all  
14 the way through to the most recent one in 1982. They have  
15 designated the municipal complex as being the town center  
16 and designated housing plans and development plans all  
17 occur around that. That is the focal point for the future  
18 of the township, the future starting in 1968 and onward.

19 Q What standards of committing patterns did  
20 you use in terms of distance or speed?

21 h Will, we in the methodology derived under the  
22 consensus formula for urban league, we considered various  
23 ways to designate the watershed region, we felt that  
24 given the studies made by Rutgers University, the CUPR  
25 study as well as the other studies that we are all

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familiar with as planners, felt that a 30-minute commuter time was the commuting time that should be used as opposed to a 45-minute or an hour or any other particular number.

We then had to calculate what a commuter shed might be for any given municipality,

Now, we could all spend a lot of time in cars if we had to drive all the distances necessary to make those calculations, so it was agreed to that we would use for purposes of calculation on local roads and county roads, municipal roads, county roads, no matter what their condition, no matter what the traffic lights they had, whatever, that the original speed to be used would be thirty miles per hour\* So if you are on a county or municipal road and you are trying to find out where that leads to and how far you get, you would multiply it times or you would divide it by thirty the mileage, and multiply it by sixty miles per hour to get the total number of minutes.

per hour\* You get your mileage\* how you get ten miles, divide by thirty. You then multiply times thirty miles an hour to get how many minutes you travel in one hour. We are trying to get the thirty-minute numbers\* I'm just giving you an aside on the calculation.

1 For State roads, all State highways we used a  
2  
3 **calculation**, 40 miles per hour, and for interstate roads,  
4 which is the New Jersey Turnpike and Garden State  
5 **Parkway**, Atlantic City Expressway, we used a number of  
6 fifty miles per hour, then tried different travel times  
7 from your central starting point under those roads to  
8 determine how far that 30-minute travel time will take you  
9 on different roads and then find out whether or not you  
10 penetrated a county, penetrated another county. You would  
11 use the county data for the entire county. The **reason for**  
12 that is very simple. It would be an impossible **task to**  
13 get any municipal data if you only went into one town- and  
14 one county. It just would be very inconvenient in **terms**  
15 of the numbers, and the numbers would not be available in  
16 terms of all the census information. On the other hand,  
17 they are available at the County level.

17 Q Does the decision to use the local County  
18 once you have penetrated the County, is that a standard  
19 **went right to the line?**  
20 of how far you have to penetrate the County? What if it  
21 **went** ^;Xf it went right to the Une, I would say that it

22 does not really penetrate the County

23 **THE**  
24 -~ COURT: I used "touch," and he used  
"penetrating.\*" It's an interesting choice of  
words.

1 A We also normally take it within a quarter of a mile  
2 to a half a mile into the County to see if you can really  
3 get into it, you know. It's a matter of judgment, but  
4 where there are close calls we would try another route  
5 to determine if there was another way to get to that same  
6 County.

7 Q In other words, if you had several points  
8 of access within the thirty-minute commute, that might  
9 make a difference as opposed to the single point?

10 A Yes. Also if the single point were only getting  
11 into that point by a hair, say, you know, a quarter mile  
12 or less, then it wasn't, it really shouldn't be  
13 considered. If, on the other hand, you made it to that  
14 county in several different points, all getting in a  
15 quarter mile or half mile, then you might include that  
16 county. If it was only one point in, that wouldn't make  
17 a difference.

18 Q Using that methodology, did you determine  
19 the prospective need region for Franklin Township?

20 A **Yes.** I determined it to be a six-county region.

21 Q What were the six counties?

22 A Monmouth County, Middlesex, Mercer, Somerset,  
23 Hunterdon and Union\*

24 Q Having determined the region, what is the  
25 next thing that's done? Having determined the prospective

1 share region, having determined it, what is the next thing  
2 you do?

3 A Oh, you can go to either one of two steps\* You  
4 can either calculate what the prospective need is, which  
5 would involve going to the population projections or you  
6 can go ahead and do the methodology for the prospective  
7 need.

8 Q Let's deal in the same order that we did it  
9 with the present need and let me ask you, do you attempt  
10 to determine what the prospective need is for the entire  
11 region?

12 A Yes.

13 Q What data is used to determine that?

14 A You use the Office of Demographics and Economic  
15 Analysis, ODEA population projections\* There are two  
16 different models that they released in their report.

17 There's a model one and there's a model two.  
18 by municipality?

19 A They are by county.  
20 How are those reports, ODEA, by county or  
21 are by county.

22 Q That's one of the reasons it's necessary to  
23 include the demographics in the entire county and  
24 region?

25 A Yes.

Q All right. What did you do with the two



1 models the ODEA released?

2 A we averaged them.

3 Q What did you average for the two models?

4 A Well, there were discussions during the Urban teagu<sup>^i</sup>  
5 consensus meetings that one model - there were argument  
6 on both sides one model was better than another model\*  
7 It was felt one model showed past trends for the State of  
8 New Jersey. Another model showed the difference in terms  
9 of economic development in tents of the State. Zt was  
10 felt that neither one of them was exactly the best, and  
11 anything could change over time and that it was better to  
12 use the averaging of the two models. They are broken down  
13 by age cohort, and so we averaged the two of them by age  
14 cohort\*

15 THE COURT: Are they rated by county?

16 THE WITNESS: Are they rated by county?

17 THE COURTt Yes, to reflect the population  
18 increases?

19 TBS WITNESS: I can't recall whether they  
20 are or not. I didn't run through all the -  
21 calculations for them, Your Honor, in that  
22 respect. What we did in the consensus methodology,  
23 various planners were assigned to do various  
24 tasks to assemble the data once we had agreed  
25 on the methodology of assembling it and I did not

1 go - that was not my particular goal.

2 Q What did you find to be the prospective need  
3 for the six-county region?

4 A We found the number -

5 Q Page eighteen\*

6 AX have some calculations if I can go to those. X  
7 recalculated the prospective need based on the AMG  
8 decision because of the -

9 Q Well, do whatever you want. I'm asking you  
10 if you know, if you can tell me what the prospective **need**  
11 for the coiamutershed region is\* You can read out of the  
12 report\*

13 A It was 61,096.

14 THE COURT I Did you indicate you want to  
15 recalculate that?

16 THE WITNESS: No, no\*

17 TS2 COURT: All right\*

18 A X stand by that\* X don't know if that's what X  
19 **used** or not, but X have a worksheet that X have since  
20 updated **and** x prefer to use that. It may be different  
21 **than what** is in the report.

22 Q All right. Is that the pool then that is  
23 going to be distributed among the towns in the  
24 commutershed region?

25 A It's the prospective pool, yes\*

1 Q All right\* What criteria are used to  
2 distribute that pool within the region?

3 A The same criteria that I used with respect to the  
4 *pr^mm\** need formula with the exception of an additional  
5 factor to consider job growth by comparing the job growth  
6 in the municipality and job growth in the region. That  
7 is the one difference that Z had in my original  
8 calculations prior to the AMG decision where I had just  
9 taken a total number in 1933 ~ I'm sorry, 1982 and Z  
10 only had the third quarter at the time and then took **the**  
11 **•72** covered jobs without doing the regression **analysis** to  
12 then look at the change-over<sup>9</sup> time\* In doing that under  
13 the AMG decision I came out with a slightly lower number  
14 for the prospective need\*

15 What the regression analysis does, it tends to  
16 soften that particular aspect of the formula. For  
17 example, if the town had a tremendous job growth between  
18 that decade or in those eleven years and you were only  
19 going to take the first number and the last number, you  
20 **i&ghV\$sva** very high percentage and then compare it with  
21 the region\* You might get a very high percentage. Xf you  
22 were able to see that the town steadily over time through  
23 the use of year-by-year data, it would tend to, using  
24 the regression analysis, it would soften the extent to  
25 which the town had grown by its jobs in relationship to

1 the region. We did do the regression analysis just the  
2 other day to compare it with what we had done.

3 0 And it resulted in a slightly lower number?

4 A Resulted in a slightly lower number for the  
5 Township.

6 0 All right. Would you tell me, you put in  
7 the record the number of covered jobs in 1982 in Franklin  
8 Township as 11,653. What is the number of covered jobs  
within the six-county region?

10 A Number of county jobs within the six-county region  
11 is 665,894.

12 Q 665,894.

13 A Yes.

14  
15 0 All right. What is the relationship in  
terms of percentage?

16 A 1.75%.

17  
18 0 That number does not exactly coincide with  
19 your page eighteen of your report, does it?

20 ~~calculated~~ now the regional employment numbers were

21 and put in the Carla Lerman report. Our  
22 number we had done originally did not. There were,  
must have been some data entry errors into our computer,

23 so we used the Carla Lerman numbers to calculate the  
24 total, municipal total county employment.

25 TEE COURTS The municipal jobs are 11,653?

1

THE WITNESS: The municipal jobs for

2

Franklin Township are 11,653.

4

5

THE COURT: How does that percentage have that all - I don't think it will.

6

7

8

9  
10

THE WITNESS\* It does. We had, as you can see, we used page eighteen of our report, found the number of corporations jobs to be slightly higher, but it would still come out to .175%.

11

Q You told us what you calculated the municipal growth area to be as, 14,451.

13

Q What is the combined growth area?

14

15

16

17

18

19

A Again we went to the Lerman report to recheck our numbers and found the combined number to be 579,795 acres in the growth area for the combined. In our report we indicated it was a slightly higher number at 615,407. It changes the percentage from our report from 49%, slightly increases it. I stand by our

... y i^re^rijant number.

20

21

22

23

24

25

20 J, -4 w.t. \*\*\*. m^ mXhim081Mt sorry? I didn't hear you.

THE WITNESS Stand by our current number

for percentages, because we did recheck everything

against the Lerman data.  
Q All right. Using the regression analysis.

1 what was Franklin Township's percentage of the growth in  
2 municipal job growth between 1972 and 1982?

3 A 3.984%.

4  
5 Q So that's a full percent higher, using the  
6 averaging method?

7 A That's correct.

THE COURT: I get 3. -

8 THE WITNESS: 3.984% What we indicated  
9 in our report that it was 4.66%, so it's dropped  
10 by going to the regression analysis,

11 BY THE COURTS

12 Q Okay. You have your figures have you  
13 arrived at that?

14 A Ten or twelve years' figures?  
15

16 Q Ho, no. Using the regression --

17 A Okay. The regression -  
18 0 You started with what and ended where?

19 A We took the average annual municipal employment,  
20 which averaged out at 732 jobs, and we took the average  
21 employment growth in the region, which averaged out at  
22 18,374 jobs. That's, you know, that's without going  
23 through all the calculations but the regression.

24 Q Regional was what?

A 18,374.

Q But then you did a regression in that context?

1 A That is the average regression.

2  
3 Q That's the average regression.

4 A Right, That represents the regression number.

5 Q All right.

6 A I have stepped through it year by year. So if we  
7 take 732 and you divide it by 18,374, you arrive at 3.98%,  
8 3.984%\* Whereas, if we, prior to the AM6 decision if  
9 we've done it, actually, a quicker way of doing it, but,  
10 as you see, it revealed, yields a higher percentage. In  
11 this case it<sup>1</sup>a more harmful to the Township. The number  
we were comparing then used 4.68%.

12 BY MR. FRXSBSA

13 Q All right. What is the median income,  
14 household income in the region?

15 A Okay. The median for this particular region was  
16 \$23,828.

17 Q What is the relationship between Franklin's  
18 median income and the regional need Income?

19 A It comes out to a ratio of 1.087.

20 . -Q.V' Now, do you do the same thing except Ao  
21 you add in the extra factors in terms of the use of the  
22 median income factor, that is, you multiply the median  
23 income factor of 1.087 times the average of the three  
24 factors?

25 A correct.

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Q And you arrive at a fourth factor?

A Correct.

Q Then you average those four factors?

A Then you take a fourth percentage. That's now a percentage\*

Q Yes.

A And you average it with the other three percentages, growth, changing jobs, growth and growth area, divide by four. You get an average percentage.

Q What is Franklin Township's percentage, using all your recalculated figures?

A Using our recalculated figures, it comes put to 2.801%. Previously we had calculated at 2.97%, but our percent has dropped.

Q Right. How, applying that 2.08% to the regional pool of 61,000 -

MR. HUTTI Excuse SMI. YOU said, "2.08"?

THE WITNESS\* 2.801.

Q 2.801.

A ton multiply that times the 61,096 units, prospective need pool, and you get 1,711 units.

Q Is there a similar adjustment made for both vacant land and vacancies?

A The same as the present need formula? Yes. You multiply, assuming there is no insufficient vacant



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available developable land, in this case there is, times  
**that**, multiplying a factor 1.02. That yields 2,053 units,  
2,053\* You then multiply for the vacancy allowance factor  
1.03, and that yields a total of 2,115 units as being the  
prospective need allocation.

Q That number is still lower than the number  
you have previously reported?

A Yes.

Q Is that then added to the present need figure  
of 566 that you testified to earlier? **units**

A That's added to the 566, and that yields 2,681  
as the Township's total fair share.

THE COURT: A logical breaking point?

MR\* FRIZELLI **Yes.**

THE COURT: That **was** 2,681?

THE WITNESS: 2,681.

THE COURT: All right, off the record.

(Informal discussion outside the record.)

(Whereupon, the court adjourned for lunch.)

" " \*

A F T E R N O O N      S E S S I O N

TBB COURT: All right, Mr. Frizell.

MR. FRIZELL: Thank you, Your Honor\* I'm not sure if I know exactly all the positions of the plaintiffs regarding the stipulation. It will just make a difference on how we proceed with the proofs at this point. My own clients, I think, are willing to stipulate it. I'm not sure of everyone's.

THE COURT: All right. Let's get this straightened out before we proceed.

Anyone have any problems with accepting the proposed stipulation?

Mr. Cafferty.

MR. CAFFERTY: All right.

THE COURT: Miss Hirsch.

MS\* HIRSCH: All right, Your Honor. Just for clarification, I think my client and several other plaintiffs want to put in a case on what we are calling the July 12th ordinance without changing our position that under the time of decision rule that is not the appropriate ordinance for trial. So long as we are able to put in a case on the July 12th ordinance, I guess we don't have a problem with the stipulation.

1 THE COURT: All right.

2 MR. CAFFERTY: X find myself in a most  
3 peculiar position in response to that, Judge.  
4

5 THE COURT: Well, X don't think she means,  
6 now, —

7 MR. CAFFERTY: I'm going to say X don't  
8 have any reports or anything.

9 THE COURT: It would be my intention in the  
10 event you don't choose to rely upon the July 12th  
11 hearing that we also have a hearing with ~~respect~~ **compliance**  
12 ordinance that when you come back on the ~~compliance~~  
13 to the validity of the July 12th ordinance, so  
14 that in the event of an appeal and the court  
15 were to find that the July 12th ordinance should  
16 have been that which was tried today, we would not  
17 have to have a remand. X could make my finding  
18 with regard to that ordinance. We will do then  
19 both at the same time.

20 # «\*• CAFFERTY: Would we exchange reports  
21 on that issue, Judge?

22 *m\*\*\** THE COURT: Yes. And let sae be dear.

23 There's been some reference to the fact X made  
24 some decision with respect to the time of the  
25 decision rule. My ruling in ray view is not  
based upon the time of the decision rule. It's

1 based upon the circumstances of this case and  
2 what transpired at the pretrial and immediately  
3 prior thereto and my feeling under the  
4 circumstances the municipality would have to  
5 proceed under the ordinance in effect on July 11th.  
6 X have not made a decision in this case or any  
7 other case as to the applicability of the time  
8 of the decision rule in Mount Laurel cases\* All  
9 right.

10 MR. FRIZELL: Your Honor, again that  
11 stipulation by all the plaintiffs, obviously we  
12 don't have to get into the details of that  
13 ordinance. However, I think for the benefit of  
14 the record we will at this time go forward with  
15 just an outline history of the zoning in Franklin  
16 for some past period of time, if we can.

17 Let me offer these, Your Honor. Some of  
18 these have marks on them. I'll identify them as  
19 I go.

20 MR. CAFFERTY: I'm sorry? X just want to  
21 make sure X understand. Has everybody now  
22 stipulated to the position of the Township?

23 THE COURT: X understand everyone has  
24 accepted the stipulation of the two conditions  
25 to be imposed.

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THE COURT: PJW-8?

THE WITNESS: PJW-8 is - there's no title.  
Well, it's entitled, the cover is "The Franklin  
Master Plan," and the date of it is August 2, 1972\*

THE COURT: PJW-9.

TBS WITNESS! PJW-9 is the Township of  
Franklin Ordinance, no, - it's dated December 23,  
1976, and I believe it has an effective date of -  
this is the 12/23/76. It's on the last page.

MR. FRIZELLI This is a package of the  
ordinance.

THE COURT: PJW-10.

TBS WITNESS: It's a package of various  
ordinances from the Township of Franklin from 1976  
to 1984. They are all bound in one clip.

THE COURT: And PJW-11,

THE WITNESS: PJW-11 is the master plan,  
the February, 1980, plan.  
Franklin Township. It's the 1980 plan. Yes.

TBS COURT: PJW-12.

TBS WITNESS: Is the comprehensive plan,  
Township of Franklin, dated, it's the 1982 plan.

Well, there's a cover, certification from the  
Secretary of the Planning Board certifying that  
the Planning Board adopted this plan on November 3-4,

1 1982.

2  
3 THE COURT! Xt was a long meeting.

4 MR. FRIZELL: Your Honor, the next two  
5 exhibits that I've marked are Court decisions.  
6 They are noticeable - I don't know if they are  
7 appropriate to put in evidence. One is - well,  
8 Mr. Hints can identify them.

9 THE COURT: All right.

10  
11 THE WITNESS! PJW-13 is Superior Court,  
12 Appellate Division, decision of the plaintiffs,  
13 Leo E. Hindel and Ruth Mindel, et al. versus the  
14 Township of Franklin. It's argued, it's a dated -

15 THE COURT: There is a decided date there  
16 some place.

17 THE WITNESS: It says, "Argued September 23,  
18 1975 - decided."

19 THE COURT: Isn't there a date stamped in?  
20 "October 16, '75." Is that it?

21 THE WITNESS: Yes, that's correct,  
22 October 16th. Yes. Next to the "Decided" it says,

As.

23 < "October 16, 1975." It's stamped.

24 And PJW-14 is a Superior Court decision,  
25 Judge Thomas Leahy.

THE COURT: Looks like a letter opinion.

THE WITNESS: It's a letter opinion dated

1 July 6th, 1981, and it's certified by the clerk to  
 2 **Judge** Leahy as of that same date\*

3 THE COURT July 6th# f81?

4 THE WITNESS: **Yes.**

5 THE COURT: Thank you.

6 **MR, SILVER:** Tell me who the parties are in  
 7 that.

8 **Yjg WITNESS:** Excuse me?

9 THE COURT: Is there a title of the case on  
 10 it?

11 THE WITNESS: Yes. I'm sorry. It's re  
 12 Jack K. Field versus the Township of Franklin•

13 **MR. FRIZBLL:** I was remarking earlier in  
 14 the old Mindel case in '73 Mr. Silver represented  
 15 all the parties that are still here. Mr. Silver  
 16 represented the town. Mr. Mezey represented Dr,  
 17 Mindel. Now, Mr. Butt represents Mr. Mindel, Dr.  
 18 Mindel.

19 <sup>ma9</sup>~~FLA~~m **BUTTi** My teeth were worse..

20 <sup>1?M</sup> **cOTUff,** what's that?

21 **MR. HOTTs** My teeth were worse.

22 THE COURT: Every once in awhile these  
 23 Mount Laurel cases remind you of Bleak House. How  
 24 many of you read "Bleak Town" where everybody's  
 25 dead and they forgot what they were arguing about.

1 Z trust that will not happen to any of those  
2 present.

3 BY MR\* FRIZELL:

4  
5 O Mr. Hints, did you take the opportunity in  
6 the course of your work in Franklin Township to review  
the master plans of 1968 and 1972?

7 A Yea, Z did\*

8  
9 Q Would you just generally for the court as  
background describe what that revealed?

10  
11 MR. MC GIMPSEY: I don't understand a  
12 number of things about this. One, X don't under-  
stand the relevance or materiality of this to the  
13 issue at hand in the case, the Batter we are trying  
14 right now. Z understand the only issue open is to  
15 the allocation formula.

16  
17 MR\* FRIZELL: Your Honor, the case

18  
19 1. MC GIMPSEY: That's it.  
20 description of its efforts since 1972. I think  
21 we've had numerous discussions in this litigation  
about which ordinance applies, et cetera, and the  
22 indications were that we ought to just take a  
23 broad look at the history of the ordinances over  
24 a long period of time. Z think it's relevant to  
25 all the issues that we are going to decide in



1 this ease. It's not relevant strictly to the  
2 fair share number, but it is certainly relevant  
3 to the issues we were prepared to try concerning  
4 compliance, et cetera« They stipulated noncompliance  
5 of this ordinance, but we are prepared to go  
6 forward, present a background on all these  
7 ordinances to the court, so that we can, when and  
8 if we have to come back on July 12th on any other  
9 ordinance we can just sort of plug it in\*

10 MR\* MC GLIMPSEYS if tt&e court please, let  
11 it be plugged in or brought in at the time when  
12 it becomes relevant and loaterial. Zt seems to mm  
13 that it's doing nothing, but cluttering this  
14 record, if it is irrelevant and immaterial and  
15 the rules call for it not to be in. Z still  
16 don't see any reason, any sound reasoning  
17 whatsoever in bringing in material that sight be  
18 appropriate at a later date, that\*s not for this  
19 trial\* It\*s just plain -

20 MR. FRIZELLj Judge, again shall we strike  
21 the opening, so there is no misunderstanding from  
22 the Township\*s part as to what the issues are in  
23 this case, including the history of their  
24 ordinances, if it wasn't appropriate? They  
25 didn't have to open on it# but that's really not

1 the point\* The point is that I think that again  
 2 the broad scope of exclusionary action on the  
 3 part of the municipality for the past twenty years  
 4 is a relevant issue in these cases\*

5 THE COURT\* Relevant to what? I mean the  
 6 ordinance has now been determined to be noncompliant,  
 7\* at least the ordinance we are trying the case on,  
 8 and the only thing left is fair share\* Bow is it  
 9 relevant to that? I mean Z conceded the  
 10 subsequent day may have some relevance and then  
 11 Z'm not so sure it would\*

12 MR\* FRIZBLL: I will tell you the truth,  
 13 Judge. I have seen so many of these cases go up  
 14 and town and the forest is lost for the trees\*

15 THE COURTt That's the problem, you see\*  
 16 We lose this or we have this testimony, now. We  
 17 may lose it at a time when it is particularly  
 18 relevant\*

19 ' ^ . : \ ' - ^ S S \*\*• FRZSELLs Fine\* Zf you don't, if  
 20 Mrf He Gimpsey is saying that he'd rather hear  
 21 "v"  
 22 r this evidence at the time of subsequent  
 23 compliance and/or builder's remedy, Z just think  
 24 that the opportunity is here, now, to present it.  
 25\* Z don't have a problem with permitting, reserving  
 and permitting cross on the fair share

1 methodology today, and we'll just come back with  
2 this at a later time. This was the way Z was  
3 prepared today as of ten o'clock this morning  
4 to proceed with my case.

5 THE COURT: I understand.

6  
7 MR. MC GIMPSEY: if the Court please, I  
8 don't know if Mr. Frizell is arguing to the Court  
9 that the Lanaan formula should not be stricken,  
10 upheld, and he's adding this new factor or  
11 anything along that line and that's a different;  
12 story. X didn't know about that.

13 THE COURT: X didn't understand this to  
14 go to fair share in this respect.

15 MR. MC GIMPSEY: hm long as it's not in  
16 this respect X hold fast in say objection.

17 THE COURT: Mr. Auciello.

18 MR. AUCIELLO: Your Honor, X join in the  
19 objection of Mr. McGirapsey for the same reasons.

20 THE COURT: All right. X think we should  
21 told this off. Xt aay be relevant. I'm not even  
22 r sure it would be relevant at a subsequent stage.  
23 What we are talking about here, good faith, proving  
24 a fact that the town hasn't moved along in its  
25 Mount Laurel obligation and, if so, what relevance  
does that have. So I'll sustain the objection.

1 MR. FRIZELLS Judge, I'm finished on the  
2 fair share methodology, so if we are going to  
3 permit cross without me addressing the witness I  
4 will recall him later on, on the other issues\*

5 THE COURT All right\* You will reserve  
6 on those other issues, of course\* I think what I  
7 would like to do here, so that we may get some  
8 sense of order about us, is first give the  
9 plaintiffs an opportunity on cross if they wish  
10 to and then proceed with the defendants\*

11 MR\* FRZELLS Your Honor, did the Township  
12 take an opportunity to review the exhibits, so  
13 that we could move them?

14 THE COURTS Mr\* Cafferty\*

15 MR\* CAFFERTY: I can respond to it\* It  
16 seemed to me that the objection to the introduction  
17 of the evidence upon which this witness is going  
18 to testify -

19 ..^ THE COURT: No\* The first six. Well,  
20 ti# through six\*

21 - | MR\* CAFFERTY: I'm sorry. We have no  
22 objection to two through six. Judge\*

23 THE COURT All right. I'll take care of  
24 it.

25 MR. WOLFSON: Are there one of those

1 ordinances in a package that should go in?

2 MR, SILVERS The July 12th ordinance.

3 MR, LINNUSJ Pre-July 12th.

4 (Informal discussion outside the record.)

5 MR. FRIZELL: Your Honor, co-counsel has  
6 inquired whether it would be appropriate to mark  
7 in the ordinances that were stipulated this  
8 morning to have *bmen* invalid,

9 THE COURT: Somewhere along the line we  
10 should get those together\*

11 MR. FRIZELL: they are here. They **have**  
12 **been marked.**

13 THE COURT: Is that -

14 MR. WOLPSON: That's JW-10.

15 THE COURT: Would it be J-9 and J-10?

16 **That's** correct.

17 MR. HXRSCB\* May X take a look at those,  
18 please?

19 TKB COURTS All right. While Counsel is  
20 looking, now, PJW-2 through 6 will be marked in  
21 **evidence.**

22 (The items were received and marked  
23 Plaintiff Fields' Exhibits PJW-2 through PJW-6,  
24 respectively, in evidence.)

25 MR. FRI8BILJ Your Honor, the defense hasn't

1 even started looking at those ordinances yet.  
 2 X have no problem if everyone looks at them  
 3 during the break and we permit the cross on fair  
 4 share.

5  
 6 THE COURT: Okay. Let's move on then. All  
 7 right, in the order we have at the table, Mr.  
 8 Linnus, any cross?

9 MR. LINNUS: No questions on cross. Judge.

10 THE COURT: Let me see if there is going to  
 11 be any. Any cross by any counsel for plaintiffs?  
 12 MS. HIRSCH: Your Honor.

13 TBS COURT: Yes.

14 MS. HIRSCH: I'm not sure this is taking in  
 15 which cross, because all the plaintiffs have agreed  
 16 to Mr. Bintz and Mr. Wiener as plaintiffs<sup>1</sup>  
 17 witnesses on fair share. So I don't know that it  
 18 matters, but just for the record.

19 THE COURT: All right, whatever, if you  
 20 MR. WOLFSON: No questions.  
 21 Jointly are offering it on direct.

22 MR. FRISELL: No questions.

23 MR. BUTT: No questions.

24 THE COURT: All right. Cross-examine, Mr.  
 25 Cafferty.

MR. CAFFERTY: Mr. McGimpsey will do it.

1 MR. MC GIMPSEY: Judge, may I go on the  
 2 outside of the railing, so I can walk down and  
 3  
 4 see the witness? X won't stand in front of  
 5 counsel.

6 TBS COURTS If you want to, come around\*  
 7 There is a seat here.

8 MR. MC GIMPSEY So X don't block anybody's  
 9 view, maybe X will stand here.

10 THE COURT: Whatever\* That's fine.

11 CROSS-EXAMINATION BY MR. MC GIMPSEYS

12 Q Mr. Hints, one question, if X might ask,  
 13 while you were on the Lerman formula committee you didn't  
 14 represent East Brunswick at that time. Am I correct on  
 15 that?

16 A No, I did\* X represented East Brunswick Township.  
 17 X represented a developer in Monroe Township and X  
 18 represented a developer in Cranbury Township.

19 O X see. So you represent two developers as  
 20 well?

21 & from developers and the township\*

22 All right. With respect to the Lerman  
 23 formula itself, you attended four meetings where everybody  
 24 was present\* Am X correct on that, sir?

25 X As X recall, it was four meetings. Yes.

O How many people were on the committees at

1 those times?

2 A Well, they were listed, I believe, in the Lerman  
3 formula credits to twenty-two planners, I don't have the  
4  
5 report in front of me, however, not all of whom had  
6 attended all the sessions. For example, the planner for  
7 South Brunswick Township was there at all times. My  
8 partner, Tony Kelson, was there, appeared once or twice  
and so on.

9 Q With respect to that were they all planners  
10 that attended those conference meetings, planners alone?  
11

12 A As I recall, they were all planners\* Yes\*

13 Q Were there any statisticians involved?

14 A Well, planners are statisticians and that's part of  
15 their graduate training and undergraduate training as  
16 well. There were, the only other people that were there,  
17 Z can't remember, on one or two occasions it included the  
18 representatives from the Public Advocate's office\*  
19

20 Q Okay\* Here they statisticians or anybody  
in the field of statistics?

21 A They were attorneys.

22 Q They were not statistic experts, am Z right?

23 A A number of planners were statistic experts, yes\*

24 Q Here you one of them, a statistic expert?

25 A Z don't know Z am any more expert at statistics  
than any other planner, but Z have had training in it.



1 correct, to replace those substandard housing?

2 A That's correct.

3 Q So am X correct, if a house were a unit  
4 house, low income or stoderate income, and it had Inadequate  
5 plumbing only, that the intent of the formula was to have <a  
6 new unit replace it\* Am X correct on that?

7 A That's correct\*

8 Q Okay. There was nothing done in the  
9 formula for destroying, or getting rid of the old unit  
10 that remained in low income and substandard, was there?

11 A Not in the formula itself. Well, those units that  
12 were demolished or unoccupied, but not in the *cmmtm*,

13 Q Okay,

14 ~~THE~~ COURT: YOU say, are not in the counts?

15 THE WITNBSS: Not in the counts.

16 Q There was no intent to get rid of those  
17 substandard units that were like substandard in plumbing  
18 or substandard only in heating, am Z correct in that, in  
19 the formula?

20 A. What do you mean, "get rid of"?

21 MR. HOTTs Excuse me. Your Honor. The  
22 question to me is vague. Is he saying occupied  
23 substandard or substandard and not occupied?

24 THE COURT: The nonoccupied are not  
25 included in the count, so I assume he's referring

1 to occupied.

2 MR. HUTTs Referring to occupied.

3 A But Z need clarification. Z need clarification on-

4 Q You don't understand the question?

5 A No, Z don't. Would you repeat the last part?

6 Q Okay. Let me ask you this questions Was  
7 it the Intent of the formula that if a unit occupied by  
8 low income or moderate income were substandard in the  
9 form of plumbing, plumbing alone, that the cure for this  
10 was to replace it with a brand new unit? Is that the  
11 intent of the formula? \*;i

12 A That's the intent. Well, it's the intent/ yes.  
13 it's the intent to assess those units and determine that  
14 they need replacements.

15 Q Do you have any feelings as to whether it  
16 would be better off to just fix the plumbing rather than  
17 replace it with a brand new unit, you yourself?

18 A Well, let me respond in this wayx when Z was  
19 Director of Planning in Community Development for last  
20 Brunswick Township for a period of eight years Z was in  
21 charge of; planning other things for the housing  
22 rehabilitation program for the township. We were  
23 interested in substandard units and replacing or  
24 rehabilitating any units that were substandard for plumbin  
25 or heating or roof collapse or whatever. The point is

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though that our effective, our effectiveness and the monies made available to us to rehabilitate these were not that very large\* So, as with agreeing with the other planners involved in the consensus methodology, the need was so great and the money not there to rehabilitate enough that we had to really consider new units to replace the old units, there were so many compound problems,

Q It's a lot cheaper to fix up plumbing in a substandard unit than it is to put in a brand new unit, isn't it?

A Plumbing is just one indicator\*

Q Do you want to answer ray question?

K Well, -

MR. PRIZELLJ tour Honor<sub>f</sub> Mr. McGirapsey is interrupting the witness in the middle of an answer\*

TB& COURT: Be wasn't being responsive\*

Be can answer the question\* X think it's obvious

•" 09 its face\*

0 : Do you want to answer the question?

h It there are any other things along with the unit, plumbing being the only one, it's probably easier to replace the pluabing fixtures or whatever is causing the plumbing problems, yes\*

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O Okay\* And that same thing is true with inadequate heating. Am X correct on that?

A fit that's the only problem, correct.

O Now, with respect to a .82 factor that was used for indigenous housing, that .32 factor came from the Tri-State Commission Study. Am X correct on that?

A That's correct.

Q How, that Tri-State Commission did surveys and samplings of certain areas in order to come up with the .82 factor. Am X correct on that, sir?

A It comes from the -

Q Am X correct on that?

A Well, the way you worded your question it comes from census documents and from sampling, yes, if that's what you are asking.

Q Yes. That's what X was asking. And the areas that were sampled were considered either from census documents or were from the areas of New York. Am X

correct on that?  
New York, ye«.

Q the area in that, was it the area of

Rockland County down through Richmond County, which is Staten Island?

A R...

Q Did that include the counties of Queens,

1 Kings, Bronx and New York?

2 X Yes\*

3 Q "that's New York City, am I right?

\* A Part of it yes,

5 Q Four-fifths, well, four-fifths of the  
6 county, am I correct?

7 A I haven't calculated. X don't know it that well,

8 Q Yes\* Did it also include part of Southern  
9 Connecticut?

10 A Yes, it did.

11 Q Did the area, include the Hartford **area down**  
12 south - let me withdraw that question\*

13 Did that portion of Connecticut, which **was**  
14 considered from Hartford down to the southern border of  
15 Connecticut?

16 A I don't recall\* X don't have a copy of the study  
17 in front of me\* X don't know if it extended all the way  
18 up to Hartford.

19 Q All right, sir. Did it consider parts of  
20 **Hew Jersey** in that report?

21 k:-...-:i!\*M, it did.

22 Q Was it the northern counties of New Jersey?

23 A Yes\*

24 Q Just the northern counties, not other, am  
25 X correct?

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A Well, I<sup>1</sup>© not sure what your definition of "northern" is.

0 . Fair enough\* Tell ma what counties were considered\*

A Well, again I don't have a copy of the study in front of me, but I believe it extended down to include Middlesex County on upwards, Union County, Essex, Hudson, Bergen, Union, Passaic\* I'm not sure how far west, whether it included any of the other counties to the west or not\* I'm not sure and I can't recall whether it Included Monmouth or not\*

Q All right\* You agree with me, do you not, that New York City is quite a different population composite than, say Somerset County in New Jersey, isn't it?

A Oh, yes\*

Q Is the southern part of Connecticut somewhat different from the Sonerset area? Do you know?

A It depends. X know the area. It depends on where in Southern Connecticut\* X used to live in that area.

Q Some parts are maybe comparable and other parts are not. Am X correct on that?

A There are similarities and differences throughout the whole region\*

Q How, however, the .82 factor was derived in

1 the Lanaan formula from that commission study. Am I  
2 comet on that?

3 A That's correct.

4  
5 Q Was there a Rutgers study that was made  
6 available along about that time that would confine itself  
7 to Hew Jersey only?

8 A Yes. The CUPR Study.

9 Q Yes. When did that come out?

10 A That I have here; just check the dates. That's  
11 dated 1933. I went to a press conference for **the release**  
12 of the publication on December 7, 1983, so that<sup>1\*</sup> about  
13 the time that I would say it was released. -.

14 Q All right.

15 A In fact, that was the date it was released to the  
16 public. It was a press release\*

17 Q **Now**, that covers a certain area. It gives  
18 statistics as to substandard housing and the portion of  
19 low and moderate income that inhabits substandard

20 housing in Hew Jersey. Am I correct on that?

21 &\* \*.\*, it does.

22 Q Does it break down into regions?

23 A Breaks it down into various regions, yes.

24 Q All right, sir. Can those regions be  
25 broken down or translated by computation into counties?  
Do you know?

1  
2  
A z believe they can, yes.

3 Q Would you agree that that would be a more  
4 reliable data or collection of observations on which to  
5 base this factor than the Tri-State Commission?

6 MR. FRIZELL: Your Honor, I'm going to  
7 object to the question. X think that the problem  
8 in the question is that it assumes, for instance,  
9 the definition of "substandard" of both studies  
10 would be the same among other things. X mean  
11 there\*s a whole, there's a lot moatm behind those  
12 questions than that question will permit an  
13 answer to. You can't simply ask the question ;>

14 In that way. There's different definitions of  
15 •substandard.\* X don't believe that document  
16 ever makes a comprehensive study of the percentage  
17 of low and moderate income families that occupy  
18 substandard units. X mean Mr. Bints is free to  
19 testify about whatever he wants, but in response  
20 to questions. But that question, is this a  
21 better study, unless they are referring to the  
22 sane question, you can't answer the question.

23 THE COURT: I\*t's lay the foundation first.  
24 Does the report itself identify a percentage on a  
25 regional or county basis in New Jersey of  
substandard units occupied by low and moderate



1 income families?

2 MR.: MC GIMPSEY: If the Court please, I  
3 think Mr. Frizell may be testifying himself, but  
4 I think the question -

5 THE COURT: I disregard that, but X would  
6 like to get that information myself for the  
7 record. X didn't understand that the report had  
8 that in -

9 MR. MC GIMPSEY: Well, my question was, X  
10 asked him, was one better than the other\* Be can  
11 answer yes or no and then tell me why he wants it  
12  
13 yesorno.

14 THB COOWT: Was one better than what?

15 MS. MC GIMPSEY: X had asked him was one  
16 a more reliable set of data in which to come out  
17 with a .82 factor than the other.

18 THB COURT: well, if the data is not in  
19 the report, how can he answer that?

20 MS. MC GIMPSEY: All right. X will  
21 withdraw the question.

22 THB COOTT: All right. I'm not saying it\*»  
23 not in the report. I don't know it's not in the  
24 report.

25 BY MS. MC GIMPSEY:

Q Was there any data as to substandard

1 housing for inadequate plumbing, for inadequate heating  
2 and for overcrowding in the Rutgers\* report?

3 A There was data, but it also had it in some other  
4 surrogates\*

5 Q There were three other surrogates that it  
6 added, are they correct? Those three surrogates were there,  
7 were they not?

8 A Those three were in there\* Yes\*

9 Q Weren't they taken from the 1980 census  
10 reports?

11 A Yes, they were\*

12 Q All right\* Now, regardless of what you use  
13 as criteria for indicating substandard housing, the same  
14 standards were in the Rutgers\* report as were in the  
15 census data from which the Tri-State Commission was taken,  
16 Am I correct or am I wrong?

17 A I think you are wrong\* I think - well, I'm not  
18 sure\*

19 Q Was the Tri-State Commission, did they use  
20 the same data for substandard housing \*\* Did the census  
21 report?

22 A I don't know\* I didn't have the background  
23 studies of the Tri-State study\*

24 Q I'm sorry? Excuse me.

25 A I didn't have the background studies that the

1 plumbing and inadequate heating, overcrowding and so on,  
2 fa through the tables from the census files by the  
3 municipality. You get a number. Then you take the  
4 number for every inunicipality in the region. You add up  
5 all those substandard units. You get a number, total  
6 number of substandard units for the region. Then you take  
7 the total number of housing units, whether substandard or  
8 not, in the region and you get a percentage. The  
9 percentage is 6.4%.

10 Q So that the 6.4%, what does that represent,  
11 an arithmetic mean of the total substandard housing in  
12 the region?

13 A It's not a mean. It's just a percentage of the  
14 total substandard housing in the region. The percent of  
15 substandard housing, total housing.

16 Q . Okay. Has it true that the 6.4 factor was  
17 used as a cutoff, so that if the torn were under 6\*4 it  
18 got a reallocation factor added to it?

19 A It would be responsible for going to the next step,  
20 which is determining what its present need sight be. You  
21 could go through the present a\*ef methodology calculation.

22 Q What was that on the basis of - was that  
23 on the basis it was presumed to have been exclusionary in  
24 its zoning?

A That comes, yea, that comes forth from the Mount

1 0 I see\* How, with respect to - there's a  
2 figure that you have in the reallocation factor, a total  
3 figure of 35,014. Am I correct on that?

4 A Yes.

5 0 That 35,014, is that arrived at by figuring  
6 the total substandard housing in the eleven-county  
7 region?

8 A Yes,

9 Q Then you apply .82 factor to it?

10 A Ho. The .82 has already been in the ~~st&thenatics~~  
11 ~~total~~  
12 to arrive at the total .82 factor or the 82%  
13 was already used to determine the individual town's  
14 substandard units. Then it's those totals of standard  
15 units that the town are then totalled with all the rest  
16 of the towns and that gives you the regional number of  
17 35,014. So .82 is already factored in there. It's not  
18 a matter of getting 35,014 and then factoring it into it.

19 Q I'm sorry. X didn't mean to suggest that  
20 to you. I'm sorry I confused it. What X am asking you  
21 is do you get a total figure first for housing that's  
22 ~~substandard~~  
23 that needs to be reallocated and then do you  
24 times it, times that factor of .82 in order to get at the  
25 35,014?

A So. You do it individually by town.

Q Okay. Is the .82 percentage factored in.

1 in order to get the 35,014?

2 A It's already factored in, yes.

3 Q So that you use the .32 in that instance?

4 A Yes.

5 Q All right. That's what X was getting at.

6 Is that the same .82 that we talked about  
7 earlier that was on the Tri-State Commission?

8 A Yes.

9 Q Was that derived from the Tri-State  
10 Commission data about which we talked earlier?

11 A Yes.

12 Q In order to get the reallocation formula  
13 too there is a growth area factor that's used. That's  
14 one of the three factors that's used in order to get the  
15 formula. Am x correct on that?

16 A That's correct.

17 Q When we talk about growth area are we  
18 talking about vacant developable land of the Township or  
19 municipality over a region? Aa X correct on that?

20 K « /ti|u We are talking about the growth area  
21 according to the State Development Guide Plan shown in  
22 the map &wmr to your right there.

23 Q The vacant developable land in the growth  
24 area under the state Development Guide Plan?

25- A No.

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Q No. What are we talking about?

A We are talking only about the number of acres in a municipality that's been measured off as being within the growth area as defined by the State Development Guide Plan.

Q All right.

A Whether or not it's vacant, whether or not it's developable and vacant, whether or not it's undevelopable, or whether or not it's developed already is all - your question, the question is whether or not it's in the growth area?

Q All right. Now, with respect to that factor that factor is given equal weight in this formula for reallocation as to the jobs factors. Am I correct on that?

A That's correct.

THE COURTS In the present need?

MR. MC GIMPSEY in the present reallocated

\*  
^, ,, ,, ^ Assad.  
t'': % <S&rect.

\, , ^K,r/^M\; That's correct. Am I right?

A Yes.

Q Now, there are other factors though as to growth and the possibility for growth and for a municipality or township's ability to take growth, aren't

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there, other than just the amount of land that's in the growth area under this State Development Guide Plan?

A Well/ can you explain more? I'm not sure where you are going.

Q All right, fair enough. If you don't understand the question.

A factor as to whether or not a town can provide for low income and moderate income with additional other, say other 80% of other types of housing, is infrastructure for one, isn't it?

A That's correct.

Q For example, if a town might be loaded with area that's in the growth area under the State Development Guide Plan and they may have no sewers at all in the town, isn't that correct?

A That's correct. Or they may have one little well or whatever.

Q Yes\* Sons of them have nothing but well water and are loaded with that kind of land, isn't that correct?

A Mil, well water, they might not have any wells\* doesn't matter,

Q Some of them may not have city water or piped water, am I correct?

A That's correct.

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Q Some of them may not have sewers in the whole town, isn't that correct?

A That's correct\*

Q Levittown Township in Burlington County, are you familiar with that?

A I'm familiar with Levittown.

Q they don't have a sewer in the whole town. Am X correct?

A X haven't been up there lately. X don't know.

Q that was not considered in this factor of this growth area. Am X correct?

A That's correct.

Q How, with respect to - there's another factor, isn't there, median income factor or a ratio when you go into the reallocated need?

A Yes.

Q How, how is that ratio derived?

A It's derived by taking the median income, median household income for the municipality, which comes from the 1980 census. Actually, it's 1979 data.

. 4p> ' X understand.

A And then comparing that with the median household income for the region, which is factored by using the county, each of the counties, and the number of households in each county and the total median income for the county



1 to get at a regional median income average. You take the  
2 median income, median household income from the  
3 municipality over the median household income average for  
4 the county or for the region and you get a factor.

5 Q Ofcay.

6 A If it's, if I could just finish that, if, for  
7 example, the municipality has a median household income  
8 of 25,000 and the median household income average for the  
9 region is 25,000, the factor would be 1.0. So when we  
10 multiply it nothing changes.

11 Q X see. Let me ask you this\* When they get  
12 the median for the region, and this time we are talking  
13 about the eleven-county region, aa X correct on that, ~

14 A Yes.

15 Q -- how do they get that?

16 Do they take the median for each county, add  
17 them up and divide by the number of counties to get the  
18 arithmetic mean of the median?

19 A No. It's factored by the number of households  
20 in the county. It's weighted.

21 How?

22 A By taking the number of households for each of  
23 the counties as reported by the census, which is again  
24 1979 or the data, actually, and you factor the median  
25 household income for the county with the total number of

1 households and get an average. You get the total of that  
2 county and then you, out of all those you arrive at a  
3 number and get the average.  
4

5 Q So that -

6 A It's a weighted number.  
7

8 Q So that you weight each median of each  
9 county, am I correct?

10 A You are weighting them all, yes.

11 Q Then you add them up?

12 A If I'm being clear, yes.

13 Q Then you divide by the number of counties  
14 afterwards or divide by what? .-

15 A You are dividing by the number of households into  
16 the number off, into the total median income.

17 Q So that you arrive at a median for the  
18 eleven-county region by coming up with an average weighted  
19 with an average median that was done through a weighting,  
20 and you divide by the number of households. You get a  
21 **median** for the region, is that your testimony?

22 A I believe that's what it is, yes.

23 Q All right. With respect to a median ratio,  
24 what is the purpose for using a median ratio as a factor  
in this formula for reallocating?

A It's to determine whether or not a municipality,  
it's to answer one of the questions raised or posed by

1 the Mount Laurel II decision about the town's ability to  
2 provide -for low and moderate Income housing and also its  
3 past exclusionary practices. It gets at the question of  
4 economics, the economic ability of the Township to buy or  
5 to build a new structure. A town with a higher median  
6 income will have typically more of an ability to pay on  
7 the whole than a town that ends up having a lower median  
8 income, it also exhibits those towns with the higher  
9 median income\* Typically in the studies that we've made  
10 they don't have any garden apartments or very few ~~garden~~  
11 apartments relative to the whole total housing stock\*  
12 Their percentage of low and moderate income housing is  
13 relatively low compared to the total housing stock\*

14 0 Mil, let me ask you this question then if I  
15 might Am I right in rephrasing it that the median was  
16 attempting to find out the ability of the municipality  
17 to afford more low income and moderate income housing?

18 A That's only one part of It\*

19 0 Yes. That was one part of it.

20 A If % was part also to address its past exclusionary  
21 practices. There were other ways to derive at it, but  
22 this was decidedly the best way, the fastest way to do  
23 it.

24 0 Well, most municipalities in Hew Jersey  
25 don't gain their tax monies by an income tax\* Am I

1 correct in that?

2 ^h- **Yes**, you are right\*

3 Q So that it's possible that the ability of  
4 the Township to pay for low income-moderate income is not  
5 related to the median income of the people who live in the  
6 town, isn't that right?

7 A Well, that's not - theoretically it's not. It's  
8 not related theoretically, but when you actually take it,  
9  
10 do an analysis of median incomes and the median household  
11 income for a given town, you find that that town **has**  
12 shown past exclusionary practices\* You should find **also**  
13 that the town has a greater ability to pay typically **than**  
14 the town that has a lower median income because of **greater**  
15 volume capability, et cetera.

16 Q Let me ask you this; The basis to get a  
17 good rating in bonds doesn't have anything to do with its  
18 median income of the people living in it. Am X correct  
19 in that?

A You are correct. It's a surrogate.

20 Q As a matter of fact, a town's ability to  
21 **raise taxes** is more important as to the value of the  
22 industrial basis within the town. Am X correct in this?

23  
24  
25 A That's correct, and in the original formulas that  
even X worked on that we were involved in, in the  
consensus methodology, trying to sort out. We looked at

1 valuation per capita« X was a big proponent of looking  
2 at valuation per capita as an indicator, as a surrogate  
3 for measuring the town's ability to pay for the

4  
5 infrastructure for new housing in its schools, et cetera  
6 and also, you know, whether or not the town had past  
7 exclusionary, has been encouraging a lot of industrial  
e ratable and not a lot of housing. However, using the  
9 value per capita formula did not work out in every  
10 municipality. There were some aberrations again here or  
11 there, using that kind of an indicator,

12 Again, as a result of meetings and discussions with  
13 various planners and trying, attempting different ways of  
14 getting at what we were concerned with, we found! that

1 median Incoose used as a factor, not as a straight, not  
2 just as an indicator of percentage of working, as a  
6 percentage with the jobs in the growth area, we found it  
17 to be the fairest way of getting at that thing that we are  
19 interested in getting at\* It was an indicator and a  
18 surrogate of adjusting the fair share of the other two  
and jobs, that of growth area, the area, the growth area

22 Q But before the Lerman conference came in  
21  
23  
24 you were not of that opinion that it was as good as per  
25 capital?

A Nobody had.

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Q were you? I'm just asking you.

A I had started out looking at valuation per capita.

Q All right. Were there any studies done by the Lerman Group that indicated any data that said that median was more important than looking into the tax base of the municipality as to whether or not it can afford infrastructure, low income, moderate income, heavy projection and so on?

A Yes. Several of us planners Independently looked at a number of different ways to get at the economic ability to pay and past exclusion, we also, our finan computer runs with different towns, using median income factors versus using valuation per capita and using another one or two methods as well, as Z recall, as well as other firms or planning consultants, also firms independently. We came, we met, we decided that the median income factor as a factor, an adjustment and done as a surrogate was a good indicator. It was fair. Did not throw the numbers way off, and it seemed consistently to represent what we were interested in representing.

Q Where is that data? Was that ever published or given to anyone? Was it ever given to Judge Serpentelli or anybody?

A Z don't believe it was, no.

Q Did George Raymond do a study on that?

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25

THE COURTS On what?

ME. MC GIMPSEYi On the question I just asked.

THE COURTS You mean on the issue generally?

MR. MC GXMPSEYS I will withdraw the question\*

Q Did George Raymond ever do a study as to whether or not the median ratio was a better ratio than some ratio, such as per capita valuation?

A Well, the consensus group assigned the task of examining the different methodologies or the different surrogates to several planners and those several were

Richard -

Q Did George Raymond? I just asked a simple question\*

A No. It was Richard Coppb&a ,myself, -

Q That\*s what X just asked\*

THE COURTS For a better identification, Mr\* Raymond was a member of the consensus group, a planner, and also a court appointed expert in  
• otter litigation\*

MR. MC GXMPSEYS Yes, Your Honor\* Thank you\*

Q How, was any factor included in the formula for something like an actual history of the town as

1  
against the town's fair share.

2  
= " "## Ch'\* What happens if the town has a high ratio  
for median income and it has an excellent history with  
4 respect to exclusionary zoning or the absence of it?  
5 Should there be any factor in there considered, to your  
6 knowledge?

7 A Then it would have units that will be credited  
8 toward the units of the fair share.

9 Q You think it's all done by a credit formula?

10 A You can't do it by any other way.

11 Q You think it's done by the present credit  
12 formula if there is one? Is there one?

13 A I have been involved in several cases where once  
14 we've determined the fair share number for the given  
15 municipality, we then ask what credits the town is due  
16 because of its nonexclusion or in actual production of  
17 low and moderate unit housing. Yes. But it can only be  
18 done on a case-by-case basis. You can't apply the  
19 formula and expect the formula to look at every town,  
20 whether or not it's, you know, been passed, what its  
21 zoning is like and somehow enter that into the formula.  
22 It just does not mathematically, it's not mathematically  
23 possible. Time does not even allow you to do it in a  
24 mathematical way to make an adjustment for that. There  
25 is no way to put that in units of time.



1  
2 Q You mean the only objection to that,  
3 cranking in a factor for that is in terms of time?

4 A No. Z just said that there's no way mathematically  
5 f; to put it into the formula.

6 Q So it has nothing to do with time or does it  
7 have something to do with time?

8 A It's both. Even if you could mathematically, even  
9 if you had something, whatever, something you are thinking  
10 of to go into the formula, if you could, if it could be  
11 worked into a formula mathematically, then the question  
12 is whether or not on the time basis it could ever be done.\*  
13 You cannot go out around and check 567 municipalities and  
14 mathematically figure out whether or not they were  
15 exclusionary or not according to something and somehow  
16 plug that into a formula. Zt just doesn't work. Zt  
17 doesn't work and there is no time to do that.

18 Q But you only look at one town at a time,  
19 don't you, when you apply the formula?

20 A You are doing the methodology. Then at the end  
21 you give them credit for what they have done. I don't  
22 see that\*

23 Q so you feel the credit should be given for  
24 a town if they had a history of nonexclusionary zoning,  
25 am Z correct?

A Yes. Zf they can prove - no. The nonexclusion,

1 but if they can prove that they've actually produced the  
2 units since 1980.

3 Q So that are you telling me it's not a  
4 factor as to whether or not a town has had exclusionary  
5 zoning or not? You don't mean that that's the point where  
6 you get to the credit, anyway?

7 A Ho. Well, z don't know that. You can't put all  
8 - I'm saying you cannot put that in a fair share  
9 methodology.

10 Q I see. But you can make a presumption of  
11 exclusion on a median basis and hit the town for that, " v  
12 can't you? That's your testimony, isn't it? < ^

13 A Median income factors, arrive at that, yes.

14 Q So you can make a presumption as to  
15 exclusionary zoning through the median factor and use  
16 that against the town?

17 A And also whether or not the town has the ability to  
18 pay.

19 \* &ir That's one of the two factors?

20 A , l&at's one of the other factors.

21 >...<  
22 v " \* i v - . - &4 All right. How, after you get the three  
23 factors worked in, still talking about present

24 reallocated, yes, you come up with a figure, am I correct,  
25- and then you crank in the 1.02 factor? An I correct on  
that?

1 A Correct\* Well, wait\* The present, on the present  
2 numbers, no\* What we did is we got whatever the present  
3 need, number would be for the given municipality and then  
4 you divide that by three -

5 Q x\*m sorry\*

6 A - six-year periods, assuming that they don't have  
7 to meet that need right away, that they could face it  
8 over a time, that is, if it was a very small amount  
9 perhaps take it in the next six years\* Of course a large  
10 amount, typically what would be done, X divide it by  
11 three and then take that number and factor it times  
12 1.02. :; -  
13

14 Q Now# X want to ask you some questions about  
15 the 1\*02 factor\* Did that come from a 1978 study by the  
16 State of New Jersey, that 1\*02 factor? Xs that what that  
17 was based on?

18 A Ho\* Xt came from a concern expressed by a number  
19 of planners who were present during the consensus  
20 methodology that there would be some towns where there wer s  
21 factor.

22 just insufficient, since we are going with a growth area  
23 Q Yes\* And you indicated before growth does

24 not necessarily mean the town might be totally developed,

25 A Xt still could be showing a growth area, so we  
were concerned about a number of these reallocated

1 surplus units falling to a town that had no place to put  
2  
3 them and then that town or those towns arguing that they  
4 could provide them and then where would those units go?

5 So in an effort to make some adjustments pursuant to the  
6 Mount Laurel XX decision that those towns with vacant  
7 developable land should be the ones who should be providing  
8 for the housing. We applied a 1.02 factor. We called it,  
9 X forget exactly what we called it, but it was an  
10 adjustment factor for having additional vacant developable  
11 land.

12  
13 Q What was the basis for 1.02?

14 A Xt was a 20%, it was a 20% add on. \*IV \r.?. .

15 Q But you get 1.02 as opposed to 1.07 or 1.1

16 as opposed to 1.05, whatever?

17 A Xt was felt that 20% was a reasonable adjustment.  
18 X don't remember all the arguments expressed by all those  
19 who were present or agree with them. X didn't think  
20 about 20% myself. There were arguments made by those -

21 Q What did you argue for?

22 A r felt -

23 Q Do you recall?

24 A Wo. X don't recall. X heard the arguments. X  
25 thought they were reasonable and at the time X agreed with  
26 them.

27 Q So that's the basis for 1.02 as far as you

1 know?

2 A Well, X think there was so - you mentioned the  
3 Department of Community Affairs. Z think they put that  
4 in their housing allocation or report, HBA reports. X  
5 believe the other studies had also put what was expressed  
6 in their means.

7 Q What other studies do you have?

8 A X don't know.

9 Q All you know, you believe there may be  
10 a department of community affairs study?

11 A The housing allocation report, X believe, indicated  
12 that there was soae kind of an overage.

13 Q Have you told us everything you know about  
14 the 1.02 factor?

15 A Yes, X believe X have.

16 Q Thank you. Then you crank in a one, what  
17 is it, 1.03 factor for vacancy?

18 A That's correct.

19 Q > Then you come up with a final figure for  
20 present reallocated need?

21 A That's correct.  
22 Q The next portion of the formula is  
23 prospective need. Am X correct on that?

24 A That\*s correct.

25 Q All right. You start off with prospective

1 need with a beginning point\* Am I correct on that, Mr.  
2 Hints?

3 A Yes.

4  
5 Q You chose the municipal complex in the town.  
Am I correct on that?

6 A Correct.

7 Q Your reason for choosing the municipal  
8 complex is that it was the municipal complex. Am Z correct  
9 on that? Is there any other reason that you chose it?

10 A No. z think Z expressed it was the logical  
11 starting point of Franklin Township. It was the logical  
12 starting point, because there is no one center in  
13 Franklin Township. Franklin Township ia, if you will,  
14 a suburban sprawl community. It has numerous residential  
15 developments throughout the Township in the northern and  
16 eastern portions of the Township primarily. It also has  
17 strict commercial development found along various portions  
18 of the Township, but primarily starting at Kingston  
19 along Route 27 and through Franklin Park all the way up  
20 through Hew Brunswick. It has a commercial development  
21 along **the** Blm Street business area. It has a commercial  
22 development along Easton Avenue, but there is no one  
23 place that people would identify as being the place or  
24 the focal point of Franklin Township as a downtown or as  
25 a central point.

1  
2 On the other hand, the 1968 plan, the 1972 plan  
3 for the Township, the 1980 and the 1982 plan all  
4 considered that the Township would have developed around  
5 a town center, that it needed a focal point\* The plans  
6 expressed that the municipal complex at DeMott Lane  
7 and Middlebush be the location for a future town center.  
8 We are dealing here with a prospective need. We are  
9 dealing with what's the town going to provide within  
10 the next six years. It was felt that the town's center -  
11 point for a prospective need basis, having no real center  
12 anywhere else, would be best at where they could  
13 clasically set the center of the town.

14 MR. MC GIMPSBY: Your Honor, may X have a  
15 second? would you excuse se for a second to just  
16 talk to my partner?

17 THE COURT: Go ahead. Sure.

18 (Informal discussion outside the record.)

19 MR, MC GIMPSEY: Your Honor, are we taking  
20 a &reak or do you want me to continue? I had my  
21 back turned.

22 THE COURT: No. Since we started after  
23 two we'll just go through.

24 MR. MC GIMPSEYs Does Your Honor wish me  
25 to continue?

THE COURTS Yes, sir. Yes.

1 BY MR. MC GIMPSBYr

2 Q But, Mr. Hintz, with respect to the  
3 beginning point, the municipal complex is not at the  
4 center, geographically, of the town. That's correct,  
5 isn't it?

6 I A Not far off; not far off.

7 THE COURT: Am I laboring under a  
8 misapprehension? Doesn't Mr. Chadwick come up  
9 with the same commutershed?

10 MR. MC GIMPSEY: No, sir.

11 THE COURT: He doesn't?

12 MR. MC GIMPSEY: I think you will find that  
13 Mr. Chadwick comes up with the intersection of  
14 JFK and Eastern Avenue. Am I correct?

15 THE COURT: No. I mean doesn't the same  
16 six counties -

17 MS. HIRSCH: No.

18 THE COURT: Morris?

19 MR. MC GIMPSEY: No.

20 THE COURT: I see. Yes, all right.

21 MR. MC GIMPSEY: Yes, sir.

22 BY MR. MC GIMPSEY:

23 Q It's certainly not the center of the heavy  
24 population of the town, is it?

25 A It's hard to say. I haven't done any studies



1 recently of how many people are located in what part of  
2 **the** Township. There are a lot of garden apartments along  
3 Franklin Township's boundary with North Brunswick and  
4 along Route 27, for example. There are a lot of  
5 apartments up along Easton Avenue. If you added them all  
6 up and averaged them and found out what the central point  
7 of the population is, I don't know where it would, indeed,  
8 be.

9 Q Well, north of the municipal complex and  
10 east of it is the Levin Development, isn't it?

11 A Yes\_

12 Q That's a huge development, isn't it, **even** in  
13 Franklin Township?

14  
15 A It's a big development, but it's single-family, and  
we've got large apartment complexes, for example.

16 Q Franklin Greens is one of them, isn't it?

17 A **Yes.**

18 Q That is north and a little bit east of the  
19 municipal building. Am I correct on that too?

20 **Correct.**

21 If it v> And Easton North is a pretty good size  
apartment complex, isn't it?

23 A Yes.

24 Q That fronts right on Easton Avenue, which  
25 is north, basically north of the municipal building. Am

1 I correct on that, sir?

2 A Yea.

3 Q There is also development all the way, from  
4 Franklin Boulevard all the way out to just about 287, isn't  
5 there, along Eastern Avenue?

6 A Yes, yes.

7 Q Residential development?

8 A Yes.

9 Q **Isn't that correct, sir?**

10 A **Yes.**

11 Q Isn't there also along **Easton** Avenue a  
12 concentration of shopping centers in Franklin Township?

13 A There is a concentration, but it's no more of a  
14 concentration than the concentration of shopping centers  
15 that run along 27 bounded with North Brunswick and up to  
16 New Brunsick. There's no, there's even a shopping center  
17 down in Kingston of some size. There's the Hamilton  
18 Street business district that has a lot of square  
19 footage of commercial space. The point is that there is  
20 **no one** place that you can say, and this came out in our  
21 study of the Elm Street business district some seven or  
22 eight years ago, there is no one area that you can say  
23 that we found. We did a questionnaire survey at the  
24 time for all the residents in Franklin Township, and  
25 nobody could point to any place as being the center point

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of downtown where people, you know, remembered as being **the place** that, the place of being of the township.

Q Isn't it true that the reason we finally ended up choosing the municipal center is that no matter what point you ran from you still ended up with the same numbers, according to you?

A I'm not sure I follow you.

O Would the reporter read it again? Let the reporter read it again. I don't want to mislead you.

(The question referred to was read by **the** reporter.)

A well, we selected the municipal building as **the** starting, municipal complex as the starting point to do **our fair share, knowing the town as we did. The numbers** that you get, you know, when you add one county in or drop out one county are very close.

Q Well, let me ask you this: Do you remember your deposition being taken on June 13, 1984?



J|ja ^ ^ ^ 23^ 1 i M 15 through 23. Do you

•^|/^"li\*|e|^|^-t can read it with you.

A If you can show it.

O **Sure.**

A **That's all right.**

Q Well, let me start with line 7, excuse me,

1 which has the question, so as to be more fair.

2 "Questions Let me probe this a little bit  
3 more, if X might. You refer to the municipal building as  
4 in many ways the center of the municipality. Of course if  
5 a particular location is the center of something, it  
6 depends how you define the something. Did you use a  
7 geographical definition to determine the beginning point  
8 here?"

9 This is your answer, \*x believe, well,  
10 geographical could mean many things? could be the central  
11 population, it could be the exact center in terms of **the**  
12 physical land area of the community. Xt could be, you  
13 know, the average distance of any one of the borders of  
14 the town. The specific reason we finally ended up  
15 choosing the municipal center is that no matter what point  
16 we ran from it we still ended up with the same numbers.  
17 So it didn't really seem to matter."

18 Is that your testimony on that date?

19 A. Yes.

20 **specific**  
21 Does that accurately state the reason, the  
22 \* 1 reason that you chose the municipal center as the  
23 beginning point?

24 A Well, X think if you read the previous sentences  
25 just prior to that at the top of the page, X give the  
reason that X just stated before as to why X thought, you

1 know, the municipal building is the starting point, I'm  
2  
3 not sure myself why I said what I said at the last  
4 statement there. But X guess the point is that no matter  
5 where we did the driving times, the computation of the  
6 driving times from the municipal building, we still ended  
7 up with the same region, the six-county region.

8 Q Did you ever run it from the intersection of  
9 JFK and Eastern Avenue?

10 MR. FRIZELLI Your Honor, let me - well,  
11  
12 never mind. I'll withdraw that\*

13 O Now, did you ever run it from any other  
14 beginning point other than from the municipal building?

15 A No, we did not.

16 Q You considered Hamilton Street, you ran it  
17 from, didn't you?

18 A HO.

19 Q You didn't.

20 MR. MC GIMPSEYS Page 24, line six through  
21 eleven,

22 A I think.

23 Q That's not the page.

24 It isn't? Do you remember this testimony  
25 on June 13, 1984?

A Yes.

O "Question," I have to read it for the record  
"Can you tell me what other points you ran your

1 calculations from, beginning points, other than the  
2 municipal building?

3 "Answer: Z believe I looked at the Hamilton  
4 Street location, locating a point on Hamilton. X can't  
5 remember where I was, but I looked at different points."

6 Do you remember that testimony?

7 A Yes.

8 Q So that you can run it from different points,  
9 am I correct?

10 A Ho, I didn't.

11 MR. HOTTJ I object. Your Honor.

12 MR. PHZLIBOSZANS It speaks for itself.

13 MR. HIJTTx z object, because that testimony  
14 does not answer the question. He said he looked  
15 at it. He didn't say he ran it.

16 THE COURT: Yes. It speaks for itself.

17 BY MR. MC GIMPSEY:

18 Q Now, the prospective, after you get from the  
19 beginning point, you described how you got the different  
20 countief that you got on your direct testimony?

21 \* • \$\$8r<sup>e</sup> corr \* ot

22 "r 6 There's nothing to add to that, am I correct,  
23 nothing other than what you say?

24 A nothing. You have something?

25 Q Ho. Z really don't.

1 Let me ask you this though: There is a  
2 figure, X think it's 61,096, that comes into play in this  
3 prospective computation. Do you want your report?

4 A X think that's the total number used.

5 THE COURT: That's the six-county need?

6 THE WITNESS: Yes. That's the six-county  
7 need. 61,096 was the regional prospective need for  
8 the six-county region.

9 Q How, you derived it from the two different  
10 models of data, X believe you said, am X correct?

11 A That's correct.

12 Q Okay. And those two pieces of data or  
13 observations were taken from what?

14 A The Office of Demographics and Economic Analysis at  
15 the Department of Labor.

16 Q And Industry in New Jersey?

17 A X don't think it's Industry any more. X don't  
18 think it is. It's Labor. No.

19 Q^ But that's New Jersey?

20 A W|vare talking about the same thing, yes.

21 .^ \*\*\*\* \*\*\*\*\* \*.\*.\*\*\*. \*\*<> results for that same  
22 period of time, two different figures, am X correct on it?

23 A These are population projections, yes, and they do  
24 two different models. They have the economic demographic  
25 model, which is Model One and the demographic model.

1 which is Modal Two.

2 THE COOBT They actually have more than two?

3  
4 THE WITNESS: Yes. They have actually more  
5 than two.

6 A These are the two the consensus group felt were  
7 the two most reliable. There was a lot of debate as to  
8 which was the best.

9 Q Out of the two?

10 A That's correct.

11 Q Za there a way of checking them year to  
12 year by virtue of actual results that come out of the  
13 census bureau on the ODSA every year, every July that's  
14 published for '81-'82?

15  
16 A I'm not sure whether those are still population  
17 estimates. They are in the census counts.

18 Q I'm sorry. I didn't mean to mislead you.  
19 Z don't mean that they are census counts, but there are,  
20 in fact, population estimates *pmx* year that are given out  
21 by the ODEA?

22 A v3re#. The more current estimating techniques, yes.

23 #. 0: ; That's because each year they get new  
24 information to crank in?

25 A That's correct.

Q Am I correct on that?

A Correct.



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Q For example, like building permits?

A Correct\*

O Maybe industrial basis being added, those kinds of things, am X correct on that?

A Yes.

Q Does the U.S. Census Bureau take part in those projections with the Labor Department of New Jersey?

A I believe, but X don't know all the ins and outs of that-

Q Right. Have you made any study as to **the** results of those year-to-year projections as to which, Model One or Model Two, is the more accurate?

A Have X?

Q Yes.

A NO.

O Has anybody who took part in the Lerman formula ever made any studies, to your knowledge?

A Hell, there were, yes, there were planners who were involved with the consensus methodology who argued one aid or **the** other because of their particular knowledge of **having** analyzed those in more detail.

Q Did they argue the results of these year-to-year projections pointed more toward one model than the other?

A X can't recall.

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Q Do you know the year-to-year projections indicate that one model is more accurate than the other?

A No, X do not.

Q Do you know of your own knowledge whether the year-to-year projections indicate that one model is more accurate than the average of the two models?

A I'm afraid Z don't have the luxury of analyzing those. No.

Q All right.

THE COURT: Mr. McGimpsey, it's difficult for me to -

MR. MC GIMPSEY: Yes.

THE COURT: It's difficult for me to sit here and try to follow where you are going, of course Z have knowledge the witness doesn't have because of testimony that has occurred before me in other cases. It's a rather unusual situation for a judge to be in, because Z'm not supposed to

be in the typical case carrying over factual knowledge. In the Mount Laurel cases the Court has anticipated that Z would, that Z would gain experience as I go along. Now, that issue that you've just been addressing is addressed in my opinion, because it was addressed in other litigation. Of course the opinion at least takes

1 the position that the two model supplemental data  
2 supports it and that the population projections  
3 are almost exactly on target. Now, are you  
4 prepared to present testimony on that in that  
5 regard?

6 MR. MC GIMPSEY: Your Honor, Mr. Chadwick  
7 is going to testify as to it.

8 THE COURTS Good.

9 BY MR. MC GIMPSEY:

10 Q I wanted to ask you one question with  
11 respect to the median factor in the respective allocation.  
12 You indicated that you had a ratio of 1.087, am I correct  
13 on that, for the factor for the six-county region? Am t  
14 correct?

15 A That's correct.

16 Q Okay. Or am X wrong? 1.087?

17 A Yes.

18 Q Xn your report, am X correct, that you had  
19

20 A I bada different number, yes.

21 Q What's the reason for that difference in  
22 1.087 to 1.06?

23 A I'm not sure, but when we recalculated and were  
24 getting ready for court we found that the numbers were  
25 different. We also took another look at the Lerman data,

1 which was printed and published and used that for some  
2 reason found a discrepancy in the numbers. So X<sup>f</sup>m referring,  
3 now, to tip median household calculations provided in the  
4 Lerman report.

5 Q Was the initial information that you had  
6 that got the 1.06# that was based upon your own information  
7 that you derived?

8 A That information that we put in the computer and  
9 let the computer tell us what the number **was**, yes\*

10 Q Where did you get the information? **Was** that  
11 from census data?

12 A From the 1980 census\*

13 Q Do you know if the Lerman formula had  
14 different data to get the 1.087?

15 A X think the error might have been us not deleting  
16 a town that should have been deleted or, you know, that  
17 it was urban aid or might have been a town not in the  
18 growth area or something of that sort that might have  
19 thrown **the** number off a little bit\*

20 All right. Do you have an opinion as to  
21 **the present** need, whether one of the three factors should  
22 be weighted more than the other? When X say "the three  
23 factors," I'm talking about the median, the jobs and the  
24 growth area\*

25 A Well, the median income factor is not so much, the

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median income factor is almost a weighting on the other  
two factors. The other two factors are measured equally,  
and the median income factor is factored against those, the  
average of those two, and then used as another percentage.  
But by doing it in such a way it is more of a weighting use  
of the median income as opposed to giving - in other  
words, it's already downplayed, meaning the factors are  
already downplayed to some degree.

Q Don't you think the implement factor should  
be weighted more than the other two? 1 - 1/2

A More than growth area or more than jobs?

Q Yes»

A Ho. Thm fact in that particular case, the only  
substitution X would make if we had reliable data would be  
for the growth area, would be vacant developable land in  
the growth area. But X would still, even if X had that  
data, would weigh that equally with the job data.

Q Are you happy with the way those three  
factors are being used in the Lerman formula today?

A Yes, I'm happy and excited?

Q Yes, right. X will withdraw the question.

X don't mean - are you satisfied with those three factors  
as used in the Lerman formula today are adequate?

A X believe they are not only adequate. I think  
they are reasonable. X think they are fair, and given the

1 thorough examination that I made and others have made of  
2 different methodologies and trying to work in different  
3 factors; X feel from present need that is the most  
4  
5 **reasonable** formula given this point in time\*

6 Q Do you think they should be refined any  
7 better?

8 A Oh, absolutely, X think, you know -

9 Q They are not written in gold at this time, do  
10 you think?

11 A No\* I think as we get additional data, for  
12 example, going back to the wealth factor again, if you want  
13 to call it that, the median income factor, X think **over time**  
14 there may evolve other more sophisticated ways of using that  
15 method, that indicator in which case it would be studied  
16 over time. Hopefully we will find, we'll have some  
17 agency, hopefully the State, that will calculate all vacant  
18 developable land in the growth **area**, so we will have that  
19 data.

20 Q Let me ask you a question about that. The  
21 truth of **the** matter is you don't think vacant, developable  
22 land, you don't think there is any data today that's  
23 accurate on that, am X correct?

24 A Vacant developable land?

25 Q Yes\*

A X do. X indicated that in my testimony. The

1 problem is though that it's not available on a county-by-  
2 county basis, you know. That's within the last three or  
3 four years that we could say use it everywhere, it's only  
4 Somerset County, for example, that has good data on vacant  
5 developable land. Middlesex County does, but then you go  
6 to Onion or North Union. But you go to other counties in  
7 this particular region, it seems like every prospective or  
8 every prospective calculation that we've done generally  
9 ends up being more than just Middlesex or Somerset. It  
10 includes other counties, and those other counties just  
11 don't have good data.

12 MR. MC GIMPSEY: May I have a minute, Your  
13 Honor?

14 THE COURT: Sure.

15 (Informal discussion outside the record.)

16 Q Maybe just one more question. How did you  
17 develop a figure for the acreage in the growth area in  
18 Franklin?

19 A I used a planimetered it. It's a hard word to get out,

20 Y. «.

21 J J G ^ ia > we U M d a d « vic « called a planimeter,

22 which is a device used by engineers and architects and so  
23 on to measure areas off the map.

24 Q What kind of map did you use? Which map  
25\* exactly did you use?

1 A We used the State Development Guide Plan, 1980  
2 revised plan.

3 Q What scale? Do you know?

4 A Well, X don't know what scale it was at. X don't  
5 recall. But it's the one that's on exhibit for Somerset  
6 County. It's the one that's published by the Department  
7 of Community Affairs and printed. X can't - if X saw it,  
8 X could tell you what the scale is at.

9 Q You don't recall at this time?

10 A No, X don't.

11 MR. PHILIBOSIANI Judge, it's in evidence.

12 Be can show him the nap.

13 THE COURTS X'a not sure he was referring  
14 to that one.

15 Are you referring to the one in evidence?

16 THE WITNESS: Yes. Only we referred to  
17 the original State Development Guide Plan, a  
18 published report. X think that the one in  
19 evidence may be a photocopy of that report.

20 Q is it the exact sane scale? Do you know?

21 A Weil, the photocopy does make for some error, so  
22 we went to the original document.

23 MR. MC GXMSEY: All right. That's all,  
24 Your Honor. Thank you.

25 THE WITNESSi Thank you.



1 THE COURT: Any redirect?

2 MR. AUCIELLOJ Your Honor.

3 THE COURT: I'm sorry. Mr. Auciello.

4 CROSS-EXAMINATION BY MR. AUCIELLO:

I

5 I

6 Q Mr. Hints, do you recall what the charge to  
7 the consensus group of planners was at the time it first  
8 convened, or was drawn together?

9 A X don't know that there was a charge, we were all,  
10 we had all prepared fair share numbers. We were all  
11 representing different clients. We were all planners  
12 that had been involved in seeing what happened with the  
13 fair share methodology and arguments. In fact, X shared  
14 a conference the year before on fair share methodology.

15 So we case together with an understanding that if we could  
16 arrive at a methodology we'd all be better off. We didn't  
17 have anyone, we didn't have Carla Lerraan telling us we  
18 must come together on something. We conveyed and we  
19 group iain together as a group some time early to aid  
20 agreed that we could agree.  
21 February of 1984, is that correct?

22 A Q At the time it's wy understanding that this  
23 You know, X was at all those sessions.

24 THE COURT! Ho, no. It's not even close.

25 A X can't recall.

THE COURT! It's not even close. X would

1 say probably November of '83.

2 THE WITNESSt Yes. It was in -

3 Q Well, whatever it was.

4 I  
5 A Z was down here a lot, I know that, and we met a  
6 lot. But the final report case out on April 2nd. But it  
7 was even prior to that there were March and February  
8 editions and so on and we were into the winter when we  
9 were doing that.

10 II  
11 Q At the time that the group first came  
12 together you had personally already prepared fair share  
13 studies, is that correct?

14 A Yes, Z had.

15 Q That was for the Township of Old Bridge and  
16 East Brunswick?

17 A Ho. That was for Bast Brunswick and for Cranbury  
18 and for Monroe. Z may have done one or two others, but  
19 not involved in the Urban League cases.

20 ~~to which you~~  
21 ~~vacant developable land~~ In the preparation of the fair share studies  
22 ~~as one of the criteria for the~~  
23 ~~reference~~ did you take into account  
24 ~~the amount of your fair share numbers in those?~~

25 A Yes.

Q As a planner, Mr. Bints, isn't that item  
one of the items of paramount importance in rational  
planning, the amount of available open developable land?

1 A Yes.

2 Q With respect to the work product which emerged  
3 from the consensus group, did the group, in fact, address  
4 itself to two major areas, one of defining a regional  
5 need and then one of defining the constituent obligations  
6 toward meeting this need? Would that be a broad  
7 generalisation as to the -

8 A I don't remember getting down to, you know, such  
9 a one-or-two itemisation. We were involved in a whole  
10 number of issues, for example, how do we get at **defining**  
11 the region. Then we got into arguments as to, you know, **region?**  
12 do we define a fixed region versus a commutershed  
13 " \* | \* " \*  
14 Then we got into the argument do we need a fixed region  
15 for both prospective and present and so on and so on.  
16 Then we got into the methodologies, and then we got into  
17 the population projections. So it was just any number of  
18 issues, mil of which were - some were more boring than  
19 others and some were more interesting than others, but  
20 there were a number of issues\*

21 Q ; But was the definition of the region or the  
22 regions a necessary predicate before the determination as  
23 to a methodology for ascribing responsibilities toward,  
24 within that region?

25 h Not necessarily\* You could independently come up  
with a fair share methodology and independently, you know,

1 examine the question of region. But sooner or later they  
2 have to come together in order to determine a number, in  
3 other words, if we broke our group up into a couple of  
4 different groups and one group is going to go off and  
5 agree or try to wrestle with the problem of fair share  
6 methodology, they could do so independently of the group  
7 that had to weigh, look at the arguments of one type of  
8 region or how to calculate the region\* The two are  
9 independent.

10 Q The two are independent. I'll withdraw that.

11 In your opinion, Mr. Bints, are the two, in  
12 fact, independent, the determination of a region or  
13 regions and then the determination of fair share within a  
14 region?

15 A They are only independent in terms of if you want  
16 to try to figure out - I mean you are asking the question.  
17 This group got together, I think, and stop me if I am  
18 wrong, but you are asking me if they got together how did  
19 they go about attacking the problems at hand. But sooner  
20 or later once you answered these various questions that  
21 we were dealing with, these various issues, you have to  
22 know, say this is the region and then apply the  
23 methodology. So they are not independent when it comes  
24 to actually doing something about getting the final, you  
25 know, a fair share number. They are independent only in

1 that you can arrive at, you know, you can independently  
2 research those kinds of issues and, you know, not have the  
3 two intermixed necessarily.

4 Q Were they independent in the sense that the  
5 group could have arrived at a conceptualization of a region  
6 or regions, proceeded to a methodology which would have  
7 determined a number for the region or regions without  
8 addressing the next, without addressing a next component  
9 which would be ascribing particular numbers to each of the  
10 two constituents within the region?

11 A I'm sorry. Maybe it's getting *Imtm*, but I'm just  
12 not following you. I'm not doing this, because I'm  
13 trying to avoid you. I'm not sure I follow you. I  
14 don't know what you are asking. If you are asking can you  
15 make a determination of how or to decide how you want to  
16 treat regions, can you do that independently of determining  
17 a fair share methodology, the answer is yes.

18 Q If in fact in your professional opinion  
19 that could be done, in your professional opinion as a  
20 planner *mm* is called upon to make an evaluation as to  
21 a particular municipality's responsibility in terms of  
22 its region and the number which was determined for that  
23 region, as a planner, sir, would you not be more  
24 comfortable or is it not more closely aligned with your  
25 professional training and experience to examine an

1 individual municipality as a unit separate and apart from  
2 other municipalities within the region in a sui generis  
3 determination?

4 THE COURTS No.

5 Q Why not?

6 THE COURT: Because he doesn't know what  
7 sui generis means.

8 A No, Z do. X studied Latin.

9 THE COURT: X can tell by your immediate  
10 response.

11 MR. MEZEY: Longest question ever asked.

12 MR. LXNNUSS Would you repeat the question?

13 THE COURTS Yes.

14 (Informal discussion outside the record.)

15 A You are asking that should each town be  
16 Independent and have its own independent region?

17 Q No. Not region. Should each town's  
18 obligation within the region for which a number has been  
19 determined, should each town be examined independently  
20 la terms of its own characterisations, in terms of its  
21 own history, in terms of its own vacant developable lands  
22 as opposed to ascribing a particular fair share  
23 methodological number upon it?

24 A NO.

25 Q Why is that?

1 A No. You have to - I think it's important to  
2 arrive at an overall methodology, one that can be applied  
3 in case after case with some deviations, you know, but one  
4 that is fair and reasonable that you can use the same  
5 statistics, the same source data, so that no one can  
6 describe, you know, they were penalized unjustly. I  
7 think that on the other hand, when you get to the end of  
8 a running through, you know, describing, doing the way  
9 that X have just described, once you get a number, then  
10 you may have some individual circumstances, some individual  
11 quirks about the methodology that may not particular work.  
12 Then you sort those out at the end\* But in terms of trying  
13 to arrive at a methodology you have to do it, what's the  
14 available data and trying to arrive at the most fair and  
15 scientific basis that you can.

16 Q In your review and analysis were there any  
17 particular quirks with respect to Franklin Township which  
18 would have required in your opinion any deviation from the  
19 particular methodology that was adopted?

20  
21 h Hone whatsoever.

22 Q Now, Mr. Hintz, you made reference, X  
23 believe, in the cross-examination to the Rutgers Study  
24 that the document known as Mount Laurel II, Challenge  
and Delivery of Low Cost Bousing, -

A Yes.

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Q - that's by the Center for Urban Policy Research, -

A Yes\*

Q - were you personally involved in the study?

A Z was interviewed\* I wasn't personally involved in the study, no, Z was aware that it was going on. I had discus8ed it with some of the researchers and Z was interviewed.

O According to the document the project leaders were Robert W. Burchell, w. Patrick Beaton and David Listokin.

A Yes.

Q Do you know, sir, whether or not any of thos? individuals were involved in the consensus group that carae up with the consensus formula?

A Dr. Burchell and Dr. Listokin both were requested and Invited to address the consensus group and they did so on the first day of our convening. Z was in touch with Dr. Listokin during that time and afterwards to discuss various aspects of it, but they weren't involved after that point. Ho.

Q Do you know whether or not Dr. Listokin has had any professional employment with Jack W. Field?

A Yes, he has; not at the moment or not in the most



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recent past,

MR, AUCIELLO: I have no further questions.

THE COURT: Any redirect?

MR, FRIZELL: Yes, Your Honor.

THE COURT: How much? The reporter's been going almost two hours. I'm just trying to avoid bringing Mr, Hintz back unless he's coming back, anyway,

MR, FRIZELL: Your Honor, this won't take long,

REDIRECT EXAMINATION BY MR, FRIZELL:

Q Mr, Bints, you indicated earlier the master plan of the municipality indicated that the municipal complex should be planned as a township center, I'm wondering if you could make reference to, let's start with the 1982 master plan,

MR, WOLFSON: Which one do you have?

THE COURT: All right. That's for identification as PJW-12, is it, the '82?

IS that what you are looking at on the front page?

V #"

THE WITNESS: Yes.

THE COURT: Yes, all right.

THE WITNESS: PJ-12, PJW-12.

MR. MC GIMPSEY: Your Honor, is Mr. Frizell going to direct his testimony somewhere or is he

1 going to testify?

2 THE COORTS Let the witness find it.

3 A I'm not sure what the question is.

4  
5 THE COURT: X think the question is you  
6 previously testified that the master plans, some  
7 or all of them, depicted the municipal complex as  
8 the center or suggested that it should be the town  
9 center.

10 TBS WITNESS: Yes.

11 THE COURTJ The question is where in those  
12 reports is that shown? y

13 MR. FRIZELL: Tour Honor, why don't I do  
14 this in the interest of your earlier conanenti  
15 Xf X could move the master plans in evidence, they  
16 will speak for themselves. We can direct your  
17 attention to them at some future point in time.

18 MR\* MC GIMPSEYi xf the Court please,  
19 first of all, there is a question pending before  
20 the witness. X would like to know if he knows  
21 it. Xf he doesn't know it, that's one thing.

22 : But X think that should go into the record.

23 THE COURT: All right. Xf he can find  
24 it quickly. If he can't find it, let's move on.

25 A My recollection is that the plan had made mention  
of the town center area, but I can't - it says, for

1 example, that one of the goals is, "Create a sense of  
2 township identity and unity..." it says, "by creating a  
3 strong and viable township center and incorporating a  
4 variety of activities intended to serve all the township  
5 residents."

6 MR. MC GIMPSEY: May Z have the page you  
7 are reading from?

8 TBS COURT: Sure. That's page 11 of the  
9 1982 plan, or exhibit PJW-12 for identification.  
10 I recall there being other references, but I can't  
11 find them.

12 Q Could I direct your attention, Mr. Mats,  
13 to page 23 of the master plan which is a discussion of  
14 Sector 2.

15 THE COURT 23?

16 MB. FRIZKLL: Page 23, the top.

17 A Yes. It says on page 23 at the top, it says,  
18 "Continue developing the municipal center with public and  
19 cultural uses\* Increased traffic generated by activities  
20 at the center has the potential of adversely affecting  
21 Middlebushf —"

22 THE COURT\* Not too fast.

23 THE WITNESS: Sorry.

24 A «~ therefore, the potential traffic and noise  
25 impact on Mlddlebuah should be considered for all

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municipal center activities."

0 Mr. Hints, let me direct your attention to the 1980 master plan, the map entitled "Land use plan" to see if you can identify the town center on there.

A J-10?

THE COURT\* Ten.

THE WITNESS: Ten. x\*m sorry. That was two years ago.

TBS COURTS Looks like eleven.

THE WITNESS: PJW-11, That was another case,

A It shows on the land use plan map a designated town center in blue, just says briefly, "Town Center," includes mixed or public and semi-public activities and requires further study.

Q Could you refer to page 42?

THE COURT: Did that have a page or is that just -

TBS WITNESSt That's just the map which follows page 46 and prefaces page 47.

\* !!!!\*.....~fc\*' Page 42?

A / Page 42 at the bottom describes the town center as being "The concept of a functional Town Center as a focus for township-wide activity and identity is planned at the location of the present municipal complex on DeMott Lane.

1 "In the long range future this area would house the  
2 Township government, library, limited recreation  
3 facilities, a community center, performing arts center  
4 and art and cultural facilities\*\*

5  
6 Then it goes on the next pages and keeps going on\*  
7 There's more to it.

8 Q Is the town center area that was identified  
9 in the '50 and '82 plans also shown on the 1968 master  
10 plan?

11 A Yes. That's PJW-7 for identification, and it also  
12 shows the town center area.

13 ~~THE WITNESS:~~ it refers to the master plan  
~~THE COURT:~~ Referring to what page?

14  
15 map without - it seems to follow page 37, but  
this is so old that it way be out of alignment.

16 THB COURT! All right.  
17

18 Q Now, Mr. Hints, one other question, If you  
19 were to, for Instance, as you indicated in the deposition  
20 read to you by Mr\* McGiipsey, there was an attempt to  
21 locate the geographic center of Franklin Township\* Would  
22 it be closer to or farther from Morris County from the  
municipal center?

23 A It's further from Morris County.  
24

25 Q So that it would not include Morris County  
26 if one were to use the geographic center? You can't get

1 there, to the municipal center, you are not going to get  
2 there from -

3 A X would doubt you would get there from Morris County  
4 to the geographic center of town, although X didn't  
5 calculate that,

6 MR. FRISBLL: Your Honor, X have no other  
7 questions. X just move the master plans for the  
8 purpose that we want.

9 THE COORTS All right. That would be P-7,  
10 10 and 12. Any objection? i

11 MR. MC GIMPSEYS Your Honor, X understand  
12 it\*s being moved for the question as the beginning  
13 point,

14 THE COURT: Yes.

15 MR. MC GIMPSEY: Yes. X have no objection.  
16 X have a couple questions on redirect.

17 THE COURT\$ Let's mark it.

18 MR. FRIZELL: x<sup>f</sup>« sorry. X missed one.  
19 Xt was PJW-8, which is the 1972 version. I'm not  
-20 going to elicit any more testimony except it will  
21 speak for itself on the same subject.

22 MR. SILVER: 7, 3 and 11?

23 MS. HIRSCH: 7.

24 MR. CAFFBRTYt X have 7, 11 and 12. X  
25 believe it's 7 and 11 according to my exhibits.

1 MR. FRIZELL: Part of the problem is these  
2 were used as exhibits in the earlier trial.

3 MR. LINNUS Seven, eight and eleven.

4 THE COURTS We are now talking of 7, 8 and 11.  
5 Wasn't the first reference to 12?

6 MR. CAPFBRTY\* Thank you, Your Honor,

7 MR. FRIZELLt 7, 8, 11 and 12 is correct.

8 THE COURTS All right. 9 and 10 are already  
9 in.

10 (The master plans were received and  
11 marked Plaintiff Fields<sup>1</sup> Exhibits PJN-7 through  
12 PJW-12, respectively, in evidence.)

13 MR. FRIZBLL: While we are at it X an  
14 reminding the court the ordinance is not admitted  
15 in evidence, if there are any questions.

16 MR. CAFFERTYS I don't think we had a  
17 proper opportunity to examine that.

18 MR. FRIZELL: X have no problem with that,  
19 Mr. Cafforty. I'm only telling you this is the  
20 package we received from the township in discovery.

21 MS. HIRSCH: Judge.

22 THE COURTS Just a second. All right,  
23 Miss Kirsen.

24 MS. HIRSCHI Judge, I have a few questions  
25 on redirect, and I also have a cement on the

1 ordinance if we are getting to that. Maybe we  
2 should just finish Mr. Hintz.

3 THE COURTS Row much more?

4 MS. HIRSCH: very brief.

5 THE COURTS All right. Brief, hopefully,  
6 Miss Hirsch.

7 REDIRECT EXAMINATION BY MS. HIRSCHS

8 Q Mr. Hints, can you tell me if the consensus  
9 methodology dictates where the thirty-minute commute should  
10 start within the municipality?

11 A I don't recall that it does.

12 THE COURT? Let me tell you it doesn't.

13 I struggled with it.

14 O Have you reviewed this court's decision in  
15 AMG Realty Company versus Township of Warren?

16 A Yes, I have.

17 Q Are you familiar with part of the decision  
18 that directs where the thirty-minute commute should start  
19 in the municipality?

20 A I recall reading that. Yes.

21 1, ^ / | ; . Did you review the fair share study that you  
22 did originally for this ease again in light of the Warren  
23 Township decision?

24 A Yes, I did.

25 O Did you reconsider where the start of the



1 thirty-minute commute should be in Franklin Township in  
2  
3 light of the standards in the Warren Township decision?

4 A Ko. I felt that even more supported by, you know,  
5 starting, using the municipal center as the starting point.

6 THE COURTS Let me ask whether you think  
7 that the several step process which was used in  
8 the opinion, and please don't hesitate, is correct  
9 or whether you would have gone for a different  
10 approach, whether you would have used the  
11 municipal complex first, for example, as opposed  
12 to the town center?

13 THE WITNESS: Z would prefer from my areas  
14 knowledge, working fair share numbers in other  
15 and other municipalities, X would prefer to, Z  
16 would always look at the functional center first,  
17 finding none, would look for the municipal center  
18 and then go from that point\* Again I've done it  
19 enough times to be very comfortable with it. I'm  
20 also, you know, very familiar with Franklin  
21 Township and have been for a number of year&,  
22 having worked in the area and so on that X just  
23 can't think of any other point that X would start  
24 from in Franklin Township.

25 THE COURTS But how would you define a  
functional center?

1 THE WITNESS t How would X define a functional  
 2 center? One that is basically a commercial and  
 3 cultural center for the given municipality and  
 4  
 5 one that hopefully also contains some civic  
 6 activities as well as along with the cultural and  
 7 commercial activities\* For example, I think the  
 8 classic downtown, you know, business district of  
 9 Trenton or Z think of - if Z were going to start  
 10 in Toms River, not knowing where the municipal  
 11 building in Toms River is, I would probably start  
 12 in the center business district of Toms River and

13 TRB COOKT: You've got them both here.

14  
 15 That's right across the street,

16 THE WITNESSs It's not present in Franklin.

17 THE COORTi Okay\*

18 BY MS. HIRSCHI

19 Q Mr\* Bints, are you familiar with the Easton  
 20 Avenue-John F\* Kennedy Boulevard area of Franklin Township?

21 \* , \* & .  
 22 O. Could you describe the residential  
 23 character and the commercial character of that area and  
 24 give me your opinion on whether you would consider that to  
 25 be the functional center or the downtown area of Franklin  
 Township?

1  
2 A It's a suburban sprawled development area, hasn't  
3 allowed - well, in the last ten or twelve years there's  
4 been a lot more commercial development added along Baston  
5 Avenue towards the canal. There's, you know, a Shop-Rite  
6 and there's some other new commercial shopping centers  
7 that have been added in that area, and that's building on  
8 an older single-family residential area that was going  
9 down JFK Boulevard. It's, you know, more, it's hard to  
10 determine where you are\* X have been through so many  
11 times I'm not sure what the places are, but X knew the  
12 area well.

13 Q But you consider it a downtown area for  
14 Franklin Township?

15 A HO.

16 Q Is it similar in character to some of the  
17 other built-up residential-commercial areas in Franklin  
18 Township?

19 A Well, it has a lot of similarities with what might  
20 be termed the Franklin Park area northward towards Mew  
21 Brunswick of Franklin Township where you have also a lot  
22 , of housing development, naturally, garden apartment  
23 development, and you also have another Shop-Rite complex,  
24 you know, and the shopping center part and there's strip  
25 commercial development and so on. The way you get to any  
place from Easton Avenue and to what may be shopping is to

1  
2 drive in your ear. The way you get to anything on Route 27  
3 is to drive in your car. There's no walking\* There's no  
4 downtown. There's nothing of that sort, no focal point,  
5 nothing that says you are here, whatever.

6 US\* HIRSCHI Thank you.

7 THE COURT: All right, anything else?

8 MR. MC GIMPSBY: Is it my turn?

9 THE COURTt Yes, apparently there is no  
10 other redirect\* In terms of time?

11 MR, MC GIMPSBY3 Not long, Your Honor. I  
12 would say five minutes or would you prefer the  
13 witness --

14 THE COURTt I'm trying not to bring this  
15 witness back, but the reporter's been going an  
16 awfully long time.

17 ME. FRIZELLJ IS redirect appropriate if  
18 there is no redirect?

19 TBS COURT: You mean recross.

20 MR. MC GIMPSEYt X have an area of recross-  
21 examination. It is the area brought out on redirect  
22 and also on the question of JFK Boulevard, which  
23 was brought up on redirect or recross.

24 THE COURT: All right. I'm going to  
25 limit it. At four-fifteen we are going to cut it.  
Try to do it.

1 MR. MC GIMPSEY: I will try to So it.

2 RECROSS-EXAMINATION BY MR. MC GIMPSEY:

3 Q Let me ask you this question! With respect  
4 to the master plans that you were directed to certain  
5 pages by Mr. Frizell, none of those pages had anything  
6 other than the fact that the new municipal complex was a  
7 public and cultural area, is that correct?

8 A the civic and cultural center.

9 Q Does it say "civic" or does it say "public"?

10 MR. FRIZELL\* Your Honor, can I object?

11 They can make reference to the documents If they  
12 want to, what the documents themselves say. They  
13 will speak for themselves\* X think X was fairly  
14 brief just asking Mr. Hints to point them out for  
15 the Court's direction.

16 MR. MC GIMPSEY: Your Honor, it's a perfectly  
17 valid question.

18 THE COURT: If you say otherwise, the  
19 documents will speak for themselves.

20 Wfx, I really don't recall.

21 ft That's what I want to know. It didn't say  
22 it was the center of the population in the town, did it,  
23 in those master plans?

24 A I don't recall.

25 Q It didn't say it was the geographical center

1 of the town in those master plans, did it?

2 A I don't recall.

3 Q It didn't say that it was the business or  
4 commercial center of the township in those Blaster plans,  
5 did it?  
6

7 A X think that it was suggesting in one of them, one  
8 of the plans, there are four of them, that at some point  
9 it would become, you know, the center point where there  
10 would be commercial activity as well as cultural and civic,

11 Q Did it say it would become the center for  
12 commercial area in the township? that's my question.

13 A That it would include commercial development.

14 Q But it didn't say it would be the center  
15 for commercial area in the township. Am Z correct on that?

17 A I think you are correct, yes.

16 Q All right. Didn't say that it would be the  
center for industrial base in the township, did it?

19 A Oh, no\*

20 Q One other question, if X might, with respect  
22 to JFK and Easton Avenue, that area of JFK and Easton

21 Avenue, JFK really just about dissects or, excuse me,  
23 bisects Easton Avenue in the town, running on its northern  
24 boundary, am I correct on that?

A As X recall\*

Q I'm not talking in Inches, but, you know,

1 is it generally true?

2 A Generally I would say that's true, yes.

3 Q To the easterly side we have a huge shopping  
4 center by the name of Rutgers Plaza, am I correct on  
5 that, right on Saston Avenue?

6 A If you tell me that is so, I guess.

7 Q Have you been there?

8 A I have been there\* In fact, I've eaten there\*  
9 Is there a Chinese restaurant there?  
10

11 Q Yes, absolutely\*

12 A Okay\* I don't know where that is\* I just know I  
13 have been there\*

14 Q That's the one I am talking about\* That's  
15 a big shopping center, am I correct?

A It's a big shopping center\*

16 Q Further east to that is Pastore's Shopping  
17 Center, is it not, another shopping center?

18 A All I know, there's a lot of strip commercial  
19 development on this roadway, and I have been probably to  
20 all those places.

21 Q Further east down from that second shopping  
22 center is a zone called office professional transition,  
23  
24 am I correct on that?

25 A Well, there's some office and converted residential  
homes along there\* Yes\*

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Q Okay. Also down there on the easterly side of the town on that northern section is Harrison Towers, isn't it?

A Yes. Those are the mid-rise residential buildings. Yes.

Q Okay. How many floors are there? Do you know?

A Fourteen, sixteen, something like that.

Q If you take JFK and then start going to the west, there's a shopping center across the street from that, isn't there, that used to be the Dfreyfus 'shopliftg Center?

A You are winning. I don't know those places by their names,

Q Do you know a shopping center across from that with McDonald's, Dunkin<sup>1</sup> Donuts, the bank, all that long hoo and hooray of stores behind it?

A Yes, yes.

Q Isn't that right?

A There's strip commercial development along that.

Q Next to it is another shopping center, isn't it, on the same side of the street?

A They, you know, in my mind, and I have been there many times, I've driven there I don't know how many times, they go from one place to the other. I'm not sure how



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defined one is, which one is called which, by which name,

0 But there is another shopping center?

That's my question\*

A I'm sure you might be correct.

0 Next to that is a professional building owned by a dentist, isn't it?

A You obviously are sore familiar with that area.

0 X just want to know, you know. You don't have to tell me how you know. Just tell me what you know\*

**Yes or no\***

**A X can't tell you yes or no\***

Q Okay\*

A Because again the area is close in my mind from being one thing to another. At times there is vacant land\* There's Rutgers' Prep School\*

Q On this side, on the southerly side across from Easton Avenue is the Bonner PUD, isn't it?

A Bonner goes all the way back to Middlebush.

Q **Yes\*** It is mainly on the Easton Avenue side runs all the way up Cedar Grove Lane, doesn't it?

**V ; I don't know\***

Q 2,400 units, do you know that? Isn't that the correct number for Bonner?

A That sounds correct, but X am not correct\*

Q There is the Quail Brook housing

1 development that's stopped that's right behind or a block  
2 from JFK, isn't there?

3 MR. FRIZELL: Your Honor, I object. I  
4 think this litany has gone far enough. I think  
5 if Mr. McGiropsey wants to make some factual  
6 presentations, the way to do that is not in the  
7 recross of this witness concerning every single  
8 building that exists on Easton Avenue in Franklin  
9 Township. Are we going to go through every  
10 building in the town?

11 THE COURTS I think he's made his point.  
12 It would be raore helpful when Mr. Chadwick **takes**  
13 the stand and that X see some sort of land use nap  
14 which Mr. Chadwick utilises. It's difficult for  
15 me. The witness knows a lot more about the town,  
16 obviously, than I do, and I think X might get a  
17 better picture through his direct.

18 MR. MC GIMPSEY: Your Honor, X understand  
19 that. But X think X have the right to ask this on  
20 ctoss-examination. I'm not taking an awful lot of  
21 time. Maybe Mr. Prizell doesn't like it.

22 THB COORT\* You have wade your point.

23 MR. MC GIMPSEY: Thank you.

24 THE COORTs All right. Nothing further of  
25 this witness.

1 Thank you, Mr. Hints. You may step down.

2 THE WITNESS: Thank you\*

3 THE COURT: All right, David, thank you

4  
5 very much. I appreciate it.

6 Off the record.

7 (Informal discussion outside the record.)

8 (Whereupon, at 4:15 p.m. the court

9 adjourned to Tuesday, September 11, 1984, at  
10 9:30 a.m.)

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET/OCEAN COUNTIES  
Docket Kos. L-6583-84PWi L-26294-84;  
L-7917-84FWf L-14096-84PW?  
L-22951-84PWy L-25303-84W?  
L-25303-84PW; L-33174-84PW;  
L-19811-84

JACK If. FIELD CO., , J.H. VAN )  
CLEFF, 3R., J2R ASSOCIATES, )  
FLAMA CONSTRUCTION CO., BRENER )  
ASSOCIATES, WHITESTONE )  
COHSTRUCTXON CO. f RAKECO )  
DEVELOPERS, INC,, LEO MINDEL )  
**and** V7OODBROOK DEVELOPMENT CO., )

Plaintiffs, )

vs. )

TOWNSHIP OF FRANKLXK, TOWNSHIP )  
OF FRANKLIN PLANNING BOARD **and** )  
TOWNSHIP OF FRANKLIN SEWERAGE )  
AUTHORITY, )

Defendants. )

I, DAVID <3. VORSTSO, a Notary Public and  
Certified Shorthand Reporter of Mew Jersey, do hereby  
certify that X personally took a stenographic record of  
the testimony and the proceedings had, and transcribed  
the sane\* and the foregoing is a true and correct  
**transcript** of same.

*David M. Vorst*  
David 6. **Vorsteg**, C.S.R.  
License Number **XX00368**

DATE: September 16, 1984

1 that you can rent or sell at a level which is afford-  
2 able by families for whom it is intended.

3 Q And the second assumption that you make  
4 with respect to that is that the market rate portion  
5 has been satisfied all along in the form of a substan-  
6 tial number of market rate units that have been built  
7 since 1980; is that correct?

8 A That's right, because the building industry  
9 always try to satisfy whatever market there is.  
10 That's how they make a living.

11 One can expect if the need is actually there,  
12 the units are being built.

13 Q Did you make any analysis to determine  
14 the number of units that have been constructed in  
15 New Jersey between 1980 and 1984?

16 A No. But since writing this report -- I should  
17 say that in revising the report between the blue  
18 and red, I tried not to change too much. But my  
19 thinking keeps evolving.

20 Since writing the report, I came to the con-  
21 clusion that probably I would be justified if I were  
22 to say that 80 percent of the market has been satis-  
23 fied between '80 and '84, because it's 40 percent of  
24 the period. It's a reasonable assumption.

25 Q So then would it be safe to assume that

1 there has been 40 percent of the 67,000 which is the  
2 unsubsidized number constructed between '80 and '84-,  
3 in your opinion?

4 A I think so.

5 Q That would be approximately 26 or 27,000  
6 unsubsidized units that would have been constructed  
7 between '80 and '84; is that correct? If we were to  
8 take 40 percent of 67,000?

9 A Right, about 27.

10 Q But you have no knowledge as to the  
11 actual number of units constructed in that period of  
12 time; is that correct?

13 A No, I don't.

14 Q Are these numbers available?

15 A I suppose one could compile them. But whether  
16 right to the minute or not, I don't know. But one  
17 could compile some number.

18 Q Now, you also apparently make a third  
19 assumption, and that is that there will be a substan-  
20 tial demand for market rate units outside the frame  
21 work of Mt, Laurel implementation mechanisms.

22 Can you tell me what you mean by that statement?

23 A Well, Mt. Laurel housing is going to be pro-  
24 duced, I mean, based on the 20 percent set-aside  
25 technique which is favored by the court and which

1 seems to be the only technique that can produce Mt.  
2 Laurel housing on any scale at the present time. That  
3 will be relatively dense multi-family-type housing,  
4 generally speaking.

5 But there is a substantial demand among wealth-  
6 ier people, the middle class, upper middle class, for  
7 single-family housing and single-family subdivisions  
8 Which are going to continue to be built. And they are  
9 also part of the prospective need projected by the  
10 Department of Labor.

11 Q But that type of housing, the types  
12 sought by wealthier families, is already included in  
13 the number 110,631; is it not?

14 A That's right. They are part of that projection.

15 Q So you're not assuming that there's an  
16 additional number of houses to be built over the  
17 110,000?

18 A No. The point that I'm making here is that we  
19 took the \$7,000 units, which are the market rate  
20 projection from '90 to '90. And we said that maybe  
21 40 percent of that has already been built, which brings  
22 the number down to \$9,000. Even the \$10,000 represents  
23 an exaggerated number of units in terms of those that  
24 will be available with which to satisfy Mt. Laurel  
25 needs.

1 Q I see. Okay.

2 A Because of the single-family subdivisions and  
3 so on that are going to continue to be built.

4 Q So now you make a further assumption  
5 that between now and 1990 the market in Franklin  
6 Township<sup>f</sup>s prospective need region could absorb not  
7 more than 50,000 unsubsidize<sup>4</sup> units in the type of  
8 relatively dense developments that would make possible  
9 the 20 percent set-aside?

10 A Well, that is a conservative number based on  
11 the figuring that we just did here.

12 Q It<sup>f</sup>s just based on what you've told me  
13 so far today?

14 A Right.

15 Q Therefore, you reached the ultimate  
16 conclusion from those five assumptions that the maxi-  
17 mum number of units affordable to Mt. Laurel households<sup>s</sup>  
18 which can be produced by 199a on through selling alone  
19 would am<sup>®</sup>nt to 12,500; is that correct?

20 £ That's correct.

21 Q That's baaed on the 20 percent ratio of  
22 the 50,000 that you've previously spoken of-, is that  
23 correct?

24 A No. Yes. No. It's 25 percent. Because the  
25 total percentage of Ht. Laurel units in total



1 development is 20 percent. But that means that that  
2 20 percent is equal to 25 percent of the unsubsidized  
3 number,

4 If you have 100 units in the development, 20  
5 percent - Mt. Laurel is 20 units. Twenty units repre-  
6 sents twenty-five percent of the eighty non-subsidised  
7 units. So you have 50,000 unsubsidized units. So  
8 that if you have 50,000 unsubsidized units, you can  
9 produce 12 and 1/2 Mt, Laurel units.

10 Q The number of 12,500 represents the total  
11 amount of units in the region, prospective region\*  
12 both Mt. Laurel and non-Mt, Laurel to which the 20  
13 percent set-aside would apply?

14 A No. The 12,508 represents - let me put it  
15 another way to make it clearer. The total number of  
16 units which can be built to satisfy the total market  
17 subsidized and unsubsidized is 62,500, 50,000 unsub-  
18 sidized units and 12,500 subsidized units,

19 q Now, is there a relationship between  
20 that aaVSfcQ and your number that you've arrived at  
21 for Franklin's prospective fair share?

22 A There's no relationship at all. The prospectiv<sup>e</sup>  
23 fair share is based on a formula which is applied to  
24 a prospective need. We have arrived at certain  
25 numbers, let's say 18,000, 2,000, whatever the number

1 was, that represents the fair share of Franklin Township  
2 of the total regional need.

3 Now we're starting from a different point. How  
4 much housing can be produced? It has nothing to do  
5 with need. It has to do with how much housing can be  
6 produced.

7 Q Let me ask you this question now.  
8 Presumably if one did a separate fair share analysis  
9 for each municipality in Franklin's prospective need  
10 region, one would arrive at a number, a total number  
11 if you added them up of the low and have the Mt. Laurel  
12 need for that region; is that correct?

13 A No. If one added the total need, one doesn't  
14 need to do it because the Department of Labor already  
15 projected that it's 110,000 units.

\*6 Q Let me ask the question my way and then  
17 you can tell me if it makes sense\*

18 If one were to take the methodology for prospec-  
19 tive fair share, the Lerman methodology for each  
20 community within the region of Franklin Township, one  
21 would arrive at a Mt. Laurel need for that region if  
22 you were to total them up; would you not?

23 A Right.

24 Q Would that number bear any relationship  
25 to the 13,589 number that you are now discussing in

1 this section of your report?

2 A Well, it would be less. The fair share would  
3 be less. Because fair share represents only 20 percent  
4 I'm sor-ry. Let's backtrack.

5 If one starts out with a total projected need  
6 and then apportionments that total need to different  
7 municipalities, aggregating these apportionments will  
8 produce the total need.

9 Now, of course, the fair share includes a 20  
10 percent surcharge in the vacancies which is over and  
11 above the basic projection of household growth.

12 Now\* so this is what hap-pened. Am I answering  
13 your question?

14 Q As I understand your answer, essentially  
15 the difference between the aggregate of the fair share  
16 numbers for all the municipalities in the region and  
17 the projected household growth number -

18 A Is a 20 percent and 3 percent.

19 <f.-•• \_\_\_\_\_ should be essentially 20 percent and  
20 3 percent?

21 A Right.

22 Q Now, getting back to what ^3,000 of that  
23 represents, the H3,000 is an estimate of how much of  
24 the total need represents the needs of Mt. Laurel  
25 households.

1 Now, set that aside for a moment. The fair  
2 share is based on that number. The fair share purports  
3 to apportion not the 110,000 but the 43,000 among all  
4 the communities. Right? The formula takes the factors  
5 and multiplies them by the Mt. Laurel need. But the  
6 Mt, Laurel need represents 40 percent of the total  
7 household growth.

8 A The housing that can be built via the 20 percent  
9 set-aside is only 20 percent Mt. Laurel oriented.

10 I Therefore, by definition you cannot satisfy the entire  
11 Mt. Laurel need using zoning alone.

12 Q Now, that leads me to the next question  
13 then. As I understand what you've just told me, the  
14 fair share number for Franklin Township, whatever that  
15 number is, depending on what factors or allocation  
16 criteria you utilized, - let's say hypothetically  
17 that fair share number for Franklin Township is  
18 2,000 —

19 A Right.

20 Q -- is it your testimony that that number,  
21 2,000, is not achievable through zoning?

22 A Absolutely not. Well, let me backtrack.

23 on the regional basis it is not. On the commu-  
24 nity basis it is. Because if you have a total market,  
25 let's say, for 43,000 Mt• Laurel units, that's the

1 need. But the set-aside technique can only satisfy  
2 half of that, which is just about the proportion,

3 Only 22,000, the first communities that are  
4 going to zone for it in the region, are likely to get  
5 it all built. The ones that come down later are prob-  
6 ably going to find that their M market - I mean,  
7 the builders simply will not built because the market  
8 is exhausted.

9 Q That would actually be true then? The  
10 first communities that are sued and have a builder's  
11 remedy awarded against them would suffer the same fate?

12 A It also depends on desirability of the commu-  
13 nities, both as to jobs, et cetera, and the quality  
14 of the community,

15 For instance\* I made a statement that Cranbury  
16 would get every single unit that it's zoned for within  
17 the next five years because it's in the Princeton  
18 real estate market exploration area. If it zoned  
19 itself• ffr its full fair share, it's going to get its  
20 full fair share,

21 Q So that it is inherent in the market  
22 place that some communities in effect are going to  
23 get a free ride?

24 A Well, theoretically if one deals in the world  
25 of these projections that we are basing all our

1 thinking on, that is precisely the effect.

2 Q Do you have an opinion of what, if any-  
3 thing, can be done to avoid that set of facts?

4 A Well, now I'm looking at the decision, the  
5 Mt. Laurel II. And one starts with the fact that Mt.  
6 Laurel II says take the need and apportion the need,  
7 that is what's being done through the fair share  
8 allocation formula.

9 The second thing is what is the implementation  
10 mechanism? And what I have recommended in every in-  
11 stance where it made sense to do so -- so far I think  
12 it made sense everywhere - is that every alternative  
13 method, rehabilitation of substandard housing, making  
14 an allowance for the possibility that some of the  
15 overcrowding would be solved through new construction,  
16 having the municipality explore possibilities of  
17 getting « it's very scarce now - but 202 Federal  
18 assistance for senior citizen housing, which becomes  
19 100% of rent Mt. Laurel, Or making available to the  
20 developer of Mt, Laurel housing infrastructure  
21 assistance, building streets, the sewers, whatever.

22 I lean, to every such initiative on the part  
23 of the municipality should be given credence with the  
24 understanding that if they do not move, in the direc-  
25 tion that they indicate that they would like to move

1 in order to not zone every acre, vacant acre in town  
2 for high density development, that they be allowed to  
3 try to do it.

4 The compliance period even now is six years.  
5 For a couple of years maybe one should be allowed to  
6 explore other possibilities.

7 Incidentally, this is election year, so we  
8 don't know who's going to be the next administration,  
9 what subsidies may or may not become available.

10 So these are the kinds of things that should  
11 be given some leeway to try these other methods in  
12 order to not overxone to the extent that thia 20 per-  
13 cent set-aside method would cause the total regional  
14 picture to have to absorb,

15 Q Let me see if I understand what you're  
16 saying.

17 What you're saying is the problem is not  
18 necessarily what the fair share methodology is, but  
19 rather the implementation of that methodology?

20 A Precisely.

21 Q Might a solution to the problem that  
22 you raise be that the implementation itself was  
23 staged in some manner and related to all communities  
24 in the region providing some initial percentage of  
25 low or moderate income houeing?

1 A Well, I don't know what - not being a lawyer  
2 and certainly not being a judge, I have no -

3 Q I'm asking you as a planner now, not a  
4 lawyer or judge.

5 A Well, it seems to me, particularly in municipal-  
6 ities that find it difficult to provide the infra-  
7 structure and the like, that some staged approach is  
8 an appropriate way to do it. I recommended that in  
9 Bedminster where the total fair share, the fair share  
10 of the 20 percent exceeded the total number of units  
11 in the municipality.

12 The same thing applies to Cranbury. So in  
13 those instances, I mean, to have a sudden growth take  
14 place within two, three years, of thousands of units  
15 built really changes the character of the community  
16 erratically.

17 go in those instances it may be appropriate  
18 to consider staging.

19 MR. CAFFERTY: I have no further  
20 questions, Mr. Raymond.

21 A I want to make one point. I noticed that in  
22 the red report, while I did correct for the new  
23 growth area having to do with the fair share, I did  
24 not correct the last section of the report starting  
25 on Page 25, which uses the formula to develop what



1 is the "fair- share" of the achievable housing, on  
2 Page 28 and 27.

3 Q I see.

4 A I didn't correct those figures.

5 Q Well, those figures would be reflected,  
6 would they not, on Pages 27, 28 if I were to just  
7 substitute the numbers in your Footnote 18; or is that  
8 wrong? In Footnote 18 of the red report I thought you  
9 told me that you lied, or did I misunderstand you?

10 A What I did is I took instead of starting with  
11 the need of 43,000 units, I started with the achievable  
12 number, which is 12,500 plus a certain amount of over-  
13 zoning, 20 percent overzoning, whatever. Then I applied  
14 the formula to that need and I came up with the  
15 figures on Pages 27 and 28. I can do that, if you'd  
16 like me to, and I'll send you the revised pages.

17 \$ Perhaps you can do that through your  
18 counsel so that we all know what the numbers are.

19 MR. CAFFERTY: I have no further  
20 questions.

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1 CROSS-EXAMINATION BY MS. HIRSCH:

2 Q Mr. Raymond, is there anything further  
3 you'd like to clarify in your testimony today?

4 A Not substantive, I would like to add to ray  
5 experience record. Because the way you asked the  
6 question, I didn't have a chance to.

7 While I didn't study planning, I taught  
8 planning a great deal. I was Chairman of the  
9 Department of Planning at Pratt Institute for 16  
10 years, and I taught zoning at Columbia University.  
11 And I lectured at many other universities and the  
12 like. So just for the record.

13  
14 CROSS-EXAMINATION BY MR. AUCIELLG:

15 Q Mr. Raymond, you indicated that you  
16 personally had involvement with the Master Plan which  
17 was developed for Cranbury?

18 A Yes, Well, a limited involvement. I can  
19 explain, if you want the details.

20 M? participation dealt with the transfer  
21 development credits portion of the Master Plan.  
22 Since I was involved as the head of the firm, I got  
23 a little involved in the editorial aspects of the  
24 final report. But essentially that was my contribu-  
25 tion.

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1 Q And I believe you also indicated that  
2 you were personally involved with Cranbury in its  
3 Mt. Laurel litigation?

4 A Yes.

5 Q Did you author or present a report on  
6 Cranbury's behalf in that particular litigation?

7 A Yes. Similar to this.

8 Q And in that report did you follow the  
9 same methodology that you followed in this report for  
10 determining that municipality's indigenous and pros-  
11 pective obligation?

12 A Yes. As I say, my thinking evolves as I go  
13 from one report to another, and there might be slight  
14 variations, but essentially it's the same.

15 Q So essentially you followed the Lerraan  
16 Consensus Report in your analysis in Cranbury and your  
17 analysis for Franfclin Township; is that correct?

18 A Yes.

19 Q Were you personally involved in the  
20 Master Plan of Plainsboro?

21 A No.

22 Q Your firm was involved?

23 A Yes •

24 Q And you were not personally?

25 A No,

1 Q Was your firm involved in any litigation,  
2 Mt. Laurel litigation involving Plainsboro?

3 A Well, I testified and I prepared a similar  
4 report to this report for Plainsboro as well.

5 Q By that do you mean you followed the  
6 same methodology in terms of coming to your ultimate  
7 numbers?

8 A Yes.

9 Q Would you make a copy of your Plainsboro  
10 and Cranbury reports, Kt. Laurel reports, available  
11 to your counsel?

12 A You have them.

13 Q Now, Mr\* Raymond, are you familiar with  
14 the Master Plan, the document which is entitled,  
15 "Master Plan, Franklin Township, New Jersey," for  
16 which the technical assistance was provided by Raymon<sup>d</sup>,  
17 Parish 6 Weiner, Inc\*?

18 A I'm not sure.

19 Q You're not familiar with the document?

20 A X know that it exists. But I had no hand in  
21 preparation of any kind. And I didn't even read it  
22 preparatory fp %his.. Because what I did here has no  
23 relevance at all. I mean, not irrelevant. I mean,  
24 it's not in any way based on any facts about Franklin  
25 Township.

1 Q So what you did here is, for want of a  
2 better term, an abstract analysis with respect to  
3 housing needs?

4 A I think we need a better ten than abstract.  
5 This is an approach based on a given formula which has  
6 been established and which is so far receiving credence  
7 in the court. And I followed the formula where it led  
8 and I stated whatever differences I had with the  
9 formula and showed what consequence following my  
10 approach would be,

11 Q One of the major differences, as I  
12 recollect your testimony, is the formula's reliance  
13 on acreage as determined by the State Development  
14 Guide Plan for growth or limited growth as opposed to  
15 the developable acreage; is that correct?

16 A First of all, I don't know anything about  
17 developable acreage. There are no figures available  
18 for the region of developable acreage. So that there's  
\*9 nothing in this report having to do with developable  
20 acreage.

21 Now, if you want, I can tell you that the Mt,  
22 Laurel n decision is very clear in indicating that  
23 the existence of vacant land in the community should  
24 not be a factor at throwing housing at it. It's on  
25 Page 350, I believe.

1 Q Mr. Raymond, are you familiar with a  
2 document known as the Planning Report on Franklin  
3 Township, Somerset, New Jersey, prepared by Brener  
4 Associates, dated May 11, 198\*t, prepared by Sullivan  
5 Arfa, P. C?

6 A Never saw it.

7 Q Are you familiar with Sullivan Arfa,  
8 P. C. ?

9 A No.

10 Q Do you know what that is?

11 A No.

12 MS, HIRSCH: Just if I can  
13 clarify for you, Mr, Raymond's charge  
14 from me was just to do a fair share  
15 Study for this client. And we have  
16 another witness from Sullivan Arfa,  
17 which is a planning firm in Philadelphia,  
18 to analyze the Township ordinance, its  
19 compliance with Mt. Laurel and other  
20 aspects,

21 MR, AUCIELLO: So Mr. Raymond  
22 did not familiarize himself with any  
23 report which was prepared by Sullivan  
24 Arfa with respect to this particular  
25 Township and the same client?

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MS. HIRSCH: No. He is strictly a fair share expert for us.

MR. AUCIELLO: In light of Mr. Raymond's unfamiliarity with the Master Plan document previously prepared by his firm and the study prepared by Sullivan Arfa, I have no further questions.

MR. SHANABERGER: No questions.

MS. HIRSCH: No questions.

MR. CAFFERTY: Nothing further.

(The witness was excused.)

(The deposition was concluded.)

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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET COUNTY  
Docket No. L-Q06583-8^ -PW

J. W. FIELD COMPANY et als;. )

Plaintiffs, )

vs. )

CERTIFICATE

THE TOWNSHIP COUNCIL OF THE )

TOWNSHIP OF FRANKLIN, et als. )

Defendants.  
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I, JACQUELINE M. VARHLEY, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing deposition was taken by me on Monday, June 18, 1984, and was reported stenographically by me; and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that the witness was duly sworn by me according to law prior to testifying.

I further certify that I am neither attorney for not\* counsel to any of the parties; I am not related to or employed by any of the parties or attorneys; and I am not financially interested in the outcome of this action.

*Jacqueline M. Varhley*  
JACQUELINE M. VARHLEY, C.S.R.  
No. XI01015

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

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