

MM - Field v. Franklin Twp

9/11/84

Stenographic transcript of trial ~~proceed~~ proceedings

pt 2

includes witness Wiener direct + cross
+ ~~1~~ 11 Flama's resume exhibit

P 139

~~ML 0000728~~

ML 0006195

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : SOMERSET/OCEAN COUNTIES
Docket Nos. L-6583-84PW? L-26294-84?
L-7917-34PW; L-14096-34PW.; L-22951-34PW;
L-25303-84PW? L-25303-84PW? L-33174-84PW?
L-19311-34

JACK W» FIEED CO., J.H. VAN CLEFF,)
SF., JZR ASSOCIATES, FLAMA CONSTRUCTION)
CO., BRENER ASSOCIATES, WHITESTONE)
CONSTRUCTION CO., RAKFCO 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.

Place:

Ocean County Courthouse
Toms River, New Jersey

Date:

September 11, 1984

BEFORE:

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

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

Reported by
DAVID G. VORSTEG, C.S.R.

PENGAD CO., BAYC N.J. 07002 - FORM SEL 6402

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1 APPEARANCES:

2 MESSRS. FRIEDEL & POZVICKI

3 By DAVID J. FRIEDEL, Esq. and
 4 MICHELE R. POZVICKI, Esq.
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 Attorneys for Plaintiff VZR Associates.

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 9 JEFFREY SHANBERGER, Esq.
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17 Attorney for Plaintiff Van Cleff, et al.

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By STEWART M. HUTT, Esq.
 Attorneys for Plaintiff Dr. Leo Mindel.

19 MESSRS. SEIFFERT, FRISCH, MCGIMPSEY & CAFFERTY

20 By THOMAS J. CAFFERTY, Esq. and
 21 ALEXANDER F. MCGIMPSEY, JR., Esq.
 Attorneys for Defendant Township of Franklin.

22 DENNIS A. AUCIELLO, Esq.

23 Attorney for Defendant Township of Franklin
 24 Planning Board.
 25

1 September 11, 1984

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3

Witness

4

<u>NAME</u>	<u>PAGE</u>	<u>DIRECT</u>	<u>CROSS</u>
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5

Geoffrey wiener

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MR. MEZEY		4	
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THE COURT	13, 20, 24, 41, 56, 64		
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MR. HUTT		72	
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MR. FRISELL		75	
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MR. MCGIMPSSY			79
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Exhibits

15

<u>PLAINTIFF FLAMA'S</u>		<u>IDKNT.</u>	<u>EVIDENCE</u>
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16

PF-1	Resume	8	8
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1 THE COURT; All right* counselor, I
2 apologise for the delay. Are you ready to proceed?

3 MR. >TEZFY: We are ready.

4 THE COURT; ^here is our witness? Do
5 one of you want to take the stand? You all look
6 guilty.

7 MR. HUTT: He thought yo« weren't coming
8 out. He ran downstairs.

9 MR, MEZEY: He was just here.

10 (Informal discussion outside th® record.)

11
12 G E O F F R E Y W I E N E R, having been duly sworn
13 according to law, was examined and testified
14 as follows:

15 THE COURT: All right, Mr. MeseY.

16 MR. MEZEY: Thank you, Your Honor.

17 THE COURT: Just before you proceed; did
18 you want to regroup here? Mr. Wolfson, you
19 indicated you wanted to be seated near Mr* MeseY.

20 MR. WOLFSON: At the break.

21 **DIRECT EXAMINATION BY MR. MEZEY:**

22 Q Mr. Wiener, what is your occupation?

23 A I'm a professional planner.

24 Q Are you licensed by the State of New
25 Jersey?

Wiener - direct

^

1 A Yas, I am,

2 ;%.-.:--,. * ...Q What is your educational background?

3 A *i I have a bachelor's degree of urban geography from
4 Clark University. I have a waster's degree in city and
5 regional planning from Pratt Institute.

6 O Was your bachelor's degree with honors?

7 A Yes, it was.

8 O Have you been -

9 THE COURT: What was that?

10 Off the record.

11 (Informal discussion outside the courtroom)

12 Q Were you a member of the consensus group?

13 A Yes, I was.

14 Q Would you describe your participation in
15 that group?

16 A I was invited to participate on behalf of two clients
17 of Carl Bisgaier's, and they were developers in Cranbury
18 Township and Monroe Township.

19 THE COURT? B-i-s-g-a-i-e-r, is it?

20 Okay.

21 I attended two of the three meetings. I was out of
22 town for the middle meeting, so I was there for the first
23 one and the last one. I also had conversations with Carla
24 Lerman in which I expressed my opinions as to the strengths
25 and weaknesses of the consensus methodology.

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1 MR. HOTTs Excuse me. Would you move
2 closer to the microphone?

3 MR. WOLFSOHS Keep your voice up,
4 Gcoffrey.

5 Q Could you briefly give us your background
6 in regard to land use and litigation and studies?

7 A Well, I'm currently employed by the Abeles Schwartz
8 Associates where I am a vice president.

9 THE COURT: **A-b-e-l-e-s** Schwartz,
10 **S-c-h-w-a-r-t-z.**

11 A We have offices in New York and Rightstown, Hew
12 Jersey, and we undertake land use and planning studies,
13 zoning analyses, feasibility studies, neighborhood plans.
14 We assist in actual housing project development* I worked
15 there almost six years and specialized in land use analysis
16 as well as housing development. I prepared a number of
17 studies for municipalities which examine land use development
18 trends. I've also analyzed ordinances. I've written portions
19 of zoning ordinances. I've been involved in a number of
20 **Court cases** on a variety of land use issues, including
21 **exclusionary** zoning, and I've prepared studies and expert
22 reports in connection with those cases.

23 Q Were you retained as an expert witness by
24 the New Jersey Department of Public Advocate in an exclu-
25 sionary zoning case?

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1 A Yes, I was.

2 Q Would you tell the Court about that?

S A We were retained by the Department of Public
Advocate, actually? in connection with three separate cases,
4 all three of which I had participated in. The first was the
5 Morris County case, Morris County Pair Share Wonslmg Council
6 v, Boonton, et al., and I testified before Judge Skillnan on
7 issues of fair share. In that case we were also consultants
8 to the public advocate in connection with negotiations in
9 Bedminster Townshid on the issue of fair share, and **e were
10 also working with the public advocate in Mount Laurel tt*m-
11 Ship in connection with the settlement there.

12 Q Were you involved as a consultant to
13 housing sponsors in New York and New Jersey?

14 A yes. In addition to undertaking land use studies
15 and feasibility analyses I act as development consultant to
16 non-profit housing sponsors who were actually tmmtng
17 together projects. I assist with all aspects of the develop-
18 ment process. I would go to the site, getting architects on
19 board, obtaiing financing, generally subsidized financing,
20 obtaining land use approvals and following through the
21 pJl^ect through construction right up until initial
22 occupancy.

23 Q Have you also had teaching experience,
24 Mr. Wiener?

25

1 A Yes. I taught at Pratt Institute after I
2 graduated from there.

3 Q Do you have a resume which gives your
4 background in detail that we can perhaps offer into evidence?

5 A Yes, I do.

6 THE COURT: These will be PF exhibits.

7 O You have a lot here.

8 THE COURT: PF-1.

9 (The resume was received and marked
10 Plaintiff Flama Construction Corp.*8 Exhibit PF-1
11 for identification.)

12 THE COURT: Any objection to it being
13 in evidence?

14 MR. WOLFSON: No.

15 MR. CAFFERTY: May I inquire the monber
16 of this?

17 THE COURT: PF, as in Flama, 1.

18 MR. MEZEY: I will tender Mr. Wiener as
19 an expert at this time, Your Honor.

20 *%!* ** (The resume was received and marked
21 Plaintiff Flama Construction Corp.'s E&hibit PF-1
22 in evidence.)

23 THE COURT: All right. PF-1 in evidence
24 is a resume of Geoffrey Wiener.

25 Any voir dire?

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MR. McGiMPSEY: No, Your Honor.

THE COURT: Mr. Mesev.

BY MR. VBMWri

Q Mr. Wiener, at our request did you perform a fair share study of Franklin Township for Flama, Rakeco and J.Z.R.?

A Yes, I did.

Q When was your original fair share study report prepared?

A I believe we were retained back in early December, 1983, and we were actually asked to prepare a study on fair share in connection with some, in connection with the consensus methodology meetings. Once those had been fairly well finalized and the methodology was pretty well established in early April of '84 we were asked to prepare a report on fairly short notice. We submitted it, I think, on April 16th.

Q That was using the consensus methodology?

A That's correct.

> <#/
Did you later revise that report?

A - ¥«»# I did. I didn't revise it per se. I submitted a memo which followed the methodology more exactly as it was spelled out in the Warren decision, AMG v. Warren Township* That I think was submitted at the end of August.

Q Using that methodology, did you determine

1 fair share figures for Franklin Township?

2 A Yes, T did.

3 Q- Could you give us those figures, please?

4 A The figures that I came up with, using the AM(5
5 methodology, were 2,111 units to meet prospective need,
6 120 units to meet present regional need, and that included
7 a phasing of the allocation of regional, present regional
8 need into three six-year time periods and then 344 units of
9 indigenous need for the Township itself. The last figure is
10 based on the calculations, which were in the back of the
11 Warren Township decision. They differ slightly from the
12 figure I gave. It differs, is slightly different from the
13 figure I gave in the memo, which I believe was 355. But the
14 344 figure is the exact figure based on the Warren decision.
15 The total of those three categories is 2,675 units.

16 Q In determining that figure did you
17 basically use the same process and the same formulas that
18 Mr. Hintz described yesterday?

19 A Yea, I did.

20 So that if we were to go over a step by
21 step explanation of how you arrived at those figures, it
22 would be duplicative of what Mr. Hintz testified?

23 A Yes, it would. I can't think of any real exception
24 to the methodology he spelled out.

25 Q All right. I would, however, like to

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1 **explore** v.ith you some of the rationale for some of the
2 **methodology** that was used. You of course identified
3 Franklin township as a developing municipality, did you not?

4 THE COURT: As a growth area municipality.

5 A Well, both, I believe.

6 THE COURT: The first one doesn't make
7 too much difference, anymore.

8 A I believe Franklin contains State development type
9 growth areas, and I also believe it meets the criteria of
10 the developing municipality under Mount Laurel !•

11 Q Could you just briefly give us **tl*etf#**
12 criteria and tell us how you feel they meet that?

13 A For developing municipality?

14 Q Yes.

15 THE COURT: ^hy do we have to bother?

16 MR. MEZEY: The only reason, Your Honor, --

17 THE COURT: Unless you are worried about
18 January 1st.

19 MR. MEZEY: Yes. If this case happens to

20 **go on** for some reason after January 1st, Your
21 **Honor**, we don't know what standard we would have,
22 and I thought it might be good just to have this
23 in th© record.

24 THE COURT: Okay.

25 MR. MEZEY: Thank you.

1 THE COtJRT: You would think the time of
2 decision rule would cover it, but go ahead.

3 A I believe there's six criterion which firmly
4 establish that Franklin Township is a developing municipality
5 as that term is defined in Mount Laurel I.

6 The first is that the municipality has a sizable
7 j land area of almost 30,000 acres or 46.4 square miles, 'the
8 second characteristic is that the municipality is outside of
9 the central city and older built-up suburbs. In the early
10 seventies, 1972, the Department of Community Affaiss.

11 classified every municipality in the State according to the
12 intensity of urbanization, and Franklin was at the very
13 beginning of the suburban ring. It was classified as
14 suburban, The source is DCA Publication, DPS, Intensity
15 is of Urbanization. The master plan also talks about a variety

16 I of suburban rural land uses within the 'Township, which I
n feel firmly establish the municipality's suburban character,
18 The population density of 676 persons per square mile as
19 of 1930 is also in line with this suburban character. It
20 is not an essential city. It has not developed its built-up
21 suburbs* 14 includes large quantities of undeveloped land.

22 The third criterion in the Mount Laurel I decision
23 is great population increase since World War II. The census
24 figures Indicate that Franklin has grown by 25,059 persons
25 since 1940, which is nearly a five-fold increase in popula-

1 tion from 6,299 persons in 1940 to 31,358 persons in 1980.
2 Between 1970 and 1980 the population grew by only 3 percent,
3 but the numbers, number of dwelling units grew by 22 percent,
4 which is indicative of continuing growth during the 1970's
5 decade. The only reason the population increased as much
6 was because the average household size declined drastically
7 during that decade.

8 The fourth characteristic, which I think establishes
9 Franklin as a developing municipality, is that it has
10 substantially shed its rural characteristics, and I believe
11 the population growth and density statistics that I
12 mentioned above bear this out. I also believe that the
13 economic growth, which has occurred in the Township and is
14 presently occurring there, also is characteristic of a
15 non-rural community. The number of private covered jobs
16 increased by over 200 percent in the last decade from about
17 3,600 jobs in 1972 to 11,653 jobs in 1982.

18 Recent improved development just last year is also
19 indicative of a non-rural community. I believe almost a
20 million square feet of commercial-industrial space has been
21 approved for development based on the review of their site plan
22 and subdivision records. I also believe that the community is
23 economically intertwined with the rest of the urbanized and
24 eastern New Jersey region and, therefore, is non-rural. I
25 think the transportation links, particularly the interstate

1 highway, firmly establishes the community's character as
2 part of the urbanized region as compared to a rural isolated
3 municipality, and I think the master plan mentions this on
4 page 3 at the very outset where it discusses Franklin's
5 relationship to the region.

6 I also think the physical character development in
7 the municipality characterizes it as non-rural. Most of
8 the municipality's housing units are in suburban stock
9 subdivisions or in garden apartment complexes. The physical
10 pattern in rural communities is more typically linear
11 along major roads with hamlets and cross roads or in isolated
12 farmsteads. Some of that pattern still remains in Franklin.
13 But the majority of dwellings are on suburban stock subdivisions
14 and that reflects the fact that it's crossed the
15 boundary line from a rural community to a suburban one.

16 Finally, I think the municipality's own public
17 documents, especially its master plans, will attest to the
18 fact that it is a suburban community. It's no longer a
19 rural community. Farming has declined in importance and
20 it's become a center of offices and bedroom community for
21 commuters to other employment centers in the region.

22 The last two criteria for the developing
23 municipality are - very briefly, Franklin is still not
24 completely developed. That's also established by the land
25 use data in the Township's master plan which states that

1 nearly 80 percent of the Township's land remains undeveloped,
 2 and I'm quoting from page 8 of the '32 master plan. Table I
 3 of the master plan talks about 24 percent of the
 4 municipality consisting of developed land and 76 percent as
 5 open land. Clearly the municipality has large quantities of
 6 land which remain to be developed. Some of that land is set
 7 aside as open space and will not be developed, but on the
 8 other land developing will clearly continue.

9 The last criterion is that Franklin is located in
 10 the town for notable future growth and that's borne out
 11 by the pattern of development that's been occurring there
 12 since World War II, which has basically proceeded from
 13 north to south, out from the central city of New Brunswick
 14 and the older suburbs at the northern edge of the
 15 municipality and proceeding west and south into the middle
 16 municipality. That reflects the expanding wave of both
 17 commercial and residential development which is, in fact,
 18 engulfing the northern part of Franklin. At the same time
 19 some of the smaller hamlets in the south have seen their
 20 own independent growth, small subdivisions and so forth.
 21 So; X believe Franklin is firmly located in the path of
 22 inevitable future growth and based on the six criteria I
 23 have outlined I believe it's clearly a developing municipality.

24 0 Now, in regard to Mount Laurel II and the
 25 consensus methodology and AMn, could you tell us the rational

1 employed in regard to definition of the region?
 2 J#... ^Wflj.0 as Carl WSmt% wmnt cw@r_f there's a dual,
 3 there are **dual** regions, one for present need allocation
 4 purposes and one for prospective need allocation purposes.
 5 I'm a firm believer in that concept. I think it has a lot
 6 of validity which is really based in the Mount Laurel II
 7 decision itself. The present need region consists of
 8 11 northern New Jersey counties and is a large region in
 9 order to incorporate areas with substantial housing needs
 10 and substantial developable la.sxl, In that sense it complies
 11 with Judge Pashman's definition, which is eltdad in ftomtt'
 12 Laurel II that a region must be one in which the housing
 13 problem can be solved, small regions in the northern part
 14 of Hew Jersey where a series or series of small regions
 15 would preclude the equitable sharing of housing needs and
 16 resources, which I believe is implicit in the whole Mount
 17 Laurel concept.

18 The prospective need region is the commuter shed
 19 region which incorporates those counties touched by the
 20 3(J<*&fciute dqaBnuter shed from the municipality, and that
 21 **concept** of ft*region which is tied to where people can be
 22 expected to live is also very much a part of Mount Laurel II
 23 decision. People must live in proximity to their jobs.
 24 Generally I think about 60 percent of New Jersey's population
 25 commutes 30 minutes or less. Therefore, a 30-minute

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1 commuter shed makes sense in defining a prospective need
2 region. It certainly conforms with the definition of a
3 housing region, a fair share region as that general area
4 which constitutes more or less the housing market area of
5 which the subject municipality is a part and from which
6 the prospective population of the municipality would be
7 substantially drawn in the absence of exclusionary zoning.
8 That's quoting directly from the decision, Mount Laurel II,
9 where they cite Judge Furman's decision in the Madison
10 case.

11 THE COURT: With regard to the definition
12 of region, it's been argued before Judge Skillman
13 that some of the more remote growth areas, and I'm
14 looking at our State development guide plan
15 enlargement there in Sussex, in Warren and perhaps
16 Hunterdon County where there is a small amount of
17 growth area quite distant from the large or
18 significant area more to the east, that they should
19 be treated as individual regions, both for present
20 and prospective or one of those two, either of
21 these, present or prospective. There should be
22 their own regional areas. You see those little
23 segments of yellow, and I guess one of them even
24 includes Phillipsburg and something up there in
25 Sussex and Warren County. How would you react to

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that?

THE WITNESS5 I don't like the idea of
 lopping off what in essence is an extension of
 th« northeastern New Jersey urbanized region. I
 had occasion to take a look at the whole question,
 one of the so-called rural center growth areas,
 in this case in barren County in connection with
 the Washington Townshio case in Morris County. The
 Hackettstown growth area, which is right on the edge
 of Morris County, clearly is the recipient of or
 responding to growth pressures from the east. In
 fact, most of the development or virtually all of
 the development that's occurring around ther« ' rttjff %
 now is really emanating from development occurring
 further east. In other words, residential sub-
 divisions are going in around Hackettstown to house
 workers who are commuting to lobs in Morris,
 sometimes in Somerset, Runterdon, and the growth
 itself establishes the fact that this part of
 New Jersey has now fallen under the influence of
 the northeastern urbanized region.

BY THE COURT*

Is it correct to say that some of that
 some of that growth is occurring in what the SDGP defines
 as limited growth areas?

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1 A Definitelv.

2 0 In other words, the concept of keeping
3 **them** relatively free from intensive development is not
4 holding up?

5 I A I believe based on development trends that I have
6 seen that's very true. It's not, development's not only
7 occurring in limited growth areas, but in agricultural areas
8 also. The idea that the so-called rural center growth areas I
9 will be self-contained islands of development to service the
10 surrounding agricultural rural and cultural area, I **think**,
11 is not a valid description of what's actually happening **there**
12 in many cases, certainly not in the case of Hackettstown,
13 which I indicated in detail.

14 I think the other one in Sussex County, the rural
15 center is connected with Branchburg or Sparta. I'm not sure
16 which. I think a lot of suburban style development is
17 occurring up there as well, which is really a spill off from
18 the rest of the northeastern New Jersey urbanized region.

19 Q How about Hunterdon? Is it fair to say
20 ~~that. But ESRE~~ has impacted in the same way, that it's pushing
21 the **eastern** growth pattern?

22 A I believe so. I'm not as familiar with Hunterdon,
23 but I've been told that there is considerable development
24 adjacent to that corridor, which is not in the growth area.

25 0 You don't know that personally. That's a

1 hearsay statement?

2 A I never really looked at that in detail.

3 THE COURT? All right.

4 BY MR. MEZEY:

5 Q In your study of Franklin Township how
6 did you determine the center of the region for the commuter
7 shed?

8 A Well, we did it in two ways, actually. We originally
9 looked for the functional center of the municipality, the
10 I "downtown," and could find no single commercial ~~corridor~~

11 BY THE COURT:

12 Q Let me interrupt you again. Do you believe
13 that that's the appropriate place to look for it first, the
14 downtown, disregarding what the opinion says? If you were to
15 define — yes, disregard what the opinion says, if you were
16 to find an appropriate way of measuring the commuter shed,
17 would you have picked the downtown area first or would you
18 have used the municipal complex first or some other measure?

19 A In this particular case I happen to agree with the
20 ~~opinion that~~ the functional center, the downtown core is the
21 ~~most appropriate~~ starting point for the definition of
22 prospective need reason and that in the absence of a single
23 downtown, which is the situation in Franklin, I think two
24 alternatives should be looked at. We looked at both of them*
25 One is to try to identify the geographical center of the

1 municipality and use that as a starting point.

2 We measured the commuter sheds from the intersection
3 of, I believe, South Middlebush and Blackhill Road, which
4 is approximately the geographic center of Franklin, and we
5 find the six-county commuter shed region, which is the same
6 as the one in the finding by Carl Hints. We also looked at
7 when the region would change if you started from the
8 municipal building. Now, the municipal building may or may
9 not be a good starting point. In this case I think it is a
10 valid starting point, because it's located less than one
11 mile, about 4,000 feet from the geographic center of the
12 municipality. It's also located pretty much in the center
13 of the more intense residential and commercial
14 development in the municipality. Clearly they chose that
15 site for the municipal center, because it was accessible
16 from where people lived and worked in Franklin. That lends
17 a validity as a starting point for a commuter shed region.
18 In this particular case it didn't matter whether we started
19 from the geographical center or the municipal building. But
20 Y given the fact that most of the more intensive development
21 in the northern part of the Township, I think, the municipal
22 building is probably a better starting point for this
23 municipality.

24 That is not to say that there may be occasions where
25 the municipal building is not located in a convenient and

1 accessible location. It could be located out in the sticks.
2 I know in Jefferson Township in Morris County they built
3 their immicipal btilldincr in the middle of *orest land.

4 THE COURT: Brick Township put its
5 municipal corrolax on the Lakft*¹ood border and left
6 all 26 square miles to the northeast or west and
7 south. That had some impact on w/ thinking when
8 I wrote the opinion. Go ahead,

9 THE ??X«BSS? Well, in those kinds of
10 cases where the municipal boilcting is clearly
11 skewed in one direction, you know, I think one
12 has to really make a judgment as to whether the
13 geographical center or the municipal building is
14 a better starting point. In the case of Franklin
15 I think the municipal building is probably the
16 best single starting t>oint.

17 BY MR. MEZEY:

18 0 In regard to the quantification prospective
19 need in this period, Mr. Wiener, what source did you use?

20 ~~AVAIL~~ We used the figures that were prepared by the
21 consensus ifl&up and appears on Table 3 in the April 2nd
22 report fotmp&redbyCarlaLerman. Those figures are inturn
23 based on the two sets of ODEA copulation projections and the
24 CUPR headship rates. Quite frankly, I really believe that
25 those are probably the roost sophisticated and reliable set of

1 estimates that currently exist ^or future r>or>ulation growth
2 in New Jersey* I would have used the same ones. T have no
3 **problem** wit& them whatsoever.

4 0 Is there a comparison between th@ ODEA
5 estimates and the census estimates?

6 A Well, the ODF& figures are nrojecticms, wfiich were
7 prepared back in the summer of 1982. Since that time the
8 Census Bureau has nre^ared State population estimates, which
9 I did look at. The most recent one is for New Jersey's
10 population of July 1, 1983, I believe. My concltisfc>m **was**
11 that we're on target as far as the growth that can ^"
12 expected, given the projections made by ODEA that **blended**, /
13 that blend the two proiections. T made that aonclusion in
14 connection with the Washington Township case in Morris County.
15 Subsequent to that time I noticed that you, that Judge
16 Serpentelli had included that same comparison as part of the
17 Warren Township decision.

18 THE COURT: The Census Bureau, however,
19 does not, as I understand it, amend their decade
20 **W** **projections** in their figures. In other words,
21 they projected a one-fifth of one percent increase
22 In population per year. In their estimates, while
23 they show what data they've collected, they don't
24 revise their own estimate.

25.

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1 BY THE COURT:

2 0 Is that correct? In other words, they
3 **show the actual** growth as, let's say, nearly half a percent
4 a year, but they don't revise their own projection.

5 A You mean the projection for July of '83?

6 0 Their decade projection, in other words,
7 at the start of the decade they projected a fifth of one
8 percent per year average over the decade.

9 A We're talking about Census Bureau projections -

10 0 Yes.

11 A - to 1990.

12 0 Yes.

13 A I believe that I only looked at the estimates.

14 0 What I was really aiming at is to find
15 out whether anybody other than ODEA would provide the Court
16 with a projection based upon other data. Apparently the
17 Census Bureau doesn't do that.

18 A I see. Well, the other question, I don't believe
19 **the Census** Bureau does those projections on a county by
20 **county basis**, which is the advantage of the ODEA projections.
21 It is **really** necessary, I believe, for determination of
22 prospective housing need. You need those county figures.

23 I don't know that the census does those projections.

24 BY MR. MEZEY:

25 0 Once you determined the prospective housing

1 need, Mr. Wiener, do you rerform, do vou apply certain
2 **allocation** factors? is that correct?

3 A **That's** correct. I used the four factors set forth
4 by the consensus methodology.

5 0 Would you discuss some of the justification
6 for those factors?

7 A Yes.

8 THE COURT; Off the record.

9 (Informal discussion outside the record.)

10 THE COURT; Go ahead, Mr, Wiener*

11 A The underlying basis for the selection of **the four**
12 allocation factors, prospective need, allocation **factors,**
13 really is the decision itself, the Mount Laurel Tt **decision,**
14 and particularly the passage at 256 in which the Court
15 recommends formulas that the Court quotes, substantial
16 weight to employment opportunities in the municipality,
17 especially new employment accompanied by substantial ratable*.
18 The first factor is employment, present employment in the
19 municipality as a percentage of the region*s employment, and
20 **that's ap|»w1\$riate** as a reflection of where housing would be
21 **needed simply** to house persons in reasonable proximity to
22 their homes, the present distribution of jobs.

23 The second factor is employment growth, recent
24 employment growth, which is also an indicator of what one
25 can anticipate the employment rrowth picture will be in the

1 remainder of the fair share period to 1990, That also is a
2 **very valid** factor because of the need to locate housing in
3 proximity to future jobs. Secondly, the Court has talked
4 about **recent** employment growth that produces ratables, so
5 employment growth serves as a surrogate for increases in the
6 municipality's tax base. In other words, it serves also as
7 a physical suitability factor indirectly, because new jobs
8 are a direct reflection of ~~nest~~ commercial and industrial
development which constitutes an addition to the municipal-
10 ity's tax base.

11 The third factor, State Development Guide **Plan**
12 growth area or the portion of the State Development Guide * "F"
13 Plan growth area, the region's growth area, which **is located**
14 in the municipality, comes directly from the decision's
15 insistence that prospective housing need be provided for
16 in growth areas. It's self evident that based on that
17 requirement one must, one should try to include a factor
18 that reflects land and growth area, although the results
19 have weaknesses because that land may or may not be available
20 **for development.** But right now I think it's probably the
21 **only land** availability factor that we have given the
22 absence of up-to-date data developing land figures on a
23 consistent basis.

24 The fourth factor is what's commonly referred to as
25 the wealth factor, and it's based on the ratio of the

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1 municipality's median income to the region's median house-
 2 hold income. It's in there as f in w belief, mainly as a
 3 fairness factor and a reflection of the past performance of
 4 th@ municipality in terns of providing for low and moderate
 5 income housing in the r>ast. T do believe that there is a
 6 direct correlation between median household income and the
 7 municipality's past zonincr practices. T have never
 8 encountered a municipality which directly flies in the face
 9 of that correlation. Higher median income is associated
 10 with exclusionary zoning practices, and those municipalities
 11 that provided formulti-familydevelopment and *othmf^i&pm?* - ' . . .
 12 of less intensive housing consistently exhibit low **and median!**
 13 incomes, I think the definition, very definition of
 14 exclusionary zoning as it was set forth by the Court in
 15 Mount Laurel I and Mount Laurel II supports the inclusion
 16 of a wealth factor in the allocation nrocess.

17 Justice Pashraan defined exclusionary zoning in
 18 Mount Laurel I as "the use of the zoning power by the
 19 municipality to take advantage of the benefits of regional
 20 **development, wi**thout having to bear the burdens of such
 21 **development)** and the use of the zoning power by
 22 **ADY-ENT**
 23 "fttolcPlilillies to maintain themselves as enclaves of
 24 affluence or of social homogenitv." So the decision itself
 25 is much tied to municipalities¹ relative affluence or lack
 of affluence, and I think it firmly recognizes that zoning

1 is a tool by which municipalities can either preserve that
2 affluence or open up the municipalities to the less affluent.
3 I think on that basis the wealth factor is an appropriate
4 one to include. I think that covers the four.

5 Q Was that also returned to in the AMG
6 decision?

7 A Yes. I'm actually reading from Dage 10 of the
8 AMG decision which quotes Justice Pashman.

9 THE COURT.- I think it's one of the all
10 time great definitions of exclusionary zoning*
11 that whether one agrees with the concept or not,
12 it's beautifully done, and then the words of the
13 Chief Justice embellish upon it, but, yes, i%*8
14 on page 10 of the opinion. But more appropriately
15 it's Mount Laurel I at 195.

16 Q Now, is there a process of weighting of
17 these factors that are applied, Mr. wiener?

18 A They're weighted all equally. The four factors are
19 averaged. But what the effect of that has is to actually
20 •!PH ^m%^ifi^ihi 50 percent of the allocation to time, jnore
21 than 50 percent of the allocation to employment and
22 employment growth, which I feel is consistent with the
23 Court's recommendation that formulas accord the substantial
24 weight to those factors. The reason I say more than 50
25 percent, I know two of the factors are employment-related.

1 Two out of four makes 50 percent. But the wealth factor
2 is **the derived** factor. It's based on the first three factors
3 **multiplied by** this ratio of median income in the
4 **munieipali^f** to region median income. Therefore, those
5 two employment categories also exert influence over the
6 wealth factor, what the wealth factor will be. That's why
7 I say that in essence employment really accounts for over
8 50 percent,

9 The final allocation factor when on© looks, it is
10 normally in the way in which that final factor is **derived**,
11 and **that** I believe is consistent with good planning **and with**
12 Mount Laurel II,

13 THE COURT: Have you had an opportunity
14 to determine in Franklin Township the percentage
15 of increase in the fair share of the median income
16 if the median income factor is eliminated?

17 MR. MEZEY; Your Honor, I didn't hear
18 the question.

19 THE COURT: I don't blame you. I didn't
20 ~~talk~~ very loud. I was just chatting with the
21 **witness**. I asked whether he had determined in

21^f
22 Franklin Township what the fair share number, the
23 prospective fair share number would be without a
24 wealth factor, so as to determine what percentage
25 effect it had on the overall fioure. I've been

1 I testing that in every case and I have not aone
2 over 10 percent» I was just wondering where it
3 landed here,

4 THE WITNESS: I have not done that
5 calculation, but it appears to rae that the number
6 I would go down very, very slightly. Because in
7 Franklin's case the ratio of municipal median
8 household Income to regional median inoone is
9 slightly over one, it*s 2.\$72,

10 THE COURT: Well, can we take a moraant?
11 The third factor percentage is what for **prospective**
12 without the wealth factor?

13 THE WITNESS: Okay. I^fm lookingr&fc my
14 memo where I reallocated everything using AMG's
15 guide. I get 1.49 - well, we are using prospective
16 need, now.

17 THE COURT: Yes.

18 THE WITNESS: I'm looking at present,
19 excuse me, I get 2.735 for the first three factors,

20 y. THE COURT: And the need which you
21 Z. ^gjfceuXate is 61,096 units?

22 THE WITNESS: That's correct.

23 THE COURT: Anybody checking me on this?

24 MS. HIRSCH: Judge, I worked some of
?5 these out yesterday. Maybe you could check my

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numbers.

THE COURT: I get 1,671 units.

MS. BIRSCH: That's ricrht.

THE COURT: Without the add-ons, now.

THE WITNESS: That's what I got.

MS. HIRSCHs That's what I trot, 1,671.

THE COURT: 1,671. Now, if we tak® the fourth factor percentage, it's 2.973.

THE TTINESSt That's what I got.

THE COURT: You've got that nt»ber worked out here, but let's check it. 1,815 or 1,£16, depending on how you round it. Is that whaU you have?

THE WITNESS: NO. I only got 1,708.

MS. HIRSCH: No. 1,708 is right.

THE WITNESS: Yes.

THE COURT: Forget the 1.02 and the .103 or 1.03. What's the fourth factor percentage?

THE WITNESS: The fourth factor, the wifjith factor, comes out to 2.973.

V^f THE COURT: Oh, I'm sorry. Yes. So we are working with a 2.795 as the overall percentage?

THE WITNESS: Yes.

THE COURT: Okay. I picked up the wrong number. 1,708. Correct.

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1 MR. MEZEYS Corract.

2 THE 'FITNEPS; It's a difference of 37 units.

3 THE COURT: Anybody want to work that
4 percentage?

5 THE WITNESS: 2 nercsnt, I believe.

6 THE COURT: 2 percent.

7 MR. FRI2ELL: It is mathematically correct
8 the difference would be always one-third of the
9 difference between one and in this case 1.07. In
10 other words, it's always going to be, if it^{1*}
11 7 percent, if the median income is 7 percent higher,
12 the fair share should work out always to be one-^{7v}
13 third of that difference, or roughly 2 percent in
14 this case. In other words, if the median income
15 was 10 percent, it's going to be 3 and one-half
16 percent. Because it has a one-third influence
17 on the other three factors. We are watering it
18 by one-third, I think.

19 THE COURT: Well, it didn't increase in
20 Warren by that amount, warren's median income was
21 about 140 percent, and the increase was not ten
22 percent. So that would be neat if it worked that
23 way, because you wouldn't have to go through this.

24 MR. FRIZELL: There should be a mathe-
25 matical function. I'm sure there is.

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THE COURT: I don't have a r.ind for that. If anybody does, they car, help tie out.

But, Mr. Chadwicfc* as part of the record, in Warren Township air. I correct that the median income did not increase by [^]ore than 10 percent? Do you recall that? I thought I addressed that in the opinion?

MS. CHADWICK: That's correct.

THE COUF.T: It may *imp*end on the other factors. But in any event in this case it**'-: approximately 2 percent without the add-ottC *#

THE WITNESS: 2.2 percent, I beli«VS, aM, } median income, I believe, in Franklin is 8.7 percent higher than the region. So that relationship doesn't hold, the one that -

MR. FRIZELL: It's what? Excuse me.

THE WITNESS: 8.7 percent. Franklin's median is 8.7 percent higher.

MR. FRIZELL: I thought you said 1.07.

THE WITNESSJ No. I said 1.087.

THE COURT: It's roughly 9 percent higher.

THE WITNESS: That's correct. So it actually seems to come out more like one-quarter, the influence seems to be.

THE COURT: That could be roughly

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1 consistent in Warren If it is a quarter. It
 2 was under Id percent, We will have to check that
 3 statistically, when it was run in the seven cases,
 4 the Urban League it averaged somewhere around
 5 3 or 4 percent as well, but that, of course, all
 6 depends on the municipalities you are dealing with,
 7 In those cases you didn't have any of the, any
 8 very high median incomes. In fact, you had one
 9 below a hundred percent. Plainboro was below
 10 a hundred percent. Thank you.

n MR. HUTT: Excuse me, Judge. Did it get
 12 a number of units after all these fancy mathematics
 13 that would be less if there wasn't a wealth factor?

H THE COURT: Well, without the adjustments
 15 that are required, yes, we did.

16 What was the number, Mr, Wiener, the
 17 difference between 1,708 and 1,671.

18 THE WITNESS: I believe it was 37.

19 THE COURT: Right.

20 MR. LINNUS: Without the adjustments?

21 MR. MEZEYS Without the adjustments.

22 * -- THE WITNESS: With two adjustments it
 23 would be about 46.

24 BY MR. MEZEY:

25 Q Do you want to tell us about the adjust-

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1 ments, Mr. Wiener? I

2 A Yes. There were two adjustments made. The first I
3 is the adjustment to account for the *act that there are going
4 to be municipalities which do not have ample vacant develop-
5 able land to accommodate the fair share number that they are
6 assigned once the whole process is complete. 20 percent is
7 a conservative, in my opinion, conservative add-on, because
8 those units which can't be accommodated have to be reassigned
9 elsewhere. They don't simply disappear. The need is still
10 out there. The figure of 20 percent was really derived from
11 the last time that a comprehensive study was done
12 determine how much reallocation we would need to occur if
13 one allocated to every municipality in New Jersey. That was
14 the DCA in 1978 housing allocation report which found that
15 23 percent of the units would have to be reallocated.
16

17 Now, I say it's conservative because of two
18 differences between that allocation and the situation of the
19 consensus methodology today. First of all, the housing
20 allocation report used vacant developable land as one of its
21 **allocation factors** which would have the effect of directing
22 **units** to **to** municipalities that actually did have a
23 capacity to accommodate them. In the consensus methodology
24 vacant developable land data, reliable land data was not
25 available, and there is no factor which directly reflects
the land supply in a particular municipality.

1 Thus one would assume that the degree of realloca-
2 tion which takes place under the consensus formula would
3 of necessity be greater than that occurred using the DCA
4 formula from the housing allocation report since that DCA
5 formula ostensibly took into account the land supply.

6 The other reason I say it's conservative, second
7 reason, is because DCA assumed that you could fit four units
8 of low and moderate income housing per gross acre of
9 available vacant developable land. I think that's a highly
10 optimistic assumption? doesn't take into account the
11 consumption of this land for other purposes or doesn't
12 adequately take into account the fact that a lot of this
13 land is going to be consumed for other purposes. But
14 perhaps even more importantly, it doesn't take into account
15 the fact that a lot of the units are going to be built as
16 set-asides if conventional developments with only 20 percent
17 of the units will be low and moderate.

18 So that even if an overall density of four units
19 per gross acre, and I'm saying throughout the municipality,
20 look at all the land - actual density in a particular
21 developments would obviously be higher. But this four units
22 would be a gross calculation. Even if that relationship
23 were correct, if the units were built as set-asides, one
24 has to divide by five, because only 20 percent of the units
25 would be lower income. So that for those two reasons I think

1 the 2 percent add-on is not only necessary, but it's
2 probably highly conservative.

3 HObokty has repeated the DC& allocation process in
4 the entire State of New Jersey or for even an entire region
5 in order to determine whether that is the truth, that is the
6 | case, exactly how much reallocation would be needed. It
7 would be impossible to do that without havino new update
8 vacant developable land fioures on which to base one's
9 calculations.

10 THE COURT; Okay, Mr. Messey, maybe wev
11 will take a short break at this point. Fifteen
12 minutes, all right?

13 MR. MEZEYt Thank vou, your Honor.

14 (Whereupon, a short recess was taken.)

15 THE COURT? All ricrht, Mr. Mezey.

16 MR. MEZEYS Thank you, Your Honor.

17 BY MR. MEZEY:

18 Q I think before the break we were talking
19 about the adjustments, and I think you had described the
20 2\$ perdgStpiijustraent to us. That would leave the 3 percent
21 adjustment»%.

22 A fiat's correct. It's necessary for there to be a
23 minimum number of vacant units in order to allow people to
24 move. This is known as a market mobility factor or minimum
25. vacancy rate. The standards that have been used by housing

1 experts for many years are minimum of 1.5 percent of non-
2 **rental** units, or for sale units should be vacant and provide
3 **adequate** mobility in the market and 5 percent of the balance
4 should be vacant. The reason it's higher in the rental
5 stock is simply because households move much more often from
6 rental units than they do from sales units. There's much
7 more mobility in this market and one has to have a bigger
8 supply of vacant units in order to ensure that a shortage
9 will not develop.

10 The effect of not having an adequate vacancy **rent**
11 is for a perceived shortage to develop. Then if it's an
12 uncontrolled market, prices will be built up. The **people**
13 who do have units will be able to get higher prices **for** them,
14 So it's essential that a given number of additional units
15 be added to the fair share allocation in order to provide
16 for this mobility. The 3 percent figure, essentially an
17 average of the 5 percent and 1 and one-half percent, it's
18 a little closer, I guess, to the 1 and one-half, but the
19 assumption is that perhaps more of the units will be for
20 **sale than for** rent. So I believe it's an appropriate
21 **adjustment** to be made and an essential one.

22 Q Now, Mr. Wiener, if we can direct our
23 attention to present need, could you tell us the factors
24 involved in quantifying the present need figure?

25 A Present need involves two components, as we know.

1 One is the regional need, present need, and then there's the
2 indigenous need in that particular municipality, Franklin.

The regional need is simply the aggregate of the indigenous

4 **needs** *pi* **all** the municipalities in the present need region. I

5 In both cases indigenous and present regional need the need
6 consists of two elements. First is physically inadequate
7 units, which I think the Court refers to as delapidated
8 units, which either need substantial rehabilitation or
9 replacement.

10 There's no single or there's no comprehensive **source**
11 of information on numbers of delapidated units, **ttw** **census**
12 used to attempt to quantify these units as part **of their**
13 **disceptual** housing surveys. But they found that the **figures**
14 were highly unreliable, because one must have a very trained
15 eye and spend quite a bit of time in order to really establish
16 whether a particular unit is, in fact, delapidated, as the
17 census defines it or is not.

18 So when we sent enumerators out to look at these
19 units they found that one person, one enumerator will find
20 **•Uttife •abettt^ifery** building he looked at was delapidated, and
21 **another** "«tfi«|rator would find none of them was delapidated.
22 It was a very subjective evaluation.

23 Beginning with 1970 enumerators were no longer
24 sent out. There was a self-enumerator census in the census.
25 The bureau included questions on physical characteristics

1 which are recognised surrogates for the physical condition,
2 general physical condition of the unit. Two of these
3 surrogates were used by the consensus group as indicators
4 of numbers of delapidated units, and these surrogates are
5 units with incomplete plumbing facilities and units with
6 inadequate heating which either means no heat at all or
7 room heaters with no flues, portable heaters, stoves,
8 fireplaces as the only source of heat in the unit.

9 I believe that those two categories when combined
10 provide a very nice and reliable estimate of the numbers of
11 physically substandard units. The basis for my opinion is
12 one, X looked at the actual numbers of delapidated **units**
13 that were counted in the '60 census and the numbers that
14 were estimated based on the '70 census figures in the special
15 report put out by the census. They were approximately the
16 same numbers as the ones we derived for '50, using the two
17 surrogates. They are in line with what one would expect
18 in terms of numbers of physically deficient units.

19 I just want to point out that the actual units
20 themselves are not, that were counted as having inadequate
21 plumbing and inadequate heating, were not the important
22 consideration when one does this analysis. The fact is that
23 these deficiencies are associated with other major deficiencies,
24 such as structural deficiencies and cracks in the
25 foundation, inadequate leaky roofs or structural members that

1 need to be replaced. Major deficiencies are strongly
2 associated with these two factors, so it's not really
3 adequate to say that, well, one can simply upgrade the
4 particular units that were counted by adding the missing
5 plumbing or adding the heating equipment«

6 That really doesn't address the question, because
7 what this surrogate is, is an estimate of the total popula-
8 tion of households with a whole variety of physical inade-
9 quacies, and other units which may have complete plumbing
10 and adequate heating are actually being counted in surrogate
11 through the use of these surrogates. One can't assume that
12 if one simply goes out and replaces or corrects the conditions
13 that were acting as surrogates that one would solve the
14 problem. That's not the case at all,

15 The second element of the present need is over-
16 crowded units,

17 BY THE COURT:

18 0 Before you get to that, you are aware, I
19 take it, of the fact that the CUPR suggests that there be
20 seven factors involved in the selection or the designation
21 or identification of the delapidated unit.

22 A Yes, I am.

23 Q I'd just like you to touch on them briefly.
24 Two of them are those which are used in the consensus
25 approach. A third is the year in which the unit is built,

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1 if it is built prior to 1940 or built after 1940. Can you
2 find the justification to establish why a unit, which is
3 substandard in 1939 would be treated as standard in 1940 if
4 there were not any other present surrogate? Can you give me
5 any reason for that? I know you are not an author of the
6 book and I am stretching for that.

7 A I think this - I have an opinion. I don't know
8 whether this, precisely their reason, but there's a
9 correlation with structured age and physical problems that
10 these surrogates are attempting to count* The older the
11 unit, the more chance there is that there will *be a problem*
12 in terms of the foundation, the roof, windows, items *^jics*
13 the census really can't tabulate easily and consistently.

14 Q But the report, if I understand it
15 correctly, assumes that even if the unit was designated as
16 substandard in 1939 it becomes standard in 1940 as long as
17 there is no other deficiency. So that if we concede the
18 delapidation of the building in 1939, in 1940 it becomes
19 undelapidated, if I can use that term, unless there is some
20 *otibmi d\$ntmncy*, that would not be a reflection of age or
21 *be relevant to* its age, would it?

22 A Well, I think that the CtJER is using the surrogates
23 the same way the consensus group is. I don't think one can
24 look at a particular unit that is built in 1939 and has no
25 elevator and say that unit is definitely substandard or

1 delapidated. But when one looks at the entire population
 2 of housing units that fall within these categories identified
 3 by the surrogates, one has, you know, an approximation of the
 4 numbers of units. But to look at any one particular unit
 5 and try to say, well, the numbers must be off, because this
 6 unit doesn't exhibit serious physical deficiencies even though
 7 it's built in 1939 and has no elevator, you know, that's a
 8 little, that's misleading. Because it doesn't take into
 9 account the real premise of the welfare methodology which is
 10 that we are simply submitting, using factors **which** are
 11 designed to measure the quantity rather than identify
 12 specific units.

13 The only way you can identify which units **are the**
 14 ones that really need to be replaced is to go out and do
 15 an on-the-ground survey. I don't think anyone would **advocate**
 16 using the census itself even if one were able to match up
 17 the surveys, completed survey forms with a unit. I don't
 18 think anyone would advocate going out and using that as a
 19 basis to say which particular units should be replaced. I
 20 think it is a valid basis for determining the aggregate
 21 number of physically deficient units when one has carefully
 22 considered, you know, the surrogates that are being used and,
 23 you know, made sure that those were correlated with the
 24 characteristics that you are trying to identify. You know,
 25 I think the census is a good thing through that process and

1 selected the things that it asked questions about because
2 of the fact that they reflect other inadequacies or they are
3 highly, strongly correlated with other inadequacies.

4 0 Perhaps I haven't made myself clear. As
5 I understand the report, the count is based upon a
6 determination whether the unit was built before 1940 or not.

7 If it was built before 1940, it must have one of six
8 surrogates remaining, the seventh surrogate being whether
9 it was built before 1940 or not. If it was built after
10 1940, it must have two in order to be considered deficient.

11 What I am trying to get at is the logic of that cut-off date*

12 What if the units deficient by definition in 1940 because
13 it has one of the surrogates, why does it become not
14 deficient or become standard in 1940 because it only has
15 one and not two? If you don't know, I thought you would
16 answer, you don't have to answer. Perhaps you don't under-
17 stand.

18 A I think I understood the logic, that is, the age
19 of the structure is in the opinion of the Rutgers people
20 and another surrogate of the occurrence of various physical
21 deficiencies, that in general units built before 1940 have
22 a much greater probability of physical deficiencies than
23 those built in 1940 or afterwards. Especially when one
24 looks at these other characteristics one can make certain
25 assumptions. I think that's the reasoning.

1 Q If that is the reasoning, wouldn't it be
 2 **expected** that the data would reflect that there's more than
 3 **one deficiency?** If we are trying to identify units by their
 4 count, it would seem to me that if it was built before 1940
 5 one would expect it would have more deficiencies that would
 6 be reflected. Do you follow me? In effect what we are
 7 saying is that these units only have one deficiency. They
 8 must by definition. Otherwise if they had more than one
 9 they would be continued to be substandard in 1940. So
 10 apparently at least the supposition is made that they only
 11 have one despite their age.

12 A I think the supposition is that there's **a whole**
 13 bunch of other deficiencies in buildings built before **1940**
 14 that aren't reflected in these surrogate indicators **that are**
 15 tabulated by the census. Things like windows generally have
 16 to be replaced after 40 years, if not sooner. Roofs have to
 17 be replaced.

18 Q The composite of its age so **to speak** is
 19 **an unspoken surrogate?**

20 /<<& - * ;'v>

21 **I think** that's the reason.

22 « ' * . N. • ' # " " Did the consensus group consider **the other**
 23 **remaining** surrogates that are contained in the CUPR approach,
 24 that is, access to the unit, kitchen facilities, elevator?

25 A I believe some of them were considered that. I
 remember some discussion on the question of kitchen facili-

1 ties, for instance, and it was my opinion and the opinion
2 of some of the other planners that if we were going to count
3 every unit, you know, if we really have no way of making the
4 kind of cross-tabulations Rutgers was making without going
5 back to the original computer tapes and doing special runs,
6 which is what Rutgers did, we wanted to devise a method which
7 could be undertaken by municipalities or developers or
8 defendants relatively easily based on readily available
9 census data.

10 First of all, not all of the factors that Rutgers
11 has chosen are readily available in printed form, The
12 access question I don't think shows up in any of the
13 summary tape files that are generally published by the State
14 Data Center. I may be mistaken, but, more importantly, the
15 correlation of all these factors isn't available, so we only
16 considered those factors which were readily available and
17 the other thing being that we wanted to choose those factors
18 which we felt were most strongly associated with the other
19 categories of physically deficient, which we were trying to
20 reflect through the use of the surrogates.

21 Absence of kitchen facilities, for instance, was
22 not felt to be as strong a surrogate as plumbing and heating
23 categories. There are dwelling units in housing projects
24 for the elderly and other kinds of semi-congregate care
25 facilities where they have kitchen mats. They don't have

1 all the kitchen appliances necessary to count as a complete
2 kitchen, and they would fall into that category of lacking
3 complete; kitchen facilities.

4 Individuals may actually make a choice not to have
5 a complete kitchen simply because they are bachelors and
6 they eat out all the time. However, one will not make a
7 choice to forego, conscious choice to forego plumbing
8 facilities generally or forego heating facilities. That's
9 the kind of thing that is considered a minimum necessity
10 and, therefore, we thought it was a better surrogate. >

11 Q How about the elevator of four stories W *
12 more as it is? By the way, four stories or more, not over
13 four stories.

14 A I don't believe that shows up in any of the summary
15 tape files either even though you can get it from the
16 computer tapes the way Rutgers did.

17 O Do you think that's an appropriate
18 reflection of substandardness in and of itself?

19 A So, In and of itself I don't believe it is. Ho.
20 t really>f^iaybe when it's cross-tabulated with other
21 factors tferfify Rutgers has it might be more appropriate. I
22 have an STF printout, so we were limited by the factors
23 which were readily available in a summary tape file printout,
24 summary census.

25 Q As I understand the way this works, now,

1 in order to obtain the *ata that *h* CUPR utilises one has
2 to get a computer printout for each county involved, is that
3 right, of the surrogates?

4 A Wall, yes. I think the data is available on county
5 and some cases a sub-county level, which I think Judge
6 Skillman referred to as sub-regions.

7 Q A Tninimum of a hundred thousand population?

8 A I believe so,

9 Q And that's available. That data is based
10 upon a sample, I take it?

11 A Yes. It's the public use saepl®* which ls?TtM ^
12 5 percent sample, I believe, something Rutgers had t<r
13 actually purchase the tawes from the center and program it
14 or program the computers to get the cross-tabulations that
15 they wanted.

16 Q Do you know what the cost factors involved
17 in obtaining a statement or a run, computer run, are for a
18 county or sub-region?

19 A I think this is hearsay, but one individual,
20 Malcolm Ka*fer, who represents one of the plaintiffs, I
21 believe, ii^this case did obtain such a run, I believe, and
22 h#\<aM'lher'paid either 500 - he gave me two figures. One
23 was \$500 and the other was \$2,000. I'm not sure.

24 THE COURT: I hope he doesn't keep
25 his checkbook that way.

1 Q Per county, you mean, or total?

2 A Yes. This was just for one sub-region.

3 Q So that to do this on the eleven county
4 basis we'd have to multiply whatever it is per county. Is
5 that what you are talking about?

6 A Probably, yes. But I think the best way to find
7 out that is just contact Rutgers.

8 THE COOETs Yes. I'm trying to save
9 us bringing Dr. Burchell, but perhaps that's the
10 best source.

11 All right, you may proceed,

12 BY MR. MEZEY:

13 Q Is it your opinion, Mr. Wiener, **that the**
14 incomplete plumbing and inadequate heat would encompass other
15 is deficiencies?

16 A Yes.

17 Q And that they would be the true indicators
18 of a delapidated unit?

19 A Yes. As I said, I think they are reliable surro-
20 gates which estimate those numbers.

21 Q Is there also a factor of overcrowded
22 unit?

23 A Yes. That's a separate count from the census, so
24 one has to total the various physical deficiency categories
25 and the overcrowded units and eliminate overlap from those

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1 counts, which is possible using readily available printouts,
2 and then come up with a total number of substandard units
3 physically deficient and overcrowded units which exist. Then
4 one must take into account the fact that not all of those
5 units will be occupied by low and moderate income households.
6 To do that we used 82 percent, which comes from the
7 Tri-State Regional Planning Commission.

8 0 Do you feel that that's a reliable figure
9 to use?

10 A Well, I think it's the best available one we **have**.
11 There's no cross-tabulation that's been made, to my know-
12 ledge, of those three surrogates, those three factors*
13 plumbing, heating and overcrowded with income, I know the
14 Rutgers people did a cross-tabulation of the units identified
15 with their surrogates, but it's a different count. It's
16 different units and they used a different methodology. It's
17 not, can't be said to be comparable to the count that was,
18 that occurs when one uses plumbing and heating deficiencies
19 without, you know, as separate categories without the process
20 **that** the ftuigers people went through.

21 **M**
22 " . . . **BODX** think it's a good approximation. I think the
23 Tri-State people used the same surrogates as far as I could
24 tell as the consensus methodology and that, therefore, it
25 may be a better indicator than the Rutgers percentages which
are based on different surrogates. I have no way of knowing

1 for sura what the exact percentage should be.

2 0 But is it your opinion that the 82 oercent
3 figure is -

4 A It's reasonable.

5 0 - a reasonable fimira?

6 A Yes.

7 0 t<hat is the purr>ose of attempting to define
8 a regional standard?

9 A Okay. Well, once one's quantified the total number
10 of units that are physically deficient and o^mrcraifdfd# it*F<<rt
11 necessary to determine how many of those units may n^ed to Z,
12 be reallocated from municipalities with a disnroportionate rj
13 share of the present housing need. That concept comes v
14 directly from the Mount Laurel II opinion which talks about
15 municipalities accommodating indigenous need except for that
16 need represents a disproportionate share in relation to the
17 region. So what the consensus group did was to find out,
18 well, what's the proportionate share, so that we can
19 determine what's disproportionate and needs to be reallocated.

2a We Simply multiplied or divided, actually, the
21 number of Basically deficient and overcrowded units by the
22 total number of occupied dwelling units in the region, present
23 need region, and came up with 6.40 percent which is the
24 average percentage for the entire region. Those municipali-
25 ties where their numbers of physically deficient and over-

1 crowded units were higher than 6.4 percent of their
2 occupied stock were eligible to have that excess need
3 reallocated, and that was the real purpose in going through
4 this calculation. It's entirely separate from the realloca-
5 tion process itself and there should be no conclusion.

6 It's possible for a municipality which contributes
7 units to the excess need pool to later on actually receive
8 an allocation of units, excess present need units, depending
9 upon the factors used and the particular characteristics of
10 this municipality. But if it's got allocation factors which
11 make it eligible to receive a present need allocation or
12 reallocation of the excess need, then it actually may
13 receive some units back once the reallocation process is
14 undertaken. But first you have to come up with this pool
15 of surplus units, and that's why the regional standard is
16 established. Then each municipality is examined to determine
17 those units which exceed that regional standard and they
18 are put into this pool of surplus present need.

19 Q Then how is that allocated?

20 A The present pool of present need is allocated using three
21 of the four factors that are used for allocation of prospec-
22 tive need. The only one that's excluded is the recent
23 employment growth factor. I think the reason is self-evident.
24 One is really attempting to allocate units in response to
25 the present situation and in proximity to the present

1 distribution of jobs, not to some anticipated future
2 distribution of jobs* so a *more important factor is the
3 present employment figure. The other rationale for using
4 the other factors, wealth factor and the State Development
5 Guide Plan growth area factor_f are the same as they were
6 when one used those factors for allocation prospective need.

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7 I think they make eminent sense for allocation of present
8 need as well.

9 THE COURT: The reallocation ^centage
10 of 6.4 is probably the best example in the ©stir©
11 methodology, in my opinion, as to why thia should
12 be done by somebody other than a Court.

13 The involvement in reallocation across
14 the board is really necessitated, isn't it, by
15 the fact that a Court is hearing one case at a
16 time and can't just pick a number out of the
17 total pool that should go to that town? If we
18 had the luxury of having all the municipalities
19 in the State of New Jersey before me, I could
20 ~~then~~ really go through the entire reiteration
21 process that HAR did and ke&r> backing out the
22 excess need and keep reallocating it until it
23 was finally fairly allocated across the board.
24 As I understand it, the consensus group said,
25 well, you can't do that, so we are just going to

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hit everybody with 20 percent. Is that a fair reading of the underlying rationale?

THE VIWTS: We are talking about 20 percent adjustment?

THE COURT; Yes.

THE WITNESSs Yes. I believe it is.

THE COURT: On the 6.4 as well?

I mean maybe if you could do this on a comprehensive basis, you might not want to pick a 6.4. You may want to pick another basis to reallocate that, wouldn't you?

THE WITNESS: Well, the 6.4 -

MR. McCIMPSEYS Your Honor, respectfully/ the Court is asking questions, and I know this is an unusual procedure, but I would have to object to the form of the question. It seems to me these questions are highly leading to the witness, what he's going to say,

THE COURT? They are highly critical or suggestively critical of the opinion which I wrote. I dfcn't know how you could object.

MR. McGLIMPSEYS It sounds to me as though the Court is asking the question, but in the favor of the formula which I thought is what the Court

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1 wrote in the barren opinion.

2 THE COURT; T«ell, von know, I aaain
3 repeat that it's my effort her* to try to do better
4 than ^e've done before.

5 MR. MEZEY* Do I cret to rule on the
6 objection, Judge?

7 THE COURT: Well, I'm going to overrule
8 the objection. But I think it's very important
9 that while the Court has experts before it that it
10 explores the depth, any weaknesses or any possible
11 refinements of the methodology that's being
12 presented by this witness and which has, by the
13 way, been at least adopted at this point by the
14 Court. It seems to we X am doing for you what
15 you might want to do yourself.

16 MR. MCGIMPSEY; If the Court please, let
17 vm make something clear. I'm not at all objecting
18 to the question delving into the area, not in the
19 least bit, but it just seems to me the Court asked
20 tJse question in a highly leading manner to the
21 ~~Sl*~~
22 it where it suggested an answer. I know I know
23 lear a lot of snickers down from there, but I know
24 too there is even a limit on Courts as to the kind
25 of questions that are asked. I'm simply suggesting
to the Court that these questions are entirely

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appropriate, but perhaps maybe in a situation where you just ask the question, you just ask without suggesting the answer. That's my point.

COURT: I will do my best.

MP. VEGTUMPEY: Thank you.

THE COURT: I was never very good at examination as a lawyer at any rate.

MH. MCGIMPSEY: I wasn't either, Your Honor, so we are even.

BY THE COURT:

Q What I am getting at is that I filed subject to question both the automatic application 6.4 sort of starting point, I understand it's not a ceiling, or a 20 percent. My question is did the consensus group address perhaps the more precise approach to reallocation? Did it consider any other possible methods?

A I really fail to see the apparent connection you are drawing between the 6.4 percent and the 20 percent.

Q They are not connected. I just draw them in at the same time in the sense that they both kind of treat municipalities with the sameness to some extent.

A But -

Q Yes. Go ahead.

A - they do both treat municipalities with a

1 consistent mathematical, you know, effect, but I think the
2 similarity pretty much ends there. Because I think the
3 6.4 percent is much more firmly grounded in the concept of
4 **reallocation** of an excess from the decision.

5 Q All right. Let's stay with 6.4 for a
6 minute. If we had all the municipalities in the State of
7 New Jersey, heaven forbid, in one case, could you recommend
8 to the Court a better method of reallocating the excess pool
9 than to utilize a regional percentage? I guess that's **the**
10 question,

11 A Well, I think we have to clarify, because we are
12 not using the 6.4 percent to allocate units at any **point**.
13 We are using that to identify what, in fact, is the **excess**,
14 and then we are allocating the excess based on a separate
15 set of allocation factors,

16 Q All right, that's correct.

17 A So the 6.4 percent is only -

18 Q But that triggers the reallocation, is
19 that right?

20 A Section 17-27.1 establishes the number of units that either
21 **have to** be contributed to the pool and, as part of
22 their indigenous need or can be contributed to the pool and,
23 therefore, are units which really the municipality is
24 relieved of responsibility for, provided for. Now, I think
25 I see what you are getting at, because this percentage would

1 change depending on the configuration of the recreation.
2 0 Let *rm* see if T can move this along a
3 little bit. The reason T related it to the 20 percent
4 reallocation was that, as I understand it, the housing
5 allocation process, the State had the luxury of having before
6 it all of the municipalities in the State, and, in making
7 reallocations it could make its first allocation and see
8 what that did for all the municipalities in the State. Then
9 it could draw back the excess and reallocate again in case
10 somebody went too far. Now, the 20 percent across the
11 board doesn't allow the Court to do that, and the same sort
12 of philosophy is at least arguably involved in the .15% issue
13 and, that is, could we devise a better method for this ?
14 excess pool if we had everybody here? So what would it
15 be? Would we go through the same sort of reallocation that
16 was used in the housing allocation report?
17 A I believe the housing allocation report used pretty
18 much the same method to determine the pool of excess present
19 need. I think they also used some kind of a regional
20 ~~not sure~~ alternative you are suggesting or if there
21 really is an alternative. I would not recommend using
22 different percentages for different municipalities in the
23 region, because I think that would conflict with the intent
24 of Mount Laurel II.
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Q In any event the consensus group did not discuss other alternative® to this problem or did it?

A Not to my recollection, but it could have been part of th© discussion on the second day, which I missed.

THE COURT: All right.

Mr. Mezey, how imach more do you hav®?

MR. MEZEY: Not much more, Your Honor.

Well, Mr. Wiener's going to have to come back, anyway, for cross-examination.

THE COURT: I know. But I thought you just had a few raore questions to complete yourself and then break.

MR. MEZEY: Well, I think it would fee convenient to break.

THE COURT: All right, fine. Let's come back at one-thirty.

MR. CAFFERTY: Just one question, I know Mr. Chadwick indicated he had to leave at three-thirty. I wonder if we might excuse him

^ | f the day, because I know we have lengthy

« -1^ ciiifcs-exainination based on what we have so far

from the witness this morning. I gather there's going to be more direct.

THE COURT: From other counsel?

MR. CAFFERTY: Well, more direct from

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Mr. Mezey froir what Mr. Mezey lust said.

THE COURTs "There's not much more, I
gather.

MR. MEZEYt No, very little.

THE COURT: Well, anybody object, get
an early day in the event Mr. Chadwick has to
leave?

MR, WJLFSONi X would love that.

THE COURT: All right.

MR. CAFFERTY: Thank you.

(T-Thereuixm, the Court adjourned **for**
lunch.)

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THE COUBT: Off the record.

(Informal discussion outside the record.)

THE COUST: Okay.

BY MR. MEZEY;

Q Mr. wiener, we were talking about allocation of present need, and I believe there's a phasing involved in that, is there not?

A There is. Under the consensus formula we determined that the reallocated present need need not be all met immediately, but rather it should be phased over **three** six-year periods. There were two considerations **that went** into that. One is on the impact of reallocating a **lot** of households, occupants of housing units that are currently substandard from the present locations to other communities. In other words, the fact that this present need would be met in communities other than the one in which it currently exists, and that has an impact on the sending community. It has an impact on the receiving community.

Now, I've, you know, looked at the ixapacts, and **Xra itft sure** that it's absolutely essential that phasing be applied in all areas or with respect to all municipalities. If you look at the assembling communities, I think the worst example is Newark. Newark under the consensus formula basically gets to reallocate 10 percent of its present

1 housing stock to other communities over six years. Given the I
2 population declines that are occurring there, now, that's
3 **hot, you know,** extraordinary. That kind of decline is
4 happening regardless of whether new units, standard units
5 are being provided elsewhere or not. People are moving out*
6 because jobs are moving out.

7 So the impact on the sending communities even in the
8 worse cases, **situation** does not seem to be as severe as I
9 originally thought it was and **pexhans** other planners thought
10 it was. The impact on the receiving community varies **from**
11 case to case. You know, in the case of Franklin, if on
12 didn't face the present need reallocation, that would **increase**
13 itself, the Township's total allocation, from 2,675 to 3,116.
14 Let me just calculate the difference: 441 more units.

15 Q How many was that?

16 A 441, and I think one has to - I mean it's clear
17 that the Mount Laurel II decision would like to see present
18 need provided for as quickly as possible. One has to, I
19 think, examine on a case-by-case basis whether that

20 **provision of** units would have an inordinate impact or not.

21 In this case we are talking about a 16 percent increase in
22 the **fair share** number. I'm not sure that that would
23 necessarily make a difference in the case of Franklin Town-
24 ship.

25 The Township seems to have a lot of land available

1 for development of new housing. It's also <rot a lot of
2 development that's going on presently, as I qu&sa can be
3 seen siiaply by the number o** plaintiffs in this case. **It's**
4 conceivable to me that perhaps that additional present need
5 could be provided for in Franklin's case. However, I have
6 done the calculation, assuming that we did face this
7 present reallocating need, and that involves dividing the
8 number, the total reallocation, by three, from 660 to 20
9 basically,

10 0 Is it your opinion that it **would be**
11 perfectly appropriate in the case of Franklin TomuriULp aot:
12 to use phasing? ? *

13 A Well, I haven't looked carefully at the local
14 question of capacity of the Township to accommodate, you
15 know, to accommodate the additional units. My impression
16 is that they probably do it, but, you know, what we are
17 talking about here is, I think, a really very particular
18 kind of analysis of what constraints exist to developing
19 how severe those restraints are and whether phasing is
20 **needed** t<>'jfifc* into account those restraints. I haven't
21 **gone into that** very detailed kind of study that would be
22 necessary to make that determination, so I am really giving
23 an opinion based on general impression, which I received
24 simply from reading the documents on the Township and
25 various expert reports and driving around the municipality.

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BY THE COURT:

Q If the plan offers the basis of internal subsidies at: five to one, not that it has to be, but if it was, we **would** be talking about some 15,000 odd units at two and a half people per unit, some 40,000 people in six years. Do you still maintain that position? Do you think that could be accomodated?

A Well, I don't, Even if lite fair share plan talks about provision for those units, it doesn*t necessarily mean that they are all going to be provided within m »!*- year period, realistically speaking. I don't think they **are** going to be provided. I think there's always a viable **factor** in terms of rezoning. After the reaoning occurs, there is going to be a period during which the developers assess the rezoning and get their plans together and applications together and then actually begin to undertake the work. So it's going to - realistically speaking, I don't think that we are talking about that kind of exchange within six years,

I also don't know whether we are talking about ~~meeting that~~ ^{^ n} ~~re~~ need throuah set-asides. But I don't

~~21- iiiiil~~ ^{^^i^l^} e information on which to make a conclusion

as €o whether that's feasible. I know, for instance, that municipalities in New Jersey, raunicipalities have in the past more than doubled their population within ten-year periods without, you know, severe deleterious effects. That

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1 is particularly true during the 1950^fs and 1960^fs when
 2 rapid suburbanization occurred, I meant to bring some
 3 examples and take a look at them, because I forgot them
 4 back in my office. Because I've looked at them. I know
 5 that some municipalities more than doubled the population
 6 within a ten-year time frame. But I haven't really taken
 7 a close look at what the particular impacts would be in this
 8 case, and I think that's really what's required here, you
 9 know, in terms of the environment, municipal services and
 10 those kinds of considerations.

11 BY MR. MEZEYS

12 Q is there presently, do you know, in MbmBk-t.
 13 presently available affordable housing in Franklin Township^

14 A We took a look at the present multi-family housing
 15 stocks since that's for all intents and purposes, that's
 16 the only source of low depressed housing in Franklin simply
 17 to establish what if any affordable housing was currently
 18 available. What we did was we compared the maximum monthly
 19 shelter cost that can be afforded by low and moderate income
 20 households based on the affordability definition for Mount
 21 Laurel II, which assumes that no more than 25 percent of
 22 the households' income will be spent on shelter. We compared
 23 those maximum costs with the rents of apartments, what rents
 24 currently are being charged for apartments in Franklin.
 25 That information is summarized in Table 12 of our expert

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1 report.

2 MR. FSTfcFLL: Your Honor, -excuse me,

3 unless my silence is misinterpreted later, I

4 understood fchsre was a stipulation of non-

5 compliance in this case yesterday, and I think

6 what Mr. Wiener's now testifying about is really

7 compliance for credits versus what the matter is,

8 the fair share where. If the Township is entitled

9 to any credits, it **seems** to me it's against what-

10 ever the fair share number is and **he commw a matter**

11 of compliance later. But if they **stimulated non-**

12 compliance, I don't know that the plaintiff **h&imj:**

13 any responsibility. In fact, I didn't **elicit**

14 any testimony from Mr. Hints on this subject about

15 the existing household stock of the Township. If

16 they stipulated non-compliance of this ordinance,

17 then by definition they don't have enough credits

18 to meet their fair share and we are into

19 compliance.

20 *j *l THE COURT: That's a question of when

21 you determine credits, I suppose, now or later.

22 MR. McGBfPSEY: I was going to ask the

23 same question.

24 THE COURT? I've generally done that as

25 part of the fair share proceeding, because it

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relates to the mandate that the town is going to have for resoning purposes,

MR. PRI2ELL: Well, but I can understand that if there is no stipulation of non-compliance. But if there is a stipulation of non-compliance,, the judgment of non-compliance needs to be entered and then they have an opportunity to comply. I mean it seems to me it's like the other evidence that was objected to yesterday. It's informational at this point.

THE COURT: No. The problem is if- ~~the~~ town doesn't know whether what it's claiming as credits is a legitimate claim and, it reasons, it comes back after 90 days only to have the Court tell them that those aren't credits, you couldn't fault the town for saying, you know, give us another shot.

MR. FRXZETiL: It's the same problem with an ordinance. In other words, if you are going to do that, we could start hearing evidence about what kind of ordinance is going to comply.

THE COURT: No, no. They take their chances on that one, I think, under the opinion. The opinion gives them guidelines as to what the ordinance should do. They know they've got to meet

1 the number, but they have to know the number. So
2 I think credits properly are an issue, now, toward
3 th« calculation of the fair \$share.

4 MB. FRIEELL: I will only say, Your Honor,
5 T certainly misunderstood yesterday's ruling and
6 the stipulation that I thought had been made.

7 THE COUWT* Well, I won't preclude you
8 from recalling Mr. Hintz if you think that's vital*

9 BY MR. ME2EY:

10 Q Did you finish your mmmmr^ Mr. Wiener?

11 A Ho, I haven't. T was going through the analysis
12 that we did to get the comparison of the maximum monthly,-. k
13 shelter costs. The rents of units currently avallabla
14 indicate that there are virtually no units which can be
15 said to be affordable to low and moderate income households
16 in Franklin. The one complex which does contain units at
17 reasonably low rents is the Edgemere project, which has
18 three and two-bedroom apartments. But we were told by
19 somebody when somebody from my office visited there this
20 F id&B,t&M t&i^vfchey have an extensive waiting list and they
21 I wwn-*fao#ii>ting more applications. So those units can't
22 really be said to be available even though the ones there
23 have fairly low rents that would be affordable at least to
24 moderate income households. There doesn't appear to be any
25 other ones that fall into the affordable category except

1 for perhaps Franklin Hamilton Gardens, which contains one
 2 bedroom and two-bedroom units that would be affordable to
 3 persons at the very upper limit of the moderate income range.
 4 We weren't able to determine actually how many units became
 5 available there typically, but it's a rauch smaller complex
 6 than the Edgemere complex.

7 THE COURT: Were ^{any} o^ these subsidized
 8 in any way, their rents controlled?

9 THE WITNESS.* No, Ifcat's the other
 10 consideration. None of the projects that;**
 11 surveyed - well, let me say thiss There-ii a
 12 rent leveling ordinance in the Township. Item
 13 information that we got was from the Franklin
 14 Township Rent Leveling Board to the extent that
 15 the rents were affordable, now, you know. There's
 16 some control on what they will be in the future.
 17 But then we have to look at whether the Rent
 18 Leveling Board typically grants increases which
 19 are in line with increases in the incomes of low
 20 and moderate households and whether typically
 21 ~~these~~ increases exceed the rating increase for
 22 low and moderate income household incomes. If
 23 the latter was the case, then they wouldn't effec-
 24 tively ensure that the units would remain affordable
 25 throughout the period covered by the fair share plan.

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We will have to take a look at that.

•>• „* X think we also looked at, aside from the units that are up and available, now, we also looked at projects that were in pipeline, and we did find apparently 400 units in the Field Development are reserved, will be reserved for low and moderate income households once that project is underway or that phase of the project. To the extent that those units are subject to some form of control that would ensure they nmMm, in fact, occupied by lower income households and they remained affordable to lower and moderate income households, then Franklin is entitled to a credit for those units, you know.

There may be some other projects which we missed, because I'm not sure that we did a comprehensive survey of all the ones. That's the one w© moved on. The only other, well, the only other category of project that would also fall into this category would be a subsidized project. t?it not sure exactly what the situation is with regard to subsidized housing in the Township. I don't believe they have any units presently, but they may.

MR. MCGIMPSEY: Objection, if the Court

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please. It seems to me the witness on that last statement is speculating. I don't believe -

V" " THE COURT: I didn't take any notes. I don't know.

MR. MCGIMPSEY: Yes.

BY MR. MEZEY:

Q There appears to be a slight difference of six units between your fair share figure and the fair share figure of Mr, Hintz. Could you explain that?

A Yes. The process used to determine the acreage in the State Development, Developraent Guide Plan growth area is to use a planimeter, which is a measuring device.

Q Do you want to spell that, please?

A P-l-a-n-i-m-e-t-e-r. It measures areas on maps. One can determine the approximate acreage of a mapped area, but it's subject to some degree of error, two or three percent. Mr. Hintz came out with a slightly higher figure for acreage in the growth area. I'm not exactly sure what it is, but it is slightly higher than ours which would account for the fact that his fair share numbers are six units higher than our number.

MR. MEZEY; Cross-examine, Your Honor.

THE COURT: Any other direct by plaintiff?

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MI right, Mr. Hutt.

DIRECT EXAMINATION BY MR. HOT?!

Q Mr. Wiener, I believe you testified earlier **this morning that** vacant developable land may or may not be available to the growth area, is that correct?

A That's correct.

Q Has it been your experience there is developable land in non-growth areas?

A Certainly-

Q Have you observed from personal **experience?** You talked about these, the Morris County and other cases you have been involved in, or any other experience. **Have** you observed from your personal experience that there's **been** substantial residential development in New Jersey in non-growth areas?

MB. MCGIMPSEY: Objection, if the Court please. This is leading. I understand this is direct, direct testimony. It's his expert. I think it's objectionable and leading.

MR. HUTT! I'm not cross-examining.

THE COURT; It's direct. It's mildly leading. The question you asked him is has he observed that there is. Is there? That's all.

Q I will say, is there?

THE COURT: Okay. You may answer the

1 question.

2 A I observed extensive development in limited growth
3 **and** agricultural areas as well as conservation areas in
4 different parts of the state.

5 Q Do you have any opinion as to whether or
6 not a municipal's lands are in the growth area or non-growth
7 areas has any substantial effect as to the amount of
8 developable lands in that town or development going on in
9 the lands of the town?

10 Q. Could you restate the question? I'm not **sure** --

11 Q I would be glad to.

12 A -- I am understanding it.

13 Q If you disregard growth versus **non-growth**
14 areas in a town, do you have an opinion as to whether or
15 not physically residential development actually occurs on
16 lands in a municipality, whether or not those lands are
17 classified growth area or non-growth area? Is there any
18 correlation between the two?

19 MR. MCGIMPSEY: Objection, if the Court
20 **plmase.** I don't know what municipality he's
21 **talking** about. I object to the form of the
22 **question.** I don't understand it myself.

23 THE COURT? The question is whether
24 the witness does.

25 MR. HUTT: I will rephrase it.

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THE COURT! lo ahead. Rephrase it.

Q What I am trying to get at is whether

you have mmopinion as to whether or not developers develop
oxi landa they consider developable, whether or not those lands
are located in or without a growth area?

A I think they generally totally disregarded the
I State Development Guide Plan designations.

Q Would you also say that there are lands
! that are not developable in non-growth areas? Is that a
i fact?

A Lands?

Q Not developable.

A Not developable in non-growth areas? yes**

Q If there are lands not developable in growth
areas, is that correct?

A That's correct.

Q So the amount of vacant developable land
as a function of building has absolutely nothing to do with
growth area or non-growth area, is that correct?

THE COURT Absent the Mount Laurel,

rt
Ifcaka it?

MP. HUTTS Yes* Absent Mount Laurel.

A They are separate issues. I mean separate quanti-
ties which have to be evaluated separately.

MR. HUTTS Thank you.

1 THE COURT: Any other plaintiffs'
2 counsel?

3 Mr. Prizell.

4 MR. PRIZELL: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. FRIZELL;

6 Q Mr, Wiener, are you familiar with this
7 document, "Peoples, Dwellings & Neighborhoods" by the Tri-
8 State Planning Commission?

9 A Yes, I am.

10 Q I'm going to direct your attention to
11 page 11 of the document and ask you according to the Tri-
12 State Regional Planning Commission under the heading of
13 "Substandard Housing in 1970," what was the total percentage?
14 What was the percentage of substandard housing in the total
15 housing stock of the Tri-State Region?

16 A According to this an estimated 10 percent of the
17 region's households live in substandard units.

18 Q If I can just direct your attention back
19 to the front of the book and ask you how many, approximately
20 how many do they estimate the number of households
21 in the region? It's on page 7 of the book.

22 A There are approximately 6.3 million.

23 Q Now, how many households according to
24 this document, how many households of lower income occupy
25 substandard dwelling units? Take your time and look at it.

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1 MR.: McGIMPSEY: (Ejection, if the Court
2 **please.** I^sm not too sure whether Mr, Frizell
3 is asking the document to be put in evidence and
4 just have the witness read it or he's asking hira
5 to simply read what's in the document. T don't
6 see what he's asking him. Is it opinion? Does
7 he know about it or does he think it's fact or
8 whatever? I object to him just asking his witness
9 to sit up there and read something.

10 MR. FRIZELL: Before you ask for ~~an~~
11 opinion it seems to me you have to elicits ~~some~~
12 facts, No. 1, No. 2, the book is the only **copy**
13 I have and apparently one of the last remaining
14 ones in the State. X don't want to put it in.
15 It is a publicly available document in many
16 libraries.

17 THE COUPTS Why don't we run a copy of
18 it? I mean in terms of putting it in. But I
19 understand what your objection is, I think the
20 plans in which the questions are being framed
21 might be improper. If he doesn't know, you may
22 direct his attention to the book and then there-
23 after ask him an opinion with respect to it.

24 MR. FRIZELL: I just thought that would
25 take longer.

1 THE COURTS Yes.

2 BY MR. FRIZELL:

3 0 All right. Mr. wiener, could you find,
4 looking at **the** book, what that document estimates the total
5 of substandard dwelling units, which are occupied by low and
6 moderate income families is?

7 MR. McGIMPSEYt Again, Judge, it seems
8 to me like he's just asking him to look through
9 there and read something. He's not asking if he
10 knows anything. I suspect that's the **question that**
11 I have with respect to it, the objection **I have**
12 with respect to it.

13 THE COURTS Well, the other way **of going**
14 about this is to ask him to assume that the Tri-
15 State Planning Commission report says that and
16 then ask him an opinion. I assume he's leading
17 to an opinion. That's an identical question or
18 an opinion question, and he can do it in either
19 way. So Mr. Frizell could ask him to assume if

20 ****11** - , '-fil||report does that and then support that by
21 ~ . . . l^itrring to those pages. I'll overrule the
22 objection.

23 You may proceed.

24 A I note that on page 8 there's a table. It's
25 entitled "1970 lower income housing needs,¹¹ and it identifies

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1 566,862 standard dwellings in the Tri-State Region.

2 Q All right, Now, Mr* Wiener, could you
3 calculate for us, using your planner's ability, the relation-
4 ship between 566,000 dwelling units occupied by lower income
5 families and 633,000, roughly 630,000 total substandard
6 units as defined by that study?

7 A The substandard dwellings are 89 percent, 89,S
8 percent of the 633,000.

9 O So, Mr. Wiener, does the study indicate
10 of the total, of the region's total substandard units about
11 80, as defined by that study, about 89 percent using that
12 one substandard criteria which, incidentally, for the
13 record, Mr, Wiener, they separate out overcrowded units,
14 substandard units, -

15 MR. MCGIMPSEYs Objection. I think
16 Mr* Frizell is testifying.

17 MR. FRIZELL: I'll ask him.

18 O Do they have different standards of
19 housing deficiency identified in the study, Mr. wiener?

20 A Yes, they do.

21 Q What are the different standards of
22 housing deficiency?

23 A They break out substandard dwellings, which is
24 defined as containing certain physical deficiencies and
25 overcrowded dwellings and then what they call cost

1 imbalanced dwellings.

2 0 Okay. What I asked you before had nothing
3 **to do with either** the overcrowded dwellings or the cost
4 imbalanced dwellings, is that correct?

5 A I was looking at the figure for substandard
6 dwellings occupied by lower income households.

7 0. All right. So that the relationship that
8 you indicated before is the relationship of strictly sub-
9 standard dwelling units occupied by lower income families
10 to substandard dwelling units in the entire **population*** is
11 that right?

12 A Yes. That's the ratio that T calculated.

13 MR. FRIZELL: I have no other **cruestions**.

14 THE COURT: Let me have Mr. Frizell's
15 book. If I pledge my attendant's life on this,
16 can we copy it in case we have any need for it?
17 I would like to have one. I have not been able
18 to get one either.

19 (Informal discussion outside the record.)

20 S'Jk THE COURT: Any other plaintiff's
21 **counsel?**

22 All right, Mr. McGitmssey.

23 CROSS-EXAMINATION BY MR. MCGIMPSEY:

24 Q Mr. Wiener, wty name is McGimpsey and I
25 represent the town*

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1 A Yes.

2 Q I had some questions to ask about your
3 background. You indicated that you had worked in behalf
4 of some developers as an expert in the olanninc? field, is
5 that correct?

6 A Yes.

7 Q Have you worked in behalf of a municipality
8 in the planning field?

9 A Yes.

10 O Okay. Did you prepare a zoning ordinance
11 or assist in preparing a zoning ordinance for a municipality?

12 A Portions of a zoning ordinance, yes.

13 Q There was one, was it, one zoning ordinance!?

14 A Yes.

15 Q Any others that you worked for a municipal-
16 ity in preparing other than that one?

17 A Not that I recall.

18 Q All right. Have you ever worked for a
19 municipality in preparing for a master plan?

20 A I prepared land use plans which were - I don't
21 recall whether they were part of the master plan process
22 or whether they were separate documents. But certainly
23 they were land use studies of the type that would be
24 included in the master plan document.

25 O Do you have a statistical background

1 yourself, sir, in the course of your studies?

2 A Certainly in the course of my studies I have
3 taken statistics.

4 Q You testified earlier about the median
5 ratio factor or, I think you called it, the wealth factor
6 in the Lemman formula or consensus formula, is that correct,
7 sir?

8 A Yes.

9 Q All ricrht. You also testified about tha
10 Court's opinion in the warren decision or the AMG decision,
11 is that correct, sir? Did you talk about that formula
12 derived from that opinion?

13 A Yes.

14 Q The opinion, does it not, describes on
15 page 23 of it how the median or wealth factor is derived?
16 Do you have a copy of the opinion?

17 A Yes, I do.

18 THE COURT: Referring to the unpublished
19 opinion?

20 W MR. MCGIMPSEY: Yes, I am.

21 ^ V THE COURT? At Page 23?
22 * " -V

23 MR. MCGTMPSEY: I'm sorry, Your Honor.

24 THE COURT: No, no. I'm only kidding.

25 It may remain that ^ay. Who knows? Although
it's one of the most published in this State.

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1 We've given out a couple hundred, of then, T
2 guess.

3 MK. MCGIMPSEY: I've rrot one of them
4 myself.

5 THE COUFT: My assignment Judge says
6 it looks like it's worth caper to light his
7 fireplace. Okay.

8 BY MR. MCGIMPSEY:

9 Q On top of nage 23, the first three
10 numbered paragraphs, does that det@min@ how to get the
11 median ratio? Does that set forth the steps that you us©F

12 A Yes, it does.

13 Q Sir, is that a correct description of
14 the steps as called for in the consensus formula or the
15 Lerman formula as it's known? It's the same formula I am
16 talking about?

17 A Yes, I believe it is. I don't know the report
18 specifies how to identify the median income or the region,
19 but this is the one with the values.

20 Q All right. I just wanted to ask you some
21 qtmtlm^initttt that, because Step 2 really is describing
22 how you get the median income for the region. Is that
23 correct, sir?

24 A That's correct.

25 Q Okay. Whether that be the eleven-county

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1 region or the prospective county*s region, isn't that
2 correct?

3 A * Right.

4 Q How, the first sentence says that you
5 should multiply the median income for each county times th«
6 number of households in this county, thereby producing your
7 gross county income. Is that a correct statement of what
8 it says?

9 A Yes.

10 THE COURT: It's not a correct way of
11 saying it, but it's a correct statement. You ...
12 don't multiply times, they tell me. You multiply x
13 by.'

14 MR. MCGIMPSEY: Yes, Your Honor.

15 THE COURT: All the critics have come
16 out of the woodwork, let me tell you.

17 Q But let me ask you thist From a
18 mathematical and statistical basis is it true that if you
19 multiply a median times the number of vacancies in a
20 ~~population or~~ a distribution, that you'll get a total
21 { li&OHte; the median? Is that true mathematically?

22 A No.

23 O Pardon?

24 A No.

25 Q As a matter of fact, a median is a central

1 parameter that's used. That's the term that's used *or
2 **statistics?**

3 A **It's** the midpoint.

4 Q Yes. But it's a type of average or
5 central parameter that is a representative of the entire
6 distribution that you have in a statistical outlay, isn't
7 that correct?

8 A It's a midpoint of distribution,

9 Q Isn't the median determined by the fact
10 that if you have an even number of observations in **mal-**
11 **distribution*** you look for the two that are in the **middle**
12 of that distribution and split a line in between **them and**
13 that's what you get for the median. Am I correct **on that?**

14 A Yes.

15 Q If you have an odd number of observations
16 in the distribution observations, you take the one that's
17 in the riddle and you use that one as a median. Am I
18 correct on that?

19 A Right.

20 Q The median itself is merely a representa-
21 **tiv« of tl^jline** in which the distribution has 50 percent
22 observations to the left and 50 percent observations to
23 its right. Am I correct on that, sir?

24 A I'm not sure about what you mean by "to the left"
25 and "to the right."

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MR. MCGIMPSEY: We don't have anything to write on?

THE COURT: Sure. There should be paper behind that, some markers.

This is not the planner.

MR. MCGIMPSEY: How do you open this thing? There you are.

THE COURT: It's Mr. Chadwick we have to be very careful in case Mr. Chadwick has color problems.

MR. MCGIMPSEY: He does, Your Honor.

THE COURT: So does another planner. I just finished reading a transcript. The planner was color-blind. So we kept saying, "It's the orange line." I'm looking at the exhibits and it's green.

I'm sorry. Mr. Chadwick has the same problem, so we have to be conscious of

it
* | } £
* 9 1/2

MR. FRIZELL: Why don't they pass a math-coloring?

THE COURT: I don't know.

BY MR. MCGIMPSEY:

0 Let me see if I can just draw what might be a simple distribution. If we had a graph that looks

1 something like this and there were observations that run
2 like this, a bell curve tyne of **affair**, wouldn't it be that
3 **the median** would be, and let me mark it "median," wouldn't
4 it be a **line** which to the left of it would be 50 percent,
5 half of the observations that are made in the distribution
6 and to the right of it in a graph, something like this? **The**
7 other 50 oercent would be on the right. Am I correct on
8 that?

9 A Yes.

10 Q As a matter of fact, though **there's another**
11 kind of central parameter count, an arithmetic mean, **isn't**
12 that correct?

13 A That's correct.

14 Q An arithmetic mean is the kind of thing
15 we used to call when we were kids as an average.

16 A Yes.

17 Q Like if you got a number of two, three,
18 three and two, you add them all up and divide by four and
19 you come out with an average, 2,5, if that all adds to 10
20 **and divided** is that riant?

21 A, ^ ' **fiftifc's** right.

22 Q In an arithmetic mean you add the numbers
23 of all the distributions, the values of all the observations
24 you make in the chart and divide by the number of observa-
25 tions, the frequency, in order to get to the arithmetic mean.

1 Am I correct in that? km I not, sir?

2 A Yes.

3 Q And you can have the same median for two
4 different distributions, but have different arithmetic
5 means. Am I correct on that, sir?

6 A Yes.

7 Q For example, if the 50 percent of
8 observations all were clustered around the median on the
9 left, but you had a lot or a great deal on the right, far
10 to the right of the 50 percent of the observations here,
11 you would have a high arithmetic mean, wcmldiit yoti? **Because**
12 when you add all these numbers up and divide by the
13 frequency you get a higher number than if you just fiad **the**
14 bell curve. Am I correct on that?

15 A It appears that the mean would be higher than the
16 median. Yes.

17 Q Yes. On different distributions, depending
18 upon where the frequencies are, you can have the same median,
19 but a different value for the arithmetic mean. Am I right

20 On that? 4-J

21 A Yes.

22 Q So that the estimate on page 23, paragraph
23 2, from the top or the number two is mathematically invalid,
24 at least as to the first sentence. Am X correct on that,
25 sir?

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1 THE COURT: You are referring to, now,
2 the statement which says, "Identify the median
3 income of each county"?

4 MR. McTRIMPSEY: I'm sorry, sir. I thought
5 I said the second sentence where it says, "Multiply
6 the median income for each county times the number
7 of households in that county, thereby producing a
8 gross county income." You do not produce
9 necessarily a gross county income. I'm correct in
10 that, aren't I?

11 A No. I think the first gross county income is
12 exactly what you are producing. No.

13 O All right, thank you. Then there's another
14 statement down there.

15 I THE COURT: Let's not leave we uninformed.
16 You produce a gross county median income? What
17 are you producing when you do that?

18 THE WITNESS: What you are producing is
19 a figure which - I'm not sure what you call it.

20 # MK. MEESEY: Wouldn't that be the median
21 county income?

22 MR. MCGIMPSEY: If the Court please,
23 I've got an answer. But I'm stopping and
24 counsel's testifying.

25 THE COURT: Yes. I agree.

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MR. McSIMPSEY: May I ask one question?

THE COURT: Are you going to pursue this line?

MR. McSIMPSEY: Yes, I will, if I may, Judge.

BY MR. McSIMPSEY:

Q In other words, median times the frequency really doesn't give you any result as to aggregate income, does it?

A It gives you an indication of the relating **median** based on a median in that county, based on the median **median** than on the average. When I say "wealth," I mean **total** wealth, including - what it really is, I think the **weighted** way to describe it, would be a weighted, a component of a weighted average. That's really what it is,

Q Well, then what you are saying is the statement producing a gross county income is incorrect, but what it may be giving you is the first step of a weighted mean. Am I correct on that?

A Yes, in this case you are trying to establish **the weighted** mean of the median incomes for the counties in the region.

Q . But, now, it says the next sentence down, and Judge, I am going to tie this in, so I think I am skipping something, the next sentence down says, "Aggregate

1 all of the gross county incomes and divide that figure by
2 **the total** number of households in the region to obtain the
3 regional median income.^{ft}

4 Now, that's not mathematically valid either,
5 is it?

6 A Well, I don't know if it's - I think it's a valid
7 procedure.

8 O Okay. But let me.

9 A I don't know if that correctly uses the proper
10 terms that one would want to use if one is going to be ******
11 precise* ****** ->K-

12 O If one is going to be precise, **what** ybu , >
13 do when you aggregate all the county incomes and divide by
14 the number of households and all those counties, you come
15 up with an arithmetic mean, don't you, an average?

16 A you come up with a weighted average -

17 Q But it's not - excuse me.

18 A - of the county median incomes.

19 Q But you do not come up with a median,

20 **you?**

21 **h** ~~any~~ ~~the~~ ~~weighted~~ ~~average~~ ~~approximates~~ ~~the~~ ~~median~~. ^{^h_e} weighted average approximates the median.

22 O Whoa, whoa* Just stick with the second
23 sentence* If I take a gross income from counties and divide
24 by the number of households, I don't come up with a median,
25 do I?

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1 A The only way you establish a median is to go back
2 to **the** original source taken for the entire region and
3 **to arrange** it in order, in other words, from the poorest
4 household to the richest household *and* find the household
5 in the taidle, and that's not Possible to do withotit the
6 original census tapes.

7 Q Okay, Now, let rae ask vou this questions
8 What you are really saying is that they don't corae up with
9 a true isedian in this median factor that's described here
10 on page 23. Am I right on that?

11 A That's correct. They come tip with a weig&^esl
12 average.

13 Q There's another way of doing it?

14 A Which approximates a median.

15 Q Let me ask you this? They could have
16 instead of taking the median from each county, they could
17 **have** done that, couldn't they, and weighted each of them
18 and put them into a frequency distribution chart and drawn
19 a median of the medians, couldn't they? Am I confusing you
20 **or am I not?**

21c? MR. FRTZELLS Your Honor, can I object
22 to **the** question? They could have done anything
23 in the world. The question is whether or not,
24 A, what they did was reasonable and, B, what they
25 didn't do was more reasonable.

1 THE COURT: Yes. But the question is
2 leading to that. If they could have done that,
3 the next question is Whether that was reasonable.
4 But you confused me, so let's try it again.

5 BY MR. MCGIMPSEY:

6 O Let me try again.

7 A Yes. Thank you.

8 O Let me just do this: They could have
9 instead come up with a median for each county. You can get
10 that easily enough, can't you, from the Census Bureau?

11 A That's correct.

12 O The population of each county is easily
13 ascertainable, isn't it, from the census figures?

14 A Yes.

15 O So they could have come up with a median
16 which gives them a figure. They could have weighted that
17 figure by the population that it is, the percentage of that
18 population to the total population of the region. They
19 could have timed that by that median of this county, and

20 could have come up with a final figure that they could
21 use to determine the distribution, couldn't they, for each county?

22 THE COURT: The median income data
23 that's available, available on the basis of
24 household population or family?

25 THE WITNESS: It's available for house-

holds and families. But the consensus methodology uses household median income.

THE COURT: All right. But you would be starting off, -just so I am clear, you would be starting off with household median income if you are going that way, forgettina family for the moment and for whatever difference that makes. Now, you are suggesting, counsel, that you do what? You take the median household income and do what?

MR. McCSIMPSEY? And weight it. Your Honor.

THE COURT? Weight it how?

MR. McGIMPSEY? Well, I'm suggesting that it could have been weighted for each county and weighted by - what I mean by "weighting," is you would take a ratio of the county's population to the region's population and weight it that way, You would do a weight factor times the median and come up with an answer, a product. That would be an observation that you would place on the contribution chart.

THE COURT: I'm sorry. You would be taking the county's population in relationship to the region.

MR. McGIMPSEY: Yes, Your Honor.

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THE COURT: And derivincr what

percentaae?

MR. McCTMPSF^r A ratio or percentage.

You would take that oercentage --

THE COURT: Tjet's wake it simple* Let's

suppose - I mean let's give me an example. We

have a five-county region and County A represents

50 percent of the population. Its median income

is \$20,000 per household. Okay. *?ow, what do

we do with that county?

MR. McGIM***?: With \$20,000 per house-

hold and with that being 50 percent of th^>

population, you would come UD with a median for

that county.

THE COURT: Its population, now, its

t>opulation is 50 percent of the region, not its

household. Its population, you are saying?

MR. McOIMPSEY; You are saying its

population?

M * > V THE COURT; I thought that'© i#fiat you

aid.

MR. McGIM<>?SEY: No. What I'm saying

is as the median and number of households over

the total households of the recrion - I'm sorry,

Judae. You are riahrt. I made a mistake by

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1 sayincr "population."

2 THE COURT: hi l right, fo now von. are
3 **saying**, let's ^UDtJose it has 50 percent o* the
4 households in the region.

5 MR. Mc^IMPST^{1*}^j V?S •

6 THE COURT: Okay. Then you are **suggesting**
7 what? What would vou do?

8 MR. McOTMPS?[^]: T^{Te} would rcive that a
9 weight of 50 percent and read out sift,000 for
10 that. Then for each countT yon cam come up with
11 a weighted median and do the same thing, tefcirea
12 distribution and draw a line and take a median
13 from that.

14 BY MR. McGIMPSET;

15 O My question to you is wouldn't that be a
16 more reasonable raanner in which to determine a median for a
17 region of these counties?

18 THE COURT: I'm sorry. T want to
19 understand it before the witness answers it.
20 y\$^m actually reduce the inedian income by 50 percent?
21 iT i^\$ in the world would you do that? Fhat would you
22 be accomplishina?

23 MR. MCGIMPSEY: Because, Your Honor, it
24 would be a weight criven to the roedian income.

25 THE COURT? It should be the other way,

1 shouldn't it?

2 MR.: Mc^YMPSEFY? You !T>an there should be

3 a doubling of it?

4 THE COURT: Let's follow the scenario.
5 Let's put it tip on the board, so we can understand.
6 Let's work with four counties, so we can divide
7 this. Let's r>ut County A, B and C.

8 MR. FRIZELL: Your Honor, don't we have
9 all the data available for real counties?

10 THE COURT: You know, why struwie with <#
11 figures? Do you want to do it, counsel, or to "!"
12 you want the witness to do it? I don't ca^l*.* <

13 MR. Mc<?TMPSEY: I wouldn't mind, Your
14 Honor,

15 THE COURT: Okay. So I can understand
16 what you are getting at. There may be soraethincr
17 profound here that I'm going to struggle with and
18 I'd rather see it. Let's put them up on the board.
19 County A* B, C and D and then assign some convenient
20 median income figure to each.

21 MR. MCGIMPSFY: Shall we say 10,000 for A?

22 THE COURT: All right. And then fifteen
23 for B.

24 MR. MCCIHPSEYJ Ricrht.

25 THE COURT: And twentv for C and twenty-

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1 five for D.

2 MR. McOIMPSBY: Let me ask him a question,
3 if I might, if the Court please.

4 THE COURT: Sure.

5 BY MR. McGIMPSEY;

6 Q Is there any way that you would suggest
7 that those could be weighted in the fact that they are
8 population, different populations? You as a Planner, is
9 there any way that is the most reasonable in order to
10 weight those medians for each county?

11 A Yes.

12 Q How would you do it?

13 A It's the way that's described in the AMG **decision**
14 on page 23.

15 Q Now, what would you do?

16 A The consensus formula.

17 Q What would you do to weight them? What
18 would you weight them if this was 50 percent?

19 THE COURT: Well, okay. We've got
20 1/2 of them, now. I was going to suggest you
21 **assign** to A 40 percent.

22 MB. McGIMPSEY: Yes, sir, Your Honor.

23 THE COURT: And let's assign to the
24 others each 30 percent, just to see what we are
25 working out here. Now, I wonder -

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MR. SEANBERCSIP.s I have to a hundred.

MR. F^IZFLLt A hundred thousand

population.

T^E COURT; I mean 20 each, 20 percent, okay, 20 percent each. So now we have one county that's twice as much as anybody else in terms of household. It's half of what anybody is in terms of, well, it's half. It's more than half, okay.

Now, what happens from this step, counsel? What is it that you are suggesting?

MR. McGIMPSEY: Well, * would **soggMt** to the Court that it would be best to weight them and to take 10 percent each, give them each a weight that would have a weight of four, two, two and two and the distributions. In other words, the distributions could be for each different factor here.

THE COURT: Well, tell me what it is that **FS!** **arpu** are trying to accomplish, you were talking **IT** multiplying before.

#. % " MR. McGTMPsky; I was wrong, your Honor. What I am saying is the distributions should be such that it reflects the weighting, and the weighting should be such that two observations may be at 25,000. Maybe there should be for that

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1 two for 20,000, two for 15,00?), four for 10,000,
2 put a distribution on it and draw a median from
3 It.

4 THE COURT: Okay, would that not, is that
5 not the very thing that I discussed in fch@AM
6 opinion or is it something different that Mr.
7 Reading on behalf of Warren Township suggested?
8 You know what I am referring to?

9 MR. MCGIMPSEY: I don't.

10 BY MR. MCGIMPSEY:

11 Q I just read page 23 and my question is*
12 is that what page 23 is meant to produce or is it something
13 different? **

14 A I think it would produce the same figure. But in
15 order to confirm that I would have to run through it. I
16 think it would produce the same figure as the procedure that
17 the consensus methodology adopts.

18 THE COURT: What would produce the same
19 figure?

20 THE WITNESS: Well, his weighted -

21 THE COURT: The four, two, two and two?

22 THE WITNESS: Yes, sounds like it. But
23 maybe it would be more clear for me if you actually
24 did it.

25 Q Well, supposing if you had on the bottom

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line the figure of 10,000 - no. That would be the median.

MR. UUTT; Excuse me, Judge. Is that 10,000 income figures or household?

THE COURT: Yes, income.

MR. WOLFSON: For household, median income for household in the County of A?

MR. UUTT: Income.

What you would do, would you not, would be to show that 10,000 would have the number of four, is that correct? Fifteen would have a number of two. Twenty thousand would have a number of two and 25,000 would have a number of two, Wow, the median would actually be between \$10,000 and \$15,000, am I correct, because that would separate the number of distributions on each side? You would have five that are over fifteen or over twelve and a half thousand dollars and five that are under. Isn't that what a median is?

A I'm still a little confused. Can I label the access or put a scale?

MR. WOLFSON: Chart them out, Al. In other words, what's the X axis and what's the Y axis?

You would have a number of four here and \$10,000, is that correct? You'd have four observations that are weighted that way, and you'd have a number of six. You

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1 would have, in other words, what I am saying to you is
2 I wouldaVt **you** have aix observations at IS,,000 or less, and
3 if you weighted it forty observations at twenty or more?

4 A What would be the end result?

5 Q Wouldn't the median in the distribution
6 I such as that be twelve and a half?

7 MR. LINNUSj It would be over fifteen.

8 THE COURT: Let's assume that for a
9 I second and let's get the total picture. How would
10 you then develop th@ relationship with **thfc town,** *
11 keeping in mind what the median income dcMMi \$M a
12 ratio? Now, how would you get the town **into the**
13 picture? Would you then take the town's **median**
14 income and multiply it times its households?

15 MR. McGIMPSEy: Wo, Your Honor. You
16 would simply comoare the town's median over the
17 region's median.

18 THE COURT? But not introducing the town's?

19 MR. McGIMPSEY: Ko, Your Honor, because
20 ~~\$fff~~ town is not to be weighted. The town is the
21 **town,** is the town, that's all it is. You are not
22 talking about different towns, now. You are
23 talking about one town, so you don't have to do
24 an averaging. n'ou don't have to find out what the
25 median is for the six counties or seven counties or

1 five counties or three counties, whatever you
 2 want. So then you would take the town's median
 3 over the region's median, which are two different
 4 ~~figures~~, :v. ~~figures~~.

5 THE COURT? Well, it's the town's median
 6 against the region's weighted median, isn't it?

7 MR. MCGIMPSEYJ That's correct.

8 THE COURT Okay. So you would not be
 9 comparing apples and apples? you would have apples
 10 and oranges.

11 MR. MCGIMPSEYS No, Your Honor, It is
 12 the town's median over the median of the weighted
 13 medians of the county. I suggest to you, if the
 14 Court please - I don't mean to interrupt you.

15 THE COURT: The region's median has been
 16 altered by the household numbers. The town's
 17 has not. Is that true?

18 MR. MCGIMPSEYi That's absolutely true.

19 THE COURTi Okay. Now, let's assume we
 20 ~~definit~~ we have here. Wouldn't the town with a
 21 higher median income be more injured by this result
 22 than the present procedure?

23 MR. MCGIMPSEYS Might, might not, Your
 24 Honor. I don't know how the figures are going to
 25 come out. These are just hypothetical figures. I

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1 don't know how they are coming to come out. It
2 depends on what counties you are not nicking and
3 **what** counties you nick. It depends what the
4 figures are for them. But I am simply asking the
5 witness if that wouldn't be more reasonably
6 mathematical from a mathematical viewpoint other
7 than what's stated on page 23 of the opinion.

8 BY MR. MCGIMPSEY:

9 Q I guess that's your question to you,

10 A I'm still trying to understand exactly what **we've**
11 done.

12 MR. MCGIMPSEY: Okay. I'll go off* i'fen*

13 Honor.

14 THE COURT: You are going to try this
15 with *Hr.* Chadwick?

16 MR. MCGIMPSEY: Yes, Your Honor, or
17 Dr. Burchell.

18 THE COURT: Okay, fine. I didn't take
19 any notes on it, because I don't clearly under-
20 **stand** where you are. I would like to try it
21 **again**, so I do understand.

22 MR. FRIZEL: Your Honor, I would like
23 it too. I would, however, prefer if we could get
24 a written report of some kind from whoever is going
25 to testify explaining the methodology, so we can

1 examine it rather than TO throuah it in Court
2 like this.

3 THE COURT: Tell, it's a little - I
4 can't require that, but it might be helpful so
5 we can all be on the same wave length.

6 MR. TJINNUS: It's a problem of the
7 question, because the question is does the
8 development of the methodology work out and, if
9 so, it would be necessary for the Plaintiffs to
10 show it at this point. If they don't have their
11 methodology worked out, that's one thing. Safe []
12 if they have this whole scenario to the point - []
13 a report or a sketch or even some numbers which
14 look at, it might be most informative for counsel
15 and the Court to review then this evening.

16 MR. MCIMPSFY; Your Honor, I don't have
17 them right now. My question to this expert is
18 as to whether or not the formula, basically as to
19 whether or not the present formula as stated in
20 "page 23 is mathematically valid. I think he's
21 answered that.

22 THE COURT; Let me say to you on that
23 point that I think without even the witness
24 answering it, it seems to me that in a pure sense
25 you are absolutely right. What the second item on

1 page 23 says is in a very pure sense you are not
 2 producing a county accireeate Fiedian income, but you
 3 &gm\ producing a gross aggrecreate of the median
 4 income times one household's to create a relation-
 5 ship between that and the gross aggregate in the
 6 municipality. I think from a purely statistical
 7 mathematical standpoint that has been testified to,
 8 so I would recognize that. If there is a better
 9 way of doing it, then I would ask you to go forward
 10 on that,

11 -MR. MCHIMPSEY: May I ask a question, %
 12 Judge? You have me at a disadvantage. I'm not.
 13 privy to any other cases that have come before ua.
 14 If the Court is going to take in other testimony
 15 from other cases outside here, I would like to
 16 know. I say that respectfully. I would like to
 17 know what it is, take judicial notice or in any
 18 way that the Court's going to do it. But I would
 19 like to know what it is, so that I may better be
 20 ~~SENMM~~red to question it.

21 THE CQV'R'Si Well, what is in this opinion
 22 %
 3 is the aggregate of the testimony in the Warren
 24 Township case and that which occurred in the Urban
 25 League case. Of course the Court's opinion in
 " i Mount Laurel II contemplates that the trial Judge

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1 is supposed to develop expertise through the cases
2 that come before them, so I have the obligation
3 to assimilate as much expert testimony as I can.

4 Now, what is in on page 23 represents
5 the testimony principally in the Warren case, as
6 I recall it, as to how this factor works, and there
7 is nothing that I recall in the consensus report
8 which spells out how you go about identifying this
9 median income relationship. So when I visualized
10 it on page 23 it was based upon the testimony before
11 me in this case.

12 MR. MCGIHPBY: Yes, Your Honor.

13 THE COURTS I think that, as I understand
14 the statement that I've made at page 23, the manner
15 in which the consensus group derived this relation-
16 ship was as I just verbalized it, so that it's
17 either, I believe it to be a correct statement of
18 the consensus methodology.

19 But what I'm saying to you is I'm not
20 asserting that it's necessarily correct. If there
21 is a better method, I would like to know. What I
22 was trying to clarify from your standpoint was my
23 understanding of my own language, that it's intended
24 to create a relationship between the gross aggregate
25 median income of the region to the municipality,

1 understanding that it's not a true median, that
2 it is not a true median. The fact that it was not
3 a true median was testified to as not being the
4 relevant issue. Because as to all municipalities
5 it would have generally the same effect. It would
6 show some relationship as between Municipality A
7 which was at a hundred percent of median,
8 Municipality B which was at eight-five and Munici-
9 pality C which was a hundred twenty-five. So that
10 it really didn't make any difference whether it was
11 a statistically true median or an average aggregate
12 median. I don't know if that makes any sense to
13 you.

14 MR. MCGIMPSEY: I don't understand the
15 terminology of an average aggregate median. I've
16 never heard the term "aggregate median."

17 THE COURT: Well, average, perhaps I
18 shouldn't have said, but aggregate median was meant
19 to display the weighted aggregate of the county by
20 multiplying the median income times the households
21 and doing the same thing to get that number for the
22 region and then seeing what relationship a
23 municipality had by utilizing the same procedure
24 in the municipality. There was a suggestion made
25 by an expert for Warren Township which is embodied

1 in an opinion. Re testified with Mr. Chadwick
2 present, so you can discuss that with him, that
3 it could be calculated in another fashion.

4 MR. McCIMPSEY: Yes, v_{our} Honor.

5 THE COURT: I don't think it's the same
6 thing you are talkincr about. In fact, I'm auite
7 sure it's not and that's on paae 57 of the opinion,
8 But I call that to your attention, so when we get
9 to it you will be aware of it.

10 MR. MCGIMPSEY; Thank you. Judge,

11 BY MR. MCGIMPSEY:

12 Q Now, let rae ask you a question, It I
13 might, about the growth area factor, if I may, sir*

14 A Yes.

15 THE COURT: Mr. Prizell, apparently
16 some pages are missing from your report.

17 THE COURT ATTENDANT: The back side of
18 the page is blank, for instance, 18, I think.

19 THE COURT: Thirty-two.

20 THE COURT ATTENDANT? Eighteen.

21 THE COURT: It's probably not missing*

22 THE COURT ATTENDANT: It's not missing.

23 There is just nothing on it.

24 MR. PRIZELL: The end of the chapter.

25 THE COURT: Okay, thank you.



1 All right, wherever you pick a
2 convenient break time.

3 ; " MR. MCGIMPSEYJ This would be a good
4 time.

5 THE COURT: Okay. Let's take fifteen
6 minutes.

7 I think there should be a rule against
8 doing those kinds of things at three o'clock in
9 the afternoon. Let's do those in the morning.

10 I (Informal discussion outside the record.)

11 (Whereupon, a short recess was taken.)

12 THE COURT: Okay.

13 MR. MCGIMPSEY: Thank you, Your Honor,

14 BY MR. MCGIMPSEY:

15 o I just have a couple more questions, if
16 I might, to ask you about that median factor. When you had
17 come to the conclusion that a median, a high median in a
18 township is a presumption in your opinion that there's been
19 exclusionary zoning, is that correct, -

20 " " F " fe«» There's a strong correlation.

21 y- Q - is that based upon your experience?

22 A Yes, it is.

23 o But your experience is limited with
24 respect to zoning ordinances? just the production of one
25 zoning ordinance and no master plans. Am I correct on that?

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A No.

0 Okay. You've had other experiences with zoning ordinances?

A Yea.

0 In New Jersey?

A I've analyzed many, many zoning ordinances in relation to the particular characteristics of the community, and that's mainly where I've formed my opinion as to this correlation, by looking at the land use regulations in relation to the population characteristics and the housing type available. There is a very, very strong correlation* -f:K

0 You are not particularly familiar with Franklin Township's characteristics or its history, are you?

A Ho. I don't have a long history. I know what I've read in the master plans, the expert reports, what I have seen by driving around.

0 You've only driven around Franklin Township as of August 9th a few times, am I correct?

A Yes.

MR. FRIZELL: Your Honor.

MR. MCGIMPSEYS Excuse me.

MR. FRIZELL: I was going to object, but there is no question. He answered.

MR. MCGIMPSEY: I'm sorry.

0 One other question, if I might, with

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1 respect to prospective need, there first has to be chosen
2 a beginning point from which to measure the region. Am I
3 ~~correcton\~~ttiat?

A That's correct.

5 Q In your report you selected a geographical,
6 what you call the geographical center of the town. Am I
7 correct on that?

8 A We ran it both ways. We ran it from the geographical!
9 center or the approximate geographical center and we also ran
10 it from the municipal building.

11 Q You didn't say that in your initial ~~report,~~
12 though, did' you? t'K^-fr^:%

13 A I don't recall whether we stated what the starting"*
14 point was.

15 Q Didn't you attach a map to your initial
16 report or your report to us? Excuse me. My partner just
17 handed up to me a map. You showed both the municipal
18 building and the geographical center, so I will withdraw the
19 question.

20 ~~ALSO~~ Okay.

21 MR. MEZEY: For the record, I think

22 we should clarify the map was presented at
23 deposition and it was not part of the report.
24

25 THE WITNESS: That's correct.

MR. MCGIMPSEY: Excuse me?

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1 MR. MEZEYS The map was nresented at
 2 deposition. It was not part of the report. X
 3 ~~say~~ that, because His Honor does not have the
 4 map at this point.

5 THE COUP.T: Yes. I thought maybe you
 6 were hiding something frow *ne.

7 MR. McnxMPSF?5 Thank you, Frank.

8 BY MR. McGXMPSEY:

9 Q With respect to the beginning point, the
 10 Warren decision calls for a residential-commercial c@m for
 11 the first or the preferred beginning point* X am evanmefs.' - 'V'
 12 on that, am X not?

13 A Yes.

14 Q How, Franklin Township has its population
 15 level based to the north of the municipal center, Am t
 16 correct on that?

17 MR. FF.XZELL: Your Honor, could X object
 18 to the question?

19 A I really don't know. X don't know the Township
 20 ~~well enough to~~ be able to draw that conclusion*

21 7 ^*^*%*i^f Okay. Do you know the Township well
 22 enough to draw a conclusion as to where if any there is a
 23 coraaercial concentration?

24 A X know of several coiranercial concentrations.

25 Q Do you know of all the commercial

1 concentrations in the town? T'ra not suggesting you have to.

2 A I **don't** think so, I know the ones I've seen.

3 Q Thank you. Let me ask you this question
4 about the figure that He get for the nrespective need
5 calculations, that is to say, the figure of, I think you said
6 it was, 61,096,

7 A Are you -

8 Q I just want to ask you a question about
9 it. I'm asking you a question.

10 A I'm to assume this is the figure without **checking**.

11 Q Let me ask you this: Is that th</'figovt'!*>.
12 that you used in waking your calculation for prospective
13 need?

14 A Okay. Let me check that,

15 Q Oh, sure. Those are available to you.
16 Take your time.

17 A Yes, That's the regional lower income housing
18 need to 1990.

19 Q All right. That was based in the Lerman
20 ~~formula, and~~ correct, on an average taken between the
21 ~~•fi, \$oyⁱ*M-1, 4mVBloped~~ from the economic analysis and from
22 the cohort method. Is that how you get that figure?

23 A Yes. It's taken from the, actually, the consensus
24 report itself, the April 2nd report which uses the ODEA
25 population projections and the headship rates prepared by

1 CUPR.

2 Q Okay. How, which one of those, if either
3 **one of those**, is called the cohort method on projection?

4 A **There's** an economic demographic and there's a
5 cohort. I forget exactly what it's called, but are you
6 asking me which is which?

7 Q Well, there are two. One is cohort and one
8 is economic, am I correct?

9 A There are two, that's correct* Demographic cohort
10 is actually the name of the item. V

11 Q In arriving at that figure the **Lerman**
12 formula averages the two as one of the steps in **arriving**
13 at that figure?

14 A They average the two steps of projections, yes.

15 Q Now, you indicated, I think, on direct
16 testimony that that average seems reliable based upon data,
17 which you have received from ODFA within as late as July of
18 '83. Am I correct on that?

19 A I believe so. I think I testified as to an estimate
20 **prepared by the** Bureau of Census of the State's population
21 **as of 1982.**

22 **t**
23 Q Okay. That was the State's population
24 that matched up pretty close to what the projection was by
25 the average of the two methods, am I correct?

A Yes. We are approximately on target.

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1 Q But isn't it also possible through ODEA
2 to break down the State's retaliation into counties? In
3 other words, doesn't that same information come out for
4 county bases from OD3A?

5 A You mean population estimates by county?

6 O Yes.

7 A Yes.

8 O Have you made a study using the county
9 projections for the specific regions and compared those
10 figures with the Lerraan formula figure?

11 A No. I don't think they have any figures, at
12 estimates more recent than 1982.

13 O Okay.

14 A So the census was the more recent estimate, but
15 I haven't made that study, no.

16 O All right. But the census was for State-
17 wide as opposed to county-wide?

18 A The census did not break it down into counties.

19 Q Yes. Just to make it clear, but there are
20 actual projections on a year-by-year basis that are broken
21 down into counties up through July of '82. Am I correct
22 on that?

23 A They are estimates, not projections.

24 Q All right.

25 A Yes.

1 Q Now, you agree that the Mount Laurel II
2 decision requires more weight be given to the employment
3 factors or employment factor than the other factors, do you
4 not, by the use of the word "substantial"?

5 A When you say "more," you mean -

6 O More weight than the others.

7 A - more than 50 percent?

8 Q Well, more than what the others would
9 have*

10 A Depends on what the others are and how many others
11 there are.

12 O Okay.

13 A Are we talking about the consensus methodology?

14 Q Yes, I am. Let me ask you this* In the
15 consensus methodology in order to get reallocated need you
16 use three factors in there, don't you?

17 A For reallocating the present need, yes.

18 O The one is the jobs and the second is the
19 growth area ratio. The third is the median ratio about
20 which we talked earlier, isn't that right?

21 A Yes.

22 Q Isn't it your opinion that the jobs ratio
23 should have more weight than the other two, in other words,
24 each of the two at least individually according to Mount
25 Laurel II?

1 A I think that a substantial weight should be driven
2 to it, to employment considerations, but I don't know what
3 that means, that it has to necessarily have more weight. I'd
4 say no one of the three would be too substantial in my mind,
5 and that meets my own kind, makes me feel comfortable with
6 the factors as set forth. Aside from the fact that it's
7 really, it really is also reflected in the jobs factors and
8 indirectly reflected in the wealth factor also because of the
9 way in which the wealth factor is calculated.

10 Q I thought you said that the wealth factor,
11 isn't that the median factor you are talking about?

12 A Yes. I'm talking about the median factor ~~to-tbft~~
13 right.

14 Q Didn't you testify the median factor had
15 two derived routes. One was the presumption of exclusivity.
16 That was the first one, didn't you say, and the second one
17 was the ability to pay for low income and moderate income
18 housing?

19 A I don't recall talking about the income factor as
20 a reflection of past zoning practices. I don't recall whether
21 I mentioned that it also reflects the, you know, ability of
22 residents to pay for whatever they may have to pay for.

23 Q Well, are you saying that the median income
24 is a reflection of the jobs in the town?

25 A Wo. Do you mean the median income factor?

1 weight in deriving that final factor, isn't it?

2 A You'd end up with having more than that one-third
3 weight.

4 Q You think it ends up having more than one-
5 third weight?

6 A Yes, I do.

7 Q How about the growth factor? Does that
8 have more than one-third weight?

9 A Yes, it &G&S.

10 Q How about the median factor?

11 A Median income ends up having less than **one-third**
12 weight in terms of its influence on the final allocation
13 factor because of the way that the wealth factor is **derived**.

14 Q So that the present reallocated need, you
15 have a growth factor and a jobs factor with equal weight,
16 am I correct?

17 A **Yes.**

18 Q There's nowhere or let me ask you this:
19 Is there anywhere the growth factor is mentioned in Mount
20 **Laurel II*** in your knowledge, with the word "substantial"
21 **next to it**?

22 MR. WOLFSON: Your Honor, can he repeat
23 the question? I'm not sure I heard that right.

24 THE COURT: All right.

25 (The question referred to was read by

1 the Reporter.)

2 MIR. F^TfLL; YGOT Honor, could T beer
3 **the** question? I don't know what that's probative
4 **of.** I mean "the word 'substantial¹ next to the"
5 word, that sounds like some kind of word search.

6 MR, WLFSON: That's a lexicon search.

7 THE COURTJ If the witness understands
8 it, he can answer.

9 A Not to my knowledge, not to my recollection.

10 Q Thank you. There's also in the **Lerman**
11 formula a .20 factor of which we spoke, rallocation **factor**
12 is that correct, .20 factor?

13 A Yes. 1,02 is actually the factor that you awply.

14 Q All right. It's an addition of 20 percent
15 onto these other factors?

16 A Yes.

17 Q That 20 percent cam© from a 1978 study
18 by the Department of Community Affairs of New Jersey?

19 A That was the one example that the consensus group
20 had of **the** comprehensive.

21 >..Q *' % That's not my question. I asked you did
22 **that come** from that?

23 A I think that was the major basis, but there are
24 also some other opinions ventured by Planners which alter-
25 nately indicated 20 percent was not appropriate based on

1 their personal experience with the need for reallocation.

2 Q Was there **any** other data that was intro-
3 **duced** to substantiate that factor?

4 A **Not** to my recollection.

5 Q That data was on vacant developable land,
6 that data of 1978? Was that reallocation of vacant
7 developable land?

8 A No. It was reallocation of fair share housing
9 units based on -

10 Q Based on what?

11 A - inadequate supply of land in the particaalar
12 municipalities.

13 Q It had nothing to do with what was **in the**
14 **growth** area and what was not in the growth area of the
15 State Development Guide Plan. Am I correct on that?

16 A That's correct.

17 Q Okay. Didn't you testify this morning
18 that the growth area factor was used instead of a question
19 **of using a factor** based on vacant developable land, because
20 **that only thing** that you had on vacant developable land was
21 **this- 37 S ; f ^** report? Is that what you said this morning?

22 A Yes. That was the essence of the rationale.

23 Q So that it was felt that basically this
24 **1978** data was unreliable and outdated, isn't that right?

25 A Which data are you referring to?

1 0 The 1973 reallocation, Department of
2 **Community** affairs data.

3 MR. RIZELL: Your Honor, I don't think
4 **that** answers Mr. McOimpsey's question.

5 THE COURT: We are talking about vacant
6 developable land data?

7 MR. MCGIMPSEY: Yes.

8 THE COURT: My understanding, that's not
9 1978 data, so we better get it clear.

10 MR. MCGIMPSEY: I thought he just testified
11 it was.

12 THE COURT: The HAR report is
13 data by prior testimony before me is much **alike**
14 in the seventies, but I think we better clarify
15 that and see if what I have been informed is
16 correct.

17 THE WITNESS: I believe you are correct
18 in that. I think the actual figures that are given
19 in the 1978 housing allocation report are said to
20 **be by** the reporter current 1975-76, but based on
21 **aerial** photos, which date back to, I believe, 1972.
22 They attempted, I think, to update the information
23 on those aerial photos to 1975-76, That's my
24 understanding.

25 THE COURT: The shame of all of this, I

1 understand they can overfly the State in two
2 weeks and reproduce this data today with the
3 technology that they have. The entire State
4 could be mapped on vacant developable land shown
5 for the entire State.

6 MR. McGIMPSEY-. Thank von, Judge.

7 THE COURT: But it hasn't happened. Maybe
8 one of the municipalities would do it or maybe the
9 League of Municipalities.

10 MR. McGIMPSSY: Yes, Jtidcre,

11 THE COURT: The mapping thereafter, I
12 gather, would be more difficult, but it could
13 actually be accomplished in that period of time.

14 MR. McGIMPSEY: In two weeks, Your Honor.

15 BY MR. McGIMPSEY:

16 Q My next question is in that 1978 report
17 at what rate of density did they ficrue out the development
18 of the land that was available? Was it at four to the acre?

19 A Yes, I believe I mentioned that they assumed that
20 *Hows vaAtm^wt* lower income households, lower income housing
21 could be produced per acre of vacant developable land.

22 Q Was it four total acres? I mean four,
23 four total developments or just four low income per acre?

24 A Four lower income.

25 Q °kay, Let me ask you this question; Has

1 there, to your knowledge, has there been any data that has
2 come up with respect to particular cities as to whether or
3, not **the** projection o* 1979 has borne out to be true?

4 A Which projection?

5 O Well, for example, is it true in the 1978
6 report the City of Paterson was driven a zero vacancy land
7 or zero lands that could be developed, if you know?

8 A I don't recall.

9 O Do you know what Jersey City was given in
10 that 1978 report?

11 A I believe it was zero.

12 O Okay. Do you know if there's been any
13 development since 1978 in Jersey City of new units?

14 A I believe there's been redevelopment.

15 O Has there been any development of new
16 units? Do you know?

17 A Yes. I believe there has been.

18 Q Thank you. Now, with respect to indigenous
19 need, did you testify this morning that the Census Bureau,
20 tJ»S^^a«^v^reau used the terra "delapidated units" up to
21 **the census and** through the census of 1960?

22 A I believe they did. I think they may have also -
23 yes. I believe they identified delapidated as a separate
24 category.

25 O Then did you testify that after the 1960

1. census they dropped it, because they felt it was too
2 **subjective** and unreliable?

3 A Well, they dropped the whole process of sending
4 **enumerators** out to look at housing units, and they went to
5 a self-enumeration process. But there had been studies by
6 the Census Bureau which indicate that the work assessments
7 made by the enumerators were, tended to vary widely in their
8 accuracy.

9 Q They were unreliable,, weren't they, because
10 they were too subjective?

11 A I believe that they were problematic **They were**
12 better than nothing, but they weren't, they had **problems.**

13 Q Didn't you testify this morning that you
14 made a study of the 1960 census, the listing of delapidated
15 housing and compared it to the three factors that the Lerman
16 formula used in the '80 census? You found them to be
17 comparable and thereafter that validated the '80 census or
18 the Lerman formula?

19 A Well, to be more accurate, when I was working -

20 Q I -just want to know if you said that this
21 **morning, first,** and then you can correct it if you like.

22 A Okay, yes. I think I did. But I think I'd like
23 to clarify that, if I may.

24 Q Go ahead, sir.

25 A The study was or the comparison I made was actually

1 between an estimate of delapidated and deteriorating units
2 for 1970, which was made by the census in a report which
3 **was based** on the surrogates that we used* I compared their
4 numbers **for** 1970 to 1980. I don't think I ever compared
5 the 1960 figures.

6 0 you felt that validated the facts or the
7 steps that you used in the Lerman formula?

8 A It certainly showed that we were in the ball park,
9 I remember the numbers were, you *kncm*, oretty, pretty much
10 in the same range. This was, you know, something I did @aril
11 on even before the consensus methodology when I was working
12 on factors myself,

13 0 So you used figures that the **Census Bureau**
14 thought unreliable and changed in order to validate the
15 census data or the steps that were taken in the Xierman
16 formula with respect to indigenous need, isn't that correct?

17 A No. I think what I just explained was they went
18 back after the 1970 census and used the surrogates, you
19 know, the physical deficiency surrogates, the same ones that
20 **were us** the consensus formula to come up with an
21 **approximate** of delapidated units. The number of units
22 was roughly the same as the number I came up with, using
23 the same surrogates in 1980.

24 o Well, all that goes to prove is that if
25 you use the same factors in 1980 and you use the same

1 factors in 1970, you are using the same factors in '30 or
2 '70, does it? It doesn't go to prove anything else?

a A Well, it indicates to me that another fairly
4 **reputable** agency has gone through the same process and had
5 come up with approximately the same figures, although I
6 recognize they are different years. There are, you know,
7 probable indications that the '30 figures were slightly
8 higher and that, you know, these are the best estimates
9 of the delapidated units. What it shows is, you know, that
10 kind of estimate can be repeated in 1950 and that we **basically**
11 come up with the same conclusions as the census did in **1970**.
12 To me that's reassuring that you can repeat the **same process**
13 and come out with, you know, essentially the same results,
14 you know, give or take some units to account for the
15 differences in the time frame. To me that indicates that
16 we are on the right track.

17 Q Let me ask you this; what you are saying
18 is, am I correct, you are saying that you've gone down and
19 used **the** three factors the Lerman formula did, and you've
2a **used them for** 1970 and compared it with the term
21 **"delapidated"** in 1970? You feel that validates it, isn't
22 that what you are saying?

23 A It was.

24 Q Isn't that what you are saying?

25 A I can't remember whether it was delapidated or

1 dilapidated-deteriorating.

2 Q ?ut then on the sane token that delapidated,
3 which we were using to validate the Lorman formula 3ter>s is
4 something that the Census Bureau drowned, because it was too
5 subjective. It was too inaccurate and unreliable. Am I
6 correct on that?

7 A No* They dropped the process of sending Deople out
8 to establish households or I mean housing units that fell
9 into this category, They didn't establish and attempt to get
10 I a number, getting a handle on this number through the UM
11 of surrogates.

12 Q Didn't they feel it was too unreliable?
13 Isn't that what you testified to this morning?

14 MR. FRIZELL: Your Honor, I object. I
15 think Mr. McCimpsey is beating a dead horse here,
16 because he's trying to characterize the witness¹
17 testimony differently, I think, from what was very
18 clearly the use. We've heard hours of testimony
19 about the use of surrogates. Now, we are getting
20 cTOBS-examined on a whole system that was drooped
21 ;'i|ffipr the 1960 census.

22 MR. McHTMPSEY: That's right.

23 MR. PHILtBOSIANs Your Honor, I would
24 object to Mr. Frizell's objection on the ground,
25 first of all, he testified quite differently. This

1 morning he specifically stated they dropped that
 2 method, because the people with the expertise,
 3 some said all units were delapidated. Some would
 4 say none, depending on the particular census
 5 involved. That's what he said. He didn't say
 6 they thought results were unreliable at that time,
 7 but how they were taken.

8 THE COURT: Suppose we let the witness
 9 repeat his understanding of what occurred in
 10 1960. j\

11 There was an actual survey made **physically,**
 12 is that right?

13 THE WITNESS: That's correct.

14 THE COURT: Now, what occurred thereafter?

15 THE WITNESS: Thereafter the Census Bureau
 16 eliminated the use of enumerators in the data
 17 collection process.

18 THE COURT: That's a fancy definition for
 19 counters?

20 ~~1m*1~~ WITNESS: Yes_f enumerators.

21 ~~*% F~~ MR. HUTT: Talking about warm bodies,
 22 aren't you?

23 THE COURT; In some cases that was
 24 questionable, Okay.

25 And thereafter?

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1 THE WITNESS: And as part of that
2 transition they identified, they went through a
3 process of identifying surrogates to come up with
4 a reliable estimate of delapidated units through
5 the use of these, of *the* forms which weren't
6 filled out by enumerators,

7 THE COURT: That was for the 1970 census?

8 THE WITNESS: That's for the '70 census.

9 THE COURT: What did the '70 census
10 utilize in these forms?

11 THE WITNESS: Well., it was the categories
12 that we've used as surrogates. Incomplete
13 plumbing, inadequate heating are the two I recall.
14 Subsequent to the '70 census they prepared a
15 report based on these surrogates which derived an
16 estimate of delapidated and deteriorated units
17 using the surrogates. I had the results of that
18 report and at one point I looked at the results in
19 order to confirm that I was in the ball park in
20 **using** the surrogates and applying *them* in the way
21 I **used** the surrogates and applied them to the '80
22 **census.**

23 BY MR. McOIMPSEY;

24 0 How, with respect to plumbing, inadequate
25 plumbing and inadequate heating, have you done any studies

1 or have you reviewed any studies or any data that indicates
2 that if a house has inadequate plumbing it has anything else
3 inadequate in it?

4 A Yes,

5 O Okay. That study is that and what date
6 is that?

7 A The first one is the results of this center report
8 that I just mentioned which uses the plumbing data to
9 estimate numbers of delapidated units. Delapidated
10 deteriorating units, I think, is what they call th*<i>* 1
11 have the citation in the office if you want. If you want,
12 I can provide you with it.

13 O What study? You don't have it? You don't ^{fi}k
14 know what the study is?

15 A This is the consensus study done subsequent to the
16 '70 census.

17 O So that you are saying that the census
18 study - which census study, the 1980 study?

19 A HO, It was done, I think, around 1974 after they
20 had the "80^{ti} & year results which they used to estimate
21 delapidated deteriorating units.

22 O So you are telling me that the 1974 study
23 of the 1970 census indicates that in 1970 if you had bad
24 plumbing you had something else wrong with your house?

25 MR. MEZEY; Your Honor, I think the

witness wasn't through with his answer, and he was giving another part of information to -

THE COURT: I think we are clarifying the first one, and I understood his testimony to say that. Is that correct, Mr. Wiener, that this '74 study indicated that if you had bad plumbing there were normally other deficiencies?

THE WITNESS: Yes, it did.

THE COURT: Now, you were about to say that there was another source of this conclusion?

A Well, the CUPR study-Mount Laurel II cross-tabulates deficiencies that are identified by the census. W&f don't have any cross-tabulation with other physical deficiencies that might not show up on the census, like, you know, structural problems, roof problems, window problems, leaky windows, basements, et cetera. But there is that matrix at one point in the Rutgers study which cross-tabulates indicators of physical deficiency.

Q The Rutgers study is something different, isn't it? It has seven indicators of deficiency and uses two - you have to have two to indicate substandard housing, am I correct?

A They used a different methodology, yes.

Q Let me ask you this question though: You indicate in '74 there was a study of the '70 census which

1 indicated there were other thiners wron<? if a house had
2 inadequate plumbincr» That was the aeneral rule?

3 A Yes,

4 Q Now, in the '70 census thouchr they didn't
5 use the term "delanidated* anyt<ore or "deteriorated," am I
6 correct?

7 A No, That tern was only used in this renort, not
8 in the census itself. This report drew on the data from **the**
9 census to make an estimate of these housing categories.

10 Q But the '70 census only had, didn't it,
11 only have - how many factors did that **have** as to indication
12 of anything wrong with the housing?

13 A I don't recall for sure. I know that plumbing **was**
14 on© of them.

15 Q is that all you know, plumbing was one of
16 them?

17 A Yes.

18 Q So you don't know what the others were,
19 if any?

20 A No. #

21 Q All right.

22 THE COURT: Do you remember where that
23 matrix was in the -

24 MR. FRIZELL: 144, Judge.

25 THE COURT: I love this rerx>rt. They

1 can't say anything with 2-cents words. They
 2 have to use two-dollar words. Its title is
 3 "Conditional Probability Matrix of Rousing
 4 Deficiency Probabilities Given the Deficiency
 5 Noted by the Row Table,* Exhibit 2A-2. We'll
 6 spend some time over the evening looking at it-
 7 But is that the table you are referring to?

8 THE WITNESS: That is the table I
 9 am referring to, yes.

10 THE COURT: The report invents new
 11 words, if not at least new words, words that
 12 most of us do not use in common parlance.

13 0 Then it's your testimony that you used
 14 the Rutgers report to indicate that one of these three
 15 surrogates indicates there is something more wrong with the
 16 house?

17 A No, not originally. Ho. I didn't have the Rutgers
 18 report when I first looked at the question of surrogates.
 19 It wasn't out; yet.

20
 21 Q: What are you depending upon, if any, what
 22 you are depending upon, if any, to determine that if
 23 you have one of the three, plumbing, I'm sorry, one of the
 24 two, plumbing or heating, that you've got something else
 25 wrong with the house?

A Mainly the census report, and there are also some

1 technical studies done by the Tri-State Regional Planning
2 Commission.

3 THE COURT: Mr. Wiener, will you look
4 at the exhibit for a minute, so that maybe we
5 want to tak* a look over the evening. Reading
6 the column that savs, "Plumbing" at the too, not
7 on the side. At the top it says, "Plumbing" and
8 then reading down on the left it says, "Access,
9 elevator, Kitchen, Crowding, Heating" and then
10 "Plumbing." Now, the first master under "Plumbing*"
11 is ".21." And if we read across to our left it
12 says, "Access." Do I read that to mean that of
13 the plumbing units 21 percent of them had access
14 problems?

15 THE WITNESS: I think it goes the other
16 way around.

17 THE COURT: The other way around "Access"?

18 THE WITNESS: They have, if they have an
19 access problem, the probability is 21 percent they
20 **also** have a plumbing problem.

21 THE COURT: All right. So let's read it
22 for plumbing. If they have a plumbing problem,
23 what is the probability that they have any other
24 types of problems?

25 THE WITNESS: I think you have to look at

1 the bottom row in the table.

2 "THE COURT: So that percentage of those
3 having plumbing problems had heating problems, is
4 that correct?

5 THE WITNESS: Yes.

6 MR. GIMPSEY: May I ask a question?
7 There's one thing I am not quite sure.

8 THE COURT: Yes.

9 MR. GIMPSEY: The Court is asking
10 questions on the Rutgers report. He has said,
11 if I understand him correctly, he didn't depend
12 on the Rutgers report to come to his conclusion
13 or maybe I misunderstood his answer. That's what
14 I want to find out,

15 THE COURT: I understood him to say that
16 he did. He said, "The CUPR cross-tabulates
17 deficiencies."

18 And I said, "Where?"

19 Mr. Frizell said, "Page 144."

20 He said, "Yes. That's the table," so
21 that's why I was asking about the table.

22 MR. FRIZELL: In response to the
23 objection he said he didn't have it when he did
24 it the first time around, incidentally, which is
25 all from the census. But the information contained

1 in the Rutgers report supports what his original
2 conclusion was. I think this was pretty clear.

3 * THE WITNESS: That's exactly what I was
4 trying to say.

5 BY MR. MCGIMPSEY:

6 n Mr, Friaell, you are adopting his testimony?

7 MR. FRIEDEL: Your Honor, I think that's
8 improper.

9 A No, I'm simply -

10 THE COURT: Well, for your own information
11 I want to understand. You have utilized or you
12 are familiar with Exhibit 2A-2 on page 144* and
13 it's your indication that that supports the
14 conclusion that there are multiple deficiencies
15 when there's plumbing deficiencies?

16 THE WITNESS: Yes.

17 Q So if I am to understand correctly, you
18 used at least in part the Rutgers report in order to
19 substantiate the three elements or the two elements that
20 you used for substandard housing as to heating and plumbing
21 being surrogates of other problems?

22 A Yes.

23 MR. MCGIMPSEY: Okay.

24 THE COURT: Just pick a logical breaking
25 point, counsel. We'll break.

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MR. McGXMPSTFY: This would be fine.

THE COURT: All right, *ine. All right, we'll recess until toinorrow morning at 9:30. We'll have Mr. Chadwick here, I take it, at that time when we finish with this witness.

MR. FRIZELL: Yes, Your Honor.

THE COURT! All right.

(Whereupon, at 4 p.m. the Court adjourned to Wednesday, September 12, 1984, at 9:30 a.m.)

* * *

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : SOMERSET/OCEAN COUNTIES
Docket Nos. L-6583-84PW; L-26294-84;
L-7917-84PIf? L-14096-84W? L-22951-84PW?
L-25303-84PW? L-25303-84PW? L-33174-84PW?
L-19811-84

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

Plaintiffs,)

vs.)

CERTIFICATE

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

Defendants.)

I, DAVID G. VORSTEG, certify the

foregoing to be a true and accurate transcript

of the testimony and proceedings in the

above-entitled cause.


David G. Vorsteg C/S.R,
License No. X100S

Date July 15, 1984