

MM - Field v. Franklin

9/12/84

Stenographic transcript of trial proceedings

pt 3

includes witness Wiener continued cross

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SUPERIOR COURT OP NEW JERSEY
LAW DIVISION : SOMERSET/OCEAN COUNTIES
Docket NO8. L-6583-84PW; L-26294-84;
L-7917-84FW* L-14096-84FW*
L-22951-84PWJ L-25303-84FW;
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.

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

Defendants.)

STENOGRAPHIC
TRANSCRIPT
Of
TRIAL
PROCEEDINGS

Places

Ocean County Courthouse
Toms River, N.J.

Datet

September 12, 1984

BEFORE:

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

TRANSCRIPT ORDERED BYx ALEXANDER F. MCGIMPSEY, JR., Esq.
Seiffert, Frisch, McGimpaey 6 Cafferty

Reported by:

DAVID G. VORSTEG, C.S.R.

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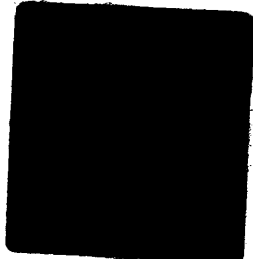
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FRANKLIN PLANNING BOARD and
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Seiffert, Frisch, McGimpf

Reported bys
DAVID G. VORST

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September 12, 198

I N D E X

Witness

<u>Name</u>	<u>Page</u>	<u>Cross</u> <small>WHICH</small>
Geoffrey wiener		
MR. MC GIMPSEY		4,410
MR. AUCIEU.0		26
MS. DOHATO		38
THE COURT	8,38	

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MR. CAFFERTYS Your Honor, good morning.

On a housekeeping matter, It doesn't have to be on the record.

THE COURT: Off the record.

(Informal discussion outside the record.)

G E O F F R E Y W I E N E R ,

having been previously sworn according to law, was examined and testified further as followss

THE COURT: All right, we were on cross-examination, X believe, at the end of the day.

Y' • -v.-;-

CROSS-EXAMINATION BY MR. MC GIMPSEtt

Q Mr. Wiener, is it Wien¹ er or wil&* mxt

A Wien¹ er.

Q Wien' er. I'm sorry.

Mr. Wiener, with respect to the median facto[^] of which we were speaking yesterday, ~

A Yes.

Q - if it were possible to get the distribution

of observations for the region in total and to run that through a computer and get the pure median, wouldn't that

be a better way of handling the median factor than the way it's handled in the Lerraan formula? In other words, true meaning over true meaning?

A I don't think that would make a significant difference. X believe, and this is based on the

1 calculations I've seen, that the method spelled out in the
2 Lerman report on the consensus methodology and in the
3 Warren decision approximates the true median within a
4 few percentage points. The margin of error is very, very
5 small.

6 Q Then in order to do that you must have had
7 a breakout of the total of the regions and been able to
8 find out what the true median was in order to find out what
9 the percentage difference was, didn't you?

10 A I did it with respect to an eight-county region.

11 Q So those figures are available then for
12 regions, am I correct?

13 A Well, they are available by income class. In other
14 words, one knows how many households fall into an income
15 range, which includes a \$2,500 spread, for instance, from,
16 you know, how many households fall within the range of
17 ten thousand to twelve thousand and so forth and
18 thousand five hundred to fifteen thousand and so forth and
19 so on. So one can use those figures also to derive the
20 median* but again one would need to interpolate within
21 the class, because one wouldn't have all of the data.

22 Q Wouldn't have all the distribution within
23 the class?

24 h Well, that, within the class it falls in the
25 middle of the distribution. One wouldn't know exactly

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which household would be median one.

Q Within the class?

h Within that class. But one could do an interpolation.
tten.

THE COURT: Mr. Wiener, when you use the term "true median," true median of what?

TBS WITNESSs The median of the income distribution of all households in the region. I think that's -

THE COURTS Weighted or unweighted? Would that represent the median of the total number of V the households?

THE WITNESS: Yes. It would, but implicitly it is weighted, because that's implicit in the definition of "median." In other words, one would simply aggregate the data for all of the households' income data for all of the households in the region regardless of which county they live in.

THE COURTS So if I am clear, if there were a hundred thousand homes in whatever county region, if I were, eight, nine-county region, whatever, -

THE WITNESS: Right.

THE COURTS -• they would all be lined up on a spectrum from zero to whatever the highest income was. The true median would be that in the

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middle?

ISA TOE WITNESS: Yes.

THB COURT: Okay.

BY MR, MC GIMPSEY:

Q Wouldn't that be a better way to come to a regional median if you do it that way than as opposed to the method that's done in the Lerman report? Wouldn't it be more accurate?

A Yes. It would be slightly more accurate.

Q You only tested it for one eight-county region as a deviation, am I correct on that?

A Yes.

Q It wasn't the eleven-county region we are talking about in the present need of Franklin Township?

MR. MEZEY: That's who he's talking about.

THB COURT: Excuse me. What was the question?

Q I'm sorry. I will withdraw the question.

The reason you tested it for the eight-county region* was that the same county? That wasn't the same as the eleven-county region that's being used in the Lerman formula for Franklin Township, is it?

A No. It's the same except for Sussex, Hunterdon and Warren.

Q How many counties did you determine were

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1 appropriate to Fran Township for the pi .^ective r ed?

2 A Six.

3 a Six, all right* So then It's obvious that
4 that is not the same region that you calculated and checked

5 on the eight-county region for the median deviation? 1

6 A Ho. It's a different region,

7 BY THE COURTS

8 Q Let me ask one additional question, so I
9 am clear.

10 In order to arrive at the true median you
11 would have to take the median household income Of every
12 household in every municipality and line it up on a
13 spectrum? >

14 A That's correct*

15 Q You couldn't take the municipality, the
16 municipality's median income and multiply it times the
17 households in the municipality. Otherwise you would get a
18 false median income figure in that sense?

19 It wouldn't be precisely true, would it?

20 A It would approximate it, but again It would,be a
21 weighted average•

22 Q So you'd have to take a hundred thousand
23 figures and find the middle?

24 A If there were a hundred thousand households, one
25 would have to look at the median income of every household

1 and **find** the one that fell in the middle.

2 BY MR. MC GIMPSEY:

3 Q All right. My next question, you testified
4 as to the Rutgers Report. I referred to the Rutgers
5 Report, but it¹a the Center for Urban Policy Research
6 Report which I am showing you here*

7 A Yes.

8 Q You indicated that you felt that this report
9 evidenced in favor of the Lerman formulas, heating and
10 plumbing deficiencies as surrogates* In other **words**, it
11 backed it up?

12 A Well, it backs up the use of surrogates.. They **use**
13 different surrogates*

14 Q Well, with respect -

15 A The point Z was trying to make, there is a high
16 correlation between housing quality deficiencies*

17 Q You pointed at page 144 when the court asked
18 you some questions* Z don't know whether it was the court
19 or Mr* Frizell who asked you some questions and I have it
20 **here** before me* Do you have your copy? Would you like to
21 **use ours?**

22 A It doesn't matter* Z will look at your copy*

23 Q On page 144 it does show on Exhibit 282,
24 it **does** show a heating deficiency as a factor, doesn't it?

25 A Yes*

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Q All right* Does it show that In that table for a heating deficiency factor there are no other problem* in 49% of the cases?

A **Yes**, but that -

Q Was that what it shows?

A Yes* Heating deficiency factor is not the same as the one we used on the Lerraan consensus methodology, but yes. That's what this particular table shows.

Q Isn't that heating deficiency taken from the census?

A It's taken from the census.

Q Isn't that the same heating deficiency *thmt* you took from the census to determine whether or not they are substandard housing?

A Ho.

Q You used a different one?

A I believe our category of heating deficiencies is more exclusive. In other words, it's more limited. It's a more limited category. I believe that category includes all units with no central heat* Our category includes **even a more** specific compilation of units with no central heat.

Q Doesn't this in the Rutgers - MR. HUTTON Excuse me. I didn't hear the last part of that answer.

1 THE WIT 3s The last part of the answer?

2 MR. Htffi?s Yes.

3 THE WITNESS: The consensus methodology
4 takes some of the units with no central heat and
5 classifies them as inadequate. Whereas, I believe
6 the Rutgers methodology considers all units without
7 central heat to be inadequate heat or indicators
8 of inadequate heat, so our definition differs.

9
10 Q Isn't it true that the census breaks down
11 heating into those units that don't have central,
12 and it can be broken down that those aren't attached to
13 a new -

14 MR. MEZEYj I didn't hear the last part of
15 the question.

16 THE COURTi What part of the question? Can
17 it not be broken down further to units which are
18 attached to a flue?

19 MR. MC GIMPSBY: Not connected.

20 THE COURTi Are not attached to a flue.

21 MR. MEZEY: Thank you.

22 \y_y*1£?;-j;& THE CODRTt While the witness is looking
23 for that I would just indicate page 114 of the
24 COPR defines what CUPR used for heating purposes
25 and, that is, the heating equipment index sets
as a standard the existence of central, a central

1 heating plant, via use of room heaters all
 2 without a flue is considered an indicator of less
 3 than adequate conditions and, therefore, as a sign
 4 of deficient dwelling unit. One-half of the
 5 existence housing deficient Mount Laurel
 6 population relies on primarily heat for noncentral
 7 heating forces. That's the definition of the CUPR.
 8 How, do you say the Lerman definition is
 9 different?

10 THE WITNESS: Yes, X do.

11 BY MR. MC GIMPSEY:

12 Q What is the Lerman definition? " i

13 A In the summary tape file 3 printout prepared by the
 14 census profile ten, table no. 17, the census breaks out
 15 types of heating equipment in year-round housing units
 16 into nine different categories. Five of those categories
 17 are within the larger category of central heating equipment,
 18 and four of those categories would be considered noncentral
 19 heating equipment. The consensus methodology considers
 20 three of the noncentral heating equipment categories as
 21 inadequate. The one category, heaters with flue, which
 22 is a noncentral heating source, was considered inadequate
 23
 24 under the consensus methodology and that does make a
 25 difference.

Q Let me ask you this: Regardless of any

1 difference that there / be in the definite an of heating
2 deficiency, the table on page 144 of the report indicates,
3 however> that no matter how you look at the heating
4 deficiency, when there is a heating deficiency in only
5 51% of the tine is that connected with anything else, any
6 other deficiency in the house, isn't that correct?

7 A I think, no, I don't think it is correct. I think
8 it says when there is noncentral heating.

9 Q Tfaat's what they determined to be a heating
10 deficiency, isn't it?

11 A Yes. As they defined it.

12 Q Yes. But when you are talking about being
13 a surrogate or any heating deficiency, whether it's yours
14 or theres, they are saying that in 49% of the time there
15 are no other deficiencies. Isn't that what that table
16 says?

17 MRt. HUTTs I object, Your Honor. He's
18 trying to put words in the witness' mouth. If
19 they are using - you can't compare apples and
20 oranges. They are using a certain deficiency in
21 heating and saying what those deficiencies,
22 49% of the time there are no other deficiencies.
23 The witness is testifying when you use different
24 formula for what's a heating deficiency they may
25 or may not be the same thing. He's trying to

1 make them synonyrccus.

2 THE COURTs That's true. But what Mr,
3 McGimpsey Is saying is just accepting as a
4 surrogate the CUPU in the manner which they
5 define heating in 51% of the cases, there are
6 no other deficiencies*

7 MR. HUTT: In the manner in which they
8 define heating?

9 THE COUBTs In the manner in which they
10 define it.

11 Is that your question?

12 MR. MC GIMPSEY: In any manner in which
13 you define heating, if the Court please, in any
14 manner in which you define heating, because this
15 is more inclusive than this one. So that whether
16 you use the Lerman or this, according to that table,
17 My question is in 49% of the time isn't it true
18 that it's not accompanied by any other deficiency?
19 That's just the question I am asking him.

20 THE COOWtt Okay. That's your question.

21 Can you answer that question, Mr. wiener?

22 THE WITNESSi Yes. I would say no.

23 Q You would say it does not indicate that?

24 A Ho. I don't think that table indicates that.

25 Q All right.

1 THE COURT Why not?

2 THE WITNESSs Mali, because of the word
3 "any."

4 THE COURTs Well, Mr. McGirapsey is saying
5 isn't it logical to assume if the Lerman approach
6 is less inclusive, if a more inclusive surrogate
7 is used, then it's logical to assume that a 49%
8 figure of n& other problems would be valid. If
9 that's not correct, I'd like you to explain it more.

10 THE WITNESS: Okay. When one uses *thm*
11 more inclusive definition, there's a much greater
12 probability that one will include units that have
13 none of the other identified surrogate indicators
14 simply because one has a much larger population
15 and one's including units which generally would
16 be considered to be "more standard" than the ones
17 that we identify using the consensus definition
18 of inadequate heat. In other words, there's a much
19 larger pool of units that you are doing the
20 cross-tabulation on, and that larger pool includes,
21 there's a greater probability that that larger pool
22 includes units which don't have other deficiencies
23 identified under the Rutgers methodology.

24 When one restricts that pool to a more
25 narrow and in my opinion a more, better indication

1 of heating inadequacy, one is really look at those
 2 units which only have very limited heating equipment,
 3 room heaters without flues, portable heaters, fire-
 4 places or stoves or no heat whatsoever. This
 5 population is much more likely in my opinion to
 6 have other inadequacies than the larger population
 7 of units without central heat, because that larger
 8 population will tend to include more "standard
 9 units" just mathematically, both mathematically
 10 and logically. I draw the conclusion that the
 11 percentage would be considerably higher if one
 12 used the consensus definition of inadequate heat
 13 and cross-tabulated it with the other surrogate
 14 indicators if one uses this broader classification.

15 THE COURTS I understand.

16 BY MR. MC GIMPSEY:

17 Q Mr. Wiener, did you do anything like the
 18 study on Exhibit 2A on page 144 of the Rutgers Report
 19 on the CUPR report?

20 A No. I didn't have data to do that.

21 Q So you are making your opinion that you
 22 just gave the judge based upon no data. Am I correct on
 23 that? You didn't do a study as Dr. Burchell did?

24 A Ho. I didn't have the data.

25 THE COURTS My understanding is that those

I figures are available. I've never seen them
2 and Z don't know the result® of them. But are
3 you sure they are not in the census or do you
4 know whether or not they are in the census?

5 THE WITNESS: I'm sure they are not in the
6 summary tape files, which are programmed *fry thm*
7 census bureau. Now, Rutgers may have taken the
8 original data files and written a new program
9 which cross-tabulated these surrogate indicators
10 to produce, you know, the figures that we are
11 looking for. But the census hasn't done that,
12 because the summary tape file printouts contain
13 those cross-tabulations.

14 THE COURT: If Dr. Burchell is going to be
15 produced, I believe he testified in the Ringwood
16 case before Judge Skillraan with regard to this
17 area of inquiry. He might have that data for us
18 and that he broke down overcrowded, plumbing and
19 heating, into an average of deficiencies. X may
20 have that. I don't know what the numbers are, so
21 :^B Have no knowledge that you do not have.

22 MR. MC GIMPSEYS Okay, Your Honor.

23 BY MR. MC GIMPSEY:

24 Q My next question to you is with respect to
25 overcrowding would you feel that there should be any

1 adjust^{JL}nt made if a tmnicipality has a grea^ deal of
 2 college students that are part of the population? Would
 3 that have any influences as to the overcrowding, whether
 4 that should be ameliorated or not?

5 MR. HUTT: Z object to that. Z don't know
 6 what he means, adjustment to what? Fair share
 7 number in the region or municipality's fair share
 8 of the region? What's he loading in there? Z
 9 don't know with regard to what.

10 TBS COURT: Well, does the wita&3if' understajif
 11 the question? <'0. - 'f tf.

12 A Hot entirely. What would you adjust at? i| -

13 Q My question to you is thist There is an
 14 overcrowding factor when you reach the indigenous need.
 15 Am Z correct in that?

16 A Yes.

17 Q In the Lerraan formula?

18 A Yes.

19 Q My question to you is addressed to that
 20 particular factor, the counting of overcrowding or the
 21 tabulation of it according to the formula.

22 A Okay.

23 Q Zf you had college students that lived in
 24 the town in a fair amount, fair size number, would that
 25 be an ameliorating factor as to whether or not, in other

1 woras, whether that factor, that overcrowding count.
2 should be lessened?

3 THE COURT You don't mean in dormers?

4 You mean in private housing?

5 MR. MC GIMPSEY: No. X do mean in private j
6 housing.

7 A X don't believe so. I see no basis.

8 Q Now, in the consensus formula there is a
9 .82 factor that is used in order to, at least in order
10 to arrive at the present reallocated need for a region.
11 That's correct, isn't it? *

12 A It's used to determine the total present housing
13 need among lower income households.

14 Q Is it also the same factor used to
15 determine what the prospective need will be for the region]?
16 Do they change that twenty-two in that?

17 A No. It's not necessary.

18 Q Now, with respect to the .82 factor that's
19 used in the present reallocated need, did that factor come
20 from the Tri-State region report?

21 A Yes. "People, dwellings and neighborhoods" was
22 the title of the report.

23 Q Yes. Did that cover counties in New York
24 from Rockland County all the way through New York City,
25 the five boroughs or the five counties? Did it include

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those?

A Yes.

Q Did it include up to Long Island, Nassau and Suffolk County?

A I believe so.

Q Long Island runs approximately maybe a hundred miles from New Brunswick, New Jersey, doesn't it?

A Approximately.

Q Did it also include counties in Southern Connecticut?

A Yes.

-\r* ".f

Q Okay. Did it include some nine counties in New Jersey?

A Yes.

Q It's true, isn't it, that geographically those areas are considerably different?

A What do you mean by "geographically"?

Q Well, New Jersey from New York out on the island* say, for example, in the nine counties in New Jersey that were considered, there are some geographic differences in there, aren't there?

A Yes.

Q There are some demographic differences in there. In other words, there's different incomes and different valuations and people who live in different

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1 styles with different expenses all throughout that area,
2 isn't it?

3 K Yes,

4 Q Isn't there a marked difference demographically
5 between New York City, for example, and the New Jersey i
6 area?

7 A What part of New Jersey?

8 Q Bergen County, for example.

9 A Yes.

10 Q Bergen County was one of the counties that
11 was included in this study? <

12 A Yes.

13 Q if the same kind of study was done and was
14 available to be broken down on the county-wide basis in
15 New Jersey, wouldn't that be a more valid factor than
16 this factor, this 82 factor that covers the Tri-State
17 region for this consensus formula?

18 A When you say "the same kind of study" -

19 Q Well, if someone took - let me tell you
20 what fifteen. If someone took a distribution of substandard
21 homes and had available within the counties in New Jersey
22 and had available the amounts of percentage of those that
23 were of the total households in New Jersey, wouldn't that
24 be a more valid approach? Let me withdraw the question.

25 If substandard homes were counted in New

1 Jersey and observations were made as to what percentage
 2 of those were from low income and moderate income, wouldn't
 3 that be a more appropriate factor to use than the Tri-State
 4 region factor?

5 A Assuming that the definition of "substandard
 6 homes" was the same as the one being used in the consensus
 7 methodology, yes.

8 MR* MC GIMPSEY: No further questions*

9 Thank you.

10 Your Honor, may I ask one more question I
 11 forgot? 7 iii

12 TBS COURT: Go ahead. I haven't finished
 13 making the note from the last one* Go ahead.

14 MR. MC GIMPSEY: I apologize.

15 BY MR. MC GIMPSEY:

1 Q Do you know what the definition of
 7 "substandard housing" was in the tri-state region of the
 18 study?

19 THE COURT: That goes to show you great
 20 kinds run in the same channel. I was going to ask
 21 hifi that and a corollary to that which is when
 23 they used the same definition of low and moderate.
 24 Okay.

25 THE
 A Those are both good questions. I have the study.

COURT: It might be that only you and I

1 agree on my comment, by the way.

2 MR. MC GIMPSEY: Thank you, Your Honor.

3 MR. HGTTi Do you want to repeat the
4 question, please, Your Sonor?

5 THE COURTi My question or Mr. McGimpsey'a?

6 MR. MC GIMPSEY: My question the reporter can
7 read.

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

10 A The '82 percent coses from page fifteen of the
11 tri-state study. It says that low and moderate income
12 households include almost all and then 82% of the households
13 experiencing inadequate housing conditions, mm, it's
14 not clear from the text what they are including in the
15 categories, what categories they are including as
16 inadequate housing conditions. Elsewhere in the report
17 they have actual figures for households experiencing
18 Inadequate housing conditions, but by the type of an
19 advocacy. But they nmvmx explicitly relate the 82% to the
20 figures, so it's a little ambiguous as to what categories
21 they are including when they run the 82% figure.

22 Q I didn't understand whether or not they
23 defined what they were using as low income and moderate
24 income. You may have read it to me.

25 A Ho. I didn't touch on that issue yet.

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3 I'm sorry, Would you answer that? That was the judge's question and mine too.

A All right.

THE COURT I think perhaps my question has been partially answered by the witness* reference, because the prior page deals with this income question. The problem that I had had is in the prior cases before me there was testimony which indicated that they had a fourth category breakdown of income, which was *wmzf* low, Isw, . . . < moderate and middle. I now see page fourteen, ¹ Mr. Wiener.

THE WITNESS **Yes.**

THE COURT: At the bottom of page fourteen there*s a statement, "Low and moderate" consists of less - well, "low and moderate - less than 80% of the regional median" is the definition. Then their middle income is 80% to a hundred twenty and higher is over that. But they have two definitions involved, is that correct? Do you ~~agre~~ **agrem** with that?

THE WITNESS: Yes. That's what it says on page fourteen.

Q Let me ask you this: The pamphlet that you are reading from is the same as the judge has here, a

1 copy wf them, am I correct!

2 THE COORTs Mine is the March 1978, "People,
3 dwellings and neighborhoods*"

4 A Yes. That's what X am reading from also.

5 MR. MC GXMPSEBYs Tour Honor, way 1 &ak that
6 your copy be marked for identification? I don't
7 want to take Mr. Wiener's copy.

8 THE COURT's Any objection to this, a joint
9 exhibit?

10 MR. WOLFSONx No objection.

11 MR. HINNUSi »o objection. If

12 THE COURT's We will mark it as a joint
13 exhibit. I'm going to run another copy of it as
14 well.

15 MR. MC GIMPSEYi Thank you, Judge. X have
16 no further questions.

17 MR. ME2EY: Could we have an extra copy?

18 THE COURT: Yes. All right, to be marked
19 as J-1 when it comes back from the copying room
20 will be "People, dwellings and neighborhoods,
21 Tri-State Regional Planning Commission, March,
22 1978.●

23 THE COURT: Did you say you made a slip,
24 Jim?

25 THE CLERKS I'm making one.

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1 THE COURT: Any further questions, Counsel?

2 MR. MC GIMPSEY: No.

3 THE COURT: Mr. Auciello.

4 MR. AUCIB&LOt Y@s, Your Honor.

5 CROSS-EXAMINATION BY MR. AUCIB&LOt:

6 Q Mr. Wiener, you described for us yesterday
7 your participation with the consensus group, is that
8 correct?

9 A Yes.

10 Q X believe you indicated that you attended
11 two of three full scale meetings with that group, is that
12 correct?

13 A That's correct.

14 Q X believe you also indicated that at some
15 time you had discussions with Carla Lerman concerning the
16 strengths and weaknesses of the consensus methodology,
17 is that correct?

18 A X think at one point she circulated, you know, a
19 draft and asked for comments and X gave her my comments*

20 Was that prior to the report actually,
21 before a report?

22 A Yes* It was when the draft was circulated before
23 the final report was issued*

24 Q Do you recall, Mr* Wiener, what the nature
25 of the weaknesses, which you cited to her were at that

1
tine?

2 A Well, to the best of my knowledge I think the main
3 thing mentioned was the wealth factor and the fact
4 that it was really a modifier of the other factors in the
5 way that it's calculated under the consensus methodology.
6 I was troubled by that, but I didn't have a better
7 solution. My instincts told me that it should be a
8 totally independent factor, but to make it so is very
9 difficult without ~~3,8~~ weighing or weighing too much or too
10 little in relation to the other factors. Seems of this
11 that income or median income is not a percentage of
12 anything relating to growth area or the employment
13 figures. So X expressed concern. I didn't have an
14 alternative to offer, unfortunately.

15
16 Q So the report as it was ultimately adopted,
17 in fact, did not make an accommodation for your particular
18 concern, which you described as a weakness, is that
19 correct?

20 A That's correct.

21 Q Now, Mr. Wiener, you also indicated
22 yesterday that you've been involved in a fair amount of
23 Mount Laurel XX litigations, is that correct?

24 A That's correct.

25 Q Had you been involved in any Mount Laurel XX
litigation in a professional capacity prior to the

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developments of the consensus report

A fern,

Q Had you prepared any fair share analyses prior to the adoption of the Lerraan report, consensus report?

A Yes.

Q Was that with respect to particular municipalities?

A Yes.

Q What towns were those again?

A Well, I prepared for, the report for the public advocate, indicating fair share allocations for ten municipalities in Morris County.

Q With respect to that report, which you prepared for the public advocate, did you ultimately derive or arrive at a fair share numbers for any or all of those ten municipalities?

A Yes.

Q Did you do an independent analysis with respect to each of those municipalities within that area ten?

A What do you mean by "independent analysis"?

Q Did you study each municipality as a unit in order to arrive at that municipality's fair share obligation?

1 A : only studied the characteristics that were
2 relevant in arriving at the fair share number.

3 Q Did you ultimately arrive at a different
4 fair share number for each municipality within that group
5 of ten?

6 A Different from what?

7 Q Different from each other*

8 A Yes. Different from each other, ye®.

9 Q Okay. And in that analysis did you examine
10 relevant characteristics within each of th® ten towns?

11 A Only those characteristics that directly influenced
12 the formula.

13 Q In other words, was the ultimate number,
14 which you reached the sum of ten constituent numbers or
15 did you analyze backwards? Did you start with a number
16 and then distribute that number among ten constituents
17 or did you get a number for each of the ten constituents
18 and add it up and say that's the regional number?

19 A I ne^er arrived at the regional number. Z never
20 - ! *. V ' added up the individual fair share allocations for each
21 municipality. That wasn't relevant.

22 Q Can you tell me, sir, what characteristics
23 or what elements were relevant in your determination of
24 the fair share number for the municipality, for any one
25 of the municipalities?

A Well, I did two allocations.

MR. RUTTS Your Honor, we are mom trying the Morris County case in ten municipalities. I don't see the relevance to this line of questioning. The witness testified he's adopted the Lerman methodology for this case, it seems to me if they wanted to attack that methodology, fine. But to go into what he did on another case on the methodology he says he's not using in this case to me is irrelevant.

THE COURT: It's a legitimate area of cross-examination, but an expert has taken a different position in another matter, if that's where he's going.

MR

MR. HUTTS Then he could ask him.

THE COURT: He can ask him if he changed his mind*

MR. HUTT: He can ask him whether he's taking a different position and, if so, what is his position.

THE COURT: That's where he's going, I assume. I will overrule the objection at this posture.

A X need some clarification. I did an initial fair share allocation for each municipality based on the

1 methodology I developed prior to the consensus meetings.
2 Subsequent to the consensus meetings I also derived fair
3 share allocations, using the consensus methodology which
4 ultimately were the ones which I testified to. Actually,
5 I testified to both and which one are y@ts more interested
6 in?

7 Q I'm interested in the fair share methodology,
8 which you developed in your Morris County analysis.

9 A Okay. The first one?

10 Q Yes*

11 A I believe then the factors, the individual,
12 municipality factors that X looked at where employment,
13 growth and vacant developable land.

14 Q Where did you examine vacant developable
15 land?

16 A X was very concerned that the allocation be tied
17 to the realistic opportunity to construct the allocated
18 units, and X believe vacant developable land is the best
19 single indicator of the existence of that opportunity or
20 **lack of** opportunity. Therefore, X included it in the
21 allocation process.

22 Q As X understand the consensus methodology,
23 vacant developable land is singularly excluded from that
24 analysis, is that correct?

25 A Yes. The report says that while all of the

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1 participants in the consensus meetings agreed that it is
2 a highly important factor and should be included, the
3 currently available data is not up to date and, therefore,
4 can't be used. At such time as new data becomes
5 available the report recommends that it be included.

6 Q With respect to your last statement, did the
7 consensus group determine that the relevant criteria or
8 data with respect to vacant developable land was not
9 available on a state-wide basis? Has that the determination?

10 A On a consistent basis from the municipality, tile
11 municipality state-wide and also between **counties***

12 Q But you were able to find the **relevant**
13 information data concerning vacant developable **land for**
14 the ten municipalities that you dealt with in Morris
15 County, is that correct?

16 A Z was able to find older data, which we discussed
17 previously, the data contained in the housing allocation
18 report, which Z did plug into the allocation formula.

19 Q How, Mr. Wiener, Z understand you've
20 **adopted the** consensus methodology with respect to this
21 **particular** litigation, is that correct?

22 A That's correct.

23 Q Did you analyze Franklin Township's fair
24 share obligation pursuant to the same methodology, which
25 you embraced in the Morris County case?

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A Yes.

Q . . , iron did?

A Yes.

Q And in that analysis did you make a determination as to the amount of vacant developable land in Franklin Township?

A I did not make an independent determination. I used the figures from the housing allocation report,

THE COURT: Let's drop the other shoe.

MR. LINNUS: What's the number? " •

THE COURT: If you don't ask, Mr. Aneiello, I will. . ^ - ' - V • "

MR. LINNUS: We Will.

Q Do you have that analysis in court?

A I don't have the report. I have the figures.

Q Well, then I guess the question is -

THE COURT: The \$64 question.

MR. WOLFSON: \$65,000 question.

Q What was the result of that analysis, Mr.

MR. MBZET* Good question.

A I'm not trying to keep you in suspense. I'm actually trying to find my notes.

(Informal discussion outside the record.)

MR. WOLFSON: Is that J-1 in evidence?

1 THE CCURTS J-1 in evidence.

2 CThe booklet entitled "People, dwellings
3 and neighborhoods was received and marked
4 Joint Exhibit J-1 in evidence.)

5 A I'm sorry. I thought I brought it down. I really
6 don't have it. It's not in my notes, but I thought I had
7 it written down.

8 Q Okay. Just following up on one particular
9 area Mr. McGimpsey went into, in the course of your analysis
10 pursuant to the consensus methodology for Franklin township
11 did you ultimately arrive at the number of overcrowded
12 housing units in the Township?

13 A Yes, using the census data.

14 Q Do you have a general familiarity as to how
15 the census data is accumulated with respect to that
16 particular component?

17 A Overcrowding?

18 Q Yes.

19 A Yes.

20 ,":lMt: How was that done?

21 A It's what we call full count data. It's based on
22 questions asked on every questionnaire distributed to
23 households by the census bureau. I believe they ask for
24 the number of persons living in that particular unit, and
25 they also ask for the number of rooms in the unit. Using

1
2 that data they calculate how many persons per room there
3 **are** and whether it's over 1.0% per rental.

4 Q Is that data related to a particular date
5 during the course of a year?

6 A **Yes.**

7 Q What date is that?

8 A It's supposed to be information that's current as
9 of April 1, 1980.

10 Q is it your understanding that a college
11 student who is living away from the home where **his** parents
12 reside would be counted as a resident where *hm liv%²m* at
13 his college or as a resident in the hone where **his**
14 parents reside or would that person be counted **twice?**

15 A He certainly wouldn't be counted twice. I believe
16 he would be counted where he is residing as of April 1,
17 1980.

18 Q Do you know whether or not that direction
19 is made explicitly known perhaps to the parents of college
20 age students who have children residing away from home?

21 **h Yes.** I believe it's part of the instructions that
22 **are distributed** with the census forms as to how that
23 determination should be made.

24 Q Did you or your firm undertake any study
25 as to the number of college students who do not normally
live in Franklin Township who reside in Franklin Township

1 during the course of a school year?

2 A Well, for the purposes of the census anybody who's
3 occupying a dwelling unit in April, 1980, is residing
4 there, so I'm a little confused by the question.

5 Q My question was did you or your firm underfca
6 a study as to how many people within the Franklin Tmmmlp
7 population occurred in the 1980 census, in fact, were
8 college students who were using the home as a residence
9 during matriculation?

10 A No.

11 Q Are you aware of any studies that were done
12 on that particular issue?

13 A No.

14 Q It's your understanding, sir, of the
15 consensus methodology that a unit which contains more than
16 1.01 individuals is considered to be an overcrowded unit?

17 A 1.0 occupants per rental?

18 THE COURT: 1.0.

19 A More than 1% per room.

20 A Greater than one person per room?
21 A Yes, including all the rooms except for the bath.

22 Q Under the consensus methodology that is a
23 unit which should be replaced by another unit, is that
24 correct?

25 A Should be provided, a unit should be provided for,

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not -- I mean replaced, connotes new construction. It could be through new construction or rehabilitation or sett* other mechanism, reservation* particular existing unite for low and moderate households, whatever. But units should be provided.

MR, BUTT: Excuse me. I object, Your Honor, because he didn't tie it in with the 32% factor, if that's what he means. Okay?

THE COURTS Mali, that's understood. All right.

Q As opposed to the other two criteria ~~wfeife~~ you described at some length, the inadequate plumbing ~~and~~ the inadequate heating, this particular overcrowding factor has nothing to do with the structural integrity of the particular unit, is that correct?

A It's a separate factor. The surrogates for structural deficiency are the plumbing and heating factors.

Q So it's a factor which, in fact, has nothing to do with structural or facility integrity, is that

~~correct?~~

J: ~~ftial:~~ ^fs correct. In fact, the overlap between the three categories is specifically eliminated through the consensus methodology, so that it's without double counting units in the physically deficient category and the overcrowded category.

1 MR. AUCIELLOS I have no further questions,

2 Your Honor.

3 BY THE COURT:

4 Q Do you have an opinion as to whether the
5 82% figure with respect to plumbing, heating and over-
6 crowding is constant or whether it is higher or lower
7 with respect to those three surrogates and, if so, on
8 what would you base your opinion? Do you follow roe?

9 A Yes, X do* I really don't have the information on
10 which to base that opinion at this time, so my answer is
11 no.

12 THE COURT? Okay* Any redirect?

13 MS. DONATO I have one question, Your
14 Honor.

15 THE COURT; All right, Miss Donato*

16 CROSS-EXAMINATION BY MS. DONATO:

17 Q Are you aware of the conclusions in the
18 Rutgers Study regarding the average number of housing
19 deficiencies, which are found to occur in the deficient
20 unit* that they studied?

21 A v. ^j don't recall*

22 MR. WOLFSONT What page are you referring
23 to?

24 Q Can I refer you to page 114 of the study -

25 A Yes.

1 Q - under "Multiple Housing Deficiencies"?

2 A Yes. It appears that the units classified as
3 deficient and Mount Laurel households average 2.2
4 deficiencies per unit according to this paragraph on page
5 114.

6 Q Does the study also conclude what percentage
7 of the Mount Laurel units have multiple deficiencies as
8 opposed to a single deficiency?

9 A Yes.

10 Q Tell us what that indicates.

11 A It indicates less than 25% of the deficient Mount
12 Laurel units have only one housing deficiency, which means
13 that more than 75% have multiple deficiencies.

14 Q And referring to page 98 of the Rutgers
15 Study, can you tell me whether the Rutgers Study in
16 analyzing overcrowded units and in adjusting the 1980
17 public use sample of the consensus data eliminated college
18 students and other classes of institutional individuals,
19 individuals housed in institutional headquarters?

20 ~~fy~~ THE COORT! Well, let's be clear, now.

21 ~~Are~~ Are we talking about college students living in
22 group quarters, institutions, boarders, lodgers?

23 Are you talking about all categories of college
24 students?

25 MS. DONATO: Yes, all categories. I'm sorry,

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1 Your Honor. I modify the question,

2 Q Does the liatgers Study eliminate college
3 students from its sample?

4 A Not as a class, no. it appears they eliminated
5 individuals living in group quarters, institutions or as
6 boarders or lodgers, but I believe that some college
7 students who were living in those categories would still
8 be counted.

9 MS. DONATO: Okay, thank you. I have no
10 further questions.

11 THE COURT: Okay. I'm **just** making **notes**.
12 Any other plaintiff's counsel on redirect?

13 MR. LINNUS: Ho.

14 MR. MEZEYi No, sir.

15 THE COIXRTs Any recross?

16 MR. MC GIMPSEY: Yes, Your Honor. I have a
17 couple questions on that.

18 THE COURT: All right.

19 CROSS-EXAMINATION BY MR. MC GIMPSEY: (Continuing)

20 Q When Mr. Auciello asked you if you developed
21 **any** formulas of your own on the Morris County case before
22 **the** consensus formula came in you said yes, am I correct
23 on that?

24 **A** Yes.

25 Q Apart from that formula, which predated the

consensus formula was a factor for vacant developable land*

Am I correct on that?

A That's correct.

Q You indicated, however, that when you met with the others discussing the consensus formula that they thought vacant developable land was an important factor, is that correct?

A That's correct.

Q But they also felt not to use it, they should not use it, because the data wasn't sufficient. Am I correct on that?

A That's correct.

Q Did they feel that the data was not sufficient from a viewpoint it was, one, outdated?

A I think that was the major concern. Yes.

Q Okay. Did they feel that, two, maybe there was some suspect about how the data was collected?

A X don't know, because I think that discussion took place when I wasn't there.

ip All right. My question to you is that data of which we are speaking was the 1978 DCA report, which had findings from 1974 or '75. Am X correct on that, sir?

A Yes.

Q Okay. That's the very same data that was

1 used to substantiate the 1.2 factor that was cranked into
2 the Lerman formula. Am I correct, sir?

3 A It was.

4 Q Was it -

5 A It was used indirectly. It wasn't used directly to
6 substantiate it.

7 Q It was used in it?

8 A It was used to calculate the need to reallocate
9 units in the housing allocation report. Yes.

10 Q In the 1.2 factor, am I correct?

11 A Yes.

12 Q The other function **was** just everybody's
13 experience, general experience, am I correct? Isn't **that**
14 what you testified to yesterday?

15 A What other function?

16 Q The other factor that led to using this
17 information or, no - withdraw the question. I'm getting
18 confused myself.

19 You said that the basis or one of the bases
20 for coming up with that 1.2 factor is the 1978 DCA report.

21 **h Yes.**

22 Q Did you say yesterday that the other basis
23 and the only other basis was everybody's general
24 experience?

25 A Yes. I mentioned that some individuals had

1 distributed their experience, which indicated that 1.2%
2 **was** needed and perhaps more.

3 Q So that the basis for the 1.2 factor is
4 two-fold? It's, one, everybody's general experience; and,
5 two, the DCA 1978 report, isn't that correct?

6 A Yes.

7 Q Thank you. I have one other question, if I
8 might, sir, or one other subject.

9 THE COURT: Just to be clear, the DCA,
10 the housing allegation report, do you know what
11 percentage reallocation they used? Was it 20%?

12 THE WITNESS: No. They never applied a
13 percentage.

14 THE COURT: Do you know what percentage
15 the reallocation was?

16 THE WITNESS: 23%. When they actually
17 went through the process they found out it was
18 23%.

19 THE COURT: Mr. McGimpsey.

20 MR. MC GIMPSEY: Yes, Your Honor.

21 BY MR. MC GIMPSEY:

22 Q You also testified, I believe, now, in
23 answer to Mr. Auciello's questions regarding overcrowding
24 that one of the ways to take care of the overcrowding
25 problem or to relieve it or omit it was by rehabilitation.

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Am I correct on that, air?

A provision of the units through rehabilitation, yes.

Q That's cheaper than building a brand new building, rehabilitating the unit, isn't that true?

A In general, yes.

Q Isn't it also true that it's cheaper to rehabilitate a unit that has a heating deficiency than to build a new one?

A It depends.

Q Isn't it generally true?

A It depends what other deficiencies go along with the heating deficiency.

Q Supposing there are just two deficiencies as opposed to the seven in the Rutgers Report. Isn't it cheaper generally to rehabilitate a unit than build a brand new one?

It depends.

Q Okay. You don't want to say that that's

A No, because the Rutgers Report only looked at

selected deficiencies. There's a whole slew of deficiencies which they had no available data to look at, structural deficiencies, window deficiencies, roofing deficiencies, which are also strongly associated with these deficiencies, the ones they identified.

1 break and then we will start with Mr. Chadwick.

2 The plaintiff® rest, I presume, at this
3 point?

4 MR. WOLFSON: we are going to call Mr.
5 Frissell.

6 MS. DONATOx Your Honor, also w® have some
7 additional things to put into evidence based on
8 the pretrial. But in addition, I don't know
9 whether Your Honor wants to know, but I spoke
10 to Carla Lerman yesterday as to her availability
11 for testifying. She would not fee able to come
12 until Monday. I realise that is somewhat out of
13 order and that she's really as much - that is
14 what she indicated yesterday.

15 THE COURTS You intend to call her on
16 Monday?

17 MS. DONATO: Well, Your Honor did indicate
18 that you would prefer that we called her.

19 V, THE COURTS Is Dr. Burchell going to be
20 produced?

21 MS. MC GIMPSEYi Your Honor, I want to be
22 candid with you. We've had calls for the last
23 few days and not had a return. I know Mr.
24 Chadwick has not had a return. I'm going to
25 try to call and also try to call Fred Stickle

1 and see if that stakes any difference. I don't
2 kaow whether it does or not.

3 THE COUBT: Do you want me to try to reach
4 him and then I will turn the phone over to you?
5 He said he would respond to us and come.

6 MR. MC GIMPSEY: He told that to us earlier.
7 He told Mr. Chadwick that*

8 THE COURT: Come on in and we will see if
9 we can get him* Okay. We will take care of the
10 narking of any document* and then start with Mr.
11 Chadwick.

12 (Whereupon, a short recess was taken.)
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LAW DIVISION 2 SOMERSET/OCEAN COUNTIES
Docket Nos. L-6583-84PW; L-26294-84f
Ii-7tl7-84P«j L-14096-84PW?
L-22951-84PW; L-253Q3-84PW;
L-25303-84PW* L-33174-84PW:
L-19811-84

JACK W. FIELD CO., J. H, VAN)
CLEFF, SR., J2R ASSOCIATES,)
FLAMA CONTRUCTION CO., BRENER)
ASSOCIATES, WHITESTONE)
COMSTROCYION CO., RAKECO)
DEVELOPERS/ INC., LEO MINDEL)
and WOODBROOK DEVELOPMENT CO.,)

CERTIFICATE

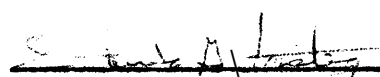
Plaintiffs,)

v8.)

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

Defendants.)

I, DAVID G. VORSTEG, a Notary Public and
Certified Shorthand Reporter of New Jersey, do hereby
certify that I personally took a stenographic record of
the testimony and the proceedings had, and trasn*t-ribed
the same, and the foregoing is a true and correct
transcript of same.


David G. VQrsteg, C.S.R.
License Number XI00368

DATE* September 16 1984