

ML 2 - Boonton

Jan, 1979

Deposition of  
Robert Catlin

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WITNESS

DIRECT

ROBERT CATLIN

BY MR. ONSFORD

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I N D E X O F E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>
RC-1	Memorandum dated September 21, 1979	
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1 ROBERT CATLIN,

2 2 Valley Road, Denville, New Jersey, duly  
3 sworn by the reporter, testifies as follows:

4 DIRECT EXAMINATION BY MR. ONSDORFF:

5 Q Mr. Catlin, I'm counsel for the plaintiffs  
6 in this litigation, which we will be discussing today,  
7 in particular, the reports that you filed with  
8 regard to Rockaway Township. Have you ever been  
9 deposed before?

10 A Yes.

11 Q As I'm sure you're aware, then I'll  
12 be asking you a series of questions and if you don't  
13 understand any questions, please indicate that and  
14 I will try to clarify the question so as to be sure  
15 that we'll be communicating at all times and if your  
16 attorney interposes an objection, please wait for  
17 the resolution of whatever legal discussion we have  
18 prior to giving your answer. Okay?

19 A Yes.

20 Q Did you receive a subpoena from our  
21 office with regards to your work on behalf of Rockaway  
22 Township?

23 A A subpoena?

24 Q Right.

25 A I may or I may not have. I don't recall. I knew

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1 that you were going to depose me so I didn't pay much  
2 attention, you know, I've been through these enough  
3 times before to know that you're looking for anything  
4 that is going to be pertinent.

5 Q In regards to that subpoena, we had  
6 solicited, by that subpoena all records and documents  
7 that you used in the presentation of your material  
8 and reports on behalf of Rockaway.

9 A Yes.

10 Q Is that material available at some  
11 time?

12 A All are nearby in the office, so anything  
13 we need, anything, I can just get it.

14 Q Fine. Now, I understand from one of  
15 your reports that you've been a planner for 21 of  
16 the municipalities in Morris County for a period  
17 of 29 years. Is that correct?

18 A Yes.

19 Q Has that been continuous service or  
20 from time to time, for these communities. :

21 A Both. We have been working in a number of  
22 communities, including Rockaway Township, since 1953,  
23 I believe. '52 or '53. We've been working in Hanover  
24 Township since the very early '50s, about the same time.  
25 We've been working in Denville since the early '50s

1 and a number of the 21 municipalities, we've been  
2 working continually on and others, we work and we  
3 stop and we go back, as they need the service.

4 Q Are any one of the 21 municipalities  
5 from which you have provided professional services,  
6 not defendants in this present litigation?

7 A Yes, there are some.

8 Q Do you know offhand which ones those  
9 are?

10 A Well, I can give you a complete list if  
11 you want to take the time to do this. The ones that  
12 immediately come to mind are Wharton and Rock  
13 Borough. Do you want a complete list?

14 Q Yes, that will be fine.

15 A Let me get a map that has all of the municipalities  
16 in it and then we will just go through them.

17 MR. ONSDORFF: Off the record.

18 (Whereupon, there is a discussion off  
19 the record.)

20 MR. ONSDORFF: On the record. Let  
21 me suggest this: Your professional experience,  
22 do you recall what would have been the smallest  
23 lot upon which you recommended for single family  
24 detached home in any of those municipalities  
25 that you've provided professional services

1 for in Morris County?

2 A I'm not positive without checking because you  
3 must keep in mind, you know, in working in so many  
4 towns I can't keep all the statistics in my head  
5 but I think that probably it would be a 50 by a 100  
6 foot lot.

7 Q What -- would you recall in what  
8 municipality you would have recommended that 50 by  
9 100 lot size?

10 A I think it was probably Rockaway Borough.

11 Q Do you recall the planning considerations  
12 which led you to make that recommendation?

13 A Well, the overriding consideration was that  
14 the area was developed at that density and we were  
15 simply recognizing existing conditions for areas  
16 that are vacant -- in other words, that had potential  
17 for further development.

18 Q Would you recall what your smallest  
19 lot size recommendation has been for single family  
20 detached homes?

21 A Well, that depends upon the size of the area.  
22 If you have a two or three-acre vacant parcel of  
23 land that's completely surrounded by existing development  
24 pattern of 50 by 100 foot lot, it doesn't seem very  
25 realistic to zone that hole in the donut for other than

1 for something that is completely surrounding it.

2 Q Do you recall any occasions in which  
3 you make a recommendation for 50 by 100 foot lots  
4 for vacant property that may have been contiguous  
5 with other small lot developments?

6 A That was contiguous for other small developments?

7 Q Yes, that's correct.

8 A At the same size?

9 Q Or substantially similar size.

10 A Well, as I say, if -- if you have vacant  
11 land as circumscribed by existing development and  
12 small lot size, we generally zone the center of  
13 that area in the same zone, unless it's large enough  
14 so that it can stand on its own. If it is self-  
15 contained.

16 Q I understand the principle. My  
17 question still remains. Do you recall an occasion,  
18 or any occasions that you may have specifically done  
19 that in any community in Morris County?

20 A Not specifically. I am sure I could answer  
21 the question if I had, you know, again, time to  
22 dig out the zoning maps and be specific but the  
23 areas that it would probably occur in in those communi-  
24 ties, those built-up communities, such as Wharton and  
25 Butler and the Borough of Rockaway, and these kind of

1 communities.

2 Q In regard to your academic credentials,  
3 could you briefly list your academic degrees that  
4 you have received from colleges or universities?

5 A I have a degree in urban planning from Michigan  
6 State University. That was the first graduating  
7 class from Michigan State, in 1950.

8 Q Did you pursue any graduate degree  
9 programs?

10 A I took a number of graduate courses. But  
11 I did not get a master's degree in planning because  
12 at that time the degree was the same for both  
13 undergraduate degrees and graduate.

14 Subsequently, they went into a graduate program  
15 but at the time I was there, that was no graduate  
16 degree.

17 Q Subsequent to your formal educational  
18 experiences, could you relate briefly your professional  
19 employment experiences?

20 A Well, I'm -- I have been head of the firm since  
21 1953, '52 or '53 and during that time we have prepared  
22 master plans for approximately 75 New Jersey municipalities  
23 We have also prepared masterplans in other states but  
24 our activity has primarily centered around New Jersey.

25 Q So, continuously since 1953, you have

1 | been the head of your planning firm. Is that correct?

2 | A I was either head of the firm or partner  
3 | in the firm since 1953. I had a partner from 1951  
4 | until 1960. The firm was known as Scott Bagby and  
5 | Robert Catlin and in 1960 I brought Mr. Bagby  
6 | out and the firm has been under my name since that  
7 | time.

8 | Q Do you presently hold any professional  
9 | licenses?

10 | A I hold a planner's license in the State of  
11 | New Jersey.

12 | Q When was that obtained?

13 | A Whenever they passed the law. I don't know  
14 | when. Whenever the State of New Jersey licensed  
15 | planners. It's been since that time.

16 | Q Do you recall what the standards  
17 | were, or are, for obtaining that license --

18 | A No.

19 | Q -- by the State of New Jersey?

20 | A No.

21 | Q You didn't take a test or anything?

22 | A No.

23 | Q In light of the credentials which we've  
24 | just discussed, would you briefly describe your field  
25 | of professional endeavor and area of expertise as

1 it relates to this litigation?

2 A My field of expertise in municipal planning.

3 Q And specifically, what areas of scientific  
4 discipline would you say that incorporates?

5 A What do you mean when you say "what areas of  
6 scientific discipline"? Such as?

7 Q Well, what courses of geology or topography  
8 or biology, other analytical skills that you believe  
9 are incorporated in that professional expertise of  
10 municipal planning.

11 A Geography, topography -- are you talking now  
12 about a license or the degree?

13 Q No, any type of skills which come  
14 within that umbrella, however they may have been  
15 obtained.

16 A I think you have to have some understanding  
17 of engineering, economics, law, architecture, then,  
18 of course, the same characteristics that are mandated  
19 by the licensing act.

20 Q So, in essence, what you're describing  
21 is generalist as opposed to specialist? Generalist  
22 in the overall field of municipal planning; is that  
23 correct?

24 A Right.

25 Q Have you testified in any form, during

1 your professional career regarding your area of  
2 professional expertise?

3 A Yes, many times.

4 Q Could you indicate, since 1975, those  
5 locations which you have presented such testimony?

6 A In Court or before other agencies? Agencies,  
7 Superior Courts or, what do you mean?

8 Q Let's start with Superior Court locations.

9 A Since 1955?

10 Q '75.

11 A Oh, '75. I don't have that information at  
12 my fingertips and I'm just guessing now as to when

13 those cases came up but one that comes to mind is  
14 with the Town of Westfield, in Union County, which I  
15 believe was subsequent to 1975, which was a zoning  
16 case. I think that was the last one.

17 There were a number of them prior to '75 but  
18 I haven't done any testifying since 1975.

19 Q Now, in addition to Superior Court, are  
20 there other forms in which you have given supplemental  
21 testimony?

22 A I've testified as an expert witness before  
23 several boards of adjustment.

24 Q Could you recall any specific instances  
25 since 1975 where you have given such testimony?

1 A Yes, the Township of Hanover.

2 Q Do you recall what the case or the  
3 issues were, when you gave testimony to the Board  
4 of Adjustment?

5 A Of Hanover Township? Well, there were several  
6 cases.

7 Q They were zoning matters involving  
8 variances or --

9 A Yes, yes.

10 Q Do you recall whether you had ever  
11 given testimony in regard to Mt. Laurel issues in any  
12 form --

13 A No, I don't believe I have.

14 Q -- in New Jersey?

15 Have you published any professional material  
16 in any publication in the State of New Jersey?

17 A I wrote a paper in 1958 on density control or  
18 cluster zoning, which was, to the best of my knowledge,  
19 the first time this has ever been done and the subject  
20 of that paper ironically was Rockaway Township which,  
21 as far as I know, adopted the first cluster zoning  
22 ordinance in the State of New Jersey. This is almost  
23 20, 21, 22 years ago.

24 Q Do you recall when that paper was  
25 published or is a copy available?

1 A American City Magazine.

2 Q Do you still have copies available  
3 that I may take a look at?

4 A I may have some in the library someplace. I  
5 haven't looked at it the last ten years. I am sure  
6 something is there.

7 Q Do you recall having prepared any other  
8 planning documents which were submitted to any  
9 municipalities in the State of New Jersey, in addition  
10 to, say, master plans, which, of course, you have done  
11 on numerous occasions?

12 A Well, we've prepared other -- yes, other  
13 documents; urban renewal plans and special studies  
14 that pertain to municipal planning but, not necessarily  
15 municipal master plans.

16 Q Do you recall any such planning documents  
17 since 1975, which have specifically dealt with  
18 housing issues and needs in any municipality in the  
19 State of New Jersey?

20 A No, I don't think we prepared any documents.  
21 We prepared other plans; maps and planning proposals,  
22 that would not necessary offset in the form of a  
23 document.

24 Q Would any of those plans or maps, have  
25 been in any of the municipalities in Morris County since

1 1975?

2 A Yes.

3 Q Do you recall which municipalities  
4 you've submitted such plans to?

5 A The Borough of Madison.

6 Q Would a copy of that plan be available  
7 in these offices, for later inspection?

8 A Yes.

9 Q Now, specifically with regard to  
10 Rockaway Township, could you briefly detail the  
11 professional services that you have rendered on  
12 behalf of that municipality?

13 A Since when?

14 Q Since your earliest retention by that  
15 community.

16 A We have prepared three master plans in the  
17 last three decades. The first one was in 1950; the  
18 second one, 1960 and the last one was approximately  
19 four to five years ago, in the '70s.

20 We have been adviser to the Planning Board  
21 on a consulting basis since the early -- since the  
22 early 1950s. We attend monthly work meetings at  
23 the Planning Board where they discuss all applications  
24 for development and write reports on every application  
25 for development.

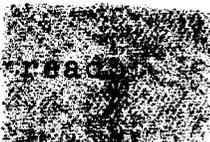
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1           Subsequent to each of the three master plans,  
2 we have also prepared comprehensive implementing  
3 zoning regulations, to carry out the objectives of  
4 these three master plans.

5           Q           With regard to Rockaway Township, had  
6 you received an opinion as to the land features  
7 or characteristics, which may inhibit or otherwise  
8 limit the development potential of vacant land?

9           A           I missed one word you said.

10                   MR. ONSDORFF: Would you read that back,  
11 please.

12                   (Whereupon, the following was read  
13 back: )

14                   "With regard to Rockaway Township,  
15 have you received an opinion as to the land  
16 features or characteristics, which may inhibit  
17 or otherwise limit the development potential  
18 of vacant land?"

19           A           Yes, yes, we have reached certain conclusions  
20 in analyzing the vacant land left in Rockaway Township.

21           I'm sorry, I missed one word.

22           Q           As to various land features, or characteris-  
23 tics which limit development, have you divided them  
24 into categories or classification?

25           A           We have looked at certain environmental constraint

1 on all vacant land, which is set forth in my report.

2 Q Now, in regard to these environmental  
3 conditions, do flood hazard areas constitute one of  
4 the development limiting factors which you have  
5 addressed in your reports?

6 A Yes.

7 Q What environmental harm or developmental  
8 limitations result from instruction within flood  
9 hazard areas?

10 A Well, I believe that's pretty obvious, that  
11 if you build in a flood hazard area, or flood plain  
12 you run the risk one day of getting out of bed  
13 walking into water.

14 Q In Rockaway, how have you defined  
15 flood hazard areas?

16 A We define them the same as the Federal government  
17 and the Federal flood insurance maps have defined  
18 them. We're taking the same physical boundary  
19 limitations and the Federal government.

20 Q In another category which you have  
21 addressed, wetlands or swamp lands, as far as limiting  
22 development, potential --

23 A No, we had --

24 Q I'm sorry, I didn't --

25 A Well, when you saw wetlands, swamp lands, they

1 may mean two different things, as far as I'm concerned.

2 If you're talking about soils very characteristic  
3 being wetlands, that's one thing. If you're talking  
4 about land that may be in a swamp, that's something else.

5 So, as far as I'm concerned, you're going to have to split  
6 those two things.

7 Q How would you define a swamp or swamp  
8 lands?

9 A I would define a swamp land as that that is  
10 constantly wet every day of the year and unless it's  
11 frozen over and land that has muck and you can't walk  
12 in it without sinking up to your knees. That to me is  
13 what swamp land means.

14 Q What problems do swamp lands pose for  
15 development on them?

16 A Well, the only way you can develop swamp land,  
17 I believe, is to muck it out and put in a type of soil  
18 that would -- could be developed. You can't develop  
19 the swamp land unless they're going to build everything  
20 on stilts and have cat walks to each one of the  
21 residential units.

22 Q Now, that type of a construction program  
23 or development program is implemented as far as  
24 replacement of soils for appropriate base for construction  
25 does that obviate environmental concerns with regard

1 to development on what now is no longer swamp lands?

2 A Does it obviate?

3 Q Yes.

4 A What does that mean?

5 Q Have you eliminated the problem, in  
6 your mind?

7 A You may have eliminated physical problem of  
8 putting a residence on that particular piece of property  
9 but you may have also, conversely, taken land that  
10 serves as a natural retention area and eliminated it  
11 and conceivably, put the problem someplace else.

12 Q How do you define wetlands, since  
13 you have made a distinction between those and swamp  
14 lands?

15 A I think wetlands are lands that have soil  
16 characteristics that make the soil sometimes, as  
17 the subsoil, subsoil wet, such as the soil classification  
18 or the soil characteristics such as mucky soil; the  
19 permeability of a low water table -- I'm sorry, high  
20 water table, which means the soil is wet near the  
21 surface grounds.

22 Q Then to your mind, are wetlands synonymous  
23 as lands with high water tables?

24 A Wetland could have a high water table.

25 Wetlands could be pockets where the soil characteristics

1 are such that they're like a huge basin and they don't  
2 drain properly and if you walk into the soil in that  
3 basin, the lands themselves are wet.

4 Q Conversely, can you have lands with high  
5 water tables, which are not wetlands?

6 A If there is proper drainage, I suppose it is  
7 conceivable that certain times of the year it would not  
8 be wet.

9 Q What is the minimum lot size necessary  
10 for a proper operation of septic systems in Rockaway  
11 Township, in your opinion?

12 A Well, I don't think you can answer that in a  
13 general way because it's conceivable, I suppose, that  
14 soil characteristics are -- that you could build a  
15 septic tank on perhaps half-acre lots, or maybe  
16 even something slightly less than that. But if the  
17 soil characteristics do not lend itself to proper  
18 percolation, it's also conceivable that two acres  
19 may not be enough.

20 Q So, in what you're saying, then, it's  
21 the site, specific determination -- you have to evaluate  
22 the specific tract in mind to determine whether or  
23 not septic will properly function: is that correct?

24 A That's a State law, that each -- before each  
25 septic tank is constructed anyplace in the Township,

1       that there has to be a percolation test made of that  
2       particular site.

3       Q       Now, have you examined the soils found  
4       in Rockaway sufficiently to have adequate knowledge of  
5       their characteristics, to determine whether or not a  
6       half-acre or slightly less, would be adequate  
7       size to support a septic system?

8       A       Well, we have not taken a general soil classifi-  
9       cation and then tried to determine whether or not  
10      we could build septic systems throughout that entire  
11      area, because even within each area, the soils  
12      conservation service, may classify a certain class of  
13      soil in a specific way and when you get on-site  
14      inspections, it may only be 80 percent accurate.  
15      So, you only may have run into the risk that the  
16      soil may be a problem, even if it appears the soil  
17      is such that you could put in a septic system without  
18      severe problems.

19      Q       Now, I would like to direct your  
20      attention to this document and ask if you can identify  
21      it.

22      A       Yes, I can.

23      Q       Is that your initial report that was  
24      filed on behalf of the Rockaway Township?

25      A       Yes, I believe it is.

1 MR. ONSDORFF: I would ask that we mark  
2 that. I would think for convenience, since  
3 we have a number of witnesses, we've been using  
4 initials in the past. R.C. for Robert Catlin,  
5 l?

6 MR. WYSE: That is fine.

7 MR. ONSDORFF: I'll have the reporter  
8 mark that.

9 (Whereupon, above-mentioned document,  
10 memorandum from Robert Catlin to Federick  
11 J. Sirota dated September 21, 1979 regarding  
12 fair housing council vs. Township of Rockaway,  
13 consisting of four pages, marked RC-1 for  
14 identification.)

15 Q Have you got another copy handy? It  
16 might be easy for your own reference.

17 A Is that September 26th?

18 Q This is September 21st.

19 A 20 what?

20 Q I believe it's dated the 21st of  
21 September. There's a cover letter and I think may be--  
22 oh.

23 Q Maybe it was sent out on the 25th?

24 A I have it.

25 Q Now, directing your attention to the

1 first paragraph of-the first page of what has been marked  
2 as RC-1, your report dated September 21, 1979, indicates  
3 that you were requested, September 12, 1979, to prepare  
4 this material. Is that correct?

5 A Yes.

6 Q Further down the first page you  
7 indicate that you reviewed Mr. Mallach's report,  
8 dated March 12, 1979. Is that correct?

9 A Yes.

10 Q Now, Mr. Mallach addressed, apparently,  
11 two sites which were zoned for apartment use in  
12 Rockaway Township; first one being at Mt. Hope Avenue,  
13 south of Mt. Pleasant Avenue; is that correct?

14 A Yes.

15 Q Are you familiar with this apartment  
16 site which is apparently being availed for Rustic  
17 Ridge Apartments?

18 A Well, I know where it is. I've been there  
19 many times.

20 Q Do you know when that apartment complex  
21 was approved for a development at that site?

22 A Not exactly. I think it was approximately  
23 two years ago.

24 Q Do you recall the zoning applicable  
25 to the site at the time it was approved for development?

1 A Yes. As I recall it was in a garden apartment  
2 zone.

3 Q Do you know what the topographical  
4 features are at that location?

5 A Also, as I recall. it was a rather steep  
6 slope.

7 Q Would you say that the slopes found  
8 there are in excess of 15 percent?

9 A Oh, I wouldn't say that because I don't know  
10 until I really examine the site plan.

11 Q Do you know, are any of those apartments  
12 completed?

13 A Yes.

14 Q Are you aware of any environmental  
15 impacts which have resulted from your construction  
16 at that time?

17 A I haven't been asked to take a -- make a  
18 review or look at it, so I really don't know. I  
19 haven't attempted to quantify any kind of impacts  
20 had on the environment.

21 Q You haven't noticed any adverse  
22 impacts on the occasions you have gone by the site?

23 A Well, they wouldn't be visible from the street  
24 anyway other than storm drainage and I never went by  
25 there when there was any kind of implement whether or

1 storm water runoffs. So, I didn't pay any attention  
2 to it.

3 Q Would you have an opinion as to whether  
4 or not these Rustic Ridge Apts. Consistent with least  
5 cost housing standards, as defined by Mr. Mallach in  
6 his report?

7 A Well, if you look at the -- just the rents  
8 alone, I don't think it can be classified as least  
9 cost housing because the rents are rather high.

10 Q Are you aware of any cost generating  
11 features which are found at these apartments?

12 A I don't understand what you mean when you say  
13 "cost generating features."

14 Q I believe Mr. Mallach addressed a number  
15 of cost generating features in his report of March  
16 12th which you refer to.

17 Do you specifically recall any factors Mr.  
18 Mallach listed?

19 A No, I have not taken Mallach's report and  
20 attempted to analyze any of these garden apartment  
21 developments in Rockaway Township, as it relates to  
22 his standards. I have not been asked to do so and  
23 I certainly wouldn't do so on my own, unless somebody  
24 is going to pay me for it.

25 Q Are you familiar with the second site,

1 noted on page one, which I believe is off Fleetwood  
2 Street, east of Mt. Hope Avenue?

3 A Yes.

4 Q Is that area presently vacant?

5 A Yes, I believe it is.

6 Q Are you aware of any environmental  
7 constraints on the development of those premises?

8 A Well, there are certainly environmental  
9 considerations prior to the development of the  
10 property and one is, I recall, when Mr. -- this was  
11 being processed by the Planning Board. There was  
12 rather severe storm water runoff problem that was  
13 only solved after a very lengthy series of meetings  
14 pertaining to the engineering of the site and the  
15 second one, there was a traffic access problem on  
16 Fleetwood Drive (sic).

17 Q Do you know what the present zoning  
18 is for the land off Fleetwood Drive?

19 A It's in a garden apartment zone.

20 Q Do you know what the acreage is of that  
21 particular site?

22 A I believe I have that information.

23 MR. ONSDORFF: Off the record.

24 (Whereupon, there is a discussion off  
25 the record.)

1 MR. ONSDORFF: On the record.

2 Q Before we broke a minute ago, you had  
3 checked on the acreage of that garden apartmnt  
4 site off Fleetwood Street and we didn't get a chance  
5 to put that on the record.

6 A 22.8.

7 Q At this time we'd like to mark, just  
8 for identification, the series of maps which you have  
9 produced. Would it be accurate to say that these  
10 are all the trial exhibits presently contemplated for  
11 admission when this matter goes to trial?

12 A Yes.

13 MR. ONSDORFF: The first one we would  
14 mark would be the large zoning map of  
15 Rockaway Township. R.C. 2 for identification.  
16 Off the record.

17 (Whereupon, there is a discussion off  
18 the record.)

19 (Whereupon, above-mentioned map, large  
20 zoning map of Rockaway marked RC-2 for  
21 identification.)

22 MR. ONSDORFF: On the record.

23 Q Now, the second large map appears  
24 to be the same size as the zoning map; is that  
25 correct?

1 A They're all the same scale, 800 feet to  
2 the inch.

3 Q This map appears to be a map of existing  
4 development in the Township, which vacant land  
5 designated with colored yellow and government and  
6 semi-public lands placed in a large blue boundary.  
7 Is that correct?

8 A Yes.

9 MR. ONSDORFF: This will be RC-3 for  
10 identification.

11 (Whereupon, above-mentioned map as  
12 entitled Existing Development in Township of  
13 Rockaway, vacant land designated yellow and  
14 government and semi-public lands as blue,  
15 marked RC-3 for identification.)

16 Q Could you define for me how you define  
17 vacant lands?

18 A Well, they are lands that had no development  
19 on them at the present time.

20 Q Would that have been viewed in terms  
21 of particular parcels owned by individuals or other  
22 entities as opposed to parts of tracts that might  
23 have no structures placed on them?

24 A I'm not sure what your question is.

25 Q Let me rephrase that. Are there any

1 instances in Rockaway Township, in looking at the  
2 existing development, if you found a very large  
3 tract owned by the single entity and had, say, one  
4 structure or a small office building, with 40 or 50  
5 acres, otherwise an open space, but surrounding  
6 the one single structures?

7 A No, we tried to be as objective as possible  
8 about preparing this map because we did want to  
9 know where the vacant land was and what impact  
10 the development of that land would have on the master  
11 plan and wherever there is a very large parcel of  
12 land in one entity, as an existing single lot on  
13 the tax maps, it may have had a structure on it,  
14 we didn't necessarily indicate that that entire  
15 parcel was developed.

16 May I get specific? For instance, if you look  
17 at this parcel of property here, on Valley Road, this  
18 entire parcel is zoned by one person but there is a  
19 house on it. So we just indicated that the land  
20 around the house was developed but the balance of  
21 the property was vacant.

22 Q Do you recall whether you formulated  
23 any cutoff point as to where you would include lands  
24 contiguous to a structure as developed? In other  
25 words, how much open space did there have to be in

1 order for you to draw the line on part of that being  
2 the developed parcel or still available for the further  
3 development?

4 A We tried to be guided by the zone in which it  
5 fell. In other words, the northern end of the township,  
6 two-acre zone. If a man had a house on the 50 acres,  
7 we tried to show that two acres was developed and  
8 the 48 acres was vacant.

9 Another specific example is this parcel of  
10 property here, which has perhaps a hundred acres  
11 of land that is undeveloped but there is a house  
12 that sets back in here and you can see that this  
13 part of that lot, that is shown as developed, is  
14 probably five percent of the entire tract, so we  
15 did not show that the hundred acres was developed.

16 Q Now, the other land classification for  
17 this exhibit, RC-3, is government and semi-public  
18 lands, if I recall correctly. How have you defined  
19 those two categories?

20 A Well, the vast bulk of that classification is  
21 in the Picatinny Arsenal property, which runs along  
22 the Jefferson Township Municipal property line and  
23 is indicated on this map as United States Government  
24 reservation and the other large parcel is the area  
25 in the northeast corner of the Township, which is all

1 the watershed properties of the City of Newark  
2 and Jersey City.

3 Included in and around that watershed land  
4 is a very large parcel of the Boy Scouts of America  
5 property, that they use for their summer activities.  
6 There's another very large parcel that's owned by the  
7 State of New Jersey, Farney State Park and there is a  
8 blind children's camp up there which is also classified  
9 as semi-public; and other than those two large areas,  
10 there is a Girl Scouts of America camp on Green Pond  
11 Road, just north of Lake Telemark and there is a parcel  
12 property down the Beach Glen, owned by Jersey City,  
13 which is owned by Jersey City for their water rights.

14 Q Now, in regard to the area which comprises  
15 watershed for the City of Newark, are you aware  
16 of any development proposals applicable to those  
17 lands?

18 A I don't believe there's any development proposals  
19 in Rockaway Township, from my reading in the paper,  
20 where the City of Newark is proposing to develop  
21 part of their watershed property and other municipalities  
22 but I don't believe any of those are planned for  
23 Rockaway Township.

24 Q Now, I understand you've prepared a  
25 number of overlays for this vacant land and existing

1 development map. Is that correct?

2 A Yes, we have a number of overlays.

3 Q Would you be kind enough to just take  
4 them, one at a time and identify them and have them  
5 marked?

6 A Well, I believe the first one we need is the  
7 base map of the environmental study. I'm trying  
8 to get a white background because these overlays are  
9 going to be confusing unless you can see them.

10 Q Why don't we take this one off and  
11 use the white background of the paper?

12 A This is a base map of the environmental concerns.

13 Q Could you just briefly describe in  
14 what manner this was prepared?

15 A This is a map that we use to superimpose  
16 overlays on it, to show the various environments  
17 and constraints throughout the Township. This  
18 particular map shows the vacant land in yellow to be  
19 essentially the same as the map we just looked at.

20 It has the same parcels colored in. Also has in a  
21 wide orange band, the area of the Township that is  
22 referred to in the three master plans that have  
23 been developed in each of the three previous decades  
24 and known as urban service area.

25 That is the land the Township has planned that

1 will some day be developed with full urban services,  
2 such as a public water system and a municipal sanitary  
3 sewer system.

4 Also shown on this map are the locations of  
5 the various iron mines throughout the Township and  
6 this also shows the flood plains which was taken  
7 from the Federal Flood Insurance Administration's maps  
8 and in the big blue areas, show the Government and  
9 semi-public lands, which was also shown on the  
10 previous map.

11 MR. OMSDORFF: Why don't we take this  
12 moment to mark RC-4 for identification?

13 MR. WYSE: Fine.

14 (Whereupon, above-mentioned map  
15 showing vacant land in yellow; wide orange  
16 band depicting urban service areas; showing  
17 location of iron mines and flood plains;  
18 prepared by Catlin & Associates marked RC-4  
19 for identification.)

20 Q Do you have an overlay for this map?

21 A This map shows the floods throughout the  
22 township that has a grade of over 15 percent and  
23 that's shown in the red color.

24 Q In what manner were the floods, in excess  
25 of 15 percent, delineated in order to be depicted to

1 appear in the red color of this overlay?

2 A You mean, how were they computed?

3 Q Yes.

4 A They were computed by determining space  
5 between the 20 foot contour intervals at an 800  
6 scale. The closer the contour lines are together,  
7 the steeper the slope and it -- you can determine  
8 the scale that you have to use to establish whether  
9 slopes are over 15 percent.

10 Q I'm sorry, possibly you've indicated  
11 this previously but I don't recall so I ask it again.

12 The contour lines which determine the slope,  
13 what was the source for they're being depicted on  
14 the map in order to make the -- showing delineation  
15 of the slopes being in excess of 15 percent. Do you  
16 recall?

17 A The source? United States Geodetic Survey map.

18 Q Do you recall the date of that map?

19 A No.

20 Q So this wasn't done by field investigation,  
21 by yourself?

22 A Oh, no, no. It would cost probably \$150,000  
23 to prepare a topo map of this magnitude if you were  
24 going to use anything other than the United States  
25 Geodetic survey map.

1                   MR. ONSDORFF: Mark this RC-5 for  
2                   identification.  
3                   (Whereupon, above-mentioned overlay  
4                   consisting slopes over 15 percent in red prepared  
5                   by Catlin & Associates marked RC-5 for  
6                   identification.)

7                   Q           Is there another overlay?

8                   A           Yes.

9                   Q           Could you identify this exhibit?

10                  A           This maps shows the severe setpic effluent  
11                  disposal, soil characteristics and create problems  
12                  that we tried to put in separate systems.

13                  Q           How are these soils depicted on this  
14                  overlay?

15                  A           They're shown in a green color.

16                  Q           In what manner were these septic  
17                  problems computed?

18                  A           This was taken from a soil classification  
19                  survey of Morris County. It's a document prepared  
20                  by the soil conservation service of the Department  
21                  of Agriculture.

22                  Q           Do you recall the date of that soil  
23                  conservation service survey, of the soils of Morris  
24                  County?

25                  A           I don't recall the date but it's the most recent

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1 one that they had developed for the County, whatever  
2 that date is.

3 MR. ONSDORFF: RC-6, I believe.

4 MR. WYSE: Yes

5 (Whereupon, above-mentioned overlay  
6 color green depicting severe septic effluent  
7 disposal, prepared by Catlin & associates  
8 marked RC-6 for identification.)

9 Q Have we now marked for identification  
10 all the exhibits you have prepared, Mr. Catlin?

11 A I believe so.

12 Q Now, again directing your attention  
13 to your September 21st report, RC-1 for identification,  
14 on page two, you began a discussion of various residential  
15 zones adopted, I believe, pursuant to a new zoning  
16 ordinance of May 31, 1979. Is that correct?

17 A Right.

18 Q The first one which you address is  
19 an R-88 zone. Could you indicate, with reference  
20 to RC-2, where those lands in the R-88 zone are  
21 located?

22 A The R88 zone is located -- primarily located  
23 in the northern end of the Township, north of Lake  
24 Telemark. It also includes the land of the United  
25 State Government reservation or the Picatinny Arsenal,  
but, from a practical standpoint, the zoning of that

1 government land is almost academic because the  
2 Township does not control any land use within  
3 the zone because of the nature of the ownership.

4 Q Now, in reference to what would be  
5 described as vacant and potential developable  
6 lands, i.e., in private ownership, could you  
7 specify which of the lands, within Rockaway Township,  
8 are within the R-88 zone which are within that  
9 vacant and potential developable category?

10 A Well, you have to look at this map with  
11 all of those overlays, to determine the answer  
12 to that question. In other words, what you see  
13 this map with all of these overlays, is anything  
14 that's in yellow, essentially north of Lake Telemark,  
15 that is vacant land that has no environmental con-  
16 straints.

17 Q I'm sorry, I don't believe you understood  
18 my question. I indicated that I wasn't concerned at  
19 this point in time with environmental constraints.

20 I'm endeavoring to ascertain what lands within the  
21 R-88 zone are both vacant and privately owned, as  
22 opposed to being publicly owned, so that they are  
23 susceptible to being developed, due to their being  
24 both vacant and under private ownership.

25 A I don't know how to answer that question. You

1 say what lands? I mean, you have to look at the map  
2 and see the lands that are in yellow and those are  
3 the vacant lands. I have not attempted to ascertain  
4 the ownership of each one of these vacant parcels  
5 of lands, but, many of those do indicate whether or  
6 not they are owned by Jersey City, the City of Newark,  
7 the Boy Scouts Camp, et cetera. That's all on that  
8 map standing up over here in the corner that we  
9 looked at in the very beginning. But I have not  
10 attempted to quantify the acreage of the vacant land  
11 in the R-88 zone, the private ownership and the public  
12 ownership.

13 Q Do you recall the planning considerations  
14 which were the basis for placing the grants within  
15 the R-88 zone?

16 A I believe the planning -- primarily planning  
17 consideration was that the lands were beyond the  
18 limits of the urban service area, which some day  
19 would be served with public sewerage and public  
20 water and also, the physical characteristics of the  
21 land such as the topography and the bedrock and this  
22 kind of thing, we recognized that generally speaking,  
23 the lands would have to be zoned for large lot  
24 development to minimize the health problems in that  
25 area.

Q What health problems?

1  
2 A Well, when you try to put a septic system  
3 and a potable water supply or well on each individual  
4 lot.

5 Q Is there any provision in the municipal  
6 land use controls of Rockaway Township which addresses  
7 the utilization of package treatment plants, or  
8 private water companies, providing water service to  
9 areas outside of the urban service area?

10 A I'm not sure that -- I'm not sure if it is  
11 or isn't. It's my understanding that Rockaway Township,  
12 being part of the Rockaway Valley Sewer Authority,  
13 had established a line beyond which they do not  
14 intend to store with part of that system and that line  
15 is basically the line we're talking about which is  
16 just north of Lake Telemark but to answer your  
17 specific question as to whether or not there are any  
18 unit controls that regulate private systems or private  
19 water systems, I don't know.

20 Q Well, the sewer service system is  
21 being provided by the Rockaway Valley Regional System,  
22 it would, I believe, be a public sewer system?

23 Does the existance of the public sewer for a portion  
24 of this municipality preclude the utilization of  
25 a private sewer system areas of the Township outside

1 the service area of the public sewer?

2 A You mean did the conditions of the Rockaway  
3 Valley Sewer construction of that plant -- did that  
4 preclude anything from going north of the service  
5 line? Is that your question?

6 Q Well, whatever the source or authority  
7 for the prohibition. Are you aware of any prohibition  
8 on private sewers being utilized outside of the service  
9 area delineated for the public sewer in this Township?

10 A I don't know. They may -- there may not be  
11 prohibitions of that. I'm just not aware of it.

12 Q Now, the second zone which you address  
13 on page two of your September 21st report is an R-44  
14 zone. Could you generally locate where the lands  
15 within Rockaway Township are that are within that zone?

16 A Yes, the R-44 zone is in the extreme northwest  
17 corner of the Township, abutting Jefferson Township  
18 and north of Green Pond.

19 Q Are you aware of any lands found in  
20 that zone which are both vacant and potentially developable?

21 A Yes.

22 Q Do you know the acreage of the lands which  
23 can be so classified?

24 A No, but it's -- it's pretty much limited to one  
25 parcel immediately north of the Green Pond Corporation

1 development. Much of that R-44 zone is owned by  
2 Jersey City or the City of Newark as part of their  
3 watershed but, there is one parcel of land that is  
4 vacant. I would say that perhaps 60 to 70 percent of  
5 that vacant land has severe septic effluent problems,  
6 which means if it was developed, it would appear  
7 to be reasonable to have some form of sanitary sewer  
8 system other than individual septic tanks.

9 As far as exact acreage is concerned, I'm not  
10 sure it was that because I did not compute it.

11 Q As far as the development of that one  
12 parcel we've been addressing, are there any development  
13 controls in place, concerning the septic disposal  
14 problems you have identified?

15 A Well, you have there local and State health  
16 codes that must be complied with.

17 Q In addition to potential septic problems,  
18 are there any other environmental limitations that  
19 you have identified?

20 A Yes, some of that land which you can see when  
21 you look at the slope overlay, does have a rather steep  
22 slope. It's right in that general area where the  
23 Craigmere Ski Lodge is located and that was kind of --  
24 the land has to be steep enough to ski on, so it's  
25 right up in that general vicinity.

1 I would estimate that of that vacant land,  
2 the percent of the total vacant parcel that has a  
3 slope of over 15 percent, may be something in the  
4 order of 15 to 20 percent.

5 Q Now, you mentioned a Green Pond Development  
6 Corporation or a Green Pond Corporation Development,  
7 adjacent to the vacant tract.

8 A Yes.

9 Q What is the nature of the development  
10 which has gone on at that location?

11 A Well, this started out, many years ago, as a  
12 summer colony, cottages and I'm not completely familiar  
13 with the details of the workings of that corporation  
14 but it's my understanding that the corporation owns  
15 the land and leased dwelling units which started  
16 out as summer cottages to people on a 99 year lease.

17 Q Do you know the lot size for those dwelling  
18 units?

19 A I don't believe there is any lot size. As I  
20 say, it was more of a cooperative kind of a thing  
21 where they -- the Green Pond Corporation owned vast  
22 parcels of property, including this lake, took up  
23 about 75 or 80 percent of the entire acreage and then  
24 built these cottages and then leased them to someone  
25 for a long-term lease, so that they are not individual

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lots.

Q Well, as far as such distance between individual dwelling units, would you know how close the majority of them come to the adjoining dwelling units?

A Well, I think some of them are relatively close. Perhaps in this -- this is strictly on memory now because I haven't been up there in many years but I would say that some of them maybe as close as 16, 20 feet from one another.

Q Do you know what type of sewage disposal these houses utilize?

A No, I think some of them are on septic tanks. I'm not sure if they have any kind of a sanitary system up there or not. It's more or less a little, self-contained community. They have their own fire department and their own post office. It is possible they have some kind of a central sanitary system and a central water supply but I'm not that sure about it.

Q Based on the environmental analysis performed in the delineation of environmental constraints to the development of this vacant land in this R-44 zone, for the sake of this question, disregarding the sewage facility disposal and just concentrating on the other environmental limitations, which I believe you identified

1 as areas of extensive or large slope, did you have an  
2 opinion as to the carrying capacity of the vacant  
3 land outside of those areas which are encumbered by  
4 the excessive slope?

5 In other words, if the development was clustered  
6 in that portion of vacant tract, which is not so  
7 restrained, what would be its maximum carrying capacity?

8 A What do you mean when you say "carrying capacity"?  
9 How many units you could put on that?

10 Q As far as density or development for  
11 residential development, that's correct.

12 A Physically?

13 Q Correct.

14 A If we go and ignore water and sewerage?

15 Q Right.

16 A I don't really know. I suppose if you have  
17 no environmental constraints and you don't have to  
18 worry about sewer and you don't have to worry about  
19 water physically it would be unlimited. You could  
20 build, perhaps, a 10-story building, but I'm not sure  
21 if that's owned by Green Pond Corporation which has  
22 for practical purposes, it is not available for any  
23 kind of development.

24 Q Now, the next zone which you've identified  
25 in your September 21st report, is the R-25 zone.

1 A Yes.

2 Q Could you generally locate that with  
3 reference to RC-2, where the lands are that fall  
4 within this zone?

5 A The R-25 zone is located north of Route 80,  
6 between White Meadow Lake Development and the Mining  
7 zone which abuts the Picatinny Arsenal.

8 Q With reference to the urban service  
9 area, where are these lands found?

10 A Falls within the urban service area.

11 Q What are the planning considerations  
12 which were the guiding factor in the zoning of this  
13 area of the Township?

14 A Well, this -- this zone was created by the  
15 special zoning committee made up by the Planning  
16 Board and the Township Committee and I believe they were  
17 primarily concerned with providing as wide a spectrum  
18 of housing types in the Township as possible. They  
19 had everything from garden apartments, to townhouses,  
20 to single family detached, on 3,000-plus square foot  
21 lots, to two acres and they only had the R-44 zone  
22 which we just previously discussed, up around Green  
23 Pond which is essentially one acre and had the R-20  
24 zone which is primarily the Fleetwood development,  
25 at something less than an acres and they felt it would

1 be desirable to create some kind of a minimum lot  
2 size between less than one acre and something more  
3 than -- I'm sorry.

4 They wanted to create something between  
5 something that was less than one-half acre and something  
6 that was slightly more than one acre and so they created  
7 the R-25 zone to make provisions for some additional  
8 kind of single-family detached housing unit.

9 Q Do you know how much vacant potentially  
10 developable land is found within the R-25 zone?

11 A No, I did not measure the vacant land but  
12 again, the maps will speak for themselves. If you  
13 want to look at these overlays, there is some  
14 vacant land in there. It's not too large an area,  
15 as you can see by looking at these maps. Some of  
16 it does have environmental constraints. Some  
17 of it is vacant and does not have the constraints  
18 of excessive flow or septic effluent.

19 Q Now, since this area is in the urban  
20 service zone or area --

21 A Yes.

22 Q -- it is anticipated that at some  
23 time, the Roakaway Valley Region Sewer Authority will  
24 be providing public sewerage. Is that correct?

25 A Correct.

1 Q So, the septic effluent disposal problem  
2 should be eliminated by that public sewer?

3 A At that time.

4 Q Right. Now, examining the vacant  
5 land with the one remaining environmental constraint  
6 which you have identified, I believe, as portions of  
7 it being encumbered by excessive slopes, would you  
8 give us an estimate as to what percentage of that  
9 vacant land is so encumbered by the slope problem?

10 A I would estimate maybe 8 to 10 percent but  
11 I'm just looking at the map now and giving you a  
12 guesstimate. I have not computed that.

13 Q Now, with regard to a cluster development  
14 which reflect the areas of excessive slopes and  
15 dedicated those for open spaces, would there be a  
16 maximum carrying capacity for this remaining vacant  
17 land as far as the density of residential development  
18 that could be constructed on those lands?

19 A Well, again, to use the words "carrying  
20 capacity," which is -- I've never heard that expression  
21 before, and I have to get some guidelines as to what  
22 you're talking about.

23 Are you asking me how many units they could  
24 put on that property?

25 Q That's correct.

1 A They are not concerned with anything else  
2 such as surrounding area and so forth? Are you saying  
3 physically how many units can you put on this property?

4 Q I'm limiting our discussion to environ-  
5 mental implications of the development. Other planning  
6 considerations aside the purposes of this question,  
7 I want to know how many units can be built in the vacant  
8 areas that are not encumbered by any excessive slopes --

9 A Yes.

10 Q -- without causing undue environmental  
11 harm to the lands and other environmental resources,  
12 we're concerned about.

13 A I really couldn't tell you. I don't know  
14 because some of that land, although 8 or 10 percent  
15 is impacted by slopes, that's all it would take to  
16 create a real serious drainage problem in there, which  
17 would have to be resolved before you compute the  
18 density.

19 Q That was my question. If you avoided  
20 those areas encumbered by slopes entirely and those  
21 that were dedicated for open spaces clustered your  
22 development and others, outside of excessive slopes,  
23 would there be maximum density which you would envision  
24 limiting the development potential tract?

25 A Again, if you're talking about how many can you

1 put on there, I think the answer is, you can physically  
 2 put on there tremendous density but again, you know,  
 3 it's just a guess on my part because I have not had  
 4 the opportunity to take a vacant piece of property in  
 5 that area and physically try to prepare a concept  
 6 plan that would show how it could be developed.

7 Again, I don't know if we're talking about  
 8 high rises or if we're talking about townhouses or  
 9 if we're talking about garden apartments, because all  
 10 of these things really determine what density you can  
 11 put on. I can tell you from experience that it's  
 12 very illogical to try and develop townhouses, one-  
 13 story townhouses, that has much more than eight units  
 14 per acre unless you're just going to overcrowd the  
 15 land to such an extent that you're going to have a built-  
 16 in swamp.

17 If you're talking about garden apartments,  
 18 we work in communities that have garden apartments as  
 19 well as eight units per acre and some with a density  
 20 of 20 units per acre. It depends on the community and  
 21 the neighborhood and the services that they have  
 22 to service these facilities, with all municipal  
 23 services not only sewer and water but schools and  
 24 other services.

25 Q Let's try to limit our discussion to the

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1 greatest extent possible. In other words, what  
 2 I'm trying to determine is, based upon your classifi-  
 3 cation system, you've indicated that certain areas  
 4 are impacted with development restrictions and you've  
 5 delineated them and my understanding of your mapping  
 6 is that those areas, which are not so impacted,  
 7 in essence, are just shown in the yellow color?

8 A Yes, that's correct.

9 Q So, not being so constrained, my  
 10 question would be, with the least cost housing  
 11 that Allan Mallach has addressed at some length in  
 12 his report, say, garden apartments, 10 or 12 to an  
 13 acre and townhouses at 14 to 16 units to an acre --

14 A I think you've got the two reversed.

15 Q Correct me if I'm wrong.

16 A You said garden apartments at 8 or 10 and I think  
 17 that would be a townhouse --

18 Q I believe you're right.

19 A -- and the garden apartments would be something  
 20 higher than that.

21 Q 14 or 16?

22 A Yes.

23 Q Saying those are the maximum density  
 24 we were talking about --

25 A Yes.

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1 Q Could they reasonably be clustered outside  
2 these areas in the R-25 zone and constructed with those  
3 densities, without causing undue environmental  
4 impact to the land and other environmental resources?

5 A Physically, you might be able to do that but  
6 when you talk about environmental impact, you're  
7 talking about not only environmental impact to  
8 that particular parcel of property that you're  
9 trying to develop but, what is the effect of developing  
10 that particular parcel of property going to have on  
11 the whole area?

12 For instance, the Rockaway Valley Sewerage Authority,  
13 although it's not -- has not built that sanitary  
14 plan facility, has predicated all of their design  
15 on a certain population density and if that -- if we  
16 take every vacant parcel of property that has no  
17 physical and environmental constraint, such as doesn't  
18 have slope over 15 percent and doesn't have septic  
19 problems but it's going to be insured anyway, the  
20 capacity of that plant which is not even constructed  
21 would be overwhelmed with the population that  
22 you could physically put, not only in Rockaway Township  
23 but a lot of other of these communities.

24 Q Sewer question aside because a development  
25 capacity could be developed, I believe, you would agree  
that would take the allocation of sewerage that has

1 been given on Rockaway for all of its development  
2 and say that's the overall tie and that could be  
3 sliced up in many ways, for whatever development  
4 ultimately takes place in the town and still live  
5 within the constraints of allocation that have been  
6 given; just directing our attention for the time  
7 being to adversary and environmental impacts --

8 A Let me interrupt you. I don't necessarily  
9 agree with that, because it's my understanding that  
10 the RDSA has developed very specific criteria for  
11 designing that system and it's not only Rock  
12 Township going into one trunk which will then  
13 down the sewer plant but, there are drainage basins  
14 in various parts of the Township. For instance, I  
15 understand there is one that runs out the southwest  
16 corner of the Township and there's another down  
17 Green Pond Road. Each of these laterals have  
18 been so designed with certain capacity in mind,  
19 which is not related, not only population density today  
20 but also being to be there in 25 years.

21 You can't necessarily take capacity from one  
22 line and put it in another because you can never  
23 take a pipe to change that capacity. It's not as  
24 easy as you say to reallocate sewer capacity from one  
25 section of the town to another.

1 All I'm saying is you can physically take a  
2 piece of property, if it has no environment constraints  
3 and do almost anything with it. As I said in Green  
4 Pond, you may build a 10-story apartment building.  
5 If it was in a vacuum, you could do this, but you  
6 could not handle that property as if it was in a  
7 vacuum, because you have to have environmental  
8 constraints to find out what impact it will have  
9 on the whole township.

10 Q I completely agree with you. What  
11 I'm trying to do is to take each potential  
12 one at a time, for the sake of clarity, so  
13 don't want to give the impression that I'm duly  
14 endeavoring to ignore the other impacts but for  
15 the purposes of discussion, adversary environmental  
16 impact resulting from environmental density; least  
17 cost housing clustered within this R-25 zone and  
18 just looking at that, if you will, in a vacuum,  
19 have you envisioned any environmental impact resulting  
20 from least cost density which we have previously  
21 discussed could be from that site?

22 A If we're looking at a vacuum, we're limiting  
23 it to topography and effluence. I don't think you have  
24 a problem but, as you know, there are many inputs  
25 into these equations; traffic, we haven't talked about

1 it; access to the site. If you're talking about  
2 density anywheres from 8 to 16 dwelling units per acre,  
3 you're opening up a whole new pandora's box as far as  
4 access to that property is concerned; what impact --  
5 what environmental impact it is going to have on the  
6 surrounding areas as far as traffic is concerned, to  
7 get traffic to and from that site.

8 Q Why don't we take a break for lunch.

9 (Whereupon, a luncheon recess is taken.)

10 MR. ONSDORFF: On the record. Now,  
11 Mr. Catlin, just again finishing up with this  
12 R-25 zone, my understanding is as the [REDACTED]  
13 land use controls for Rockaway Township [REDACTED]  
14 now in place, the development of this premise  
15 can transpire without avoiding the areas  
16 which you've delineated as environmentally  
17 sensitive or impose development limitations.

18 Is that correct?

19 A The question is, can it develop.

20 Q In other words, there are no municipal  
21 prohibitions against development in those areas  
22 which you've delineated as environmentally sensitive?

23 A No, no, there is no municipal prohibitions.

24 Q Is that correct?

25 Have you endeavored to quantify or analyze

1 the environmental -- the adverse environmental impacts  
2 which would be caused by the maximum density permitted  
3 under the R-25 zone, if that development were to  
4 occur at this location and on those environmentally  
5 sensitive areas?

6 A No.

7 Q Would you have an opinion as to what  
8 the nature of the environmental impacts would be,  
9 say, for instance, if the development occurred on  
10 the areas of excessive slope?

11 A Well, I think if the development occurred  
12 on a slope of over 15 percent, you would primarily  
13 have storm drainage runoff problems as far as the  
14 environment is concerned.

15 Q Now, directing your attention to page  
16 3 of your September 21st report, the R-20 zone  
17 is addressed in that first paragraph. Could you  
18 generally locate where the land areas are located  
19 within Rockaway?

20 The R-20 zone is primarily located in the  
21 end of the Township, south of Interstate  
22 80 and also commonly referred to as the Fleetwood  
23 area.

24 Q Do you know whether there are any lands  
25 within the R-20 zones which are both vacant and potential?

1 developable?

2 A I don't think there are any lands in that zone.

3 ~~Let me retract that.~~

4 I would say that the vast majority of the  
5 R-20 zone is either fully developed or is submitted  
6 for development by the planning board having approved  
7 a subdivision that will permit development at that  
8 same density as soon as sewers are available,  
9 with the possible exception of the southerly side  
10 of Mt. Pleasant Avenue.

11 Now, there are a series of relatively narrow  
12 very deep lots in the R-20 zone of the south  
13 size of Mt. Pleasant Avenue which essentially have  
14 homes up along but lots are very deep, sometimes a  
15 thousand feet deep, but they are relatively narrow  
16 lots but that land is -- I guess you could call it  
17 potentially developable but not very practical to  
18 develop because of the ownerships.

19 Q Directing your attention to RC-6 and the  
20 map below that, is that area that you referred to  
21 delineated as vacant land?

22 A No, it's not because as I say, the properties  
23 are so narrow, the only way it can be construed  
24 and developed as vacant land is that some developer  
25 went in there and got all those property owners to

1 sell off their backyards.

2 Q Is there any area of land adjacent or  
3 [REDACTED] proximity to this area which we've been  
4 [REDACTED] discussing which is delineated as vacant land?

5 A Let me look at this on the map. I think  
6 it's easier -- I don't think there is any vacant  
7 and in that R-20 zone which has not been committed  
8 for development.

9 Q Let me direct your attention to this one  
10 parcel, which is shown on RC-3 and next to the legend  
11 of American Legion. Maybe that's an area that  
12 [REDACTED] designated but you have it blocked in yellow [REDACTED]

13 A Yes, that's correct. There is a vacant parcel  
14 here. That's right. This is a vacant parcel of  
15 land which is shown on our overlays. Now, the  
16 parcel has tremendous slope problem which you can  
17 see on this overlay and also, the entire property has  
18 a problem with septic effluent even though it's  
19 within the service areas.

20 [REDACTED] Now, is this an area which has been  
21 [REDACTED] and for any specific development, to your  
22 knowledge?

23 A Yes, there has been a subdivision before the  
24 Planning Board being processed for a subdivision, for  
25 the last year and a half and one of the problems that

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1 the Planning Board has had with approving that  
2 is the slope problem and storm water runoff.

3 Q Has the Planning Board made a decision  
4 as to in what manner it would address those two environ-  
5 mental constraints, you have just indicated?

6 A Well, about the time that the Planning Board  
7 and the developer was firming up a concept plan,  
8 the new ordinance was adopted, which developed performance  
9 standards for that property; which meant that the  
10 concept plan that was generally agreeable by both  
11 the developer and the Planning Board before [redacted]  
12 has to be redesigned because of some of the [redacted]  
13 standards in the new ordinance.

14 Q Could you elaborate briefly on the  
15 manner in which the performance standards recounted  
16 this specific development proposal?

17 In other words, you indicated it had been  
18 redesigned to achieve what?

19 A The only way you can really answer that question  
20 is to take the ordinance and wade through a -- the  
21 performance standard and inasmuch as I did not write  
22 this ordinance, I'm not familiar with it as I would  
23 like to be but I refer you to Section 54-90E, particularly  
24 on page 64A61 in the Township code.

25 Now they have a table entitled "Percentage of

1 resource protection lands" and they have listed the  
 2 natural resources as flood plains, polovial, lakes,  
 3 wetland bogs or swamp; seasonal water table, steep  
 4 slopes at 25 percent or more and steep slopes at 15  
 5 to 25 percent and severe septic limitation for  
 6 woodland of critical vegetation.

7 Each of those environmental constraints are  
 8 set forth in this schedule as a penalty or bonus,  
 9 depending on how you want to look at it, of the  
 10 percent of resources and you then have to take each  
 11 parcel of land and plot on each one of these  
 12 resources and then come up with a percent of that land  
 13 that can be built and there's a rather complicated  
 14 formula in the ordinance that has to -- has to be  
 15 used in determining not only the acreage of that total  
 16 tract that can be developed but what part of that total  
 17 tract can be developed.

18 Q Well, if I understand the methodology  
 19 involved, then what it is is a rather comprehensive  
 20 analysis of the environmental -- of development and

21 [redacted] of a system which determines how much  
 22 development can go forward compatible with preserving  
 23 these environmental issues, or interests, rather,  
 24 which existed at a specific site. Is that correct?

25 A That is basically the intent of that provision,

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1 that's correct and as I said before, this particular  
 2 piece of property, which is now vacant in the R-20 zone,  
 3 [redacted] has been before the planning board for perhaps a  
 4 [redacted] year and a half, two years, something like that  
 5 and there was a series of meetings between the  
 6 developer and the Planning Board, to go and devise  
 7 some kind of a concept plan for the development  
 8 of that property, that would minimize the steep slope  
 9 and the problems that would emanate from that steep  
 10 slope and about the time they had formed a concept  
 11 plan, a new ordinance was adopted, which set [redacted]  
 12 this performance standard schedule. It -- [redacted] file  
 13 I just outlined, which meant it was impossible to  
 14 develop that the way it was previously proposed to  
 15 the Planning Board.

16 So, they are now in the process of revising  
 17 that plan that will comply with the new ordinance.

18 Q Now, the performance standards, are  
 19 they uniformly applied throughout the municipality?

20 [redacted] Yes.

21 [redacted] For all development proposals, before  
 22 the Planning Board?

23 A Yes.

24 Q Would it also be correct to state that  
 25 the performance standards take the zoning density

1 as a maximum and depending upon the comprehensive  
2 environmental analysis which is done, in addition to  
3 determining in what portion of a tract the development  
4 can take place, the density can also be reduced,  
5 based upon the analysis that is done, showing how  
6 much environmental harm will flow from any given  
7 development. Is that correct?

8 A Yes.

9 Q Would it then be possible to use the  
10 performance standards in the absence of an established  
11 maximum density in a zone concept?

12 In other words, if your concern was environmental  
13 protection, could the comprehensive environmental  
14 analysis be done to determine the appropriate densities  
15 consistent with such preservation of the environmental  
16 interests which have been identified in the code and  
17 use that as the authoritative rule by which you deter-  
18 mined what the density of the housing would be allowed  
19 at a specific site?

20 No, because the performance standard does  
21 not take into consideration the land use considerations.  
22 They're only dealing with environmental constraints  
23 and has nothing to do with whatever that land use  
24 category is.

25 Q It would appear that we're getting back

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to our concern with the other planning goals. My question was intended to be limited to our concern for the environmental impacts to the recesses at the site in the context of that concern, as opposed to the broader planning objectives that the zoning ordinance is intended to achieve.

A I'm not sure I understand. You see, the performance standards has nothing to do with density. The thing that determines density is a zone. The performance standards strictly on a percentage basis allocation.

For instance, I think one of the performance standards is a hundred percent in the flood plain area. What that means is if you have a hundred acre tract, part of which falls into the flood plain; let's say 20 acres falls within the flood plain, with a hundred percent penalty, you're not supposed to develop any part of that 20 acres. That has nothing to do with density.

Now, the hundred acres may be theoretic in terms of lines which perhaps 20,000 square foot lot size and it may be in the two-acre zone that requires minimum lot size of 88,000 square feet and as far as performance standard is concerned, have nothing to do with one another. You could still not develop any

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1 part of that, no matter what zone it's in, if it falls  
2 within the flood plain, so you can't simply say  
3 it meets the performance standard and say this is  
4 all we need to regulate the environmental constraints  
5 to the community.

6 Q Now, in regard to your R-20 zone, the  
7 least cost standards which Al Mallach addressed in  
8 his report, is it your opinion that any of the housing  
9 which could be built in the R-20 zone would be con-  
10 sistent with the least cost standards?

11 A I don't think as far as density is concerned  
12 it could be consistent, because what he's looking at  
13 is single-family, as I understand it, is something  
14 like a 50 by 100 foot lot and the only way you could  
15 develop a 50 by 100 foot lot would be to take that  
16 one parcel of land, which presumably is only a vacant  
17 parcel of land and try to develop that piece that  
18 has excessive slopes, but 50 by 100 feet, in my opinion,  
19 that would be chaotic. We know that through experience  
20 and having waded through that concept plan, even  
21 though the applicant is entitled to build minimum  
22 lot size, 100 by 200, that is good as a practical  
23 matter and most of those lots in there are three-  
24 quarters to an acre in size.

25 Just because of physical limitations, try and

1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MORRIS COUNTY  
DOCKET NO. L-6001-78 P.W.

3 MORRIS COUNTY FAIR HOUSING  
4 COUNCIL, et als,

:  
: DEPOSITION OF:

5 Plaintiff,

: ROBERT CATLIN

6 vs.

7 BOONTON TOWNSHIP, et als,

8 Defendants.  
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9 Transcript of stenographic notes as taken  
10 by and before JILL FRIEDBERG, notary public of the  
11 State of New Jersey and Shorthand Reporter, at the  
12 offices of Robert Catlin & Associates, 2 Valley Road,  
13 Denville, New Jersey on Wednesday, January  
14 commencing at 10 a.m.

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

16 STANLEY C. VAN NESS, Public Advocate  
17 Department of Public Advocate  
18 BY: KEITH A. ONSDORFF, ESQ.,  
19 Assistant Deputy Public Advocate  
20 For the Plaintiffs.

21 MESSRS. WILEY, MALEBORN & SIROTA  
22 BY: JAMES WYSE, ESQ.,  
23 For the Defendant.

24 Reporting Services Arranged Through:  
25 ROSENBERG & ASSOCIATES  
CERTIFIED SHORTHAND REPORTERS  
769 Northfield Avenue  
West Orange, New Jersey 07052

1 take that vacant parcel of property in the R-20  
2 zone and meet Mallach's standard of 50 by 100  
3 foot. I just don't think it's realistic.

4 Q The next zone you address in your  
5 report is an R-15 zone. Could you indicate generally,  
6 in reference to RC-6, where those lands are  
7 located?

8 A Yes, the R-15 zone is up in the center of  
9 the Township, which is referred to as the Hybernia  
10 section. It is about halfway between Beach Glen and  
11 Lake Telemark.

12 Q Now, are any lands within the R-15  
13 zone both vacant and potentially developable?

14 A The R-15 zone, when we look at the overlay  
15 maps, is basically the area of south of Snake  
16 Hill road and we have Green Pond Road.

17 As you can see, a lot of it does have  
18 rather severe environmental constraints, such as  
19 the slopes over 15 percent. Of this area in here,  
20 immediately south of Lake Telemark, I would say that  
21 perhaps 70 percent of that entire area has a slope of  
22 over 15 percent. On the other side of what is referred  
23 to as the Mine Road, it runs from Snake Hill Road  
24 down to the Mt. Hope Mine. This area here is also  
25 environmentally impacted with an excessive slope of

1 over 10 percent.

2 All of these areas, these two areas, I should  
3 say, the majority of these areas are also impacted  
4 with severe effluent disposal. There is an area on  
5 either side of Mine Road that is vacant and does not  
6 have these two impacts; the slope impact and the septic  
7 impact.

8 I would say that that is approximately an area  
9 of 1,200 feet by 4,000 feet and there's just a little  
10 of that area that has a slope of 12 to 15 percent.

11 Q In light of your work in delineating  
12 the environmental constraints in development, this  
13 area abutting Mine Road presents, in your opinion  
14 no unusual environmental constraints to development;  
15 is that correct? Those areas shaded only yellow on  
16 your exhibits?

17 A Not in and of itself. That's true, I think  
18 that land could be developed.

19 Q Could it be developed at the densities  
20 which we have discussed, to provide the least cost  
21 housing as defined by Mr. Mallach's report, without  
22 causing undue environmental harm?

23 A Well, again, if we take the property as --  
24 by itself in a vacuum and we talked only about the  
25 physical limitations of that property, I think that

1 that property could be developed at any density,  
2 if you're not concerned about, you know, what  
3 other impact it will have on there, development  
4 problems.

5 Q In addition to the environmental interest  
6 associated with the development of that property, would  
7 you be in a position to elaborate on whatever other  
8 significant planning concerns or considerations you  
9 would view as important in developing those lands?

10 A Well, one is a sewer because that land is  
11 outside the urban service area, which means it would  
12 have to be developed on separate tanks and it would  
13 have to have some kind of well on each lot. The  
14 minute that you do that, you run into tremendous  
15 potential problems with the densities that Mallach  
16 is talking about.

17 Q Despite the fact that you haven't  
18 delineated them as having septic disposal problems?

19 A The fact that it doesn't -- the fact it doesn't  
20 have septic disposal problems that you couldn't build  
21 an 8, 10 or 16, or whatever, I can assure whatever  
22 that land is at that density, you're going to have  
23 septic problems.

24 Even the Ft. Lauderdale people living on the  
25 beach, you cannot assume that there will be no

1 problem even if it's on the best land because, we're  
2 talking about something other than 50-foot lots.

3 We're talking about garden apartments; let's say at  
4 16 units per acre and townhouses at 10 units per  
5 acre. These can be real problems in my opinion.

6 It's just folly to assume that you can develop  
7 any kind of least cost housing without full services,  
8 without a potable water supply, municipal water  
9 supply and sanitary sewer system.

10 Q Now, in addition to the areas delineated  
11 for such sanitary and water services, there  
12 be any prohibition, to your knowledge, say a  
13 and private water company providing such sewer  
14 and water services. Is that correct?

15 A I don't know what the regulations are. I don't  
16 know what the RSVA standards are. If the DEP is  
17 going to approve a package plan, next to the RASV  
18 service area, I don't know the local requirement for  
19 package systems. These are things I'm just not  
20 conversant with. I don't know what the problems would

22 Q But, at the municipal level, you're  
23 not aware of any prohibition to such alternate water  
24 and sewer services?

25 A I don't know. You will have to ask someone

1 else that question because I'm just not familiar with  
2 local requirements for package water.

3 [REDACTED] Let me -- I don't think I've completely answered  
4 the question. The other thing is that there would be  
5 a traffic access problem there, getting cars to and  
6 from that site, because the only access to that property  
7 is at Green Pond Road, which is only -- which is only  
8 a north-south road running through the Township.  
9 Of course, the third problem more or less related  
10 to sanitary sewer situation is that the capacity of  
11 the sewer lining running down Green Pond Road which  
12 is one of the two main laterals, sewer laterals, sewer  
13 mains, is not -- does not have the capacity to develop  
14 that area at a density that you're talking about,  
15 least cost housing.

16 The line isn't even built and as soon as it is  
17 built, it would not be large enough to accommodate  
18 that density there and would have to be serviced  
19 in here because the development is already there.

20 [REDACTED] So, since the line has not been built,  
21 [REDACTED] it would be possible to redesign it at an increased  
22 size to incorporate additional density, if that plan  
23 were to be developed?

24 A Theoretically, that's what I first thought and  
25 I recommended, but I understand as a practical matter

1 that it is not possible to do this cause the plant  
2 has already been designed and this system has already  
3 been designed at that capacity and there's no likelihood  
4 that a larger line can be put in there.

5 I can't tell you why but this is what the  
6 sewer experts have told me. That is it as far as  
7 the RSVA is concerned. The only alternative to  
8 that would be, as you alluded to and that is some  
9 kind of a package system there and I'm not in a position  
10 to say it can or cannot happen.

11 Q Just to clarify your understanding and  
12 I realize you're not the sewer expert. You indicated  
13 that the line -- that the redesign of the line, was  
14 not compatible with overall design of the treatment  
15 plant.

16 A It's not only that but I understand there's  
17 a line in there now that runs up to almost -- up  
18 to Beach Glen which is this area here and what they're  
19 talking about doing now to build another line along  
20 side of that and the size of that line is somehow  
21 limited from an engineering standpoint, because  
22 the time that they were talking about creating that  
23 R-15 zone, it was my recommendation that it not be  
24 created. I don't think it was a very desirable  
25 thing to do, only because there was no way to service

1 it with sewers. But it was done anyway, against my  
2 recommendation. It was done by somebody else and  
3 I don't think it's a place where you should have that  
4 kind of density and you're talking about now.

5 Q Now, the next zone you discussed in  
6 your report of September 21st, is the R-15 zone.  
7 Could you locate the lands that fall within that  
8 zone on Exhibit RC-2?

9 A The R-13 zone, they're more or less scattered  
10 around the Township. They are basically all built  
11 up areas on the small lots in the Township. The  
12 largest R-13 zone in the area is what is referred to  
13 as the White Meadow Lake area. All properties are  
14 on the lake. The second largest area is the so-called  
15 Birchwood section of the Township, which abuts the  
16 Town of Dover municipal boundary line.

17 The next largest R-13 zone is probably the  
18 area around Lake Telemark, which is in the center of  
19 the Township and of course the other area is the  
20 Green Pond area that we talked about this morning which  
21 is that area of small lot development at the northern  
22 end of Green Pond.

23 Then there are other smaller sections, such as  
24 this area along Route 15, over near the Whatton Municipal  
25 Boundary. There is a small R-13 zone next to the Dover

1 Mine zone here. There is a small R-13 zone along  
2 the Rockaway Road which is referred to in the Township  
3 as the De Hart section and there is also a small  
4 R-13 zone that abuts the garden apartment development  
5 down in the very extremely southern tip of the Township  
6 and then there's an R-13 zone up in the Hybernia  
7 section, which is in the center of the Township.

8 I believe those are all the R-13 zones.

9 Q Now, you've indicated, I believe, these  
10 are primarily built up areas on relatively small  
11 lots. Is that correct?

12 A Yes, these are essentially built up  
13 although there are, you know, several hundred vacant  
14 lots throughout the Township in the zones. But there  
15 is not too much large vacant acreage. There are some  
16 parcels that you can see on -- on this exhibit, RC-4,  
17 which abuts the Dover Municipal boundary.

18 There is also the tract over on the western  
19 edge of the boundary where it abuts Dover.

20 Well, in regard to those areas that  
21 you've just eliminated in the southern portion of  
22 the Township abutting Dover, are there areas here  
23 which are then outside any of the environmentally  
24 sensitive areas which you've delineated, that  
25 would be developable at increased density without

1 undue -- adverse environmental impacts to the land and  
2 other environmental interests at the site themselves?

3 [REDACTED] The only one I can concede that would not have  
4 serious environmental impacts, assuming that sanitary  
5 sewers would be made available to that, would be the  
6 one tract that abuts the Dover municipal boundary  
7 line. I don't know how to identify it but it's -- of  
8 the three tracts side by side, it's the most northerly  
9 tract. The one in the center has a very serious  
10 slope on it. The one to the south has some excessive  
11 slope but it also has an iron mine on the premises  
12 but the most northerly site which is probably [REDACTED]  
13 of oh, I'd say eight acres only, has these separate  
14 septic limitations.

15 This other site that I referred to is entirely --  
16 almost the entire site has a slope of over 15 percent  
17 just for the top of the ridge at the site, which is  
18 only about 150 feet wide.

19 Q Now, the site that you've just indicated  
20 [REDACTED] as having the excessive slopes being in the R-13,  
21 [REDACTED] that may be developed for single-family residential  
22 use at minimum lot size of approximately 13,000  
23 square foot. Is that correct?

24 A Well, it was adopted, the performance standard  
25 last year. Now, as you pointed out, the chances of

1 trying to develop that, that minimum lot size,  
2 would be rather minimal because they would be penalized  
3 for that slope and would probably have to have lots  
4 larger than 13,000 square feet.

5 Q In reviewing the other areas zoned  
6 R-13, which were substantially built up, at the time  
7 that those areas were developed and I imagine con-  
8 tinuing now to a certain extent, were those lands  
9 also in some instances, impacted by the same environmental  
10 constraints of development which you have delineated  
11 with regard to the remaining vacant portions  
12 municipality?

13 A I'm sure some of those lands were impacted  
14 by slopes. I don't know about the septic effluent  
15 but you can see by looking at this base map here,  
16 in White Meadow Lake, that some of these lands in  
17 here, it appears that they would have a rather steep  
18 slope in them.

19 Q Now, in regard to the environmental  
20 characteristics and the impacts of development which  
21 have taken place in the R-13 zone, are you aware of  
22 any adverse impacts which have resulted from the  
23 development in these areas on these small -- rather,  
24 comparatively small lots?

25 A Yes, there have been tremendous problems and

1 I've had problem -- have had tremendous problems  
2 for a number of years; such as problems with septic  
3 systems in that area and wells being polluted.  
4 They are also having tremendous storm drainage problems.

5 Unfortunately, when the vast bulk of White Meadow  
6 Lake was developed, there were no land use controls  
7 in the Township. It was developed by National House  
8 and Farms and it was developed prior to 19 -- in the  
9 1950s there was a three-man Township Committee and  
10 what they did was they came in with a plan and the  
11 Township Committee approved it, not having a planning  
12 board, building code, tax maps and anything else. And  
13 that's how that development got in there. It has  
14 resulted in environmental problems ever since.

15 Q Now, your final zone which you address  
16 in your September 21st map is, the RMF zone. Could  
17 you indicate, in regard to your RC-2, the lands which  
18 fall within this zone are located?

19 A The RMF zone is located along Sanders Road, just  
20 west of Green Pond Road. There is an RMS zone  
21 in the southern end of the Township along the Rockaway  
22 Road. There is an RMF zone north of Route 46, which is  
23 referred to as Rockaway Gardens.

24 There is an RMF zone at the corner of Route  
25 46 and Main Street which is referred to as a Sherman

1 development. There is an RMF zone in very close  
2 proximity to the Regional Shopping Center which we  
3 talked about this morning, which is Rustic Ridge.  
4 There is an RMF zone along Mt. Pleasant  
5 Avenue which we also talked about this morning, which  
6 is a Fleetwood Development and there is an RMF zone  
7 across the -- from the shopping center that abuts  
8 the Fleetwood Development.

9 I believe the last RMF zone is up near Picatinny  
10 Arsenal and Route 15, along Richard Mine Road. Now,  
11 I believe that is all of the RMF zone.

12 Q In regard to these separate areas  
13 are any of them vacant and potentially developable?

14 A Yes, the property up near the Picatinny Arsenal  
15 that I referred to was put in as a use variance  
16 several years ago and then, when the master plan  
17 was amended, it was rezoned. There is enough vacant  
18 land there to put in additional units but again,  
19 nothing can be done until the sanitary sewers are  
20 available there, because of those lands at  
21 the present time are not connected to a sanitary  
22 sewer system. They have some kind of a-- a waste tamer  
23 system. The density is relatively low because of  
24 the septic problems. They have something they call a  
25 waste tamer system there.

1 Q I'm a little confused to what a waste  
2 tamer is.

3 A It's a term used to describe the fast burning  
4 of the -- or the fast action of the aerobic bacteria.

5 They pump oxygen into the system, burning that,  
6 the sludge faster than a normal septic process.

7 Fleetwood development --

8 Q I'm sorry. Let me interrupt you  
9 before you move on.

10 In addition to the need for additional sewer  
11 services, are there any other environmental  
12 on further development of the lands adjacent  
13 Picatinny Arsenal?

14 A Let's call this -- I don't know what the  
15 name of the development is but Rizzo was the developer.  
16 Let's refer to it as the Rizzo development.  
17 The property has a rather deep slope situation there.  
18 If you have ever driven through the area, you'll  
19 see that they have to cut -- make vast cuts into  
20 bedrock and so forth, to put some of those units in  
21 there and I think that that is shown by this Exhibit  
22 here which shows the -- all of the excessive slopes  
23 in this area and there is also two mine shafts on  
24 this property that has been the concern of the Planning  
25 Board for quite some time, because they really didn't

1 know what it was -- what would be the problem of  
2 developing some of that property as far as Mine shafts  
3 [REDACTED] concerned and cave-ins and so forth. So you have  
4 [REDACTED] environmental constraints of the excessive slopes  
5 and potential problem of the mine property.

6 Q Now, since this tract is within the  
7 urban service area, at some point in time sewerage  
8 and water services will be provided by the public  
9 agencies. Is that correct?

10 A That's correct.

11 Q Then, in a development propos [REDACTED]  
12 which dedicated the areas of excessive slope [REDACTED]  
13 open spaces, would your opinion be that higher  
14 density or densities reaching the least cost standards  
15 of Allan Mallach would be reasonably suitable for  
16 the lands outside the restricted development areas,  
17 to the extent of not causing any undue environmental  
18 harm to the interests which you have determined as  
19 being significant in this area?

20 [REDACTED] I'm not sure if that land is even being developed.  
21 [REDACTED] I have to assume that when that developer went in  
22 there, he developed the best land for that particular  
23 use and as I recall, in driving through that development,  
24 if you look at the last row of apartment units on  
25 that mountain, the topography just goes straight up

1 behind those units. So to get to the existing  
2 units and try to develop additional units, even at  
3 densities that he's talking about, he has only seven  
4 and a half units per acre. Now, they have a tremendous  
5 problem.

6 I have to believe that if they developed the  
7 land before, because they had a variance to go in  
8 and develop that property for an apartment development  
9 and assuming he developed all the lands he thought  
10 he could reasonably develop and have a return on  
11 his investment, I think it would be a real  
12 environmental problem.

13 Q As far as your own personal work in  
14 evaluating environmental sensitivity of these lands,  
15 have you delineated certain areas via your yellow  
16 coloring, which you have determined not to have  
17 unusual develop constraints as applied to that  
18 property?

19 A No I haven't done that. I think the only way  
20 you can do that is to take the zone and take the  
21 site plan and superimpose the zone; see where the  
22 existing acreage falls and it is conceivable that  
23 the area you see in yellow there is already developed.  
24 That's where the units are. I just haven't done it,  
25 I would think there would be a very good chance of

1 that happening and the land that you see in red  
2 hasn't been developed or couldn't be developed, but  
3 I haven't made that kind of a study. All I'm giving  
4 you is my observation of having driven in there and I  
5 do know that he has developed the best part of his  
6 land and I have to assume that that is the stuff  
7 that goes straight up.

8 Q Now, are there any additional RMF zones  
9 which have vacant lands, which are susceptible to  
10 further development?

11 A I think there are two, one or two of them.  
12 One is behind the OR zone, which is on the east side  
13 of Mt. Hope Avenue, directly across from the regional  
14 shopping center and also abuts the Fleetwood Development.  
15 This is referred to as the Sherman Brothers tract and  
16 there is also the tract that lies north of Sanders  
17 Road and east of Green Pond Road. The tracts are  
18 vacant at the present time. Now, on the Sherman  
19 Brothers, how much land are we talking about here? Maybe

20 50 acres  
21 Q Have you delineated the environmental  
22 limitations, if any, to the carrying capacity of this  
23 parcel of land?

24 A Well, there -- it would be on these maps  
25 that we have -- wait, down here. This is the area

1 we're talking about. Part of this area is the  
2 Sherman tract. It does have some excessive slope  
3 but, not too much. I would say maybe 5 to 10 percent  
4 of the land has excessive slope.

5 The balance of the land is relatively --  
6 it's kind of rolling lands. It does not have  
7 precipitous slopes. Part of it has the septic  
8 effluent problems because there are some low lands in  
9 there.

10 Q Now, since this tract is located  
11 in the urban service area, public sewer and water  
12 would be provided at some future date, thereby  
13 eliminating your septic concern if you await the  
14 advent of those utilities. Is that correct?

15 A Right.

16 Q If any development were proposed which  
17 dedicated the small portions of the tract, that with  
18 excessive slopes, as open spaces, would you envision  
19 any other unusual environmental constraints to the  
20 development of these lands at the least cost density  
21 which Al Mallach has identified?

22 A Only drainage and traffic. There is a drainage  
23 of traffic problem in there because when Fleetwood  
24 Garden Apts. were developed, they had a tremendous  
25 problem developing storm drainage plan that would

1 take care of the water that would run off on that  
2 property and as I recall, they worked out something  
3 with the regional shopping center developer at  
4 that time who was building those retention basins  
5 as part of that region business area. They had some  
6 kind of an agreement to take care of that storm  
7 water runoff, that is -- it is going to be a problem  
8 with the development of that tract because Sherman  
9 has already come into the Planning Board to develop  
10 the front part of his property for a property for a  
11 shopping center and he got as far as talking  
12 the storm drainage, then the zone was changed  
13 it now is in limbo until they resolve the zoning  
14 but there are environmental problems as far as storm  
15 drainage is concerned.

16 Q In regard to storm drainage, isn't that  
17 pollution in the sense that many developments nowadays  
18 utilize such things as retention ponds to handle the  
19 drainage problems that you develop?

20 A Yes, that's true. That was not the problem on  
21 site. It is not the problem. It was what to do  
22 with the water after it left the site.

23 Q And a retention pond normally can retain  
24 that problem?

25 A Theoretically, that's true but at the time that

1 land is totally undeveloped in its natural state  
2 and it's a certain CFS as far as peak storm is  
3 concerned and the problem was when that land is  
4 developed, they will -- they would have to design  
5 retention basin next to accommodate the peak storm,  
6 but the question is whether or not they can design  
7 it large enough to control the outflow so that it  
8 is no greater than it is at the present time.

9 I mean, this is a problem that's inherent  
10 with that property and when you asked if there are  
11 other environmental problems that pertain to  
12 I know this is one that is going to be a problem.

13 Q In addition to the Sherman site, I believe  
14 you mentioned one other one in the RMP zone.

15 A Yes, the other is on Sanders Road, north of  
16 Sanders Road and east of Green Pond Road.

17 Q Do you recall the acreage of the vacant  
18 portions of this tract?

19 A I believe it's about between 17 and 18 acres.

20 Have you delineated any unusual  
21 environmental limitations on the development of  
22 these 17 or 18 acres?

23 A Sanders Road doesn't show on this map,  
24 because it was a United States government map. It  
25 did not indicate that it was constructed -- oh, I'm

1 sorry, here, I found it. It's this road, here. You  
 2 see, this -- this is Sanders Road and the property  
 3 we're talking about is this property in here.

4 Q This is subjected to what environmental  
 5 limitations?

6 A Oh, well, the RMF zone is -- well, goes  
 7 up to a point someplace at this location and I would  
 8 say the lowerhalf of the place only has a septic  
 9 effluent constraint and when you get back in the  
 10 northerly part of the tract, it has a slope problem,  
 11 also.

12 Q So, it would be really feasible then  
 13 to develop that portion of the tract, because this  
 14 land does fall within the urban service area, at  
 15 least across densities, without causing any undue  
 16 environmental harm. Is that correct?

17 A Yes. Here again, if you look at the thing  
 18 in a vacuum, you're only referring to the physical  
 19 site itself, that property to be developed at higher

20 Q  
 21 What additional factors would you consider  
 22 relevant to determining the appropriateness of a least  
 23 cost housing zoning being applied then to that tract?

24 A Well, one is traffic and the other is its  
 25 proximity to the existing development along Sanders

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1 Road, which is single-family detached units and what  
2 impact a high density "least cost housing" would have  
3 on that neighborhood. As I understand it, there are  
4 some homes along Sanders Road that are immediately  
5 contiguous to this property, that are well in excess  
6 of \$100,000.

7 Q Now, in addition to these residential  
8 zones we've discussed, are there other vacant  
9 potentially developable lands within the municipality  
10 which are in non-residential zones?

11 A Yes, there are other vacant, non-residential  
12 properties in the Township.

13 Q Directing your attention to RC-2,  
14 the zone which is designated with an M, I believe that  
15 is a mining zone?

16 A Yes.

17 Q Are there active mines being operated  
18 within those areas?

19 A Well, there was an active mine up until about  
20 a year and a half or two years ago and the mining  
21 operation went into bankruptcy and it's my understanding  
22 that there is a new company that just made arrangements  
23 to buy that property. Bankruptcy referee approved  
24 the sale, I think, last week.

25 There is before the Planning Board this time a

1 subdivision to cut that mining zone in three large  
 2 parcels, particularly the area north of Mt. Hope  
 3 Pond.

4 This thing here is now, as I understand it,  
 5 going to become a mining operation. Once again,  
 6 there is a lot of equipment and it is going to be a  
 7 mine but it's just been getting there for two years  
 8 because the operation went bankrupt and now it's  
 9 going to start up again and that will take care of  
 10 this area in here.

11 Q You indicated that it was going to be  
 12 subdivided. Do you know the purposes of other  
 13 areas not open for mining, what they are going  
 14 to be devoted to?

15 A I don't know what the reason for that  
 16 subdivision is.

17 Q Is any of that land which is not  
 18 going to be actively mined, appropriate for a residential  
 19 development?

20 A I think very little of this land is appropriate  
 21 for residential development. When you get over in  
 22 this area here, there are some mining -- abandoned  
 23 mines, as you can see, on the base map here, RD-4.

24 Q I was just going to ask you -- try to --  
 25 whenever you are discussing a particular area on the

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1 map, to use references which exist on the map because  
2 that is the only way we can record it for the record  
3 as opposed to just pointing to an area of the map,  
4 which we would not be able to get on the transcript.

5 A What I'm referring to now is an area between  
6 Mt. Hope Pond and the Rizzo Garden Apt. development.  
7 As you can see by this exhibit, there are at least  
8 four mine shafts that are along that mineral railroad.  
9 I don't know how excessive those are, what problems  
10 they would result in if that property was developed.  
11 But it is conceivable that the upper part of  
12 land in here, next to the Picatinny Arsenal  
13 be developed for residential development but the  
14 main problem with that is access.

15 On the master plan, we did have a proposed  
16 road that would run through this property, all the  
17 way up to Lake Telemark and if that road was ever  
18 constructed, then I think it would be logical to do  
19 something with that property.

20 Q Well, the area which you have indicated  
21 as adjacent to and I guess south of Picatinny Arsenal  
22 is found within the urban service area, is not?

23 A Right.

24 Q So, in addition to the need for further  
25 access and you indicated an access road may be provided

1 would there be any other environmental constraints  
2 to not allow least cost development in certain  
3 portions of these premises?

4 A If we agnore the fact that it does not have  
5 sanitary sewers now and if they are going to be  
6 there and if we ignore the access problem of getting a  
7 road up to the top of that property, I don't know  
8 of any other environmental constraints other  
9 than -- you always have the problem with storm water  
10 runoff and you have to resolve that problem some way.

11 Q Would you have an opinion as to how  
12 much land we're talking about here, as being  
13 potentially suitable at some future date for residential  
14 development?

15 A No, I haven't computed the acreage, based  
16 upon these environment studies.

17 Q Just for a rough estimate, are we  
18 talking about something in excess of 50 acres?

19 A I believe it would be in excess of 50 acres.

20 Q Are there any other lands in either  
21 industrial or commercial zones, which are vacant  
22 and potentially developable?

23 A Well, there is one relatively large zone  
24 next to the Borough of Wharton, which is shown on  
25 that exhibit, RC-2, as OR, which abuts the regional

shopping center.

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Q About approximately how many acres of vacant potentially developable lands are found in the OR district?

A I don't know but we're talking about this property here, just north of the Armory. This is an 800 scale map. I guess there would be two to three square inches -- one square inch is 640,000 square feet.

MR. ONSFORBB: Off the record for a second.

(Whereupon, there is a discussion off the record.)

MR. ONSDORFF: On the record.

A 35 acres.

Q What is the present zoning for the OR district? What type of development can take place there?

A Office residential.

Q Could you elaborate on what that entails, very briefly?

A I can't do it briefly because again, I didn't write this ordinance so I have to look at the schedule.

The OR permits office, all multi-family, you can

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1 have gardenapartments in that zone and you can also  
2 in fact, you must also build offices if you're  
3 going to build garden apartments and multi-family  
4 dwellings.

5 Q Sort of a PUD, in essence?

6 A It's hybrid PUD in that it only permits those  
7 two uses. PUD says several uses. It says several  
8 offices and garden apartments, or multi-family.

9 Q In regard to environmental on development  
10 of this tract, have you identified any such limitations?

11 A No, other than what you see here. Now, you  
12 must keep in mind that we have, because of constraints  
13 in the presentation for this trial, have addressed  
14 those environmental constraints that we think are  
15 the most significant, namely the flood hazard areas,  
16 severe slopes of 15 percent or over and severe septic  
17 effluence problems. There may be other environmental  
18 problems that are peculiar to that particular piece  
19 of land, which we have not gone into and they should  
20 only be gone into if you make another detailed engineering  
21 study which we have not made.

22 These three limitations, this does not  
23 show anything wrong with that land. There may be  
24 something wrong with it that we haven't got into,  
25 such as high water table or maybe bedrock in there.

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1 That would be tremendous development costs or things  
2 of this nature. So, everything I said today is  
3 limited to just these three things that we've done  
4 and there may be other environmental problems that we're  
5 not aware of at this time.

6 Q In the context of the work and analysis  
7 you've done, of course, I appreciate all of your answers  
8 from that perspective. You know at this time of  
9 no limitation, based upon the sewer and water being  
10 provided as the present municipal plans call for;  
11 no environmental reasons why this tract could not  
12 be developed for housing at least cost standards.  
13 Would that be correct?

14 A No, if we limit it to just these environmental  
15 constraints, that's right.

16 Q In addition to the environmental  
17 constraints, would there be other interests of  
18 significance that you would want to evaluate for  
19 recommending least cost standards for the development  
20 of that tract?

21 A What do you mean?

22 Q Well, I'm asking you, in essence,  
23 what would you deem for a developer, if he came in  
24 with a plan for development of a townhouse at 12 to the  
25 acre for that tract?

1 A Well, if there are no other environmental  
2 problems, such as what I mentioned that would have an  
3 impact on that property, I would think that the access  
4 is relatively good off Mt. Pleasant Avenue. I do'  
5 not think it would have as severe an impact on the  
6 surrounding areas if you try to put it in some other  
7 place, especially along Sanders road. I can't think  
8 of any other negative impact it would have.

9 MR. ONSDORFF: Let's take a recess.

10 (Whereupon, a recess was taken.)

11 MR. ONSDORFF: On the record.

12 Q I believe we've just completed  
13 OR zone. Are there any other additional areas in  
14 nonresidential zones in Rockaway which have lands  
15 which are both vacant and potentially developable,  
16 to your knowledge?

17 A I believe there is still some vacant land  
18 in the industrial zone along Green Pond Road.

19 Q Would you have any idea as to the acreage  
20 involved for the vacant land industrial zone?

21 A No, we're talking about the area north of  
22 Green Pond Road and also between Beach Glen and  
23 Meridan, here.

24 I'm sorry, I did give you the wrong direction.  
25 Any time you're looking at these overlays, it's difficult

1 to see where the roads are. We're talking about north  
2 of Route 80, from Green Pond Road up to Beach Glen.  
3 That's the area on this map that is and has been  
4 the industrial zone, heart of the industrial zone  
5 in Rockaway Township and has been for the last 20  
6 plus years. There are a number of industrial plants  
7 in there but there is vacant land in there in between  
8 the industrial plants.

9 Q Is this, or what is the nature of the  
10 industrial operations, now, which are contiguous  
11 to these vacant areas?

12 A Manufacturing plants. There's Hewlett-Packard  
13 Engineering, the RCA plant and there's one or two  
14 plastic manufacturing plants in there.

15 Q Is it your opinion that these are  
16 industries of such a nature that the location of  
17 residential dwellings is somewhat -- in close proximity,  
18 would you be against the safety or residents of  
19 those homes?

20 It's very conceivable that it could be.  
21 I don't think it is a type of area conducive to any  
22 kind of residential development, due to the nature  
23 of the existing plants that are in there. I think  
24 they would have an adverse impact on any kind of  
25 residences, even least cost housing. These -- no sense

1 in sandwiching least cost housing in between industrial  
2 plants. I think that is one area that should be  
3 just developed as it's always been planned to be  
4 developed, for industrial. It's really the heart of  
5 the industrial area in Rockaway Township.

6 Q What would be the threats to the health  
7 and safety that you would envision housing would be  
8 built there?

9 A Well, you have a tremendous traffic problem.  
10 Everything in that zone is served off Green Pond Road.  
11 It's my understanding now that people living in the  
12 northern end of the Township, that try to get down  
13 to Route 80 to go to work, have a tremendous problem  
14 getting through that part of Green Pond Road at the  
15 present time.

16 There's a trucking terminal that's down in  
17 there and there would be a tremendous safety problem  
18 as far as getting traffic in and out of -- residential  
19 traffic in and out of that area. Just don't think  
20 it's the kind of environment that you want to encourage  
21 for the residential development -- to mix industry  
22 and residents.

23 Q Are there any other areas in the township  
24 which are largely vacant and potentially developable,  
25 that are otherwise presently zoned for use? We dis-

1 cussed -- other than for the use we studied so far  
2 today?

3 A I believe the only other area that immediately  
4 comes to mind is the property that's on the south  
5 side of Mt. Pleasant Avenue, across from the shopping  
6 center. That's referred to as Frog Town Tract and  
7 much of that is zoned by the Township.

8 Q For what purpose -- and is there  
9 any developmental proposal for that land, as of  
10 this date?

11 A That's zoned for OR. Same as the property we  
12 just talked about on the other side of the business  
13 regional zone.

14 Q Are there any environmental constraints  
15 to your knowledge, which would limit the development  
16 potential of that property?

17 A No, there aren't, as far as environmental  
18 studies that we have made, again limiting those  
19 to slopes and septic effluence and mines.

20 Q So, based upon your analysis, you would  
21 not envision any undue environmental harm flowing  
22 from the development of this tract, at least cost  
23 densities, as contained in Mr. Wallach's report of  
24 March?

25 A I think as far as the specific site is concerned

1 and again, limiting, you know, my answer to the en-  
 2 vironmental studies we have made, there's nothing  
 3 that would seem to impact that land. It does not  
 4 have a slope over 15 percent and it is in the service  
 5 area.

6 Q Would you envision any other planning  
 7 considerations being applicable to an evaluation of  
 8 a proposal to develop this tract at least cost  
 9 standards and densities?

10 A Well, you know, when you take something out  
 11 of context, like that, there are a lot of things that are  
 12 an input into planning considerations of zoning  
 13 properties, other than environmental constraints,  
 14 the whole master plan is predicated upon many other  
 15 factors, other than environment.

16 It is only within the last 10 or 15 years  
 17 that environment has been a consideration in the  
 18 municipal master plans. We're talking about municipal  
 19 services for residential properties. We're talking  
 20 about schools within walking distance, hopefully and  
 21 fire and police protection, all of the municipal  
 22 services, library and social services and so forth.

23 As far as nonresidential is concerned, we  
 24 tried to locate in areas where all of these land  
 25 use pieces fit together into a comprehensive plan

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1 and if you just look at this 45 square miles and  
2 single in on a given piece of land and say, is  
3 there anything wrong with putting the least cost  
4 housing on that piece of property, is -- the thing  
5 you have to consider is that it has to be part of a  
6 comprehensive plan and there has to be all of these  
7 inputs that I've just outlined to the equation to  
8 make it a viable plan.

9 There are all these considerations, these  
10 planning considerations have to be looked at before  
11 you say this or that property should or should  
12 be zoned for residential or least cost housing  
13 whatever. In the first place, how you zone for  
14 least cost housing, you keep using that term and  
15 you've used it all day and how do you zone for least  
16 cost housing?

17 Q Well, my understanding was that you had  
18 familiarized yourself with Mr. Mallach's report,  
19 which specified the manner in which cost generating  
20 requirements would be deleted, such as not requiring  
21 extras like parking, not requiring basements, not requiring  
22 excess widths, in depth of any requirement not related  
23 to protection of health and safety and then, for  
24 providing for sufficient densities for a house to be  
25 built in moderate cost or moderate range and low incomes.

1           We have developed the problem of townhouses,  
2           12 to an acre and an amount of 14 to 16 units to  
3           the acre for garden apartments. These have been the  
4           premise upon which our discussions have proceeded,  
5           to my knowledge. Was that different than your  
6           understanding of what we have been discussing?

7           A           No, but I just don't believe it. I think you  
8           have to be very naive that if you think that you did that  
9           you would get least cost housing. I know what the  
10          standards are. I know what his philosophy is but  
11          I don't agree with it.

12          Q           Okay. Let's approach it from  
13          perspective. Should the plaintiffs prevail in this  
14          litigation, it would be conceivable that a Court  
15          invalidate the present zoning ordinances applied  
16          to the municipalities that we've been discussing.  
17          Now, the order could also provide for zoning that  
18          provided opportunities for the construction of least  
19          cost housing or for housing built at the standards  
20          I have just enumerated, irrespective of whatever  
21          the master plan might provide and my question again  
22          to you would be, confronted with an order, Court order  
23          of that nature, which of the vacant areas we've  
24          been discussing for this entire deposition, would  
25          you elect in order to comply with that Court order?

1 A Is that a question?

2 Q Yes.

3 a If you confronted me with that order, I would  
4 tell the Township that I would go back and take all  
5 of these, after studying the court order and try to  
6 comply with the order the best way possible, to  
7 minimize the adverse impact of the planning program  
8 they have, I can't sit here today and say, I'll  
9 take this area and that area and that over south, you  
10 you know, you're asking me to develop a master plan  
11 in three minutes- That may take 12 months of study to  
12 comply with that court order.

13 Q Now, directing your attention to  
14 two documents, I would ask if you could identify  
15 these two.

16 A Yes, the one I wrote on December 7th, which  
17 I haven't looked at since I wrote it and the other  
18 one with the memorandum prepared by Allan Mallach.

19 Q Would it be a fair characterization to  
20 say that your memo of December 7th was a point by  
21 point response to --

22 A Yes, what I tried to do was take this memo  
23 and comment on Mr. Mallach's comments of his  
24 November 21 memo.

25 MR. ORMSDORFF: Why don't we mark these

1 for identification. Mr. Mallach's memo of  
2 November 21st, I believe, would be RC-7  
3 and your memo of December 7th would be RC-8.

4 (Whereupon, above-mentioned document,  
5 memo to Verice Mason, Esq. from Allan Mallach,  
6 re: Rockaway Township Zoning Ordinance of  
7 5/31/79 dated November 21, 1979 consisting  
8 of three pages marked RC-7 for identification.)

9 (Whereupon, above-mentioned memorandum,  
10 to Frederic J. Sirota, Esq., from Robert  
11 Catlin, re: Mallach's review of Rockaway  
12 Township Zoning Ordinance as per a memo to  
13 Verice Mason, Esq., dated November 21, 1979  
14 dated December 7, 1979 consisting of four  
15 pages marked RC-8 for identification.)

16 Q Now, directing your attention to what  
17 we have just identified as RC-7 and RC-8, Mr. Mallach's  
18 memo of November and your subsequent response to that  
19 in early December, would it be accurate to say that  
20 you responded and added comments only in those  
21 areas where you had a specific disagreement or divergent  
22 opinion with Mr. Mallach?

23 A No, what I tried to do was to review his  
24 memorandum point by point, and if I disagreed with  
25 Mr. Malach, I tried to very briefly point out why and

1 also where I agreed with him. I also said that, also.

2 Do you know, I said that too, for instance,  
3 I just read it now if I can find it, for instance,  
4 on page two, on the third or fourth paragraph, I  
5 indicate that: "It is true that when environmental  
6 constraints are taken into consideration, the above-  
7 mentioned densities may be reduced due to environmentally  
8 sensitive areas."

9 I think that was the point he was making  
10 in another place, on page three, item eight, the last  
11 part of that, I said: "As far as Mallach's comments  
12 on Section 54-92A.(1) are concerned, I see no reason  
13 why this provision cannot be removed from the ordinance,"  
14 which he suggests, so, you know, it isn't entirely  
15 an adverse situation. I was trying to comment point  
16 by point on his comments and I tried to disband on  
17 what he was saying because some of the things were  
18 true as far as he went, but he didn't go all the  
19 way.

20 We'll try to go this then based on  
21 that understanding of what you did endeavor to  
22 accomplish on your memo.

23 Page one, first paragraph, you indicated:  
24 The schedule of performance standards indicates  
25 that a duplex house may be built on a lot as small

1 as 85 feet in width, 100 feet in depth provided there  
2 are no more than three dwelling units per acre."

3 [REDACTED] My question to you is, where may that provision  
4 be found in the scheduled performance, if you can  
5 tell us?

6 A If you look at the schedule of performance  
7 standards in the back of the land use ordinance --  
8 do you want me to go on?

9 Q Yes.

10 A All right. In schedule of performance  
11 standards, what we're referring to in our report  
12 memoranda is the R-13 zone and I indicated that  
13 the schedule of performance standard indicates that a  
14 duplex house may be built on a house lot as small  
15 as 85 feet in width and 100 feet in depth, provided  
16 there are no more than three dwelling units per acre.

17 That's found in the table, the R-3 zone.  
18 There are three types of housing permitted. The  
19 detached, single-family, cluster single-family and  
20 duplex and if you look over the minimum lot with  
21 setback for duplex, it's 85 by 100. I think that  
22 was your question, where is it found.

23 Q That's correct, thank you.

24 Now, what were the public health and safety  
25 reasons limiting the duplex developments to three

1 dwelling units per acre?

2 A What were they? You -- I didn't have a part  
3 in this. This is not my ordinance.

4 Well, would you envision there being  
5 houses to the public health and safety at duplex  
6 construction at six to the acre or four to the acre  
7 or any number?

8 A Well, it really depends on what the overall  
9 density for that whole part of the township is  
10 concerned. You know, what is the maximum potential  
11 population expectancy in the R-13 zone and once you know  
12 that answer, then you know all the other municipal  
13 planning considerations that you have to make  
14 accommodation for, such as how much sanitary sewer  
15 effluence that you have to accommodate, how many  
16 school classrooms you are going to have, how many  
17 policemen, what kind of fire equipment and so forth;  
18 all of these things have to be quantified, based  
19 upon the density of each section of the Township.

20 Whether or not it was done, I don't know.

21 Now, directing your attention to the  
22 top of page two, you appear to quote Mr. Mallach's  
23 statement: "None of the detached single-family  
24 house zones are consistent with the least cost  
25 standards set forth in Madison and Mt. Laurel."

1           Your comment is that "This is something for  
2 the Court to decide."

3           My question to you is, does that reflect your  
4 conscious decision not to compare the single-family  
5 housing zones as opposed to the standard articulated  
6 in Madison and Mt. Laurel, to do that analysis as  
7 to whether they're consistent with the provisions  
8 of Madison and Mt. Laurel?

9           A       No. All I said that I was reacting  
10 to Mallach's statement and he said -- he made an  
11 observation, an opinion and I quoted his opinion  
12 and he said: "None of the detached single-family  
13 house zones are consistent with the least cost  
14 standards set forth in Madison and Mt. Laurel."  
15 He's referring to the housing in Rockaway Township.  
16 I didn't say they would or wouldn't or anything else.  
17 That's -- I said that's what this case is all about.

18           Q       I understand what you've done. I'm  
19 trying to find out whether that reflects your  
20 opinion as to whether they complied  
21 with a standard for least cost housing as set forth  
22 in Madison and Mt. Laurel.

23           A       I don't know if you can take it out of context.  
24 I think the court is going to have to look at  
25 the entire comprehensive zoning scheme for every

1 municipality according to this suit and make a deter-  
2 mination as to whether or not that overall zoning  
3 scheme has met the mandate of Mt. Laurel. In this  
4 case in Rockaway Township, it has been done because  
5 of the wide range of housing sites, that even  
6 go as far as to create a least cost housing zone  
7 which, to the best of my knowledge, has never been  
8 done there.

9 All I'm saying is, you know, that's what  
10 we're playing the game for, that's what we're  
11 going to find out, what the Judge is going to say.

12 Q I guess what I'm really asking is  
13 whether you see a distinction between overall  
14 obligation for zoning required in the decisions  
15 of Madison and Mt. Laurel as opposed to whether certain  
16 types may meet the least cost standard as articulated  
17 by the Court, ~~where~~ that obligation to be imposed upon  
18 a municipality.

19 A I think the Rockaway Township zoning has met  
20 the mandate of Mt. Laurel.

21 Q In the context of legal obligation  
22 for housing types or in the context of housing which  
23 complies with least cost standards, I'm trying to  
24 see whether you see a distinction between those  
25 standards?

A Whose standard, Mallach's standard?

1 Q No, how the Supreme Court of New Jersey  
2 defined those standards with the Madison and Mt.  
3 Laurel decisions.

4 A I don't know. I think they have -- they have  
5 met those standards but we'll find out.

6 Q Have you endeavored to define a housing  
7 region for Rockaway Township?

8 A No. I have not. But it's my understanding  
9 that they have hired someone else that is doing this  
10 and has made such an analysis and study.

11 Q Now, in that sentence which you read  
12 previously, concerning environmental constraints, would it be correct to say that this refers to the  
13 performance standard which has been recently  
14 adopted as part of the land use controls in Rockaway  
15 Township?

16 A You say the sentence before, or you mean  
17 that sentence?  
18

19 Q The sentence -- oh, I'm sorry. I  
20 misunderstood what you said before. You meant  
21 previous to now. You meant before this sentence  
22 up above. Yes, this -- I think this sentence speaks  
23 for itself. That is "It is true that when environmental  
24 constraints are taken into consideration, the above-  
25 mentioned densities may be reduced due to environmentally

1 sensitive areas."

2 A That is true.

3 Q What I'm trying to figure out is this, if  
4 upon a full field and site specific evaluation of that  
5 actual environmental constraints, densities, can be  
6 reduced, wouldn't it be therefore the converse to also  
7 be true, that upon such a complete inspection, it  
8 might be determined that there is such and such an  
9 absence of environmental constraints, that such  
10 densities could be increased?

11 A Not at all, because you start out with a  
12 given density for each zone, which in turn is related  
13 to many other considerations and you say that at that  
14 time every lot or every dwelling unit must comply  
15 to a certain density, then, if there are environmental  
16 constraints, that density may have to be reduced  
17 because there are environmentally sensitive lands,  
18 but these other planning considerations are the things  
19 I mentioned before, such as all the municipal services  
20 and so forth.

21 Q Let's take it one step further. Say  
22 you evaluated 20 or 40 sites or however many and in  
23 each case you have an environmental constraint which  
24 reduced the densities. These are the type of --  
25 densities established for zoning ordinances based

1 on police, fire, traffic and after having reviewed  
 2 density, 20 or 40 sites in essence, you have now  
 3 created a surplus of housing potential, based upon  
 4 your master plan envisioning the need for these  
 5 services and based upon the projected densities  
 6 which now have not been achieved on these 20 or 40  
 7 sites. Would it not be appropriate to transfer those  
 8 development rates to a totally unimpacted site in  
 9 the same area which could utilize such otherwise  
 10 unutilized municipal services, police and fire  
 11 protection, which you have listed?

12 A Yes, to a certain extent, what you say  
 13 well may be true if you're going to plan on accommodating  
 14 new people in a given area at a certain density of  
 15 two or three units per acre and your plan is predicated  
 16 upon those numbers and you find then when you get into  
 17 the environmental quantifications, that you can get  
 18 a thousand people in -- it's possible, as you say,  
 19 you may have a surplus or transfer something to some  
 20 other place. That's entirely possible.

21 Now, the next numbered paragraph, three,  
 22 indicates: "Duplex units are also permitted in the  
 23 R-13 zone, in addition to the R-15 and RMF zones."

24 Could you specify where on the ordinance  
 25 that provision is specified?

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1 A That's in the same schedule of performance  
2 standards. It is an integral part of the ordinance.

3 Q Your fourth numbered paragraph concerns  
4 the construction of townhouses in an RMF-1 zone,  
5 which is located along Norman Road and Pawnee Avenue.  
6 Is that correct?

7 A Yes.

8 Q You further describe this site as  
9 being bounded by these two streets which are 160 feet  
10 apart and my question is, what public health and  
11 safety interest is achieved by mandating the lots  
12 townhouses be placed upon lots having a depth of  
13 160 feet?

14 A Having a depth of 160 -- 150 feet, I think,  
15 you have to work backwards. In other words, the  
16 2,500 square foot was established for that particular  
17 kind of zone and it happened that the physical  
18 limitations of the street, or 160 feet away.

19 Therefore, as long as you got the 2,500 square foot  
20 [REDACTED] family, you could have any width but the  
21 2,500 [REDACTED] comes by then dividing 2,500 into 43,550, which  
22 is the number of square feet in an acre and that  
23 gives you roughly  $17\frac{1}{2}$  units per acre.

24 Q Well, in other words, the factor  
25 which you have defined as being the limiting one for

1 development is the requirement for the 2,500 square  
2 foot area and in order to meet that, you have to go  
3 back to 1,250, if I understand your answer correctly?

4 A Well, I'm not sure -- I'm not even sure what  
5 the question is now. What was the question, again?

6 Q Would it be possible -- I'll rephrase  
7 it, to develop townhouses at this particular site,  
8 on lots that have a depth of 80 feet and a lot width  
9 of 160 feet?

10 A Would it be physically possible?

11 Q Yes.

12 A Sure, it's physically possible to develop  
13 10 by 30 feet. You know, you're going to get a  
14 pretty small townhouse.

15 Q Well, granted we're dealing with high  
16 densities. In order to reduce least cost, my concern  
17 then becomes, what is the public health and safety  
18 reason for prohibiting 80 foot lots by 16 foot,  
19 at this site?

20 A Well, I think the -- it's the overcrowding  
21 of lots. You're taking a very small compact area  
22 and trying to crowd into it too many dwelling units.  
23 You would have problems as far as access is concerned,  
24 getting cars in and out of there. There's only one  
25 way in and out of this whole zone and it's just an

1 overcrowding of the land situation.

2 Q Well, if I understand correctly, if  
3 you had lots of 80 foot, you could have frontage  
4 on one; one would be on Pawnee and the other frontage  
5 would be on Norman Road?

6 A Yes.

7 Q So, you would really separate access  
8 to that extent, would you not?

9 A You'd separate access going from each road  
10 but what I'm saying is you going in -- I don't know  
11 if you're familiar with the zone we're talking about  
12 It's like a big loop street. It goes in and the  
13 comes out. These streets are 160 feet apart and  
14 you are asking me if -- if you could physically put  
15 in a townhouse 80 feet deep. My answer is, certainly  
16 you could put in an 80 foot deep or 50 foot deep,  
17 but what results is then an entire zone is developed  
18 with that density. You're going to jam in a lot  
19 of people in a very compact area and high density.

20 people, the only way they get in their  
21 neighborhood is to go through two streets, one way  
22 in and one way out.

23 Q Traffic is your main public safety  
24 concern?

25 A Traffic is a consideration. The other thing

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1 is what impact would the development of this whole  
2 zone have on that given area of the Township as  
3 far as other services are concerned.

4 Q I guess to a certain extent any traffic  
5 problems would be mitigated if public transportation  
6 were available. Is there any public transportation  
7 in Rockaway, such as buses?

8 A None whatsoever. In fact, it is even difficult  
9 to find the zone. If you're looking for it, if you  
10 look at the map, White Meadow Lake, it's a circuitous  
11 road. It's a subdivision with all curved or  
12 streets with three or four thousand homes in  
13 There is no bus transportation whatsoever; any  
14 public transportation in that part of the Township.

15 Q Now, directing your attention to the  
16 fifth numbered paragraph, you indicate there are a  
17 number of standards applicable to the RMF zone.  
18 The question would be, where are those standards  
19 specified?

20 A Well, throughout the ordinance, most of which  
21 are in the schedule of performance standards  
22 but there are other standards, when you apply the various  
23 environmental limitations we discussed before, such  
24 as impervious cover and so forth. Buffer areas are  
25 in the other part of the ordinance, drainage is in

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1 another part of the ordinance and traffic site plans  
2 details, there is a whole section on that, but  
3 numerical physical standards are in the schedule of  
4 performance standards.

5 Q Now, Mr. Mallach includes in his fifth  
6 numbered paragraph: "This is too low a density for  
7 least cost standards."

8 I note in your response, it does not address  
9 that statement. Is that reflective of your agreement  
10 with his opinion?

11 A Well, I think the reason I didn't respond  
12 to that at all is that, as I said, you know, before  
13 I don't think that even doing everything that Mallach  
14 would like seeing done is going to result in least  
15 cost housing, so, you know, what -- what more can  
16 I say?

17 Q Okay. Your sixth paragraph addresses  
18 the R-6 zone, which "was created to permit one form  
19 of least cost housing in the township, which would be  
20 other than rental units."

21 A Yes.

22 Q It would appear at this point you reached  
23 a conclusion as to certain housing being of a least  
24 cost nature. Would that be correct?

25 A Well, what this was -- this was an attempt to

1 create a zone that would make provision for some kind  
 2 of a housing that presumably would be able to accommodate  
 3 people with the least income which would be a modular  
 4 residential zone.

5 The zone was created. It was adopted. The  
 6 standards were developed and then the zone was deleted  
 7 but, standards are still there and because the thought  
 8 in mind, it's going to be in some other location,  
 9 with that thought in mind, you'll see it on the map,  
 10 R-6. But that zone, the Township Committee offered  
 11 an unfavorable report of that Planning Board and  
 12 deleted that zone recently.

13 Q Do you know the date of that deletion?

14 A No, but I think it was probably in the fall  
 15 of -- I'm not sure, sometime near the end of '79 or  
 16 beginning of '80. I just don't know.

17 THE WITNESS: Do you know, Jim?

18 MR. WYSE: I don't know offhand.

19 A But as I say, the mechanics are in the ordinance  
 20 when they deleted it and I wasn't at  
 21 the meeting but I understand the reason they deleted  
 22 it was there was a public hearing and there was no  
 23 opposition from some of the neighbors in the area.  
 24 They simply took it off the map with the thought in  
 25 mind that they would reconsider it someplace else.

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1 Q Now, the R-6 zone on RC-2, which appears  
2 on the very southerly west corner of the municipality,  
3 bounded to its north and west by an industrial zone  
4 and to the south by the Borough of Wharton.

5 Is that a vacant tract of land?

6 A I would say the vast majority of that R-6  
7 zone is vacant.

8 Q Would you know how much acreage  
9 is involved at that location?

10 A R-6 zone? Well, we can estimate it very  
11 quickly. Let me get a scale.

12 MR. ONSDORFF: Off the record

13 (Whereupon, there is a discussion

14 the record.)

15 MR. ONSDORFF: On the record.

16 Q Could you just repeat what you explained  
17 about the Planning Board before?

18 A Well, what I said was at the time I wrote  
19 this memorandum, I was not aware that that zone  
20 had been removed from the map. When I was told it  
21 was to be moved, it was with the thought in mind  
22 that they would leave the requirements and take it off  
23 the map and put it someplace else because of the  
24 opposition generated the night of the public hearing  
25 that it would be created.

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1 Q As far as you know, the acreage involved  
2 in this previous R-6 zone was?

3 [REDACTED] Approximately 60 acres, I think .

4 Q Are you aware of any environmental  
5 constraints which limit the development of this  
6 site?

7 A Much of the land is vacant. There are some  
8 power lines that run through in one point and it  
9 does have septic effluent limitations. But that  
10 would be academic because before anything could be  
11 developed, there would have to be some kind of [REDACTED] al  
12 sanitary sewer system. I don't believe there [REDACTED]  
13 too many environmental constraints, at least based  
14 on the studies we did.

15 Q Now, in regard to your interpretation  
16 of what the ordinance does provide for and the  
17 definitions you provided as, "A modular residential  
18 unit is a moveable single-family residence affixed  
19 to a permanent foundation which shall be connected  
20 [REDACTED] sewer and water," authorized to be built  
21 [REDACTED] 6 zone.

22 Have you gotten any type of an authoritative  
23 ruling from the town solicitor or any other binding  
24 statement as to your interpretation being consistent  
25 with that interpretation of the municipality?

1 In other words, this isn't just your own  
2 personal view or is it the position of the municipality  
3 as far as both this litigation and when this zone  
4 ultimately located, what they would bind themselves  
5 to if a developer came in, who wanted to build such  
6 modular houses, wherever the R-6 zone is located?

7 A This is my own interpretation by reading  
8 the ordinance and having offered 50 or 60 zoning  
9 ordinances in the past. I did not authorize this  
10 particular definition but, that's the way I read it  
11 and it's strictly my interpretation.

12 This was sent to the Township Attorney  
13 office and I haven't heard anything to the contrary.  
14 I don't know if he agrees or disagrees or whatever,  
15 but I think it's a reasonable interpretation, that  
16 the municipality would probably go along with.

17 MR. ONSDORFF: Mr. Wyse, can I ask  
18 that we could have such a statement from your  
19 office as to whether or not the views expressed  
20 by Mr. Catlin are being adopted, by reference  
21 or any other means, by the municipality or  
22 whether it tends not to stand by the position  
23 taken in this litigation?

24 MR. WYSE: I'll make an inquiry to  
25 that effect.

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A I think all that we really need is a letter from the Township Attorney's office saying whether he agrees or disagrees with what I said.

Q That's exactly what I asked for.

Addressing numbered paragraph 7, could you just specify what the setback standards are provided for in the zoning ordinance, what you disussed in that paragraph?

A That's in the schedule of performance standards in the back of the ordinance.

Q With reference to numbered paragraph 8 you referred to RMF zone. Do you see any environmental reasons for limiting, say for attached or duplexes, to four dwelling units to an acre, while townhouses may be developed at densities of six and then garden apartments at eight?

A Any environmental reasons?

Q Then, you ultimately say "For all mid-rise senior citizens' housing at 12 units per acre or a combination of the above."

Q If I understand your comments correctly, 12 units per acre, why is senior citizens' housing at 12 and limiting other types of residences to 4?

A Well, I think the distinction between a senior citizens' and non-senior citizens', is that a

1 senior citizens unit is permitted in a higher building  
 2 than non-senior citizens' and also, it will generate  
 3 somewhat less traffic and the same amount of units  
 4 would in a conventional development.

5 Q In addition to your concern for traffic,  
 6 would there be any other environmental reasons  
 7 why senior citizens housing would be appropriate  
 8 at 12 units and other residential housing types would  
 9 be limited to the lower densities, as indicated there?

10 A I think the other considerations that you  
 11 would have the makeup of the dwelling unit, the make-  
 12 up of the dwelling unit itself would have less persons  
 13 in a dwelling unit of senior citizens, than you would  
 14 have in conventional which results in an overall  
 15 evening out of the density.

16 What I'm saying is, and I've just drawn some  
 17 numbers out, if you have, say, three persons per  
 18 dwelling unit in a conventional two-persons per  
 19 dwelling units in senior citizens, that's 50 percent  
 20 less in the conventional apartment unit. So, you  
 21 could increase, theoretically, the density of the  
 22 senior citizens', by 50 percent and still have the  
 23 same number of persons going in and out of a given  
 24 area.

25 Q As far as impacts on the land which

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1 refer to the amount of ground disturbance, the amount  
 2 of impervious cover and these types of environmental  
 3 impacts which are not related to number of individuals  
 4 moving about in the premises, do you see any basis  
 5 for the density distinctions which are incorporated  
 6 in --

7 A From an environmental point?

8 Q Yes, that's right.

9 A Well, units would probably be much smaller  
 10 for senior citizens than others so if you have a  
 11 given building that covers certain footprint on the  
 12 site which you could get more units in that building  
 13 if it was for senior citizens, then nonsenior citizens  
 14 which again ratiowise, a somewhat higher density.

15 Q Now, disregarding the senior citizens'  
 16 which constitute housing for this limited class  
 17 of people, you have the general occupancy of townhouses  
 18 and garden apartments being at different densities  
 19 than say, your single-family detached or duplexes?

20 [REDACTED] s.

21 [REDACTED] How do you see or rationalize the  
 22 density distinctions in those cases, which all  
 23 apply to general occupancy residential?

24 A From a physical design standpoint, we know  
 25 it's going to take more land to build single-family

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1 detached than an attached or townhouses and it is  
2 also going to take more land to put in garden apartments  
3 than [REDACTED] townhouses. These things are all relative.  
4 [REDACTED] in other words, you try to physically design  
5 a project and we designed a great number of them,  
6 the townhouse development, we know from a design  
7 standpoint of how to have adequate parking, landscaping  
8 and so forth, there is a maximum number of units you  
9 can get on an acre and still have a good, attractive  
10 design because these are up and down such dwelling  
11 units and most instances, if you're going to [REDACTED]  
12 garden apartments, you can get into that pro [REDACTED]  
13 you can design to that property higher density because  
14 of the maximum utilization and efficiency of the  
15 building and that's why there is a sliding scale of  
16 density requirements for these various kinds of land  
17 uses.

18 Single family, detached, needs more land  
19 because of the space between each individual building  
20 [REDACTED] house, which is more efficient than a single-family  
21 [REDACTED] and garden apartment because the maximum  
22 efficiency of layout and structure itself. You can  
23 get greater density.

24 Q Now, your final comment concurs  
25 apparently with Mr. Mallach's objections to the

1 demonstrating -- that there has been a demonstration  
2 that the PD development has no adverse fiscal impact  
3 on the township. Is that correct?

4 A I don't know . Is that --

5 Q That's the one Mr. Mallach had  
6 the discussion at the end of paragraph 8 and then  
7 picked up on yours.

8 A It may have been deleted. Let me just check  
9 it. I think it has been deleted. If so -- we touched  
10 it before, just so you understand what happened.

11 The land use plan has been amended and the issue that  
12 I think which was the deadline was that December  
13 31st, you know, the governor extended the --

14 Q I'm not exactly sure what the deadline  
15 was but, --

16 A There's been a rather comprehensive amendment  
17 to this whole book which has been -- has just been  
18 adopted within the last 60 or 90 days. I think it  
19 was perhaps November-December and no one has ever

20 put together a document that codifies all the  
21 amendments as to what's in here and I believe that  
22 this one provision that we're referring to, "Such  
23 fiscal impact" --

24 Q Excuse me, physical, I thought you  
25 said physical?

1 A No, fiscal impact analysis has been deleted.  
 2 Let me just see if it's in this draft. It's in  
 3 this draft but I'm sure it has been deleted.  
 4 There are 50 or 60 changes.

5 Q Do you recall what the rationale was  
 6 for that provision in the first place?

7 A No. It was something that was put in the  
 8 ordinance by someone else and I had no input into  
 9 that provision.

10 Q Does it reflect, to your mind, a  
 11 certain possible antipathy?

12 MR. WYSE: I object to that question.  
 13 How is he supposed to know. He just says  
 14 he has no idea.

15 MR. ONSDOROFF: I just thought I would  
 16 ask. So, you're going to direct him not to  
 17 answer?

18 MR. WYSE: I direct you not to answer  
 19 that question.

20 THE WITNESS: I can't answer it anyway  
 21 because I don't know --

22 MR. WYSE: I didn't think he could.

23 THE WITNESS -- why it was put in there.

24 Q Now, in the ninth numbered paragraph  
 25 in your memo of December 7th, you acknowledge or

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1 repeat, Mr. Mallach's expression concerning excessive  
2 parking requirements. Does that reflect your  
3 opinion as to this conclusion or --

4 A No, no.

5 Q Do you have an opinion as to whether  
6 they are excessive or --

7 A No, no, I don't believe they are excessive.  
8 In fact, they were somewhat less than they are  
9 at the present time and we found from practical  
10 experience, that we were creating problems and  
11 that's the reason they were increased to what they are  
12 today, because some of the developments that took  
13 place within that old standard, resulted in real  
14 traffic problems with people parking on-street and  
15 so forth in snow removal and the problems that emanate  
16 from that kind of a parking requirement and they were  
17 therefore increased about five or six years ago,  
18 to the present standards and they have not been  
19 excessive.

20 Q Would you have an opinion as to whether  
21 such parkings requirements would be needed for housing,  
22 which truly serves people of modest incomes, as  
23 far as the number of cars that they might need to  
24 park in that particular development?

25 A No, I don't think they would have to change

1 the standard because I think that even poor people  
2 drive cars and people with incomes that may be less  
3 than yours or mine are going to have friends that are  
4 going to drive cars and come visit them and so forth.  
5 If you're talking about senior citizens, that's another  
6 situation altogether, but I think as far as parking  
7 standards are concerned, for other than senior citizens,  
8 I do not think they are excessive.

9 MR. ONSDORFF: Off the record.

10 (There is a discussion off the record.)

11 MR. ONSDORFF: On the record.

12 (Whereupon, off the record, memorandum

13 to Frederic Sirota from Robert Catlin re:  
14 fair housing council v. Township of Rockaway,  
15 consisting of eight pages and three maps  
16 and cover letter, dated December 10, 1979, marked  
17 RC-9 for identification.)

18 Q First directing your attention to  
19 what is marked RC-9 for identification, this  
20 report -- which is your report of December 10, 1979,  
21 I believe that's the last report you submitted on  
22 behalf of the Rockaway Township. Is that correct?

23 A Right.

24 Q On the first page of this document,  
25 you indicate that the existing development pattern in

1 Rockaway reflects predominantly a single-family  
2 community. However, it has a wide range of housing  
3 types which carry mobile homes, garden apartments,  
4 single-family detached homes and lots larger than  
5 two acres. Is that correct?

6 A Yes.

7 Q Can you specify with whatever reference  
8 exhibit would be most convenient, where the mobile  
9 homes are found which exist in Rockaway?

10 A RC-3 I'll refer to. The mobile homes, there's  
11 a mobile home park off the Mt. Pleasant Avenue  
12 of Mt. Hope Avenue, about 1,500 feet or so.

13 Q Do you know how many modular units  
14 are actually located at this location?

15 A 84.

16 Q Are you familiar with the environmental  
17 characteristics of the land at that location?

18 A Not without looking at the environmental  
19 maps. There doesn't seem to be too many environmental  
20 problems with the property. As near as I can estimate,  
21 it's in this area in here.

22 Q Could you indicate where you're pointing,  
23 with reference to some map features, for the record?

24 A Well, the center of the -- of this property,  
25 which contains the trailers, is approximately 2,400

1 east of Mt.Hope Avenue and 2,400 feet east of Mr.  
2 Hope Avenue on these environmental constraint maps,  
3 is in this area between these two vacant parcels  
4 of property. It's in this general area here.

5 In fact, this is probably the driveway running up  
6 to the trailer camp up in this area.

7 Q You're now referring to your overlay,  
8 RC-6, which has the green coloration for the subject  
9 disposal project areas. Is that correct?

10 A Yes.

11 Q Approximately what is the size of  
12 that mobile home, if you know? That mobile home park?

13 A I don't know. It's a very unusual shaped  
14 piece of property, as you can see by looking at  
15 this exhibit. It -- the boundary line meanders all  
16 over and it's almost a star-shaped piece of property.

17 Q You're now referring to the existing  
18 development exhibits.

19 A Which shows -- yes, which shows the actual  
20 location of that piece of property.

21 Q Have you ever personally visited this  
22 trailer park?

23 A I was up there about 15 years ago.

24 Q Was it in existence at that time?

25 A Yes, I think it was. I think it's been in

1 existence for a long time.

2 Q Do you recall the density of the  
3 development as far as the placing of the trailers  
4 and relative -- in relative position to each other?

5 A No, I don't recall that.

6 Q Are you aware of any environmental  
7 problems that the Township has experienced as a  
8 result of that trailer park?

9 A I know very little about that trailer  
10 park. I've never had an occasion to have to do  
11 anything with it as far as a planning board  
12 concerned. They've never asked me to look at  
13 it or make any kind of studies so I know very little  
14 about it.

15 Q Would you have an opinion as to whether  
16 the housing situated in that trailer park, meets  
17 least cost housing standards?

18 A I don't know.

19 Q On page two of your December 10th  
20 report, RC-9 for identification, you discuss at  
21 some length the concept or the scheme, implemented  
22 in Rockaway Township, to develop along the boundaries  
23 or within the boundaries of an urban service area?

24 A Yes.

25 Q That was first adopted in 1951; is that

1 correct?

2 A Well, the first planning program stated in  
3 1951; I believe the urban service area concept was  
4 adopted in 1953 or '4 by the planning board as  
5 part of their planned program.

6 Q Do you know when the present boundaries  
7 of the service area were established?

8 A Well, the present boundaries which are essentially  
9 the same as they've been with some late modification,  
10 since 1954, was most recently reaffirmed in the  
11 1976 master plan -- 1977 master plan.

12 Q Do you know whether any provisions  
13 had been made for redetermining the boundaries  
14 of the service area in line with declining family  
15 size and recent development of environmental protection  
16 requirements for water conservation standards, annual  
17 new residential construction? Have these factors  
18 been taken into account, to your knowledge?

19 A I don't know whether they would have anything  
20 to do with that determination of that boundary.

21 Q What then is your understanding of the  
22 basis for the boundary lines as they've been drawn?

23 A Well, they're primarily determined because of  
24 the existing development patterns that dictate --  
25 providing these with full services at some time in

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1 the future.

2 In other words, there is already enough develop-  
3 ment in those areas to justify full urban services  
4 but they do not have them.

5 A classic example would most likely be  
6 Lake Telemark, which is in this section of the Township  
7 near the Girl Scout property. This -- the existing  
8 development pattern in here already demand services  
9 and they don't have them and they're having tremendous  
10 problems with wells being polluted and with septic  
11 tanks effluence running on the surface of the  
12 and so forth and we've known for a number of  
13 because this Lake Telemark goes back prior to '50,  
14 that some day that area is going to have to be  
15 serviced and we knew in 1950 that the population at  
16 that time, it was something like five or seven  
17 thousand persons. We knew we would have to accommodate  
18 future growth and instead of spreading future growth  
19 over 45 square miles of land -- this municipality  
20 is only ten miles long, we wanted to divide the  
21 growth onto small lots to an area economically serviced  
22 with full services. We established the parameter of  
23 service area which was dictated by existing growth  
24 patterns.

25 There was already growth in there for services

1 and they were going to fill a large pocket of land  
2 between one existing development pattern and then  
3 another and we said this is where we want the small  
4 lot development to take place so that we don't have  
5 to serve 15 square miles with sewer lines and  
6 water lines and so forth.

7 Q To the extent that additional sewer  
8 capacity becomes available, is there any provision  
9 in the municipal land use controls, or other authoritative  
10 planning documents, which would provide for additional  
11 vacant lands being provided with sewer and water  
12 services?

13 A If and when it does become and if and when  
14 the existing sewers are saturated with development,  
15 then the logical expansion of that service area  
16 would be contiguous to where it is now instead of  
17 creating new service areas someplace else where  
18 there is nothing there but there is enough vacant  
19 land, as you can see in the yellow, here, to accommodate  
20 additional growth at the present time on the existing  
21 small lots; admittedly not at the densities that  
22 Mallach is talking about, you know, 15 or 16 units  
23 per acre but, relatively small lot development.

24 Q Is my understanding correct that  
25 all the sewer services are provided by the Rockaway

1 Valley Regional System?

2 A That's my understanding, all the municipal  
3 sewers, that's correct.

4 Q Directing your attention again to  
5 RC-9 for identification, a map following page three  
6 seems to be labeled residential service areas, primary  
7 and secondary. Could you briefly explain the shading  
8 parameters or --

9 A The map itself is explained on page two and  
10 the -- in the fourth paragraph, which reads, as  
11 was mentioned above, Rockaway Township's zoning was  
12 predicated upon the service area concepts, since  
13 was first adopted in 1954 and the service area adopted  
14 in the Township's first master plan, as shown on  
15 the accompanying map entitled "Residential Service  
16 Areas." That's the map you are referring to.

17 That map shows at least at that time, those  
18 areas that the Township felt would have to have  
19 full urban services. There's two categories.

20 One is primary service area which means that the  
21 area of the Township that has immediate problems,  
22 health problems and should those areas -- those areas  
23 should be provided with sanitary water facilities  
24 as soon as possible and the secondary service area,  
25 was that area that would basically plan for future

1 growth and it connects two of the primary service  
 2 areas. It includes the lands that were subsequently  
 3 developed as part of the Fleetwood Development  
 4 and the regional shopping center. There is also  
 5 vacant land at the present time in that secondary  
 6 service area.

7 Q So, what is the date of this map?

8 A This comes out of the 1954 master plan  
 9 so it would probably be dated 1952 or '3.

10 Q Now, the following maps of your residential  
 11 service areas map, '52 or '53, entitled "Municipality  
 12 facilities to utilities study, and water and sewer  
 13 service areas," could you briefly identify these  
 14 maps, where they are and what they purport to depict?

15 A The map you're referring to is also described  
 16 on page three, the third paragraph from the document.  
 17 It says, "That the 1964 Planning Board prepared a  
 18 comprehensive revision of the 1955 plan in the  
 19 service area, adopted in the 1954 plan and is shown  
 20 on the accompanying map entitled --" that's the map  
 21 we're now referring to.

22 That map came out of the 1964 master plan  
 23 which was adopted by the Planning Board and that map  
 24 again shows the limits of the service area. It shows  
 25 the land of the Township that, as of that time,

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1 was served with sewer and water, both sewer and water  
2 and it has proposed expansion plans, first stage  
3 water expansion plans and first stage sewer expansion  
4 plan and it shows the areas to receive both sewer  
5 and water during the first stage and again, it shows  
6 the limits of the service area by the heavy bold  
7 broken line. Lastly, your water and sewer service  
8 areas.

9 A This map came out of the 1976-77 master  
10 plan and again, it shows the area of the Township  
11 that is being planned to be served with sewer and  
12 water. The map shows those areas the Township  
13 that are presently served with existing sanitary  
14 sewer and also, those areas that are served with existing  
15 water service and those areas of the Township that  
16 are proposed to be served at some time in the very  
17 near future.

18 Q Now, based upon your review of these  
19 three maps showing the planning over the years, how  
20 would you describe the effluence of that, those  
21 municipal plans for sanitary water and sewer service?

22 Have they remained consistent or have they expanded  
23 the proposed areas or have they contracted those  
24 areas?

25 A Well, I think -- when you compare the three maps

1 the very first one that was done which was more or  
2 less limited to the existing development, that map  
3 has been expanded in the '64 plan. This was the  
4 period of the most rapid growth of the Township and  
5 it reflects -- the Water Planning Board as of that  
6 time felt it would have to be provided with full  
7 services at some time in the future. That is in  
8 1964.

9 When you compare the 1964 map with the 1977  
10 map, you will see that that essentially covers the  
11 same general areas, except that there has been a  
12 violent reduction in the parameter of the service  
13 area as it extended along the Beaver Brook, near  
14 the Boonton Township Municipal Boundary line.

15 The reason it was included in the service  
16 area in 1964 was that there was a development, a  
17 subdivision that took place on Linesville Road  
18 that was called a Ten-Land Corporation. Ten-Land  
19 Corporation because that was developed at one-acre  
20 density subsequent to the adoption of the '64 plan,  
21 it was felt that it was undesirable to try and run a  
22 sanitary sewer and water out that far that one-acre  
23 subdivision because of the length of the -- the length  
24 and the cost of providing facilities as far out  
25 as Linesville.

1           There was therefore, in the '76 plan, a cutback  
2 to include just the development around each plan.  
3 ~~But if you~~ compare the two maps, you will see  
4 ~~they are~~ quite similar in size. The '77 plan was a  
5 little more specific as far as the existing property  
6 lines were concerned than the '64 plan, which was  
7 more of a conceptual plan design.

8           Q           Now, referring you specifically to  
9 page four of your December 10th report, you discussed  
10 the need for the large lot zoning in northern  
11 areas of town, in order to provide for the ~~sufficient~~  
12 drainage areas for the septic systems and viable ~~drainage~~  
13 potable water wells on private lots.

14           The next paragraph on that page then indicates  
15 Rockaway Valley Sewerage in designing sanitary sewer  
16 system serving Rockaway and certainly recognizes,  
17 by excluding any area north of the Township, north  
18 of Lake Telemark, has land served by the RVSA.  
19 In other words, they have -- it seems to me that  
20 ~~they~~ confirmed the division of the municipality  
21 ~~by~~ the whole northern portion of the municipalities  
22 to large lot zoning by limiting their access to sewer,  
23 to the area south. I'm not sure I understand the  
24 reason for that line of demarcation. What was  
25 the basis of that?

1 A As far as the RVSA was concerned?

2 Q Correct.

3 A You have to ask them. It's my understanding  
4 that talking with the consulting engineer that was  
5 instrumental in designing that whole system, that  
6 they may have come to that conclusion and I think  
7 they did without being concerned about the urban  
8 service area. That's something independently  
9 decided, I think, by them. I have a work map that  
10 they have -- that they were using when they made that  
11 decision, that's something in their infinite wisdom  
12 that they did. I have no input in that, you know.

13 Q Following discussion of sewer, you  
14 then get into your quantitative analysis of environmental  
15 constraints and following page four, you had a table  
16 which appears to quantify the impacted areas and  
17 unimpacted areas as we've discussed generally today,  
18 with reference to specific sites.

19 A Well, except that this table is on a townshipwide  
20 basis and, as I said before, we did not attempt to  
21 break this down by zones but this morning when we  
22 were discussing this, we tried to isolate parcels  
23 within the zone and discuss them but I did not attempt  
24 to break down this table by zone.

25 Q I understand that. My question goes to

1 the point of exactly understanding the totals reflected  
2 here, as far as the areas in the service area. You  
3 have a figure of 554 acres, if I understand your  
4 table correctly, which are lands not impacted  
5 by any excessive slopes, flood plains or severe  
6 septic.

7 A That's correct.

8 Q And those areas are found in areas  
9 which it is intended to provide sewer to --

10 A Right.

11 Q -- at some future time?

12 A Right.

13 Q Now, accepting for the sake of the  
14 question, that all 554 of those acres were to be  
15 developed at 10 garden apartments to the acre, you  
16 would have sufficient lands then to provide some  
17 5,540 dwelling units at what would be deemed  
18 considerably high densities and that could all be  
19 done on lands that would not be impacted by environmental  
20 constraints, which you have analyzed; is that correct?

21 A Well, the mathematics are correct. 554 times  
22 10, that's 5,554. But of those 554 acres, a lot of  
23 that is in nonresidential zones that shouldn't  
24 be developed for any kind of residential area. We  
25 talked about that earlier, such as industrial zone

1 out there. There's a lot of vacant land out in  
2 the industrial zone, as you can see on this exhibit,  
3 RC-3 and that may be part of the 554 acres.

4 That doesn't necessarily mean it could be  
5 developed for residences under any circumstances,  
6 at any density. So, your mathematics are absolutely  
7 correct, if you simply took all the vacant land in  
8 the Township left on the surface area and permitted  
9 10 units per acre. You could get 5,000 units but  
10 from the planning standpoint, that wouldn't be any  
11 good.

12 Q Now, directing your attention to page  
13 six of your report, the first paragraph, your  
14 statement: "Once the sewer ban is lifted and new  
15 lines are constructed, there is -- it is reasonable  
16 to assume that most of the service area will be  
17 developed."

18 Of course, as you've just indicated, that  
19 development will proceed along present zoning in  
20 both residential and nonresidential uses. Is  
21 that correct?

22 A Yes.

23 Q Now, have you seen any planning estimates  
24 as to the additional population that will be generated  
25 by the development which will be taking place once

1 sewers are provided in urban service area?

2 A We may have made a population estimate in  
3 the last master plan. Let me just refer to this and  
4 see if I see anything -- if we say anything about  
5 that.

6 One thing is, when you're talking about  
7 population estimates, you're talking about what you  
8 project as an estimate and another is the maximum  
9 population that can be accommodated between -- within  
10 a given area and the two may not necessarily be  
11 the same. We had estimated that by 1985, there  
12 would be a population of 31,000 persons in  
13 Township.

14 Q I don't want you to spend too much  
15 time if you don't have the population estimates  
16 handy.

17 A I told you 31,000.

18 Q I'm sorry, I thought you were looking  
19 for a more specific thing.

20 A I said the 1985 population estimate would  
21 be more than 31,000 persons.

22 Q As opposed to the present population?

23 A Well, at the time we did the study in 1973,  
24 there were 20,000, -- 20,400.

25 Q Now, your population figure is beyond

1 the service area, however, that's for the entire  
2 municipality. Is that correct?

3 A True, but the growth outside of the service  
4 areas are rather minimal.

5 Q So, subtracting some minimal growth  
6 outside the service area, you're talking about an  
7 additional 10,000?

8 A I would say so, yes, that's in the ball park.

9 Q And that would comprise about 33 percent  
10 population increase, if I understand the percentages  
11 properly?

12 A That's about right.

13 Q Backtracking for one moment, on page  
14 five, you discuss the areas impacted by flood plain  
15 lands. In discussing various vacant tracts today,  
16 I don't recall ever coming across any plan impacted  
17 by flood plains.

18 A That was on my base map.

19 Q I was just wondering whether or not you

20 delineated any specific parcels of land which

21 were both vacant and potentially developable and

22 would also be constrained by the flood hazard applicable  
23 to the site.

24 A Well, there is some -- the flood hazard area,  
25 the flood plain is shown on this base map, which is

1 RC-4 and the Zipaton pattern, you also see some of  
2 land is vacant and some of it on this side of the line  
3 is in the service area.

4 Q Endeavoring to delineate what was just  
5 pointed out with reference to some of the map features  
6 just for the record, would you explain that briefly?

7 A Part of the flood plain north of Beach Glen  
8 and north of Green Pond Road, part of that, or some  
9 of that land, is in the service area and is vacant  
10 and it's impacted by the flood plain. There is also  
11 slightly more than what is in the service area.

12 Outside of the service area in that same  
13 general area, there is also vacant land and that is  
14 also impacted by the flood plain. The far outside  
15 of the service area, along Beach Glen Road, there is a  
16 rather substantial flood plain area that runs all  
17 the way up to the village of Meridan. That land is  
18 all vacant and it is impacted by the flood plain.

19 Q That's as delineated by the Federal  
20 Insurance Administration?

21 A Yes.

22 Q Is that correct?

23 A I believe the same Federal flood insurance  
24 administration maps are the same maps that are used  
25 by this DEP, the State DEP.

1 Q Pursuant to the performance standards  
2 recently adopted by the municipality, is there a  
3 total parcel prohibition on construction in areas  
4 so delineated by the Federal Insurance Administration?

5 A We have to look at the very specific requirements,  
6 because if it's in the floodway, which is a land that  
7 is flooded periodically, then I think the development  
8 is prohibited. If it is in the flood hazard area,  
9 which is perhaps the next step on the higher ground,  
10 the development I think is restricted but, to be  
11 accurate, let's look at what the witness said.

12 Q Okay.

13 A According to the ordinance, it says, "Any  
14 lands that are shown in the flood plains," and the  
15 reference is the USGF Flood maps of 1976. That's  
16 100 percent resource.

17 The verbiage that "All lands shall be permanently  
18 protected, roads obtained from the New Jersey Department  
19 of Environmental protection," but I think basically

20 we're talking about is within that land that  
21 is looked at on that map. Flood plains that are  
22 there would not be developed other than roads that  
23 would cross the land.

24 Q Now, wouldn't the USGF flood plains  
25 be separate and distinct from the housing and urban

1 development Federal Insurance Administration delineation?

2 A That's correct but in this instance, they're  
3 coincidental. In other words, the Federal Flood  
4 Insurance Administration map is the map that -- you  
5 see, this environmental information is taken directly  
6 from the Federal Flood Insurance Administration map.

7 Q This incorporates both the Floodway  
8 and Flood Fringe area. Is that correct?

9 A No, it's just all together now.

10 Q Going up the boundary of the flood  
11 hazard area of the 100 year storm?

12 A I don't think that they use the flood  
13 any more. They used to, after the last one that  
14 came out two or three months ago and now it's called  
15 the hundred year storm and 500 year storm.

16 Q That's what I am trying to pin down.  
17 I know the nomenclature has changed. Now they refer  
18 to it all as the flood plain.

19 A They call the whole thing the flood plain.

20 What I'm trying to understand is what  
21 that area incorporates as far as -- to your knowledge,  
22 does it denote the floodway and also flood fringe?

23 A I think I know exactly what you're asking but  
24 I don't think it's either. I think they have developed  
25 now, a new map which has one line along, let's say, a



1 the orange is a 500 year storm, as I recall, and what  
2 we have put on here is the outside limits. If you see,  
3 there's very little between here and here. So they're  
4 pretty much similar.

5 This little -- are we on the record?

6 This little bubble at Meridan is the outside  
7 limits of the 500 year storm. This is a photocopy  
8 of a shaded map and you can see up here that the  
9 hundred year boundary is the darker area and  
10 this lighter area is a 500 year and what you see on  
11 here is the outside limits.

12 Q Now, my question is, as a planner  
13 concerned with development in areas near water courses  
14 that have a potential for having their waters over-  
15 flow their channel during periods of heavy precipitation,  
16 how do you think prudent planning should regulate  
17 development in those flood plain areas as far as  
18 the extent of limitation on development what delineations  
19 that the outer boundaries of flood plain areas are?

20 A This particular instance, in Rockaway Township,  
21 I don't think any development should take place within  
22 that flood plain and the reason for that is that  
23 most of the flood plain flows along both sides of  
24 Beaver Brook. This, incidentally, is then on either  
25 side of Beaver Brook and Beach Glen, the floodway.

1 All of this, the water just meanders over the  
2 bank all the time and a very significant consideration  
3 is that all of the potable water supply wells that  
4 serve the entire township, is along that Beaver  
5 Brook, down in this area just north of Sanders Road  
6 so all of this Beaver Brook should be protected  
7 without any kind of development because, you know,  
8 if you get any kind of pollution in that brook,  
9 it's going to pollute all their wells down here  
10 which is the entire municipal water supply system.

11 As far as the area running along Hybe  
12 up toward Hybernia from Beach Glen, if you look  
13 the topo map, you'll see that that's extremely  
14 impacted slope area here over both sides running all  
15 along this stream. As soon as you get away from the  
16 road, it just runs straight up in sheer cliffs and  
17 to try and develop anything, you know, along the  
18 brook in that area, it just is almost impossible  
19 to do, which you can see, really see, if you drove  
20 up this road because mountains go straight up, so  
21 as far as Rockaway Township is concerned, I think it's  
22 a reasonable requirement to prohibit any kind of  
23 development in their flood plain because of any other  
24 constraints peculiar to it.

25 Q To the boundary of the 500 year flood --

1 A To the boundary of the 500 year flood --

2 MR. WYSE: Do you want to mark that?

3 [REDACTED] MR. ONSDORFF: No, that's been incorporated  
4 [REDACTED] on the subsequent maps so --

5 THE WITNESS: That's right.

6 MR. ONSDORFF: That would just be  
7 repetitive.

8 Q Directing your attention to page seven  
9 of your December 10th report, RC-9 for identification,  
10 the second -- actually, the first full paragraph on  
11 page seven, you discuss the solution to the problem  
12 of providing least cost housing and I believe your  
13 recommendation is that this can be achieved only through  
14 the provision of governmental subsidies. Is  
15 that correct?

16 A That's right.

17 Q To your knowledge, do any of the  
18 municipalities in Morris County have any programs  
19 for making such housing subsidies available?

20 [REDACTED] I believe there are some -- some least cost  
21 [REDACTED] housings in the workings. I don't know if there  
22 are any municipalities we're involved with and  
23 how such programs, but the one that immediately comes  
24 to mind, is the Borough of Madison.

25 I understand that the Township of Jefferson

1 is in the process of development of some kind of  
2 least cost housing and I think that the Town of  
3 Cover has least cost senior citizen housing; some  
4 kind of a subsidy program.

5 Q Does Rockaway have any kind of a  
6 housing subsidy program, to your knowledge?

7 A No, they do have -- do not have a housing  
8 program operation but they have been dealing  
9 with a series of developers, to provide least cost  
10 senior citizen housing for a number of years and  
11 for one reason or another, this has already fallen  
12 through because of getting the proper subsidy  
13 approved by the State or Federal Government or  
14 whatever, but they are aware of the problem and they  
15 have a special senior citizens housing committee  
16 that is working with the council to try and solve  
17 this problem and as I say, it's an ongoing thing.  
18 It's been in the workings for the last three or four  
19 years.

20 Q Now, for the remainder of page seven  
21 and the remainder of your report on page eight, you  
22 devote considerable attention to the development  
23 of housing and housing costs and the factors which  
24 may inhibit least cost housing through high density  
25 and overzoning principles, due to other construction

1 costs, in addition to the cost of land. I just  
2 wanted to inquire your experience, or source of knowledge  
3 as to various developmental costs on construction  
4 costs.

5 A Well, we have designed a number of projects,  
6 working with developers, where we're well familiar  
7 with the development costs of the land and the --  
8 the actual costs of the land, how this fits into  
9 the development equation.

10 We have to be when you're designing a certain  
11 housing project. We're, you know, having been in this  
12 business for some 30 years, you, when reviewing developmen  
13 plans for a municipal board or developer, where a  
14 developer brings them before the board, you become  
15 quite familiar with some of the problems with the  
16 developer and some of the development costs and so  
17 forth. So we're looking at it rightfully, from  
18 both sides of the table. One is consultant to the  
19 developer who may be designing a project and also,  
20 from the point of view of the municipal planning board,  
21 who is reviewing the project to make sure that the  
22 development program is not going to be detrimental  
23 to the community. So, this whole page seven and eight  
24 is strictly an opinion based upon my experience working  
25 in this area for the last 30 years and it simply

1 indicates, as I said before, that I see no way that  
2 through rezoning, you're going to see least cost  
3 housing, that it has to be something other than  
4 zoning.

5 Q Have you done any planning work or  
6 consulting for developments any municipalities,  
7 which adopted a new zoning principle for -- new  
8 zoning principle for least cost housing?

9 A No.

10 Q On the top of page 8, the statement  
11 appears -- actually, it's a question:

12 Why would a developer construct smaller,  
13 less expensive, least cost housing units, when he  
14 can make more money constructing larger units?"

15 I just wanted to ask you, what the basis  
16 was for your opinion that larger units invariably  
17 result in greater profit to a developer?

18 A Well, I think that that -- that's kind of  
19 academic, that a developer is going to develop  
20 the house and that the market will permit him to  
21 make the maximum return on his investment and if  
22 he can build a bigger house and sell it for more  
23 money, if he's going to make more money than if he  
24 builds a less expensive house and sells it for a  
25 lesser amount of money. His profit margin is larger.

1 Q Are you familiar with any employment  
2 trends in Rockaway since 1950?

3 A Since 1950?

4 Q Yes.

5 A That's a pretty broad question. What do you  
6 mean by employment trend? We know that companies  
7 and industries moving out to suburban areas, which is  
8 evidenced by what has happened in Green Pond Road,  
9 in the industrial park area.

10 Q As far as Rockaway Township, per se,  
11 has it experienced substantial growth in the number  
12 of people working within the community since 1950?

13 A I don't think we have ever made a study that  
14 shows the work, where people work, that live in the  
15 Township.

16 Q No, my question was solely directed  
17 towards people working in the Town, irrespective of  
18 whether they may live there or not. Were there  
19 more problems situated in Rockaway, than there were  
20 in 1950, or 1960, or 1970?

21 A Oh, yes, I'm sure there are because 1950,  
22 there was relatively little industry other than  
23 Picatinny Arsenal and subsequent to 1950, the so-called  
24 Hybernia Flats which is the Green Pond Industrial  
25 area, has developed and there are a number of plants

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1 there now that weren't there in 1960.

2 Q Now, the Rockaway Town Square Mall,  
3 I believe, is a recent development within Rockaway.  
4 Is that correct?

5 A Within the last three or four years.

6 Q Are you familiar with the employment  
7 that has been generated by this commercial  
8 development?

9 A I know they're in operation so they must  
10 hire people, but I didn't intend to make any kind of a  
11 study on how many they hire or anything else.

12 Q Would you say that it would be fair  
13 to say that there is in excess of 1,000 employees  
14 or 2,000 employees or --

15 A I don't know what there are. There are, I  
16 believe, over 100 stores there; three of which are  
17 department stores so, they must have hired a good  
18 number of people. But, you know, I don't know what  
19 it would be.

20 Q I believe you indicated that the mall  
21 is serviced by a Bray irrigation sewerage treatment  
22 facility.

23 A Correct.

24 Q That, in essence is part of a package  
25 treatment plant?

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A Yes. it is. I believe there are 30 or 40  
affixed to set aside, to handle effluence. That was  
a temporary situation. That was then abandoned at  
such time as they connected to the RVSA.

Q Are you aware of any problems since  
they began operating that package treatment plant?

A No, I would not be in a position to. I am  
unfamiliar with what those problems are. I have  
heard people complain about the odors that come  
from the plant and I have heard that they have  
had problems, some that effluence was getting  
in the storm system, but this is what I read in  
the paper, which somebody has said. I have not  
had any firsthand knowledge of this.

Q I would like to show you this document  
and see if you recall ever seeing it.

A No, I haven't seen this. It's the first  
time I have ever seen it.

Q Let me --  
MR. WYSE: May I see it?

A What's the date on that?

Q I don't believe it's dated but from  
my reading of it it appears that it was a news  
article right after the filing of the suit, which would

1  
2 have been the very end of October, 1978 and the  
3 ~~reporter~~ apparently contacted a number of planners  
4 in the Morris County area to get their reaction to  
5 the litigation and you're quoted, toward the end  
6 of the article. You're quoted as stating, "One  
7 thing that most people don't realize is that you cannot  
8 zone for least cost housing and have any guaranty  
9 that low cost housing is going to be built. However,  
10 that I think, the municipalities have encouraged  
11 industry, has a responsibility to make provisions  
12 for least cost housing."

13 Is that an accurate reflection of your views  
14 at that time?

15 A It sounds like a reasonable provision.  
16 I don't know if I said that or it took something  
17 out of context, whatever.

18 Q Rather than endeavoring -- I have  
19 no quarrel.

20 Going back to your mind at the end of  
21 October, 1978, your opinion as expressed here,  
22 that any municipality that has encouraged industry  
23 has a responsibility to make provisions for least  
24 cost housing, what is the relationship that you're  
25 identifying in that creation of opportunity for

1 bringing forth an obligation to provide housing  
2 opportunities?

3 A I think what I was saying and again, you know,  
4 I don't remember saying that but I'm sure I said  
5 something like that and I have no quarrel with it  
6 because it's consistent with what my thinking is.

7 Then if municipalities are going to encourage  
8 nonresidential tax rateables, that they should also  
9 provide some form of housing to accommodate those  
10 people that are going to be moving out, working  
11 in those plans.

12 Q Directing your attention to this  
13 document, I want to ask if you can identify that.

14 A Yes I have that.

15 Q That's the most recent master plan  
16 for the Township of Rockaway?

17 A Right.

18 Q And this is the one that was prepared  
19 in consultation with your planning firm?

20 A Yes.

21 Q The one which you worked on yourself?

22 A Yes.

23 MR. ONSDORFF: Let's mark this  
24 for identification.

25 (Whereupon, Township of Rockaway master

plan dated 1976 and adopted November 10, 1977 marked RC-10 for identification.)

Q Directing your attention to page 34 of RC-10 for identification, it appears that in the context of the publication of this master plan, an analysis of environmental development limitations was undertaken and is reflected by a map attached to page 34, delineating certain environmental limitations. Is that correct?

A Yes.

Q What are the limitations that were delineated in the context of this master plan?

A I believe those were the -- a generalized composite map of the maps previous to that, starting on page 32.

First of all, let's -- all of this information in the environmental impacts was -- which starts on page 31 of the master plan, was taken from that table entitled "Township Table," which consists of four sheets and we looked at the seasonal high water table, hydrologic soil group, the frost action susceptibility; the septic effluence, depth of the bedrock, seasonal high water and we mapped some of this in a generalized fashion, but was not as specific as the maps that we've prepared here.

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1 Q Now, I believe you indicated that --

2 A Let me continue.

3 Q Oh, I'm sorry.

4 A I'm trying -- you asked me what this map  
5 means. You looked at all these maps and then as  
6 the master plan on page 33 indicates, it says, Study  
7 which was initially completed, has a marbelized  
8 effect, much the same as the DEP water study as  
9 outlined above.

10 For this reason, a more meaningful generalized  
11 pattern was developed as shown.

12 In other words, more than 50 percent of the  
13 soils within the two categories, had the characteristics  
14 of being either moderately erosion potential or  
15 severe erosion potential.

16 Soils reported for the Morris County Conservation  
17 District, point out soils -- points out that erosion  
18 potential, as a measure of the hazards of erosion,  
19 it is a sum up soil and site properties which really  
20 affect erosion, soils, texture, structure, permeability  
21 and presence of stones, pebbles, length of slope and  
22 degree of slopes on such properties and so forth/

23 Then, all of these maps were then -- he tried  
24 to make a composite map which had all of these  
25 environmental impacts. On page four we state: "En-

1 vironmental limitation, environmental limitation,"  
2 which is a composite of three of the above outlined  
3 factors, namely, depth to bedrock, depth of water  
4 and erosion potential.

5 Let me skip down to getting a little more  
6 specific. To arrive at the patterns shown in each  
7 of the three development limitations, they have  
8 been superimposed upon one map of any area of the  
9 Township that falls within the severe category. If  
10 it is on this map, it means that the classifications  
11 for each of the three classifications this is prevalent.

12 For example, the severe category on this map  
13 means that the depth to bedrock is less than six  
14 feet. A seasonal high water table is less than  
15 three feet and an erosion potential is severe.

16 I could go on and how I'm trying to explain what  
17 this map is and how it came about. It's a composite.

18 Q Fine, I understand what was done in  
19 order to complete the delineations on your environmental  
20 development limitations.

21 What I would like to ascertain now is,  
22 how this map correlates to the exhibits we've been  
23 marking the best part of the day.

24 I believe you indicated earlier, early on  
25 in your description of this, was that these were more

1 detailed maps?

2 A Yes.

3 Q So, would it be accurate to say that the  
4 environmental development limitations, as reflected  
5 in the master plan map, contiguous to page 34,  
6 you assumed or incorporated in exhibits we have  
7 already discussed?

8 A No they're not because this map deals with  
9 environmental constraints that weren't touched on  
10 here. This map deals with environmental constraints  
11 bedrock, seasonal high water table and erosion potential.  
12 What we're talking about here is excessive slope  
13 flood plains and effluence disposal.

14 Q So these would be addition environmental  
15 factors?

16 A Correct.

17 Q Have to be evaluated?

18 A Right, which we did not do because we didn't  
19 have the time to do it. This map was prepared, apart  
20 of this master plan, to give a generalized environmental  
21 picture of the Township. These maps, here, were more  
22 specific as it related to those environmental con-  
23 straints that we knew would have been -- would have  
24 severe environmental limitations, such as we've talked  
25 about all day, they're building in the flood plain

1 and trying to build on slopes more than 15 percent and  
2 so forth.

3 Q I think I'm seeing what you mean now  
4 because even a cursory examination of the map and  
5 page 34 would appear to indicate that the entire  
6 municipality is impacted, at least to a slight  
7 or greater degree. Not so?

8 A Yes, all of it is impacted to some degree.

9 Q So in areas which are delineated  
10 there may be more minor developmental problems which  
11 would not unduly interfere with the actual utility of a  
12 property for residential development?

13 A Yes, the whole thing is relative. In other  
14 words, it's slight on this map -- means that of the  
15 three environmental impacts we were looking at,  
16 maybe only one of those three are present on a  
17 particular piece of property.

18 MR. ONSDORFF: At this time I would  
19 conclude my questions. Your witness.

20 MR. WYSE: No questions at this time.

21 MR. ONSDORFF: Thank you all for your  
22 patience and cooperation. A full day for us all.

23 (Deposition adjourned.)

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C E R T I F I C A T E

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

*Jill Friedberg*  
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