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01/28/1980

Deposition of
Robert O'Grady

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MORRIS COUNTY FAIR :
HOUSING COUNCIL, et al, :
Plaintiffs :
vs. :
BOONTON TOWNSHIP, et al, :
Defendants :

DEPOSITION OF:
ROBERT O'GRADY

January 28, 1980
Monday, 10:00 A.M.
2 Valley Road
Denville, N.J.

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

BY: STANLEY C. VAN NESS, Public Advocate
KEITH A. ONSDORFF, ESQ.
Attorneys for the Plaintiffs

MESSRS: EISMEIER & FALCON
BY: LAWRENCE K. EISMEIER, ESQ.
Attorneys for Montville Township

Reporting Services Arranged Through:
ROSENBERG & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
769 Northfield Avenue
West Orange, New Jersey 07052
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SUPERIOR COURT
MORRIS COUNTY
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COUNTY CLERK
DEPUTY CLERK

SUPERIOR COURT
MORRIS COUNTY,
FILED

FEB 19 1980

FRANK A. HEARLEY
COUNTY CLERK
DEPUTY CLERK

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I N D E X

Witness

Direct

ROBERT O'GRADY
By Mr. Onsdorff

2

E X H I B I T S

No.

Description

For
Iden.

ROM-1 Letter from Robert O'Grady to
Lawrence Eismeier, Esq., dated
April 17, 1979, 7 pages

22

ROM-2 Letter from Robert O'Grady to
Lawrence Eismeier, Esq., dated
November 6, 1979

23

ROM-3 Map of Montville Township dated
1974 showing streets and property
lines prepared by Robert Catlin &
Associates

23

1 ROBERT O'GRADY, having been duly sworn,
2 testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. ONSDORFF:

6 Q Mr. O'Grady this morning we're going to focus
7 on your work on behalf of the Township of Montville.

8 Could you briefly relate your professional experience
9 with this particular municipality over the years?

10 A Yes.

11 The firm has acted as planning consultants to
12 Montville Township going back, I think, to 1959. And
13 I have personally served as consultant to the Township
14 since 1962.

15 The firm initially prepared a master plan for the
16 Township in 1959 and that master plan was later revised and
17 updated in a comprehensive manner with my direction.

18 Studies began in 1974 and were concluded in 1977
19 and I've been consultant to Montville on a continuous basis
20 since 1962.

21 Q So the most recent or current master plan
22 was published in 1977?

23 A I believe it was published in 1976. Adopted either
24 in December of --

25 I can give you the date.

1 Adopted February 8, 1977.

2 Q Over what period of time did you work on the
3 '77 master plan for Montville?

4 A The studies were initiated in 1974 and concluded in
5 December of 1976. It's about two and a half years.

6 Q Over that two and a half year period of time,
7 what personally did you do in furtherance of that effort?

8 A (No response.)

9 Q In doing the master plan what did you do,
10 in essence?

11 That's the question.

12 A In developing the master plan we had made a series
13 of comprehensive studies of the Township relating to the
14 existing development pattern -- the change in the develop-
15 ment patterns of the Township. Since 1959 we made a very
16 complete and comprehensive evaluation of the physical and
17 environmental characteristics of the Township. And, we
18 made studies of population, housing, traffic, transporta-
19 tion, community facility services and utilities, financial
20 considerations. Basically, all of the major considerations
21 that would normally go into a master plan.

22 Q You mentioned you analyzed the existing
23 development pattern.

24 How would you characterize the existing development
25 in Montville?

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1 A I believe that I would characterize it -- not recall-
2 ing specifically what might have been said in the master
3 plan as a predominantly residential community having some
4 industrial development and also some large areas particular-
5 ly in northern Montville of undeveloped lands.

6 Q I believe you also stated that you evaluated
7 the changes that had occurred since 1959 in regards to the
8 development of this municipality.

9 What did you determine about how the development
10 had evolved since that year?

11 A Basically, this study was a mapping to show the
12 areas of the Township that were developed in 1959 and the
13 areas that had developed since 1959 -- between 1959 and
14 1974. And, in order to provide us with visual indications
15 of the pattern of growth and the direction the development
16 had taken over that period of time.

17 Q Are you aware of the growth that has occurred
18 either residential or commercial and industrial in Montville
19 since 1950?

20 A Since 1950?

21 Yes, I'm generally familiar with the pattern of the
22 development.

23 Q Has it been substantial, would you say?

24 A I would say that Montville has undergone substantial
25 growth in development since 1950.

1 Q Is it your opinion that that growth is
2 continuing up through the '70's?

3 Did it continue up through the period of your master
4 plan study of '77?

5 A It had continued up to that.

6 Q In preparing this master plan did you reach
7 any conclusions as to the prospect for future growth,
8 either residential, industrial or commercial for the
9 Township?

10 A Well, we anticipated that there would be some future
11 growth in the Township. This was one of the purposes of
12 preparing the plan that future growth was anticipated and
13 should be properly regulated and controlled.

14 Q In this master plan what type of growth
15 specifically did you seek to regulate and control, residen-
16 tial, commercial, industrial? What other types of growth
17 that are anticipated?

18 A Well, the plan directs itself at various types of
19 development in the Township: residential -- of various
20 types: commercial and industrial development as well as
21 community facility, open space development.

22 Q Was there any analysis done of the residential
23 needs or the employment growth that would be envisioned to
24 accompany industrial and commercial development in the
25 Township?

1 A I don't believe there was any analysis done speci-
2 fically relating to the accommodating residential uses --
3 that would be related in the Township.

4 Q Was there any analysis done of the needs
5 for accommodating residential housing that would be requir-
6 ed to serve employment growth in the housing region that
7 Montville falls within?

8 A There was an effort made to provide for a variety
9 of housing, different types of housing in terms of type
10 of dwelling units, multi-family as well as single family,
11 in terms of meeting the housing needs for various segments
12 of the population either existing or likely to move into
13 the Township.

14 Q Possibly I didn't understand your answer.
15 Was there any specific analysis done of the housing
16 region in which Montville is located to determine the
17 allocation that would be appropriate for Montville to
18 provide for that housing need that would be generated by
19 future employment within the region that housing -- housing
20 region that Montville is within?

21 A No, there was no analysis of housing needs relating
22 to Montville that might have an impact on Montville.

23 Q You spoke about a variety of housing and
24 you indicated that Montville is predominantly residential
25 now.

1 How would you characterize the present housing stock
2 in Montville as to housing types?

3 A Montville is predominantly a one family dwelling
4 community.

5 Q Is there a typical lot size that these one
6 family homes are found on?

7 A Generally, I would say the lot size pattern in the
8 more developed areas of the Township -- or the lot size is
9 about half an acre --

10 Q Half an acre to slightly more than half an
11 acre and up, in essence, would be found within the Township?

12 A Yes.

13 Well, lot sizes in the Township range from 15,000 --
14 as far as zoning is concerned, range from 15,000 square feet
15 up to 120,000 square feet.

16 Q If I understood your answer correctly, you
17 indicated that in this most current master plan provisions
18 were made for a variety of housing types in addition to
19 the one family residential dwellings that now dominant the
20 existing housing stock.

21 Is that correct?

22 A That's correct.

23 Q What type of additional housing is provided
24 for under this master plan?

25 A Provisions made for townhouse development, for

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1 senior citizen housing, for two-family dwellings and for
2 a mix of single family townhouses and apartments in a
3 residential development area.

4 Q What were the planning considerations which
5 went into creating these additional housing opportunities,
6 say, like categories for townhouses? What was the provision
7 made for their development?

8 A Provision was made for that type of development
9 because of the basic feeling of the planning board, master
10 plan committee and other municipal officials that they
11 would constitute an appropriate form of housing -- a form
12 of housing for which there would be a demand, the type of
13 housing that would be appropriate in terms of the character
14 of Montville.

15 Q In regard to the senior citizen housing
16 opportunities, what was the basis for providing for these
17 types of housing?

18 A I believe the basic reason for providing for that
19 housing was the fact that there had been interest expressed
20 by various groups in the Township: senior citizen groups,
21 to provide some opportunity for meeting the housing needs
22 of elderly people.

23 Q How many senior citizen units can be developed
24 under the current zoning scheme in the Township?

25 A As I recall, I believe it's approximately 80 units

1 that would be accommodated -- 102 units, correction.

2 Q At what density can such units be built?

3 A Eight dwelling units per acre.

4 Q What were the planning considerations which
5 were deemed significant in establishing an eight dwelling
6 unit to the acre limit for senior citizen housing?

7 A Primary planning considerations were the physical
8 environmental conditions of the site that was selected for
9 that type of housing.

10 Q You also mentioned a two-family housing
11 option.

12 Q What were the planning considerations which led to
13 the creation of that housing opportunity?

14 A The basic consideration in a sort of general and
15 overriding consideration was to provide for variety. Not
16 just offering one form of multi-family or non-single family
17 residential development, but for various types of non-single
18 family residential development.

19 The site that was selected for two-family housing
20 was considered appropriate for that purpose in terms of
21 its location and relationship to adjoining residential uses.

22 Additionally, environmental factors played a key
23 role in determining the densities.

24 Q Finally, I believe you mentioned a planned
25 unit residential development.

1 Why was this opportunity established for this type
2 of development within the Township?

3 A Well, that particular type of development was con-
4 sidered appropriate or recommended because there was an
5 area in the Township that was considered to be not only
6 appropriate for a mix of housing types and higher density,
7 but also an area that due to its present or previous use
8 as a soil mining operation, the PUD approach offered the
9 opportunity for possibly reclaiming the land, improving
10 the overall character and appearance of the area.

11 Q In none of these instances, have you mention-
12 ed providing low income housing or least cost housing
13 opportunities.

14 Was that not a consideration in creating any of
15 those housing types?

16 MR. EISMEIER: Can we have a definition of
17 those terms before he answers, please?

18 Q Low cost housing or least cost housing in
19 connection with the report submitted by Allan Mallach
20 which, I believe, you're familiar with, Mr. O'Grady.

21 Is that correct?

22 A I have.

23 Q In the context of the housing opportunities
24 that he discussed, were opportunities to provide that
25 housing considered for any of those zones?

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1 A Well, first Mr. Mallach's report was not available
 2 at the time the master plan and the present zoning regulations
 3 were developed. But, as far as the densities that apply to
 4 the various types of housing in Montville are concerned, the
 5 basic approach was to determine what appropriate densities
 6 would be given the physical characteristics of the sites
 7 that were found appropriately located for different types
 8 of housing -- housing that might be associated with higher
 9 densities with a likelihood of providing housing for lower
 10 or moderate income housing -- lower or moderate income
 11 families.

12 Q Based upon the analysis that was done in
 13 preparation of the master plan and the work that you've
 14 done since as part of this litigation, would you have an
 15 opinion as to whether any of these zones within the municipi-
 16 pality are consistent with the least cost criteria as
 17 defined by Mr. Mallach in his reports?

18 A As far as the densities are concerned, the densities
 19 in Montville are not consistent with the densities recommen-
 20 d by Mr. Mallach.

21 Q As far as the other criteria that Mr. Mallach
 22 has discussed in providing least cost housing opportunities,
 23 are the zoning provisions of the Township of Montville con-
 24 sistent in those respects?

25 A Could you be more specific as to what respects?

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1 Q Mr. Mallach indicated a host of cost generat-
2 ing requirements unrelated to health and safety and require-
3 ments for parking and basements and these types of appur-
4 tenances to housing stock which were included in his reports,
5 and indicated that would be deleted in providing for least
6 cost housing opportunities.

7 A At the moment, I don't recall, offhand, what the --
8 some of the specific zoning requirements are that might be
9 related to the so-called cost generating features mentioned
10 by Mr. Mallach. I can only state that the regulations that
11 were -- zoning regulations that were adopted were consider-
12 ed to be appropriate regulations to provide adequate pro-
13 tection to the Township to foster suitable and desirable
14 development and were found important to maintain the value
15 of housing.

16 Q When you say "suitable and desirable develop-
17 ment," you're trying to include, then, unsuitable and undesire-
18 able development?

19 What types of unsuitable and undesirable development
20 does the Township's master plan zoning seek to prevent from
21 occurring?

22 A I think that the Township zoning regulations simply
23 are intended to foster the purposes of zoning as stated in
24 the statute to avoid undue concentration of population, to
25 provide for appropriate utilization of land.

1 Generally, a character of development that would be
2 consistent with the character of the Township and -- regula-
3 tions that would be suitable given the specific sites that
4 are designated for various types of residential use.

5 Q You mentioned as part of the master plan
6 certain population analyses or studies were performed.

7 What were the nature of these?

8 A We made an evaluation of the population growth in
9 Montville Township in recent years comparing that develop-
10 ment to adjacent or nearby municipalities to growth in the
11 State and the county, as a whole.

12 An evaluation of the population in terms of age and
13 sex breakdowns, types of employment of the population and
14 projections of future population growth.

15 Q In the studies in comparing the population
16 growth to adjacent and surrounding municipalities, what
17 conclusions did you reach as to how Montville stacked up
18 with these other communities?

19 A I don't recall, specifically, except that I know
20 Montville has had both a slower growth and a faster growth--
21 depending upon the municipality than some of its neighboring
22 communities.

23 Q As far as projections for the future -- or
24 rather, what conclusions did you reach as to future trends
25 for population growth within Montville Township?

1 A I don't recall the precise projection of population.
2 Additional population growth was anticipated due to
3 the size of the Township and the amount of land that was
4 still undeveloped.

5 Q As far as the type of employment, do you
6 recall what the studies showed as far as residential popu-
7 lation and their types of employment?

8 A Again, a specific figure, I don't recall.
9 There's a variety of employment in the Township as
10 in every municipality with areas -- or with people in the
11 working force engaged in all areas of the employment -- or
12 categories of employment.

13 Q Additionally, you mentioned that certain traffic
14 studies had been performed as part of this master plan work.

15 Could you describe the nature of those traffic studies
16 and transportation analyses that you did?

17 A The transportation or traffic studies were directed
18 at an evaluation of the existing circulation pattern of the
19 Township in terms of the jurisdiction of streets, whether
20 they be federal, state, county or municipal roads; the
21 condition of those streets in terms of their rights of way,
22 pavement widths, alignments, the traffic volumes that were
23 currently handled by the various roads as well as the growth
24 in traffic volumes on the various streets in the Township;
25 evaluation of the specific or particular traffic problems

1 that exist in terms of intersections in the Township and
 2 alignment problems and other related considerations con-
 3 cerned with safety and convenient movement of traffic.

4 Q What conclusion did you reach as to the ade-
 5 quacy of the transportation system serving the Township of
 6 Montville?

7 A Well, we conclude that there were a number of problems
 8 relating to the traffic situation in the Township. There
 9 were a number of problems relating to major municipal roads
 10 and certain county roads in terms of their width and their
 11 alignment: many roads not having a sufficient capacity in
 12 terms of either existing or projected traffic volumes.

13 Problems relating to Route 287 and its present
 14 terminus in Montville were identified.

15 Q Were there any recommendations included in
 16 your master plan as to specific projects for upgrading the
 17 transportation system?

18 A Yes, there were.

19 Q Do you recall what they were?

20 The recommendations included proposals for establish-
 21 ing adequate rights of way and pavement widths for the future
 22 on various roads, for realigning certain roads, for improv-
 23 ing various intersections and also proposals for certain
 24 new roads or extension of existing roads.

25 Q Was there any analysis of the cost of the

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1 municipality of providing these additional transportation
2 conveniences?

3 A No.

4 The plan recognized and I believe indicated that
5 these were matters that should be taken care of by way of
6 future capital improvements program planning. There was
7 no estimate of the cost involved in the proposals. The
8 proposals were developed based upon the needs anticipated
9 by expected traffic growth.

10 Q Was there any analysis done ^{of} public or mass
11 transportation opportunities within the municipality?

12 A There was.

13 There was an evaluation or study to determine avail-
14 able public transportation that existed now in terms of
15 both rail and bus transportation facilities. There were
16 some studies dealing with commuter parking conditions and
17 problems and potential sites for commuter parking facilities
18 in connection with both rail and bus which were dealt with
19 in the master plan.

20 What conclusions were reached to the adequacy
21 of the present public transportation system serving Montville
22 Township?

23 A I believe that the basic conclusion was that Montville
24 was fairly well served by public transportation facilities;
25 Conrail rail facilities, passenger station in Towaco and

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1 bus transportation to Newark and New York along Route 46,
2 Route 202.

3 Q You also mentioned that there was a study
4 performed as to utilities serving the residents of Montville
5 as part of the 1977 master plan.

6 Is that correct?

7 A That's correct.

8 Q What was the nature of this study?

9 A That study was primarily concerned with identifying
10 the location of existing utility systems, public water,
11 sanitary sewer facilities, the capacities of those systems,
12 the probabilities or possibilities for future extension of
13 those utilities so that future land use proposals could be
14 related to the provision for necessary utilities.

15 Q Do you recall the recommendations as to
16 providing utilities for future residents of the municipality?

17 A The master plan itself did not make recommendations.
18 The future planning of utility systems in the Township are
19 primarily the responsibility of the Municipal Utilities
20 Authority, the MUA. And, on the basis most of the land
21 use proposals that were developed were based upon what
22 either existed at the time or what was projected by the
23 Municipal Utilities Authority.

24 Q Do you recall what the MUA's plans were in
25 '77 as far as providing future potable water and sewer

1 services?

2 A The MUA had developed plans for extending water
3 systems to various parts of the Township and for potential
4 future extension of sanitary sewer facilities, primarily
5 intended to serve existing development.

6 Q Were there any discussions held as part of
7 the master plan preparation process in regards to recommen-
8 dations that the municipal body might make to the MUA
9 respecting increasing or expanding future growth of their
10 water and sewer systems, or was it just left to the MUA's
11 discretion as to the extent of those services?

12 A There was considerable discussion as the
13 master plan was developed as to the feasibility -- proba-
14 bility of the proposed -- particularly the proposed sanitary
15 sewer system extension as to whether or not they would be
16 feasible from a financial point of view, feasible from a
17 physical point of view. But, there were no recommendations
18 in the plan to provide a sewer system different from that
19 which was proposed by the MUA.

20 Q Not in the plan itself, but were there any
21 discussions as part of the planning process which were
22 involved in with the MUA officials as to guiding or chang-
23 ing or altering or amending what they had put on the table
24 which you examined in making your land use recommendations,
25 or was it just accepted what was given to you from the MUA?

1 A As I recall, what the MUA proposed was accepted as
2 the anticipated projection at that time, recognizing that
3 the plan prepared by MUA might not necessarily come to
4 reality.

5 We were not in a position nor did our scope of
6 services cover that-developing alternate sewer plans. We
7 more or less accepted the fact that the MUA was proposing
8 a certain plan and we attempted to guide the direction of
9 the master plan in a somewhat consistent, or as consistent
10 as possible with that plan.

11 Q I believe the final study you mentioned as
12 being undertaken as part of the master plan preparation
13 was a study of financial considerations involved with devel-
14 opment in the municipality.

15 What did you mean by that?

16 A We made a number of investigation studies in the
17 master plan relating to the growth in the municipal budget
18 in the various categories of income or revenue and expendi-
19 tures in the municipal budget on the changes that had
20 occurred over the past few -- several years.

21 We made an evaluation of increases in assessed
22 valuation -- valuation of real property valuations.

23 In other words, a portion of existing valuations
24 that were either residential, commercial, industrial,
25 vacant, farmland assessments, that type of thing.

1 Q What was the purpose of these analyses?

2 A Primary purpose was to provide a basic indication
3 as to overall financial picture of the Township as it would
4 be related to the municipal planning, whether or not there
5 were serious problems anticipated in -- based on past ex-
6 perience in meeting future financial obligations of the
7 Township.

8 Essentially, just a very general type of study in
9 that regard to provide a basic picture of the financial
10 conditions as opposed to precise recommendations for acti-
11 vities in connection with financial policies of the Town-
12 ship.

13 One recommendation that was made was to establish
14 a financial review committee that would work in concert
15 with the planning board, with the municipal administration,
16 and using the master plan as well in assisting the Township
17 and guiding its future financial policies, particularly
18 in the way of capital improvements.

19 Q Would the financial studies that you did
20 incorporate an evaluation of the future development to
21 determine the cost of providing the various municipal
22 services to the development that would occur to evaluate
23 whether sufficient tax revenues would be generated to pay
24 for those services that would have to be rendered?

25 Is that what the nature of the study entailed?

1 A In a general way. But, I don't recall that the
2 plan made a specific dollar evaluation or projection of
3 costs.

4 Q As opposed to a specific dollar estimate of
5 costs, was there any general conclusions as to whether or
6 not the rateables within the municipality were sufficient
7 to support the level of services that the municipality
8 wished to provide?

9 A The plan revealed no problems -- or serious problems
10 as far as the Township continuing to maintain a high level
11 of service -- or the level of service that was presently
12 being provided. And, no difficulties were anticipated
13 for providing the necessary services that would be required
14 by future development.

15 Q That was based on analysis of the revenues
16 that would be generated by the property tax rateables
17 within the municipality?

18 A Yes, and based on the experience in the past that
19 new development was coming into the Township -- or that
20 was coming into the Township was providing the necessary
21 revenue to continue to maintain the existing level of
22 service.

23 Q As far as the specific services you rendered
24 on behalf of the Township of Montville as part of the
25 present litigation, I'd like to show you a copy of the

1 document in letter form, I believe, from you to Mr. Eismeler
2 dated April 17, 1979 and ask if you can identify it?

3 A Yes, this is the letter which I addressed to
4 Mr. Eismeler.

5 MR. ONSDORFF: I believe, for the record, we
6 have had a number of municipalities with Mr. O'Grady.
7 For clarity, we've marked each with his letters and
8 the first letter of the municipality.

9 This would be ROM-1, I believe.

10
11 (ROM-1 for identification is the letter
12 from Mr. Robert O'Grady to Lawrence Eismeler, Esq.,
13 dated April 17, 1979, 7 pages.)

14
15 Q ROM-1 is a seven page letter of April 17, 1979.
16 Is that correct?

17 A That's correct.

18 Q At this time, I'd like to show you another
19 letter from you to Mr. Eismeler dated November 6, 1979,
20 and ask if you can identify it?

21 A Yes, I can.

22 That is another letter that I sent to Mr. Eismeler.

23 MR. ONSDORFF: I ask that we mark this as
24 ROM-2.

25

1 (ROM-2 for identification is the letter from
2 Robert O'Grady to Lawrence Eismeier, Esq., dated
3 November 6, 1979.)
4

5 MR. ONSDORFF: Off the record.
6

7 (An off the record discussion takes place.)
8

9 Q In addition to these two reports we have
10 marked, have you prepared any exhibits for use at trial
11 of this cause?

12 A I have prepared one exhibit which will be used at
13 trial either in its present form or the information on
14 the exhibit will be possibly placed on -- just a blank map
15 of the Township, but on a map that will show some addition-
16 al development and zoning information, as well.

17 MR. ONSDORFF: Let's have that marked as
18 ROM-3 for identification, with the understanding
19 that if it is superseded we would have an oppor-
20 tunity to review that prior to the trial.

21 MR. EISMEIER: That's acceptable.
22

23 (ROM-3 for identification is a map of
24 Montville Township dated 1974 showing streets and
25 property lines prepared by Robert Catlin & Associates.)

1 Q Directing your attention to what's been
2 marked for identification, Mr. O'Grady, as ROM-3, could
3 you briefly identify the map which comprises the background
4 for this exhibit?

5 A Yes.

6 This is a street and property line base map of the
7 Township which was prepared as part of the master plan
8 back in 1974. That particular base map is currently being
9 updated to reflect all new streets and property line changes
10 since 1974.

11 For this reason, this particular map -- for one
12 reason, this particular base map may not be the one used
13 at trial.

14 Q Do you know who prepared this map in 1974?

15 A This was prepared by our office.

16 Q In what manner were the street and property
17 lines of the municipality so determined and then delineated
18 on a sheet such as this?

19 A The Township tax maps served as the basis for the
20 map. In fact, the map, in a sense, is a composite tax map
21 of all the tax sheets of the Township.

22 Q Could you briefly outline in what manner you
23 have delineated various planned features on this base map?

24 A Are you referring to the areas shown in color?

25 Q Yes, I would be.

1 A On the base map we have indicated all of the vacant
2 lands south of Conrail, and shown those vacant lands accord-
3 ing to various physical and environmental features including
4 slopes of 15 percent or greater which are shown in red; rock
5 outcrop areas beyond steep slope areas which are shown in
6 a light orange; flood hazard areas shown in a green; high
7 water table soils shown in olive -- an olive green; manmade
8 constraints shown in gray; and then other vacant lands shown
9 in yellow, the other vacant lands being those which do not
10 have any of the environmental constraints indicated in the
11 other categories.

12 Q You indicated that the vacant land analysis
13 which you performed is limited to that area of the Township
14 south of Conrail.

15 Is that correct?

16 A That's correct.

17 Q What was the basis or reason for limiting
18 your analysis to those areas?

19 A Our basic reason was that we had concluded any
20 portion of the Township that could reasonably -- easily or
21 conveniently --or easily sustain higher density development
22 to the areas of the Township south of Conrail; that there
23 were a number of factors and conditions which would pre-
24 clude any type of high density development in areas north
25 of Conrail.

1 Q What was your density cutoff point as far as
2 deciding that, as you put it, dense housing would not be
3 conveniently located north of Conrail?

4 How many units were you referring to as constituting
5 what you described as dense housing?

6 A I would say, approximately, any residential develop-
7 ment that would have a lot size of less than, approximately,
8 two-thirds of an acre, ranging from two-thirds of that acre
9 down to include forms of multi-family housing which would
10 be expressed in terms of density -- some dwelling units
11 per acre. But, certainly, having a density of greater
12 than two units per acre.

13 Q Possibly, I'm a little confused.

14 I believe you started your answer by referring to
15 two-thirds of an acre and concluded it in discussing two
16 acres.

17 A I am sorry.

18 Basically, single family development of two-thirds
19 of an acre or smaller in lot size and any form of other
20 housing that would have a density of greater than two
21 units per acre.

22 Q As far as land area goes, what percentage of
23 the total acreage of the municipality have you placed into
24 this low density category?

25 How much land is in that area north of Conrail?

1 A Approximately, 46 percent of the Township, or slight-
2 ly larger than 5,700 acres are located north of Conrail.

3 Q How much of that land is vacant?

4 A I don't know precisely how much of it is vacant.
5 But, the majority of it is vacant.

6 Q Specifically, what were the environmental
7 factors which led you to this conclusion that the minimum
8 lot size for a single family house should be two-thirds of
9 an acre?

10 A Primarily, the physical and environmental features
11 of the Township.

12 Most of northern Montville is in a precambrian
13 geological formation, forms the basis for establishment
14 of the -- the geological formation along with the environ-
15 mental limitations that accompany it form the basis for
16 establishing three acre zoning in the northern portion of
17 the Township.

18 There are additional areas beyond the three acre
19 zone which have similar -- in a similar geological forma-
20 tion and have very similar development constraints associa-
21 ted with them.

22 There are additionally vast areas of northern
23 Montville that are part of a prime ground water aquifer area
24 that has been identified by technical studies by others,
25 and these technical studies recommend not only limited

1 development but in some areas actually no development
2 because of the potential hazards to the ground water
3 aquifer.

4 Q Do you recall what areas have been recommended
5 for no development?

6 A There's an area of, approximately, 450 acres, as I
7 recall, which constitutes the prime aquifer area where the
8 recommendation has been made that development should not
9 occur.

10 Q Do you recall who made that recommendation?

11 A Yes.

12 The study was performed by a firm called Geonics.

13 Q Are you aware of the present zoning appli-
14 cable to this 450 acre prime aquifer recharge area?

15 A Yes, I am.

16 Q Which is what?

17 A The aquifer -- prime aquifer falls into basically
18 three zoning categories. Part of it is zoned for industrial
19 purposes, part of it is zoned for one acre lots and part is
20 zoned for two-third acre lots.

21 Q It would appear to me, then, that the
22 recommendations by Geonics have not been followed.

23 A The recommendations by Geonics followed the zoning.
24 This is a recent study.

25 Q I'm not talking in point of time. I'm

1 referring to the substantive of Geonics that this area not
2 be developed.

3 This has not been adhered to, is that correct, with
4 one acre and two-third acre lots?

5 A Most of the area is undeveloped.

6 I was referring to the zoning, which was your
7 question.

8 Q What portion of the 450 acre tract which
9 constitutes the prime aquifer recharge area is within the
10 industrial zone?

11 A I could not tell you the percentage or acreage of
12 the portion in the industrial zone.

13 The prime aquifer area extends from the Lincoln Park
14 boundary, crossing Jacksonville Road and Indian Lane. The
15 area between the Lincoln Park boundary and Jacksonville
16 Lane is the portion that's in the industrial zone.

17 I would guesstimate that, approximately, 50 percent
18 falls within an industrial zone.

19 Q With reference to what has been marked ROM-3
20 for identification, could you just indicate with little
21 tick marks, say, of the four corners of this tract, the
22 area of the prime aquifer recharge area?

23 Could you locate it on there?

24 A Yes, I could.

25 The prime aquifer area is not a single tract. But,

1 it's a broad area that extends from the Lincoln Park
2 boundary lying between Old Jacksonville Road and Cooks Lane.
3 It then extends westerly and crosses Jacksonville Road
4 straddling Indian Lane and then swings southerly down south
5 of Indian Lane.

6 Q If possible, just a small tick mark at the
7 terminus.

8 A (The witness complies.)

9 Q For the record, you have in blue pen outlined
10 what I would describe as a bent finger extending from the
11 Borough of Lincoln Park westward through the northern part
12 of the municipality.

13 Is that correct?

14 A That's correct.

15 Q Is that area essentially undeveloped presently?

16 A Yes.

17 For the most part it is undeveloped.

18 There's only one small portion of the -- at the
19 southerly end of the bent finger that is developed.

20 Q Do you know the reason that the Geonics
21 study recommended no development on the land which constitutes
22 the prime aquifer recharge area?

23 A I believe the basic reasons were: Number 1, to
24 retain the recharge capacity of the ground to feed the
25 ground water aquifer.

1 Secondly, to also preserve the quality of the ground
2 water and to avoid the potential for polluting that ground
3 water supply that might result from development.

4 Q Do you know the maximum land coverage permiss-
5 ible under the current zoning ordinance for industrial lands
6 found within this aquifer recharge area?

7 A I don't recall the precise -- the present zoning
8 limitation. I believe that current building coverage is
9 limited to 30 percent. And, if I'm not mistaken, buildings
10 and other impervious surfaces would be limited to, approxi-
11 mately, 50 percent.

12 Q Would it be correct, then, the industrial
13 zone constitutes approximately 50 percent of the land, and
14 within the industrial zone buildings and other impervious
15 surfaces can cover 50 percent of that land?

16 We're, in essence, talking about impervious cover
17 over 25 percent of the prime aquifer area?

18 A You might be talking about that much if that -- if
19 the present zoning were to remain. But, there have been
20 recent amendments to the land use regulations -- zoning
21 regulations of the Township which would further restrict
22 land coverage in wetland areas, which would apply to this
23 particular area.

24 Studies are also currently in process to evaluate
25 the present zoning of the Township in light of Geonics'

1 study which was only published within the past two months.

2 Q The studies now are intended to take the
3 Geonics' recommendations and to evaluate whether the current
4 zoning as to these lands is consistent with interests that
5 Geonics and you have identified as being worthy of their
6 protection.

7 Is that correct?

8 A That's correct.

9 As a matter of fact, I've been authorized and
10 directed by the planning board to make what they have
11 termed as a mini master plan evaluation of the entire
12 area covered by the Geonics study. Not only the prime
13 aquifer area, but also the -- basically, the water shed
14 area and to evaluate the master plan as well as the zoning
15 regulations that now apply to those areas.

16 Q In light of the interests that Geonics
17 identified, which, I believe, you stated were to retain
18 the recharge capacity and to protect the quality of the
19 ground water, is it your opinion that industrial zoning
20 which provides for 30 percent building coverage and an
21 additional impervious covering for parking lots up to
22 50 percent, would that type of land development be consist-
23 ent to those?

24 MR. EISMEIER: I object.

25 As I understand the witness, he's now in

1 the process of studying that very question.

2 If he's formed an opinion, I have no objection.

3 But, if he hasn't formed it, I think it's improper.

4 Have you formed an opinion?

5 THE WITNESS: I have not formed a position
6 yet in terms of either the type of zoning, whether
7 it be residential, commercial or industrial, or the
8 regulations that would apply to any type of zoning
9 within that area.

10 Q Not respecting zoning, but respecting develop-
11 ment that provides for impervious cover of substantial land
12 areas, is that in your opinion consistent with retaining
13 the recharge capability of/aquifer area?

14 A No, it would not be consistent. And, while I have
15 not formed any firm recommendations at this point, I believe
16 that our efforts based upon the recommendations made by
17 Geonics will be limited at any and all types of regulations
18 or planning approaches for planning policies in the area
19 that will reduce the amount of land coverage to the great-
20 est degree possible.

21 Q With regards to preserving the quality of
22 ground water, I assume the ground water/aquifer is a source
23 of potable or drinking water?

24 A It's been identified as a very high quality source
25 of water with the aquifer capable of producing three to

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1 four million gallons of water a day.

2 Q Is it presently in service for any potable
3 uses or is it just a future resource that may be developed
4 at some time?

5 A The municipal well of the Township is located in the
6 heart of the prime aquifer area, by stroke of luck, or
7 whatever.

8 Q So the municipality presently uses this
9 particular ground water aquifer for what percentage of the
10 municipality's water supply, if you know?

11 A The entire public water supply system is served by
12 that municipal well.

13 Q Do you know how much of the Township's
14 residential areas are on the public water system?

15 A Not precisely.

16 As I recall, most of the developments south of
17 Conrail are served by the municipal water system and portions
18 of the northern -- or portions of the Township north of
19 Conrail are served by the system.

20 Q With regards to types of development as
21 residential, commercial, or industrial, which type of
22 development would be most consistent with preserving water
23 quality for potable purposes, if you have an opinion?

24 A I don't have an opinion, as yet, therebeing a number
25 of conditions.

1 For example, certain types of industry might be
2 less polluting than residential, and other types of indus-
3 try might be more polluting.

4 Q Does the present zoning ordinance make any
5 distinctions between types of industry that can develop
6 in the industrial zone?

7 A Generally speaking, all of the industrial zones
8 in the Township are quite similar as far as the types of
9 uses permitted. There's no distinction in this particular
10 area versus the same type of zone -- zoning elsewhere in
11 the Township.

12 Q Is there a distinction drawn between, say,
13 a chemical industry as opposed to a light manufacturing
14 firm, or other types of industrial operations which can
15 locate within the industrial zone presently?

16 A The type of industry permitted in the industrial
17 zone is basically regulated by performance standards which
18 would establish various limitations which an applicant
19 would have to meet in terms of noise, pollution, ground
20 water pollution, smoke, fumes, dust, odors, various types
21 of potential problems that could result from various
22 industrial operations.

23 Q Have you done any studies of the types of
24 pollution which emanate from residential dwelling units?

25 A I have not done specific studies comparing

1 residential with other uses.

2 Obviously, residential uses can create potential
3 hazards particularly if they are served by individual septic
4 systems. Residential uses can generate a certain amount
5 of heat and smoke through fireplaces and heating systems.

6 I have not made any specific investigations or
7 studies of the pollutant that might be created by residential
8 uses.

9 Q You mentioned individual septic systems.

10 What type of a hazard to ground water quality does
11 such a system impose?

12 A The potential hazard of effluent from a septic sys-
13 tem seeping into the ground water system.

14 Q I believe you mentioned that single family
15 dwelling units in the northern portion of the municipality
16 are limited to a minimum two acre lot in order to preserve
17 the environmental interest as being situated in that part
18 of the town.

19 Is that correct?

20 A Well, there are presently three residential zones
21 effecting the northern portion of the Township. There's
22 a three acre zone, a one acre or 45,000 square foot lot
23 area zone and there is a 27,000 square foot residential
24 zone -- or, approximately, two-thirds of an acre.

25 Q In discussing the environmental interests

1 sought to be preserved by the zoning requirements, you
2 mentioned the ground water aquifer recharge areas which
3 we've discussed, and I believe you also testified this
4 was as a result of the existance of the precambrian soils
5 or rock structure situated in these lands.

6 Is that correct?

7 A That is correct.

8 Q How do the precambrian soils dictate minimum
9 two acre and above lot sizes?

10 A Precambrian geographical formation consists of a
11 very dense, hard bedrock. It is frequently very -- at a
12 very shallow depth. Frequently it is exposed bedrock.

13 The areas or the formation is characterized by
14 hills and very steep slopes throughout the formation itself.
15 And, the soils associated with it carry with them limitations
16 on development in terms of foundation construction for
17 dwellings, pavement for roads and parking areas and indivi-
18 dual sanitary sewage disposal systems.

19 The geographical formation is also one with a very
20 uncertain and limited ground water supply. And, there is
21 a hazard, as well, where fractures in the rock formation
22 occur of septic systems polluting the -- whatever ground
23 water supply may be available.

24 The Bureau of Geology and Topography, for example --
25 And this was one of the bases for the zoning of the

1 areas for three acres, recommended that that geological
2 formation lot size be three to four acres, based upon the
3 ground water conditions.

4 Q Based upon the conditions which you've just
5 enumerated, as far as characterizing them or putting them
6 in categories, it would appear that you mentioned some
7 aspects of the precambrian geology which inhibit the con-
8 struction and other attributes which involve potential
9 for environmental harm.

10 As far as environmental harm goes, it appears that
11 you have discussed primarily the sanitary sewage disposal
12 problems with septics.

13 Is that correct?

14 A Yes.

15 Q Are there any additional adverse environ-
16 mental impacts associated with residential development
17 of the precambrian formation lands?

18 A I think the additional limitations would involve
19 potential erosion due to the steep slopes, and removal
20 of vegetation from those steep slopes would create the
21 potential for erosion. The development of areas on steep
22 slopes would, in addition to the erosion and siltation
23 of streams, create additional drainage problems.

24 Most of northern Montville, for example, feeds
25 Lake Valhalla which is a large lake in the northern portion

1 of the Township. And, problems have already been confronted
2 with siltation and pollution in Lake Valhalla.

3 Q Have the causes of the pollution and siltation
4 of this lake been identified?

5 A I don't know that they have been precisely identified.
6 I believe that some development upstream has created some
7 of the siltation. And, I believe that some of the pollutant
8 has been traced to certain properties -- to septic systems
9 of certain properties north of the lake, or feeding the lake
10 from the north.

11 Q As far as the concern for septic disposal
12 on the precambrian, that concern would be obviated by the
13 availability of public sewers.

14 Would it not?

15 A This would -- public sewer would obviate the poten-
16 tial pollutant -- polluting factor.

17 Q In the problem with erosion and runoff, could
18 performance standards be imposed upon any development pro-
19 posal allowing it to go forward only if those adverse en-
20 vironmental impacts were held within acceptable limits?

21 Would that obviate the adverse environmental impacts
22 associated with the erosion and runoff of siltation?

23 A Well, without specifics --

24 And certainly, if there was some way of controlling
25 erosion and runoff from a site during the course of

1 development and after the development -- could meet certain
2 performance standards with soil erosion, sediment control,
3 regulations and plans, that is a general theory. It should
4 certainly alleviate that problem of erosion -- sedimentation.

5 Q Has the municipality, to your knowledge, adopt-
6 ed any soil erosion and sediment performance standards regu-
7 lating development in the northern portion of the municipality?

8 A The municipality itself has not.

9 The municipality requires that each developer have
10 a soil erosion and sediment control plan, and that plan
11 be certified by the Soil Conservation Service.

12 Q As far as environmental factors which inhibit
13 construction in the northern portion, I believe you mention-
14 ed that the precambrian geology presented certain problems
15 with foundation structures.

16 Is that correct?

17 A That's correct.

18 Q Would such concerns for foundations in resi-
19 dential dwellings be obviated by the use of, say, mobile
20 homes or apartments or dwellings on slabs without basements?

21 A In this instance, I would say "no," because the --
22 of the slope conditions, and very extreme slope conditions
23 that predominate throughout the area, and the very shallow
24 bedrock which makes even slab construction difficult.

25 Q In the private single family dwellings that

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1 would be built under the current zoning, in what manner are
2 those dwellings constructed on these steep slope areas to
3 deal with the slope and bedrock conditions?

4 A It's handled in two ways. One, through lot size
5 which is a minimum of three acres in most of the precambrian
6 formation. And, in addition to that, meeting the critical
7 area development standards which have been adopted by the
8 Township concerning steep slopes and wetlands.

9 Q In my question referring to utilization of
10 mobile homes or dwellings on slabs, I wasn't suggesting
11 varying the lot size.

12 In other words, by lot size you're trying to find
13 a flat area. This, in essence, is what you're talking about.

14 Is it not?

15 Using the severely impacted areas as open spaces,
16 wasn't that the thrust of the three acre zoning, in essence?

17 A In essence, to certainly limit the development that
18 would occur in that portion of the Township because of the
19 potential hazards that would result from intensive and
20 higher density development. Also, within the three acre
21 lot there would be a flexibility because of its size in
22 finding an appropriate location on the lot.

23 Q As far as the concerns that you have raised
24 which limit the development potential of these areas, all
25 I'm asking is for placing the single home with either a

1 slab dwelling -- possibly a townhouse or apartment or a
2 mobile home with the -- in place of the single family detach-
3 ed home, irrespective of the lot size -- or accepting, for
4 the purpose of the question, the lot size as presently
5 allowed, would that obviate the environmental -- or rather,
6 construction inhibiting characteristics of the precambrian
7 foundation which you've identified?

8 A I would say, generally, that if we're talking about
9 the same amount of land coverage, that environmental impact
10 would be the same regardless of the type of dwelling.

11 Q You mentioned the environmental consequences
12 being the same. But, as far as the limitations on develop-
13 ment, would they be the same or would they be less severe
14 as far as mobile homes or slab construction as opposed to
15 the building of single family detached homes?

16 A I thought I indicated -- or what I had intended to
17 suggest was that -- It's the area of the land that's being
18 disturbed. I think, that is, perhaps, the major considera-
19 tion. And, the environmental results would not be any more
20 severe from an apartment if it covered the same amount of
21 ground as a single family house.

22 Q Right.

23 Moving on from the environmental consequences and
24 just dealing with the circumstance or ease of development,
25 you've indicated that the precambrian foundation caused

1 problems with developing foundations, if I understand your
2 testimony correctly?

3 A Uh hum.

4 Q Because of the shallow, dense, hard bedrock.

5 My question is: Is it easier, then, to develop
6 residential structures that don't utilize foundations:
7 mobile homes, and slabs as opposed to single family homes
8 with deep foundations and deep basements?

9 Would it facilitate residential development to avoid
10 putting in foundations, at all, just replacing the struc-
11 ture with a mobile home or slab construction?

12 A Well, at the present time, there's nothing to pre-
13 clude slab construction even for a single family house.
14 It -- it's possible that under certain situations that the
15 slab construction or the limitation to development would
16 not be as great, or the slab construction as it would be
17 for regular basement type of foundation --

18 As far as the mobile home is concerned, I don't see
19 where there would be any -- it would be any easier to
20 develop a property for the location of a mobile home than
21 for -- a conventional house, since you're going to have to
22 have a level area.

23 You may run into bedrock conditions where you would
24 have to blast in order to provide a level area for the
25 location of a mobile home.

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Q Are mobile homes permitted in this area of the town?

A The ordinance does not specifically mention mobile homes as distinguished from other conventional forms of single family housing.

Q Is it your opinion, then, that mobile homes are permitted residential use anywhere in the municipality?

A I believe the intent of the ordinance is that mobile homes would not be -- are not intended by the zoning regulations. But, the regulations were drafted with the conventional home in mind.

Q Do you foresee any public health and safety reasons why mobile homes would be inappropriate residential structures within this municipality?

A From a public health or safety aspect?

No, I wouldn't say there were.

Q In regards to the southern portion of the municipality which you have identified certain parcels of vacant lands on ROM-3 and delineated through color coding certain environmental limitations on development, in what manner did you identify those areas of the southern portion of the municipality which were deemed to be vacant?

A How did I identify the vacant lands to begin with?

Q That's correct.

A The vacant lands were identified from municipal tax

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1 records as those lands which contained no development.
2 They are lands which are either not developed or they are
3 lands which are in -- not in public ownership.

4 In other words, the vacant lands are just essentially
5 vacant privately owned parcels of property; and also not
6 including areas or properties that may have received a
7 preliminary or final subdivision approval from the municipi-
8 pality -- from the planning board.

9 Q Did you make any distinction between parcels
10 of no development and possibly parcels having limited
11 development in the sense that there might be one home or
12 one small office building on a tract of 40, 50, 60 on up
13 as open spaces which would be -- or could be subdivided for
14 further development under the present land use controls
15 within the municipality?

16 A Yes, we made a distinction.

17 If a tract of land -- even a tract of land which
18 might be three to five acres in size contained an existing
19 dwelling, we still considered that would be a vacant tract
20 of land since it did have potential for further subdivision
21 and further development.

22 Q Was that your understanding, then, any pro-
23 perty which had sufficient vacant open lands for further
24 subdivision was placed in the vacant developable categories.

25 Is that correct?

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A That's correct.

Q Do you recall the total acreage involved in the vacant lands in the southern portion of the municipality?

A In the area south of Conrail there are 2,695 acres of vacant land.

MR. ONSDORFF: I think it is now appropriate to conclude the deposition.

(The deposition adjourns at 12:00 p.m.)