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Oct. 17, 1977

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Stenographic Transcript of proceedings:

Direct and Cross-examination of John Rakos

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. L- 42857-74 P. W.
A-0813-78

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JOSEPH CAPUTO and
ALDO CAPUTO,

FILED

STENOGRAPHIC TRANSCRIPT

Plaintiffs, :

OF REC'D.

JAN 14 1980

APPELLATE DIVISION
PROCEEDINGS

vs.

JAN 30 1979

CHESTER TOWNSHIP,

Stephen W. Lounsbend
CLERK

RM 1C
Elizabeth McLaughlin
Clerk

Defendant. :

-----x

Place: Morris County Courthouse
Morristown, New Jersey 07960

Date: Monday, October 17, 1977

B E F O R E :

ROBERT MUIR, JR., ASSIGNMENT JUDGE,
SUPERIOR COURT

FILED
APPELLATE DIVISION
JAN 30 1979

TRANSCRIPT ORDERED BY:

PHILIP LINDEMAN, II, ESQUIRE

Elizabeth McLaughlin
Clerk

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

MESSRS. HELLRING, LINDEMAN, LANDAU & SIEGAL
BY: PHILIP LINDEMAN, II, ESQUIRE,
For the Plaintiffs.

MESSRS. McCARTER & ENGLISH
BY: ALFRED L. FERGUSON, ESQUIRE,
For the Defendant.

MESSRS. HILLAS & GOODRUM
BY: JAMES HILLAS, ESQUIRE,
For the Defendant.

clm

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Official Court Reporter
Morris County Courthouse
Morristown, New Jersey
285-6249 07960

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

I N D E X

WITNESS

DIRECT

CROSS

JOHN RAKOS

3

61

E X H I B I T S

IN EVIDENCE

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JX/hl

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THE COURT: All right. Are we all set?

MR. LINDEMAN: Yes, your Honor.

THE COURT: Okay, Mr. Lindeman.

MR. LINDEMAN: Your Honor please, before the court proceedings actually start this morning, I asked or I requested of the Court additional time within which to make our final conclusions on the Court's inquiry about certain of the claims made by the plaintiffs in the brief. And I do now request for the record an additional couple of days within which to make that determination.

THE COURT: Wednesday morning.

MR. LINDEMAN: Wednesday, yes, your Honor.

THE COURT: All right.

MR. LINDEMAN: At this time, I would like to offer into evidence an official map of Morris County which Mr. Ferguson has seen, but --

MR. FERGUSON: I have no objection.

THE COURT: P-6 in evidence.

MR. FERGUSON: I have a copy dated 1976 prepared by the Chosen Board of Freeholders. I'm not certain what is not on that map and which may be out there right now. But I am not sure it makes any difference.

THE COURT: P-6 in evidence.

1 (The document referred to was marked P-6 in
2 evidence.)

3 MR. LINDEMAN: I call Mr. John Rakos, please.

4
5 J O H N R A K O S , sworn.

6 MR. LINDEMAN: If your Honor please, the purpose
7 of the testimony of Mr. Rakos in being called as an
8 expert is the following: Mr. Rakos, in his capacity
9 as a licensed professional planner, will offer evidence
10 on the existing uses of the land area within a
11 radius of about five miles of the premises in question.

12 He has also been retained and will testify to
13 -- he has been retained for and will testify to
14 a reasonable subdivision of the property under the
15 ordinance as it existed prior to the 1976 ordinance
16 and to the manner in which the property could be
17 subdivided on the 19 -- did I say before 1976?
18 It is before and after 1976. He was retained very
19 early in these proceedings to consult with Misters
20 Caputo and to assist them in the planning of a
21 multi-family townhouse development use for the
22 premises in question. And in his capacity as
23 a professional planner, he prepared the sketch which
24 is now in evidence as Exhibit P-1. And he will
25 testify to the character of the buildings which is

1 contemplated and will describe in some detail the
2 utilities and servicing facilities of the site plan.

3 He also will be asked to testify on the
4 extent that the improvements of the property would
5 cover in the event of the present or zoning ordinance
6 should remain in effect and the extent of the
7 coverage of improvements under the zoning ordinance
8 immediately preceding the present ordinance.

9 He will also be offered to testify as to the
10 extent of excavations reasonably that would be
11 required for the construction and development of the
12 premises under the present zoning ordinance with the
13 two and five-acre lots extant and as compared with
14 that which would control, if there were just two
15 acres under the prior ordinance. And finally,
16 generally as to the excavation that might be required
17 under the plan as worked out by him and as testified
18 to by him this morning.

19 I think that pretty well covers what the
20 extent of his testimony will be.

21 THE COURT: Okay, go ahead.

22
23 DIRECT EXAMINATION BY MR. LINDEMAN:

24 Q Mr. Rakos, would you please tell us about your
25 education, your formal education?

1 A I have a Bachelor's Degree in architecture and
2 a Master's Degree in city planning from the University of
3 Budapest obtained in 1955. I have been with the firm of
4 Robert Catlin & Associates since 1957.

5 Q Before we get to your present associations,
6 Mr. Rakos, when did you immigrate to this country?

7 A In 1957.

8 Q And your employment when you came here was
9 where? Would you describe that?

10 A With Robert Catlin & Associates.

11 Q You have been with no other except Robert
12 Catlin & Associates, is that correct?

13 A That's correct.

14 Q In what capacity are you employed by that firm?

15 A I am a partner in the firm. I am also a vice-president
16 of Catlin Associates International, which is a subsidiary
17 of Robert Catlin & Associates.

18 Q Are there any licenses that are required for
19 the professional planners in the State of New Jersey?

20 A Yes, I hold License Number 375.

21 Q When did you become licensed, approximately?

22 A The year the lawful licensing was passed, which was
23 in 19, early 1960's.

24 Q What professional bodies are you a member?

25 A I am a member, full member of the American Institute

1 of Planners and a member of the American Society of
2 Planning Officials.

3 Q Prior to your coming to the United States,
4 tell us, please, the nature of your employment, if any?

5 A I was an assistant department head of the Town
6 Planning Institute of Budapest, where I have participated
7 in the planning and design of new settlements.

8 Q Tell us, please, Mr. Rakos, what your general
9 experience has been? I say general as opposed to specific,
10 since you have been associated with Robert Catlin Associates
11 in the field of planning? That is to say, what kinds of
12 things have you done?

13 A Well, the overwhelming majority of our work is with
14 respect to municipalities. We are serving as city planners
15 and planning consultants to a number of New Jersey
16 municipalities. Currently probably about twenty-five
17 in the capacity of preparing comprehensive master plans,
18 zoning studies, and general consulting services to municipal
19 planning boards.

20 Q Have you personally participated in that kind
21 of work?

22 A Yes.

23 Q And what have you done for private interests?

24 A I have assisted private developers in connection with
25 larger scale developments, preparing development plans for

1 them.

2 Q Now, when you speak of development plans,
3 can you tell us what, if anything, or what you have done
4 for private interests in respect to creating merely sub-
5 division layouts?

6 A Well, we've done, as you say, we have prepared sub-
7 division layouts for a number of developers.

8 In fact, we have prepared the layout for the largest
9 single subdivision in Morris County, which is in Rockaway
10 Township. We have also prepared a number of development
11 plans for garden apartments and townhouse developments.
12 Currently we are in the process of preparing and processing
13 plans for a townhouse development on Harter Road in
14 Morris Township, consisting of about fifty or sixty
15 townhouses.

16 Another townhouse development in the Borough of
17 Madison consisting of about two hundred townhouse units.

18 We are also in the process of, just completed a
19 conceptual plan for the development of a whole new settlement
20 in Riyadh, Saudi Arabia, consisting of approximately two
21 thousand dwelling units with the associated community
22 services and other commercial and other developments.

23 Q Now, in the preparation of the subdivision
24 schemes for Rockaway Township and the other developments
25 that you have referred to, what, if anything, have you

1 done personally with respect to the laying out of the
2 placement of roads?

3 A Well, we are, we do not engineer the roads in their
4 details.

5 Q Right.

6 A We are preparing our -- our role in preparing a
7 development scheme is for the purpose of arriving at the
8 most economic, most aesthetic, pleasing, most desirable
9 kind of concept and scheme rather than engineer the
10 development which once our job is completed the engineer
11 takes over and prepares the actual construction plans.

12 Q What considerations in the preparation of
13 such site plans do you give to topographical and environ-
14 mental factors and related facts?

15 A Well, we are always attempting to create the least
16 amount of soil disturbance, to minimize the construction
17 costs in terms of improvements which, of course, requires
18 that the linear footage of roads, driveways, utility lines
19 be minimized to the extent possible.

20 Q What do you do in respect of the determination
21 of the location and the number of dwelling units that would
22 be accommodated in any of the developments that you have
23 referred to?

24 A Well, of course, the objectives with each single
25 development may be different. But generally, of course,

1 we attempt to locate the dwellings at their most desirable
2 locations with respect to access, with respect to topography,
3 with respect to the necessary improvement costs and so on.

4 Q And how about the service facilities, such as
5 recreational and utility services, things of that kind?
6 What, if any, participation do you have, at least, in the
7 location of such items?

8 A We estimate the economy of the development where the
9 amount of development, where the number of dwelling units
10 may justify. We recommend that recreational facilities be
11 included in the development.

12 And then, of course, we suggest a location and the
13 extent to those recreation facilities.

14 Q Now, with regard to the development at Rockaway,
15 you said Rockaway Township?

16 A Rockaway Township, we have prepared a conventional,
17 a rather conventional kind of subdivision layout for
18 five hundred twenty-two lots.

19 Q And what kind of buildings?

20 A Those were single-family detached homes which is
21 now more than 50 percent built.

22 Q What familiarity do you have with zoning
23 ordinances? Have you studied zoning ordinances?

24 A In the process of preparing development plans, of
25 course, we must study the zoning ordinances that pertain to

1 those properties involved with a development. But then in
2 addition to that, we are more significantly than that,
3 we are advising municipalities in preparing zoning
4 ordinances and in fact I personally have drafted a good
5 number of zoning ordinances for several municipalities in
6 Morris County and other counties in New Jersey.

7 Q You referred before to comprehensive master
8 plans.

9 I assume, is that not correct, that you have partici-
10 pated in the preparation of such documents?

11 A Yes, that is correct.

12 Q You, personally?

13 A I, personally, have prepared a number of them, yes.

14 MR. LINDEMAN: I offer Mr. Rakos.

15 MR. FERGUSON: No objection.

16 Q Now, Mr. Rakos, have you made a study of
17 the zoning requirements of the Township of Chester and
18 the surrounding areas, at least within a five-mile radius
19 of the premises in question?

20 A Well, what we have done was, we have analyzed
21 zoning ordinances of ten municipalities, including Chester
22 Township and nine other municipalities surrounding it to
23 get a general idea of what are the lot sizes and development
24 requirements within a five-mile radius of Mr. Caputo's
25 site.

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Q Have you prepared a sketch showing the nature of the zoning in this area that we are referring to?

A Yes. We have prepared a map that in a generalized fashion shows zoning requirements within a five-mile radius of the property in question.

Q Now, was this map that I have in my hands, and it is before you, prepared under your supervision?

A Yes, it was.

Q And it bears certain colors on it, does it not?

A Yes.

Q And those colors are intended to mean what, without being specific?

A The colors represent certain zoning requirements pertaining to lot sizes and pertaining to permitted uses in the various areas of the ten municipalities.

Q Was this coloring done on this piece of paper under your supervision?

A Yes.

Q And did it, was it done after studying the zoning ordinances of the municipalities of the relevant municipalities?

A Yes.

MR. LINDEMAN: I offer this document in evidence, your Honor.

MR. FERGUSON: What is the purpose of the offer?

1 MR. LINDEMAN: The purpose of the offer is to
2 show the uses of the land within a five-mile radius
3 of the premises in question.

4 MR. FERGUSON; And I object to the document
5 going in because it does not purport to show what
6 the land is used for.

7 As I understand it, the purport is to show
8 what the land is zoned for only. And insofar as
9 it --

10 MR. LINDEMAN: I am sorry. I meant that zone,
11 yes. I didn't mean use.

12 MR. FERGUSON: Then I object to relevancy since
13 I don't see what the zoning in other municipalities,
14 what relevance that has to the issues under con-
15 sideration by this Court. At least, as articulated
16 so far.

17 MR. LINDEMAN: Your Honor please, there will
18 be a fair amount of testimony, I daresay, as to the
19 regional market that is involved in this proceeding.
20 There is also, as the Court undoubtedly is aware,
21 is a feeling among some of the jurists in this
22 case, particularly those on the Supreme Court --

23 THE COURT: Hold it just a second. John, close
24 the window, please.

25 MR. LINDEMAN: That might properly be done on

1 a regional basis rather than just on a local basis.
2 But barring that, that which the property in the
3 relevant markets are used for or zoned for has a
4 bearing upon a case such as this.

5 We are in a case in which we are going to
6 show the Court that the property around here does
7 not, when I say around here, I mean around the
8 premises in question, does not take care of those
9 people who require less cost or moderate cost housing
10 in order to really grasp what is, what the situation
11 is with regard to that requirement, I think, it is
12 relevant to know just how the properties in fact
13 are zoned in the area. If it should develop that the
14 matter at least within the five-mile radius of
15 this town, of this property, is zoned for moderate
16 and low-cost housing, then it could very well be
17 that the need is met. On the other hand, if it
18 is different from that, there may be or considerations
19 involved and so we offer this to show what the status
20 of the property from a zoning point of view is
21 within the five-mile radius.

22 THE COURT: All right. When you have laid down
23 a foundation for the area, I will allow it to be
24 marked in evidence. But at this point, just mark it
25 for identification.

1 (The document referred to was marked P-7 for
2 identification.)

3 Q Now, Mr. Rakos, as to P-7 for identification,
4 does that show the location of the plaintiffs' property?

5 A It indicates the location by a star at the center of
6 the five-mile radius.

7 Q And there is a line which emerges from that
8 star. What does that show?

9 A That shows the five-mile radius within which we have
10 analyzed zoning ordinances and outlines an area of
11 50,264 acres within which we have attempted to find how
12 much land there is available for housing which we consider
13 more affordable, which is generally valuable in Morris
14 County.

15 Q Now --

16 THE COURT: I am sorry. I didn't get the last
17 part of that answer. Attempting to show what is
18 available for housing --

19 MR. FERGUSON: I have an objection at this point
20 which I think I should state until such time as
21 it, a determination is made by this Court in this
22 trial as to the appropriate region within the meaning
23 of that term in the Mount Laurel cases and Madison
24 Township cases. I am going to object to any specific
25 testimony by this witness as to what land is available

1 and affordable, et cetera. I don't think the five-mile
2 region is an appropriate region.

3 MR. LINDEMAN: If your Honor please, I will
4 offer Mr. Lee Hobaugh, who will testify to the region.
5 And I think that the region is a five-mile region.
6 Perhaps even greater, but even if it is less --

7 THE COURT: If you are, I take it you're
8 going to take the five-mile circumference, five-mile
9 radius, rather, of the PQ as being the area.
10 So you are telling me that the basis of your challenge --

11 MR. LINDEMAN: Yes, your Honor.

12 THE COURT: If he is going to use that for the
13 basis of his challenge, if I find a different area,
14 then from your proofs or, well, from the proofs then
15 it would be something else. But I don't see how
16 we can.

17 MR. FERGUSON: I stated my objection. I think
18 the definition and extent and nature of the region
19 is very significant. Specifically, of course, five
20 miles from this site does not take in Morristown
21 or a large part of the other townships which do have
22 many more acres in fact used for and zoned for high
23 density use.

24 THE COURT: All right. I've got the Morris
25 County map in front of me in evidence which shows

1 me some concentrations. Your objection is noted,
2 but at this point it is overruled. I don't think it
3 is pertinent at this time.

4 MR. LINDEMAN: Your Honor please, I really want
5 to say something in addition to what I answered to the
6 Court.

7 If we are going to limit ourselves to this
8 five-mile radius, there obviously is a larger area
9 to which there will be reference during the course of
10 the trial. I am thinking about the City of Newark
11 and about the general and inexorable movement of the
12 population. The general character of Morris County
13 and the surrounding counties. That testimony will
14 perhaps not be as precise as that which concerns
15 the immediate five-mile radius. But it is certainly
16 relevant in the case and I don't want to give the
17 impression to the Court that factors that are
18 impinging upon us from some of these outlying areas
19 are not relevant in the proceedings.

20 So we will be having testimony about the
21 City of Newark, Union County, and the rest of Morris
22 County.

23 THE COURT: I gather from reading Mr. Ambrose's
24 brief when he talks about 206 being tied into 287
25 and 287 being tied into the network of highways that

1 you are going to bring in more area than just Morris
2 County.

3 MR. LINDEMAN: That's right, your Honor.

4 THE COURT: If that's just for my edification,
5 fine, I have been edified.

6 Q Now, are there any delineations on P-7 for
7 identification of the boundary lines of the Township of
8 Chester?

9 A Yes, there are. Well, they're actually two kinds
10 of delineations. The various municipalities that are
11 involved in this five-mile radius are delineated.

12 In addition to a number of categories within which
13 we have generalized the zoning requirements that fall in
14 those municipalities are also outlined and then represented
15 in various colors.

16 MR. LINDEMAN: I offer this map into evidence.

17 MR. FERGUSON: I stated my objection.

18 I think in a non-jury trial, the Court can
19 properly receive it, keeping in mind exactly what
20 it is designed to show and what it depicts.

21 THE COURT: Mark it into evidence.

22 MR. LINDEMAN: May I put it up here, your Honor?

23 (The document referred to was marked P-7 in
24 evidence.)

25 MR. FERGUSON: It is a nice map.

End of Tap
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Q Now, Mr. Rakos, would you tell us, please, with particular reference to P-7 in evidence the, what the various colors mean and the number of acres which are allocated to the various uses shown on P-7?

Would you mind coming down?

A Sure.

MR. LINDEMAN: Is that all right, your Honor?

THE COURT: The second part of your question was what the various colors mean and the number of acres assigned to those colors?

MR. LINDEMAN: No, the number of acres which are involved in each particular use. I think Mr. Rakos has made a computation of it.

THE COURT: All right, you can step down.

MR. LINDEMAN: Of the acreage involved.

A The category shown in white represents areas with zoning requirements of five acres or more required per lot. And that category is 19,838.4 acres, or 39.47 percent of the total area.

MR. LINDEMAN: Excuse me. Off the record?

MR. FERGUSON: I've no objection.

THE COURT: Off the record.

(Discussion had off the record.)

MR. LINDEMAN: I offer this in evidence first.

THE COURT: All right. I am just thinking.

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Make a copy of it anyway. Okay.

Let's mark that P-7B so it relates to P-7, the area zoning inventory in conjunction, and that would be in evidence on the same basis as the other.

MR. LINDEMAN: Yes, your Honor.

THE COURT: All right.

MR. FERGUSON: Subject to my continuing objection as to relevancy.

THE COURT: Okay, all right.

(The document referred to was marked P-7B in evidence.)

Q Now, Mr. Rakos, would you tell us, please, what the various colors indicate and the number of acres which are allocable to the uses involved?

A The white, as I was starting to say, represents areas that were minimum lot sizes for single family detached dwellings required at five acres or more. And that represents 19,838.4 acres of the entire area which is a little over 50,000 acres. And that is 39.47 percent of the total.

23,600 acres is zoned for over, for one acre to one-and-a-half acre lot sizes. And that is shown in this yellow color. I don't know if it is quite relevant to go over this entire list. I think it may be more revealing if I go to the conclusions of this map and the conclusions

1 are --

2 MR. FERGUSON; Excuse me, I am confused.

3 The yellow is one to --

4 THE WITNESS: One-and-a-half.

5 MR. FERGUSON: That is not what my sheet shows.

6 THE WITNESS: I am sorry, I am sorry. It is
7 one to five acres, 14.99. I am sorry.

8 MR. FERGUSON: Go ahead.

9 Q Go on.

10 MR. FERGUSON: Well, all right. Assuming that
11 we can all tell from Exhibit P-7 in evidence what the --

12 THE COURT: Let the record show that on
13 P-7 the color coding is marked and I don't see any
14 need to go all over the colors.

15 MR. FERGUSON: I'd agree.

16 MR. LINDEMAN: All right, fine.

17 Q What conclusion have you drawn, Mr. Rakos,
18 respecting the character of the use permitted in the
19 five-mile radius.

20 A Well, the conclusion of that, I think, is significant
21 in terms of area planning is that over 90 percent of this
22 land within a five-mile radius or ten-mile diameter over
23 90 percent of the land is zoned for single-family detached
24 houses requiring a lot size of one acre or more, or
25 is in a flood plain or is publicly owned.

1 Conversely, for multi-family use only a little over
2 1/10th of 1 percent of the total land is used for multi-
3 family use.

4 In addition, 2.36 percent of the land which is zoned
5 for industrial or townhouse uses in Mendham Township.

6 THE COURT: In where?

7 THE WITNESS: Mendham.

8 THE COURT: Borough? You mean Mendham Borough
9 as opposed to Mendham Township?

10 THE WITNESS: It is in Mendham Township. I am
11 sorry, it is in Mendham Borough.

12 THE COURT: All right.

13 Q In preparing P-7 and P-7B, Mr. Rakos, what, if
14 any showing, did you make uses which may or may not be
15 conforming? Did you make such a showing?

16 A No, sir, this is an analysis, zoning analysis
17 provision as an inventory of zoning proceedings and has
18 no relationship to the actual development in the area.

19 Q Do you know, however, if within the five-mile
20 radius shown on P-7 that there are any multi-dwelling
21 areas where multiple dwelling units have actually been
22 constructed?

23 A No, I don't.

24 Q Okay. Would you take the stand again, please?

25 Now, Mr. Rakos, what, if anything, were you asked to

1 do with regard to a subdivision map of the premises under
2 the zoning ordinance as it existed prior to 1976?

3 THE COURT: Excuse me. I am sorry, I meant to
4 ask one question of him.

5 These figures that you got for P-7, the map
6 was made in May, 1977, according to -- yes, May,
7 '77, according to its graphic.

8 What years were these zoning ordinances that
9 you relied, what were the dates of the zoning ordinances
10 that you relied upon for the information?

11 THE WITNESS: There were various dates, but
12 they were, they were supplied to my firm at that time.
13 We were asked for the most recent zoning ordinances
14 available.

15 Q Did you use the then current zoning ordinances
16 as they existed?

17 A As they were supplied by the various municipal officials.

18 Q Right.

19 A At that time. Within weeks prior to that date.

20 Q What, if anything, Mr. Rakos, were you requested
21 to do with respect to a subdivision layout of the premises
22 in question under the zoning ordinance as it existed
23 prior to the present one which has been referred to as
24 76-12?

25 A We were requested to prepare a subdivision layout

1 in compliance with those zoning provisions which required
2 a minimum lot area of two acres.

3 Q And did you do so?

4 A We have prepared a subdivision layout which resulted
5 in 87.

6 Q Before getting to that, what did you try to do?
7 What considerations did you have in mind when you were
8 preparing the subdivision layout under the ordinance as
9 it previously existed?

10 A Well, we had in mind to have a subdivision layout
11 which results in the most desirable kind of lots, the
12 greatest number of lots that the property could
13 accommodate and still have a subdivision layout which is
14 rational and saleable and will do relatively little
15 damage to the environment in terms of excavation and earth
16 movement and so on.

17 Q And did you make, did you prepare such a
18 layout plat?

19 A Yes, we did.

20 Q Do you have it here?

21 A I do have a copy of it here, yes.

22 Q Now, this sketch which I hold in front of you
23 is the subdivision layout as prepared by you under the
24 previously existing ordinance, is that correct?

25 A That's correct.

1 Q Mr. Rakos, to the best of your ability, does
2 this satisfy the requirements that you just referred to?

3 A Yes.

4 MR. LINDEMAN: I offer this document into evidence,
5 your Honor.

6 THE COURT: Could I get a characterization on
7 the number of that prior ordinance so --

8 MR. LINDEMAN: 76-12, I think. Isn't that right?

9 MR. FERGUSON: That is the last one.

10 THE COURT: That is the present one. What is
11 the prior one? All I want is the number identification.

12 MR. LINDEMAN: Call it the '64 ordinance.

13 MR. FERGUSON: '64 ordinance.

14 THE COURT: You call it the '64? Okay.

15 MR. LINDEMAN: Right.

16 THE COURT: Off the record.

17 (Discussion had off the record.)

18 THE COURT: All right. P-8 is a prepared
19 layout under the ordinance.

20 MR. LINDEMAN: Under the '64 ordinance.

21 THE COURT: All right. Any objection?

22 MR. FERGUSON: I have questions on it. No
23 objections to it.

24 THE COURT: All right.

25 MR. FERGUSON: He can use it.

1 THE COURT: Okay. You mean questions reflecting
2 on the admissibility or questions reflecting on the --

3 MR. FERGUSON: Perhaps a little of both.

4 THE COURT: All right. Let's mark it P-8
5 for identification.

6 (The document referred to was marked P-8 for
7 identification.)

8 MR. LINDEMAN: Okay.

9
10
11 CROSS-EXAMINATION BY MR. FERGUSON:

12 Q Mr. Rakos, in making this layout, what were you
13 instructed as to what assumptions you should make by either
14 Mr. Caputo or anyone acting for Mr. Caputo?

15 A Well, the only instruction I had was to prepare a
16 zoning layout in compliance with the zoning ordinance.
17 Taking the requirements of the RA-2 Zone into consideration
18 and subdivide the 270 acres into lots which will comply
19 with those requirements and which to the best of my
20 ability would be developable.

21 Q What about the lake indicated in the middle
22 of the map?

23 A The lake indicated in the middle of the map was
24 there for drainage purposes suggested by the engineer.

25 Q Were you told to leave it there?

1 A I was, yes. I was told to leave the detention pond
2 there to accommodate storm drainage runoff.

3 Q Detention pond. Are you referring to the
4 lake when you use that term?

5 A Yes.

6 Q So on this map, the lake is a detention pond?

7 A Yes.

8 MR. FERGUSON: I've no objection as to its
9 admissibility limited to what the witness has testified
10 to.

11 THE COURT: All right, P-8 in evidence.

12 (The document referred to was marked P-8 in
13 evidence.)

14
15 DIRECT EXAMINATION BY MR. LINDEMAN: (CONTINUED)

16 Q Mr. Rakos, would you come down from the witness
17 stand, please, and tell us a number of things about
18 P-8?

19 And I will put the question to you directly when you
20 get down there.

21 Now, how many lots were you able to come up with
22 in the subdivision?

23 A Eighty-seven lots.

24 Q Reference was made in Mr. Ferguson's voir dire
25 of the lake where, or body of water in, pretty much in the

1 center of the property. Would you point that out to the
2 Court, please, and tell whether, tell us whether that
3 presently exists or whether that would have been contemplated
4 to be a man-made body of water?

5 A No, the Peapack Brook bisects the property and
6 at the suggestion of the consulting engineer, any develop-
7 ment that we have contemplated for the site included a
8 pond for storm drainage purposes. For the handling of
9 storm drainage water. For this development at the
10 engineer's suggestion that presumably after some calcu-
11 lations, he suggested that the area of the lake be
12 6.3 acres.

13 THE COURT: The what?

14 THE WITNESS: 6.3 acres.

15 Q Now, the map shows that Parcel Number 38, that
16 an area is clearly larger than that of most of the other
17 parcels.

18 And I would ask you, please, to explain the topography
19 at that point and why it is that the configuration is
20 shown?

21 A Well, the northern portion of this tract in general
22 has topography at places exceeding twenty or 25 percent
23 grade. Lot Number 38 falls within the most undesirable
24 topographic area and in order to construct a dwelling on
25 it only a portion of it is economically or structurally

1 feasible. It was felt so that there was no possibility
2 of creating several lots in this general area here.

3 As I recall, a house could have been constructed
4 in this area so that the balance of the land was just
5 attached to this lot because nothing else could have been
6 done with it.

7 Q Indicate the easternmost portion of Lot 38.

8 A The western, the western portion of Lot 38 is
9 with a worse grade.

10 Q And the easternmost portion?

11 A Is relatively mild grade.

12 Q All right.

13 A Still very steep.

14 Q All right. Now, would you point out, please,
15 for the Court, where Mr. Joseph Caputo's house, which the
16 Court has already seen?

17 A It is on Lot Number 9 on this map.

18 Q Tell us, please, Mr. Rakos, what in your
19 opinion would have to be done with, generally with the
20 vegetation, such as trees and bushes if this subdivision
21 were implemented?

22 A Particularly in the northern portion of the tract
23 where the grades are very rough it would, the development
24 would require substantial cuts and fills in order to
25 construct driveways and access roads.

1 Q And what exists in the way of growth on the
2 property in that area?

3 A Well, this area is generally wooded and has substantial
4 vegetation.

5 Q What, would you tell us, please, what a
6 definition of gross area of the lots, of lots in a
7 subdivision such as this means or is rather, what is the
8 definition of the gross area?

9 A The gross area is as the number of acres or square
10 feet, square foot of land required to create a single lot,
11 including all land associated with a development such as
12 for streets and for detention ponds and so on.

13 Q Have you, and what is the definition of
14 net acreage?

15 A The net acreage is the land that is within each
16 lot.

17 Q Have you made any computations, approximate
18 or otherwise, of the gross acreage, the average gross
19 acreage of the lots on P-8?

20 A Well, yes. I have calculated that the gross acreage
21 required per lot would be in excess of three acres.

22 Approximately 3.1 acres, while the net acreage which is
23 really the significant number, I feel, despite the fact
24 that the zoning ordinance requires only two acres of
25 net land area per lot, in order to have a workable sub-

1
2 division, the net acreage would be approximately 2.85
3 acres, net acres per lot.

4 Q Have you made any computation, approximate
5 or otherwise, of the aggregate coverage that would be
6 required for all improvements --

7 A Well --

8 Q In a subdivision such as this?

9 A Well, what I have done is in order to see what the
10 environmental impact would be, a significant factor
11 for environmental impact is considered the land coverage.
12 The resultant land coverage of this development that you
13 see here. That's estimated at a quarter of an acre of
14 hard cover per dwelling unit.

15 In other words, blacktop and building combined would
16 result in a quarter of an acre of land coverage per
17 dwelling unit.

18 THE COURT: You -- excuse me -- talking about
19 the house and the driveways?

20 THE WITNESS: House, the driveway.

21 THE COURT: That's within the confines of the
22 lot? Not talking about the roadways or anything?

23 THE WITNESS: Yes, I am talking about all.

24 THE COURT: All right.

25 THE WITNESS: All hard cover of the land would
result in approximately a quarter of an acre per

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dwelling unit.

Q Did you multiply this out, by any chance, Mr. Rakos?

A I beg your pardon?

Q That would be a quarter of an acre times eighty-seven lots?

A For the total, that's right.

Q For the total area of the property that would be covered?

A I didn't multiply it out.

Q No, all right. That's a computation that can be made?

A Yes, it would be about thirteen acres. About thirteen acres of the land would be covered.

Q Does that include the lake area, by the way?

A No, that's not a hard cover of the land.

Q All right. You want to resume your seat, please, Mr. Rakos?

MR. LINDEMAN: It has been suggested to me that the multiplication may be erroneous. But whatever it is, it is. We will check it for you, for the Court.

Q Mr. Rakos, what, if anything, did you do with respect to the preparation of a subdivision layout for the premises under the present 76-12 ordinance?

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A Well, I was asked to estimate the impact on the potential number of lots of the new zoning ordinance which I have done by preparing a freehand sketch.

Q And have you prepared such a sketch?

A I did, yes.

Q Do you have it here?

A Yes.

Q Now, this sketch which I am holding in my hands, the sketch that you prepared for the layout of the premises under the present ordinance?

A That is correct.

Q And what account, if any, did you take of the environmental factors, such as the existence of a brook and topography and things of that kind?

A Well, I followed the same development guidelines as I have with the previous lot layout.

MR. LINDEMAN: I offer this document into evidence, your Honor.

MR. FERGUSON: On this document, you did not on this sketch, this is not to the same degree of particularity as P-8, is it?

THE WITNESS: That is correct. It is not.

THE COURT: May I ask a question just to clarify it?

Looking at it quickly, it appears what you have

1 done is you have eradicated property lines from
2 the P-8 to the, which would be, what would be P-9,
3 so that you have just got five-acre plots where there
4 used to be two-acre plots, am I correct?

5 THE WITNESS: Well, I redistributed. Not simply
6 eradicated lot lines. I have redistributed the land.

7 THE COURT: Okay. Fine.

8 MR. FERGUSON: The road -- withdraw that.

9 Am I correct that the eastern side of the
10 Peapack Brook is the only part that has been changed?

11 THE WITNESS: Right. That's correct.

12 MR. FERGUSON; Because the western side still
13 stays two acres?

14 THE WITNESS: The lot layout is very similar
15 to the lot layout shown on P-8. Except in the area
16 you are referring to.

17 Q On the eastern side of the Peapack Brook?

18 A Yes.

19 Q And you have changed the road a little bit?

20 A Slightly, yes, as was dictated by the lot area
21 requirements.

22 Q Is this the maximum number of lots you could
23 fit on to that acreage within the framework --

24 A That was attempted.

25 Q -- zoning ordinance?

End of
Tape 2

1 A Well, I have attempted to do that. However, as you
2 have noted, the accuracy and particularity of this map
3 falls short of the accuracy of the other map. However,
4 I daresay that the number of lots shown there are, would
5 not be far off. The number of lots with this map, prepared
6 with the same care and preciseness as the other map.

7 Q Is it your opinion as a professional planner
8 that the number of lots on this map is that which can be
9 gotten under the new ordinance?

10 A It would be very close within, within a couple of
11 lots one way or the other.

12 Q How many is a couple? I need a number, Mr.
13 Rakos.

14 A Two or three lots either way, more or less.

15 MR. LINDEMAN: I offer the document, your Honor.

16 MR. FERGUSON: Well, I am not sure of the
17 relevance, your Honor. I think the foundation for
18 the witness -- to be frank, I have no objection until
19 such time as our argument as to the relevance issue.

20 MR. LINDEMAN: I do intend to link it up later
21 with other testimony, your Honor. There will be
22 no conclusion necessarily drawn by this witness from
23 this layout.

24 THE COURT: All right. Let's just mark it for
25 identification then until we tie it up, all right?

1 MR. LINDEMAN: Well, if your Honor please,
2 the witness who will give testimony from it will be
3 Mr. Clifford Earl, possibly Mr. Hosa, a real estate
4 agent, and broker in the area, and an expert on the
5 values of property in this area. Matthew J. Mann
6 Engineering possibly will also refer to it as
7 Mr. Mendelson, our traffic expert. But I don't think
8 any of them will be in a position to further identify
9 the layout or the configuration of the lots than
10 Mr. Rakos. And so, therefore, I would be somewhat
11 hamstrung by having it marked for identification.

12 THE COURT: You gentlemen are a little ahead of
13 me. What is your objection and specifically with
14 respect, you say, as to relevancy.

15 The fact of the layout because it's not precise
16 or Mr. Ferguson, what was your specific objection
17 to it? I thought you were saying that there should
18 be -- I thought this was something that you both
19 understood was going to have more foundation on.

20 MR. LINDEMAN: Let me very candidly say Mr.
21 Earl is going to testify as to the number of lots
22 times development costs and come up with a number.

23 THE COURT: I know that he is.

24 MR. FERGUSON: If it's plus or minus two or
25 three, it makes a real difference, particularly

1 where you have three or five thousand dollars profit
2 figured into his calculation.

3 THE COURT: All right. Given that, that's
4 the only objection that it doesn't have the precision
5 and so he is going to be basing it on Proposition A
6 interchangeable.

7 MR. FERGUSON: Also, your Honor, neither one of
8 them have any provision under the cluster aspect of
9 our zoning ordinance.

10 THE COURT: That would be weight, wouldn't it?

11 MR. FERGUSON: That probably is weight.
12 I would object that insofar as this purports to be
13 a representation of the maximum number -- you see,
14 that might be a whole different series of calculations.

15 THE COURT: Tell you what I will do, since no
16 one else is going to testify. I will allow it to be
17 marked in evidence, but I will mark it on the weight
18 factor rather than admissibility factor and with the
19 clarification I have it will be P-9.

20 (The document referred to was marked P-9 in
21 evidence.)

22 THE COURT: Since it is 12:30, let's break for
23 lunch.

24 MR. LINDEMAN: May I just ask one question?
25 I might forget. I will wait. I will remember. I

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am sorry.

THE COURT: All right. You can ask it. You want to ask it? Go ahead, one question.

Q When Subdivision matters are presented to Planning Boards for approval, is it pretty much generally the rule that they always remain exactly the same as they are offered, or does it sometimes, if not correctly planned, that Planning Boards require additions or subtractions of lots therefrom?

A Well, most frequently a major situation, the processing of a major subdivision starts out with a sketch plat, which is rather general based on information obtained from tax maps or other less than absolute precise information and it is intended to show the general scheme of a subdivision without detailed engineering.

Later on in the process of approving the subdivision, the preliminary plot will then show the actual layout with all of the improvements required with A, the number of lots precisely dimensioned which will then be a basis for final approval.

MR. LINDEMAN: All right.

THE COURT: All right. Break for lunch. You can step down.

(The noon recess was taken.)

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

A F T E R N O O N S E S S I O N

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3 J O H N R A K O S , previously sworn, resumes
4 the stand.

5 DIRECT EXAMINATION BY MR. LINDEMAN:

6 Q Mr. Rakos, what have you calculated the average
7 gross acreage of the lots in P-9 to be approximately?

8 A Well, as I recall, they averaged about 5.3 acres
9 gross lot area per each lot. Despite the fact that some of
10 the, a good portion of the tract was in A-2 Zone and
11 that can be attributed to the efficiency of the land because
12 of its physical limitations.

13 Q The average net acreage would be?

14 A It would be slightly under, in the neighborhood of
15 just under five acres per lot probably.

16 Q All right.

17 THE COURT: Excuse me a minute.

18 Would you read back what he said that can be
19 attributed to the, due to --

20 (The last answer read by the reporter.)

21 THE COURT: Okay, go ahead.

22 Q Now, would you tell us, please, Mr. Rakos,
23 what you did, if anything, with respect to applications
24 or proposals made to the municipal fathers, the defendant,
25 for the purpose of developing this property even before the

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lawsuit started?

A Well, at the request of the owner of the property we have developed a scheme for attached single-family homes, otherwise referred to as townhouses, which in our opinion could alleviate some of the problems resulting from the developing this piece of property and also would be to the benefit of the housing market in general.

Q And were any propositions suggested to the Planning Board and the municipal fathers of the defendant?

A Yes, we presented a scheme similar, but somewhat different to the scheme shown here to the Planning Board of the Township of Chester showing attached single-family townhouse development.

Q When you say shown here, you are referring to P-1 in evidence?

A Yes.

Q Yes, go ahead.

Do you remember how many units were provided for in the first scheme?

A I have to check for a moment. 1,018.

THE COURT: 1,018?

THE WITNESS: 1018.

Q And what if any kind of a response was received from the defendant?

MR. FERGUSON; Objection, your Honor, until it's

1 established that a response was called for or some
2 kind of a formal proposal was submitted calling for
3 a response.

4 MR. LINDEMAN: Well, if your Honor please,
5 I think this is the kind of a situation where a
6 formal response by its very nature would not be called
7 for.

8 THE COURT: Well, let's find out what was done.

9 MR. LINDEMAN: All right.

10 THE COURT: With respect to the submission of
11 this proposal.

12 Who did he talk to and et cetera.

13 Q Did you participate in any presentation to
14 any parties?

15 A Yes, I was presenting that scheme that I was just
16 referring to. I was one of the experts of the appellant
17 to testify at that meeting.

18 Q What kind of a meeting was it?

19 A It was a Planning Board meeting.

20 Q Was it a formal meeting or a special meeting?

21 A I could not recall that. I don't know.

22 Q All right.

23 A Other experts, particularly a traffic expert, testi-
24 fied and at the end of the meeting it was agreed that the
25 Planning Board will consider the proposal and respond to it.

1 MR. FERGUSON: Objection, your Honor, unless
2 we understand what the witness means by it was agreed
3 by whom and was it official action.

4 THE COURT: Let's, instead -- that's a conclusionary
5 statement which is properly objectionable.

6 MR. LINDEMAN: I agree.

7 THE COURT: What was said.

8 MR. LINDEMAN: I agree.

9 Q Just rather than using words as agreed, tell
10 us in words what happened.

11 THE COURT: And by whom.

12 MR. FERGUSON: Could we have a date first?

13 THE COURT: Okay.

14 MR. FERGUSON: Some names and what happened.

15 THE COURT: Okay.

16 A I have to check my records for the date. I'm sorry,
17 I don't have a date. I don't have a date for that with me.

18 Q Approximately when was it?

19 A It was -- I couldn't even say.

20 Q In relation to the commencement of the lawsuit?

21 A It was prior. It was preceding the lawsuit.

22 Q Do you recall what municipal officers were
23 present, such as the Mayor or the --

24 A I recall --

25 Q The Planning Board?

1 A I recall the members of the Planning Board were
2 present and, of course, the Mayor is a member of the
3 Planning Board. But I don't recall whether he was
4 actually present or not. I recall the Chairman of the
5 Planning Board was present and he indicated to the
6 applicant or his attorney then that the Planning Board will
7 consider the proposal and respond.

8 Q And in what form did the response come, if
9 you know?

10 A I don't know.

11 Q Without saying what it was, were you told of a
12 response at least by the plaintiff or one of them?

13 A No, I was not.

14 Q You were not told about any response?

15 A No, I was not.

16 Q All right. Following that presentation, was
17 there a second presentation made before P-1 in evidence?

18 A Yes, there was a second presentation made to the
19 Planning Board. A second proposal presented to the
20 Planning Board and my involvement with that second pre-
21 sentation was, only was limited to presenting another
22 scheme, development scheme.

23 Q How many units did that allow for, if you recall?

24 A That provided for 1,452 dwelling units.

25 Q Was there any cost factor involved in that

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1,452 units cost of the units?

MR. FERGUSON: Objection. I don't know what we are talking about. Cost to whom, the developer or sales price?

MR. LINDEMAN: Sales price.

A Well, the general intention was --

MR. FERGUSON: Objection to general intention unless it was expressed at the meeting.

MR. LINDEMAN: I think the witness was not --

Q You were not present at any meeting?

A I was not present at any, to any subsequent discussions with the Planning Board.

THE COURT: You can't impute the intentions. Clearly it is objectionable, Mr. Lindeman, if it was unexpressed.

MR. LINDEMAN: No, I agree. I agree, your Honor. I just wanted to find out if it were expressed somehow with this witness' knowledge.

THE COURT: Okay.

THE WITNESS: The intention, I am sorry, the intention, my intention.

THE COURT: Okay, whatever your intention unexpressed can't come into evidence.

THE WITNESS: All right.

THE COURT: So I will sustain the objection.

1 MR. LINDEMAN: All right.

2 Q Now, as to P-1 in evidence. Would you tell us,
3 please, the circumstances under which that came to be
4 prepared?

5 A Well, P-1 was a revision of the scheme that I
6 previously referred to which provided for a little over
7 1,400 dwelling units..

8 THE COURT: Excuse me. You said 1452?

9 THE WITNESS: Yes.

10 THE COURT: Okay, Mr. Lindeman said 450.

11 MR. LINDEMAN: Did I? I am sorry.

12 THE COURT: I was a little confused. It is
13 1452?

14 THE WITNESS: Yes.

15 THE COURT: All right. It was a revision of
16 that plan.

17 A P-1 was a revision of that scheme to provide for
18 a larger undeveloped area which would have more acceptable
19 impact on the environment and provide for a spray irrigation
20 scheme which can be approved, could be approved by
21 the Department of Environmental Protection.

22 Q Would you come down, please, and point out to the
23 Court the nature of the improvements as depicted on
24 P-1 in evidence and also state in words their location?

25 A The primary access to the site is from the Peapack-

1 Gladstone Road, which is one of the few hard surfaced
2 arterial roads which have relatively good access to a
3 major highway, Route 206 and also has access to a railroad
4 station in Peapack-Gladstone.

5 The property has also frontage on Fox Chase Road,
6 which is an unimproved, or a street improved to a very
7 limited extent. The property, as I previously stated,
8 is bisected by the Peapack Brook and generally speaking
9 the area north of the property or a good portion of it
10 had excessive grades and portions to the south of it have,
11 has rolling topography with limited vegetation.

12 What we have suggested to do is concentrate the
13 development on that portion of the property which is best
14 susceptible to development with moderate grades with little
15 vegetation and good access and preserve and leave un-
16 developed that portion of the land which has excessive
17 grades and valuable vegetation to preserve.

18 We also suggested that the development shall have,
19 shall not rely on septic systems, but should have a
20 sewage disposal facility acceptable to the Department of
21 Environmental Protection so as to alleviate any pollution
22 problems that may be the result of individual septic
23 systems.

24 The development that was the result of these pro-
25 posals is depicted on R-1 which shows a total of 856

End of
Tape 3

1 dwelling units and has a very moderate density of
2 3.17 dwelling units per acre. Even though this, the
3 density is very low, we felt even prior to detailed
4 examination by an engineer that such a development may
5 permit economically the provisions for a sewage disposal
6 facility and, therefore, do little damage or no damage
7 by means of pollution to the aquifers and the environment
8 in general.

9 MR. FERGUSON: Your Honor, I object to the
10 testimony of this witness as to any specific
11 environmental sewage data which were supplied by
12 someone else outside of the expertise of this witness.

13 THE COURT: Would you read the answer, the last
14 answer back in its entirety?

15 (Last answer read by the reporter.)

16 MR. LINDEMAN: If your Honor please, I think
17 the witness in using the words we may provide for
18 suggestions. Really, what our intention is and that
19 is that the planner has a function which has to be
20 substantiated or fortified by different disciplines
21 and in preparing his program, he has to do so with
22 those others, that other expertise in mind. He can't
23 be all things to all men.

24 THE COURT: I'm sorry.

25 MR. LINDEMAN: Yes.

1 THE COURT: I think, subject to actual proof,
2 what he hopes objectively is not proof and I will
3 allow the statement to remain in there, but the
4 weight that I give it will be nominal. I mean, it
5 is just an objective. It is not evidence that I can
6 deal with.

7 MR. FERGUSON: I note the witness said we
8 felt that it may permit and --

9 MR. LINDEMAN: Yes, that is what --

10 MR. FERGUSON: I would emphasize those words.

11 THE COURT: Right.

12 MR. LINDEMAN: All right.

13 Q Now, Mr. Rakos, would you describe, please,
14 the various improvements as they are shown? And I mean,
15 for example, this kind of thing that my finger is pointing
16 to and this.

17 A Well, the little squares showed in several clusters
18 here are attached single-family townhouse dwelling units.
19 The finer lines show the access driveways and parking
20 facilities.

21 The balance of the land is shown in open space and
22 it shows open space with vegetation. And this area shows
23 a community recreation center which was suggested to the
24 property owner as part of the development.

25 Q What is that in the lower right-hand corner of

1 the development?

2 A There is a retention basin shown in this corner of the
3 property which was indicated by the engineer necessary
4 because of a drainage device separating the property at
5 one point.

6 In other words, all of the storm drainage would not
7 be directed into a large pond, sixteen plus acre pond
8 near the focal point of the development.

9 A small portion would drain into another retention
10 facility.

11 Q Would you describe, please, the neighborhood
12 of the topography which the various townhouses are shown?

13 A Well, the topography as I just said, well, actually
14 the area shown as developed has moderate grades susceptible
15 to development. The area shown undeveloped is generally of
16 excessive grade and would suffer, would be damaged by,
17 to a smaller or greater degree on its grade by development.
18 It would, where development may create erosion and destroy
19 some of the erosion or a great deal of the vegetation
20 perhaps that exists there.

21 Q What, if anything, would be required by way of
22 removing trees on the scheme that is, the P-1 in evidence?

23 A Well, there is very little if any trees existing on
24 that portion of the tract that is proposed for development.
25 Most of the valuable vegetation exists on that portion which

1 remains undeveloped.

2 Q When you say valuable vegetation, you're
3 referring to trees as well as other kinds of foliage?

4 A Primarily trees.

5 Q Right. Okay, thanks.

6 Tell us, please, what if any dislocation of the
7 surface of the earth from an erosion point of view would
8 have to be done in this kind of a development? That is,
9 P-1, as opposed to the multi-lot development of P-8 and
10 P-9?

11 A Well, only in general terms, inasmuch as we have
12 done no, no specific engineering studies. In general terms,
13 I think it's fair to say that if we leave the, that portion
14 of the tract which has excessive grade undeveloped we have
15 minimized the necessary cuts and fills which will be
16 required by the development, such as, for instance, shown
17 on P-7 and P-8, or was it P-8 and P-9? I forget. The
18 two-acre and five-acre schemes, both of which contemplate
19 a development on the entire tract, including that portion
20 that has excessive grades.

21 Q Would any septic systems be involved to service
22 the individual units in the lower half of P-1?

23 A Well, we have an additional sum, and our assumption
24 confirmed by the engineer later on that the 856 dwelling
25 units proposed here can physically be in terms of good

1 engineering be serviced by a sewage disposal system using
2 spray irrigation and I understand that that scheme at a
3 conceptual stage was approved.

4 MR. FERGUSON: Objection, your Honor, as to
5 what this witness understands about anything.

6 THE COURT: Sustained.

7 MR. LINDEMAN: If your Honor please, we will
8 link that.

9 THE COURT: Okay.

10 MR. LINDEMAN: It is one of the impossibilities,
11 or at least the difficulties of a trial of this kind
12 that conceptual approval is something which will
13 be referred to. And I think counsel knows that it is
14 going to come forward and that something in the way
15 of conceptual approval was obtained.

16 THE COURT: Can't he tell us what, how the
17 dwelling units proposed can be serviced and that's
18 what you're suggesting at some later date. Do it
19 with the proper testimony. Lay a proper foundation.

20 MR. LINDEMAN: All right.

21 Q Do you know how it is contemplated that the
22 units on P-1 would be serviced from the point of view of
23 sewage disposal?

24 A Well, when we say contemplated, the product of those
25 contemplations shown on P-1 are a product of an interplay

1
2 between various consultants, traffic engineer and civil
3 engineer which is a normal process for developing a
4 scheme such as this.

5 It is not possible to stop at a certain point by a
6 planner and give it to an engineer and then give it to
7 an architect. Those various disciplines work as a team
8 so that when we came up with this scheme, we had to be
9 advised by the engineer what the Department of Environmental
10 Protection requirements were so that we can come up with
11 a scheme that complied with it.

12 Q Without regard to what the DEP did or didn't
13 do, and without regard to any approvals or non-approvals
14 or anything of that kind, just from a physical descriptive
15 point of view, tell us how it is contemplated that the
16 sewage from the 856 units is to be treated, is to be
17 disposed of.

18 A It is going to be treated in a treatment facility
19 and then disposed of by means of spray irrigation.

20 Q And so, therefore, what is the need, if any,
21 for a septic system?

22 A There is going to be no septic systems as a result
23 of this development.

24 Q Right. Now, can you tell us with regard to
25 the expenditure of anything in the form of heating fuel
what effect, if any, of the construction of townhouses has

1 upon that over-all problem?

2 A Well, the requirement of energy per dwelling unit
3 is reduced to a greater extent by this kind of development.
4 It is reduced first of all because each dwelling unit is
5 smaller than the dwelling units that would be contemplated
6 for the two and five-acre lots.

7 But it is also far more efficient because each
8 dwelling unit except those that are on the ends of each
9 cluster are exposed only on two sides, to the outdoors
10 whereas detached single-family dwelling units have all
11 sides exposed to the outdoors.

12 The end dwelling units have three of their sides
13 rather than two exposed to the outdoors, which greatly
14 reduces heat loss.

15 Q Now, Mr. Rakos, even without knowing anything
16 about the topography or any of the environmental character-
17 istics or engineering data with respect to any of the
18 other properties in your P-7 in evidence, which was that
19 first colored map?

20 A Yes.

21 Q What, if anything, can you say about the
22 uniqueness or qualification of the premises in question
23 for development for multi-family dwellings in contra-
24 distinction to all of those others?

25 MR. FERGUSON: Objection, your Honor. I don't

1 see how that question can be answered unless you bring
2 in the knowledge of other properties. And I would
3 like a specification of what properties we are talking
4 about. If it is Chester Township or the ten other
5 municipalities which in part are on that very nicely
6 colored map.

7 MR. LINDEMAN: Well, if your Honor please,
8 I'm asking the question under the assumption that we
9 have no data. Assuming there is no data of any
10 kind. Merely that it is land which is there and
11 it is zoned as it is for two and five-acre units.
12 The question is simply what is there about the
13 property that is unique with respect to them without
14 regard to any physical --

15 THE COURT: How do you find uniqueness?

16 MR. LINDEMAN: I withdraw the word unique
17 and put it this way.

18 Q Knowing at least that we have certain engineer-
19 ing data on the property and assuming as is the case that
20 we have no engineering data on any of the others, what
21 can be, there be said that peculiarly suits this property
22 for the development as shown on P-1?

23 MR. FERGUSON: I object to that question,
24 your Honor.

25 THE COURT: Read the question back again. I

1 didn't get it all.

2 (Last question read by the reporter.)

3 THE COURT: What do you mean by peculiarly?

4 MR. FERGUSON: That plus --

5 MR. LINDEMAN: I will withdraw the word
6 peculiarly.

7
8 Q What can there be said that suits this property
9 for development as shown on P-1?

10 MR. FERGUSON: I still object to the assumption
11 that he knows engineering data on one and not the
12 other. I don't see how that can make any difference
13 at all.

14 THE COURT: I have trouble with the question
15 because I -- you're asking me to accept his answer
16 and I would be comparing it in a vacuum.

17 MR. LINDEMAN: But, your Honor, of course without
18 hearing the answer, and I could make a proffer to
19 the Court and I suppose without a jury it wouldn't
20 really be too prejudicial. But the answer is not
21 going to be based upon any engineering data as such.
22 It is not going to compare the Caputo property
23 with the rest of the town in terms of its topography
24 or location or anything like that.

25 He is going to give an answer that will at least
be one reason why this property is suited and should

1 be permitted to have 856 units clustered as they are
2 and why we should, therefore, have the relief we are
3 seeking.

4 THE COURT: If I understand the question, you
5 are asking a comparison, comparison against something
6 else. And it seems to me that in any situation when
7 you're comparing A to B, anything to anything else,
8 you have got to have knowledge of the thing against
9 which you are making the comparison.

10 And you are telling me he has no knowledge of
11 that thing so how can he make any kind of comparison?

12 MR. LINDEMAN: I'll accept that, your Honor,
13 and I'll reframe the question this way.

14 THE COURT: All right.

15 Q What is there about this property that is
16 peculiarly suited for multi-family dwellings as shown on
17 P-1?

18 MR. FERGUSON: That as compared to what
19 properties?

20 MR. LINDEMAN: Just in the abstract, why is it
21 peculiar --

22 THE COURT: As to this property alone?

23 MR. LINDEMAN: Yes.

24 THE COURT: What makes it peculiarly suitable
25 for multi-family dwellings? We are talking about

1 something within the boundary lines of the P. Q.

2 We are not referring this question to the multi-colored
3 map?

4 MR. LINDEMAN: No.

5 MR. FERGUSON: That question all naked by itself?

6 MR. LINDEMAN: Right. In the abstract just this
7 parallel.

8 A Well, I think that this property does have character-
9 istics that justify this kind of development.

10 Q To which?

11 A Without comparing it to any other property.

12 As a planner, I was primarily concerned with land use.

13 And I have driven around this property to see what kind of
14 development exists. To see whether it would have any
15 adverse impact on existing development. And I found that
16 there is no, no existing character of development in this
17 area at all. The land surrounding the property in question
18 is, to a large extent, undeveloped and it has no outstanding
19 development character so that I felt that the development
20 that we propose would have unusually low density for its
21 kind and with the very substantial buffers around it
22 would do no damage in terms of land use to existing
23 development in the area.

24 In addition to that, I have noted that while the
25 little development that exists is to some extent, or to a

1 large extent residential, which does not create a homogeneous
2 character. Some of the development, at least one structure
3 immediately adjacent or opposite this development is a
4 use which is other than single-family residential.

5 There is a nursing home in the area and while it is
6 the only land use which is other than single-family
7 development because of the very sparse development in that
8 area that single non-residential use is very noticeable.
9 Very outstanding, which further contributes to the fact
10 that I have not noted a character of development which I
11 could classify as single-family residential in this area.

12 Other characteristics of the land is that as I have
13 also said it is on one of the few arterial streets in this
14 township which is paved and has good access to major
15 highway and railroad facilities. A very important
16 characteristic which we have already touched upon are the
17 physical characteristics of the property.

18 The nature of the land. The geometry and primarily
19 the topography points to the need for clustering develop-
20 ment or concentrating development on that portion which is
21 suitable for development, therefore, permitting the balance
22 to remain undeveloped so as to avoid damaging the environ-
23 ment. Development on excessive grades could very well
24 produce potential erosion and the destruction of vegetation
25 could otherwise be preserved.

1 The elimination of individual septic systems was
2 another important consideration and for that, we needed the
3 economic base to permit that kind of a relatively expensive
4 installation. We also noted that the appellant is a
5 resident --

6 Q Applicant? You mean the applicant?

7 A The applicant.

8 Q Right.

9 A Is a resident for many years of this property and
10 of the township and we felt that he would not abandon
11 this property after packaging or getting it approved by
12 local governmental agencies which would assure that the
13 quality of the development would be good.

14 Q From a planner's point of view, Mr. Rakos,
15 what about the aesthetics of the proposal?

16 MR. FERGUSON: Can we define aesthetics?

17 Perhaps the witness can tell us what aesthetics means
18 in his view.

19 Q Right.

20 A Well, the appeal, the visual appeal, I think, is what
21 you are referring to.

22 Q Yes.

23 A The visual appeal would be enhanced by the nature of
24 the development to some extent that can be predicted.
25 Such as, the pond that we have proposed. The very large

1
2 contiguous open space that would remain. But some other
3 aspects, such as the specific architecture cannot be
4 predicted because no architectural plans in detail have
5 been drawn.

6 Q Lastly, Mr. Rakos, assuming that the environmental
7 impact statement for this property will have been, has been
8 prepared, and I state to the Court that it has been pre-
9 pared, assuming that application for conceptual approval
10 has been prepared and filed, and even without now stating
11 what the result is, but although we all know what it is,
12 what effect, if any, do those technical aspects have upon
13 the suitability of this property for the development in
14 question?

15 MR. FERGUSON: Objection, your Honor.

16 THE COURT: Talking about, we are talking about
17 a theoretical sense right now?

18 MR. LINDEMAN: Well, I am putting it in terms
19 of an hypothesis. Your Honor, the sketch hasn't
20 come in yet, but I do represent to the Court an
21 environmental impact statement has been prepared in
22 some consummate detail and that an application for
23 conceptual approval has been made to the Department
24 of Environmental Protection and without creating
25 too much of a furor, I would even tell what happened
as a result of that.

1 Counsel, do you have any objection to my stating
2 it now as to what happened with the application?

3 MR. FERGUSON: Only if you include, I have no
4 objection only if you include the letter written in
5 August of 1977 by Mr. Nurleck.

6 MR. LINDEMAN: I fully intend to offer it,
7 yes, your Honor. The application for conceptual
8 approval was made by and on behalf of the plaintiffs
9 and such application was approved by the department.

10 Following that, the, I think it was the
11 Municipal Engineer for Chester Township, wrote to,
12 is it the Department of Solid Waste?

13 MR. FERGUSON: The Department of Water Resources.

14 MR. LINDEMAN: Water Resources, and supply
15 in the Department of Environmental Protection
16 asking in some detail what is meant by and what is
17 involved in the approval by the department of a
18 concept such as this. And that chairman of that
19 particular division wrote back explaining it.

20 I will offer those letters and I will accept
21 them. I will accept the letters of inquiry and
22 have an explanation as made by the DEB. So, therefore,
23 this question is based upon the fact that such an
24 environmental impact study was made and that an
25 application for conceptual approval was prepared and

End of
Tape 4

1 filed and was favorably received.

2 THE COURT: The question ended with what effect
3 do these technical reports have on what?

4 MR. LINDEMAN: On the suitability of this
5 property for the development as shown on P-1.

6 MR. FERGUSON: I object, your Honor, because
7 this witness can't answer that question unless he
8 knows first what the environmental impact statement
9 says; two, whether it says it's proper and whether
10 its conclusions are valid;

11 Three, what conceptual approval is, and;

12 Four, what Mr. Nurleck said about conceptual
13 approval in August of 1977.

14 So I submit that without knowing that, without
15 the witness telling us what his understanding of
16 those terms are so we can test if they're correct,
17 he can't answer that question.

18 MR. LINDEMAN: I concede, your Honor, that this
19 is an extremely difficult area for the Court because
20 it doesn't know how far along we are. It certainly
21 doesn't know as well as we know. But this witness
22 is not going to be asked to make any kind of a
23 technical evaluation. He is, and I think he is
24 not qualified frankly to have read the environmental
25 impact study as I am not, and to draw conclusions as

1 to whether or not it was properly prepared or not.

2 I think that is for the Court to decide. I
3 assume he has read it. I daresay he is aware, at least,
4 of its existence. He certainly knows of the
5 application for conceptual approval and its having
6 been granted and whether or not he is aware that
7 Mr. Nurleck has explained what that means or not,
8 I think is irrelevant.

9 The explanation is what it is. He says that
10 he says certain things about the need, for the
11 continuing need for compliance with relevant law
12 and regulations and doing things good and right.
13 But that isn't going to aid this witness in his answer.

14 I am not asking him to make any technical
15 evaluation of any kind.

16 THE COURT: Your question is, what effect do
17 these reports have on the suitability of this property
18 for the proposed use?

19 MR. LINDEMAN: By suitability, yes, that is
20 the question. Suitability in terms of appropriate-
21 ness.

22 THE COURT: Excuse me. I have trouble with
23 the foundation being asked of this man with respect
24 to these two specific reports. And insofar as I
25 can see, out of this area of expertise, I don't

1 know, you two gentlemen have a grasp of these reports
2 that I don't, and I'm a little bit vague on why
3 you're asking this question of this witness.

4 MR. LINDEMAN: I am asking this question of
5 this witness as a planner. Even let's assume, for an
6 example, that he would be Mr. Caputo --

7 THE COURT: I asked you a question. Maybe I
8 can shorten it.

9 MR. LINDEMAN: Yes.

10 THE COURT: The fact that he is an expert, if
11 you are proposing to him a hypothetical, assuming that
12 a report says so-and-so and another report says
13 so-and-so, what is the suitability?

14 Now, then, from my standpoint, I can say,
15 okay, I will allow you to answer -- ask that question,
16 and have it answered subject to it being later tied in
17 and established.

18 MR. LINDEMAN: All right. I think I can ask a
19 question in that fashion, your Honor.

20 THE COURT: All right. Okay.

21 Now that I phrased the question, Mr. Ferguson,
22 what objection do you have to the framework of the
23 question?

24 I'm trying to get around what to me is trying to
25 build a railroad bridge without having the track,

1 without the trestle, from my standpoint.

2 MR. FERGUSON: Well, reframing questions,
3 I would think this witness could properly testify
4 as to what his opinion of the suitability of this
5 land for development is, if you eliminate all
6 adverse environmental problems or questions. If you
7 leave all that out and don't take it into considera-
8 tion at all.

9 MR. LINDEMAN: Well, if your Honor please,
10 that may be one way to ask it and then I have some
11 other objection even to my own question.

12 THE COURT: We start using words all --

13 MR. LINDEMAN: That's my problem.

14 THE COURT: You start for me going to the
15 infinite.

16 MR. FERGUSON: Correct, exactly the next step
17 in my objection is to say that unless a foundation
18 has been laid for this witness to say that he has
19 examined other acreage and ground in Chester Town-
20 ship as to its suitability for development for
21 high density use that he should not be allowed to
22 testify as to the appropriateness of this particular
23 parcel.

24 THE COURT: Isn't that -- wait until his
25 opinion. Again, you know, of course he said he drove

1 around the track. Maybe that is enough. We went
2 back, going back to the well -- strike that.

3 It's framed with the hypothetical, with the
4 caveat that it is to be disregarded totally unless
5 the significance and the suitability of these reports
6 is brought to the Court's attention, I will allow it
7 from the standpoint of where we are right now with
8 it admitted. I guess you would have to say some
9 frailty in the proofs and other things that you
10 would have the right to explore on cross-examination
11 and any other area.

12 But, you know, we are in, we are kind of in a
13 box here. If I require all the proper foundations,
14 then what we are going to have to do is shift every-
15 thing around and bring supposedly the cart in,
16 the horse in first, and then the cart.

17 He got him here. If it is tied in, I think it
18 is something that I will allow at this point. If it
19 is in the hypothetical and there is a representation
20 it will be tied in.

21 MR. LINDEMAN: That's correct, your Honor,
22 I accept both.

23 MR. FERGUSON: If you let in all of the criminal
24 acts of the co-conspirators subject to tying it up
25 with sufficient proof at the end and -- you like that

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analogy?

THE COURT: Okay.

MR. LINDEMAN: I don't like it, but I accept the Court's --

THE COURT: Since it is being tried without a jury, we will do it that way and I will put a great big star next to it.

All right, let's rephrase the question, though.

MR. LINDEMAN: All right. I think perhaps I could do that, your Honor.

Q Assuming an environmental impact study which shows that the property from an environmental point of view may be developed without injury to the environment, and assuming further that an application for conceptual approval as to the spray irrigation system of treating the, and disposal of solid and other wastes has been filed and accepted, and assuming further that the Department of Environmental Protection has explained and qualified the mechanics of conceptual approval, what, from your planning expertise point of view, what opinion do you have as to the suitability of this property for development as set forth in P-1? And explain your reasons.

MR. FERGUSON: I have my objections stated.

THE COURT: Yes, your objection is stated.

A Well, I think that my answer is relatively general.

1 It involves a planning philosophy. I think that I have
2 to make a step back and in order to answer your question.

3 I have to look at the zoning philosophy reasonable
4 for a municipality in general and then narrow the answer
5 to as it applies to this specific parcel of property.

6 MR. FERGUSON: Objection, your Honor. He is not
7 answering the question. As I understand it, the
8 question is not what is your opinion of the zoning
9 philosophy. It is, is this land suitable for
10 development.

11 THE COURT: I think in light of all the dis-
12 cussion we have had, if you can answer the question
13 as it has been framed, please do. But don't qualify
14 it in any other regard.

15 THE WITNESS: All right.

16 THE COURT: Okay.

17 A If, if studies show that no environmental damage
18 to any unacceptable degree results from this development
19 can be anticipated, I feel that the, that the zoning
20 applicable to this tract is unjustified.

21 And here I don't know to say that without making
22 reference to the zoning scheme in general because I feel
23 it is unjustified because of the extent to which Chester
24 chooses to apply large lot zoning to its land.

25 There lays, I think, the answer to, to this proposal.

1 Where large lot zoning may be justified on the grounds
2 of protecting the environment with such protection no
3 longer justifies the five-acre zoning. I think five-acre
4 zoning should not, has no place to that in an environment
5 where five-acre zoning is so prevalent, which is shown on
6 this, on the first exhibit discussed.

7 I don't know if I made myself clear.

8 THE COURT: Could I ask a question?

9 Are you saying that if the other residential
10 uses than as zoned do not affect the environment
11 then you say that this zoning is unjustified?

12 THE WITNESS: Well, there is an oversupply of
13 land zoned for lot sizes of one acre or larger in
14 Morris County. There is a tremendous shortage of the
15 kind of development shown here. I subscribe to
16 large lot zoning despite the fact that there is an
17 oversupply in terms of demand where such zoning can
18 be justified by physical conditions or by the
19 objective of protecting the environment.

20 Where such damage would not result from a
21 development for which there is a grave demand,
22 I think, that that zoning is unjustified.

23 THE COURT: All right.

24 MR. LINDEMAN: I have no further questions,
25 your Honor.

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CROSS-EXAMINATION BY MR. FERGUSON:

Q Are you telling us, Mr. Rakos, that without spray irrigation which does no environmental damage, you would be in favor of large-lot zoning on Mr. Caputo's tract?

A No, I'm not.

THE COURT: I am sorry, would you read that question back?

(Last question read by the reporter.)

A No, what I am saying is if, if there was, if the environment would be damaged by any kind of development, I would not be in favor of that kind of development. If the only, if the only way to avert environmental damage is five-acre zoning, then yes, I am in favor of five-acre zoning.

Q But you're in favor of the zoning which is appropriate to the character and nature of the land giving consideration to the full range of environmental problems which would be inherent in the developing of that land?

A I'm sorry, would you repeat the question?

(Last question read by the reporter.)

A I still don't quite understand the question. I'm sorry.

Q All right.

THE COURT: - Try it again.

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1 Q You're in favor of a zoning scheme which takes
2 into account and gives consideration to the full range of
3 environmental factors, including slope topographies,
4 soil, underlying rock, water table, aquifers, pollution of
5 ground water, pollution of surface water?

6 A I'm in favor of considering all of these plus the
7 housing demands, plus the marketability of any kind of
8 development.

9 Q All those factors must go into your zoning
10 ordinance?

11 A Yes.

12 MR. LINDEMAN: Zoning ordinance?

13 A You mean zoning ordinance for development of this?

14 Q Well, to a, to both, to your Master Plan,
15 your ordinance and indeed any development?

16 A Yes.

17 Q Back up a little bit. P-1 in evidence, Mr.
18 Rakos, was that ever shown to the Township of Chester
19 Council or the Planning Board?

20 A I have not shown it and I don't know.

21 Q When was P-1 in evidence prepared?

22 A It should have a date.

23 Q December, 1975?

24 A That's when it was prepared.

25 Q Do you know when that lawsuit was instituted?

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A Not by date, no.

THE COURT: The Complaint according to the record was, original Complaint, was filed July 22, 1975. The Amended Complaint was filed December 16, 1975. Both of those dates that I gave you are the Clerk of the Court, W. Lewis Bambrick's, filing date.

Q Do you know, Mr. Rakos, whether this was ever presented to Chester Township in any of your presentations, that is, the one that you were present at or the one you prepared some plans for?

A I do not know of any preparation of this specific exhibit.

Q Can you identify when for the first time 856 units, that number of units, was used?

A In what sense?

Q In the sense that it ever came into concrete form in one of your proposals?

A Well, the date --

Q December, '75.

A Whatever, if that's what the date is, that's when it first came into being and that ---

Q I show you two plans, Mr. Rakos, on which appears the name of your firm and ask you if you can identify them for us?

And I call your attention for the record, they have

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been marked P-3A and P-4A for identification at your deposition taken earlier in the case.

THE COURT: Let's give them our own identification, would you please? D-2 and D-3.

Q Would you pick out the earlier of the two and give that D-2?

A This is the earlier.

THE COURT: Okay.

(The document referred to was marked D-2 for identification.)

(The next item was marked D-3 for identification.)

Q Mr. Rakos, can you look at D--

MR. FERGUSON: Can we pin it up?

THE COURT: Excuse me just a moment.

Q Now, looking at D-2 for identification, can you put a date on it and tell us what it is and when you prepared it?

MR. LINDEMAN: Excuse me one moment, your Honor.

I don't want to be hypertechnical. At the outset, I don't have any objection to these things going into evidence, even out of order. But, of course, it is, I think it is inappropriate that they be shown to the Court without their having been marked in evidence. But I do have no objection. I don't know what the Court --

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THE COURT: Well, mark them out of order.

I don't care if there is --

MR. LINDEMAN: No objection. Let's mark them in evidence.

THE COURT: Mark them in evidence, then, as D-2 and D-3.

(The documents referred to were marked D-2 and D-3 in evidence.)

THE COURT: All right, Mr. Ferguson, go ahead.

A All right. I don't recall the last date. I believe it preceded the institution of the suit.

Q So it is before July of 1975?

A I believe so.

Q Okay. Is this the first plan that your firm prepared for Mr. Caputo?

A No. I am sorry, yes, it is. Yes, that is the first one.

Q How many units does that plan call for?

A This calls for 1,018 dwelling units.

Q How big is the lake in this plan?

A Sixteen acres.

Q Okay. Does this, is this area a golf course here?

A Yes, those represent greens.

Q And does the golf course continue up?

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A Yes.

Q The lake and up the Peapack Brook, then down Fox Chase Road and Old Chester-Gladstone Road?

A That's correct.

Q Okay. Does this plan call for building on what do you call the north side of the Peapack Brook and what we, I think, have called the east side, in this area?

A It does call for development on the, on a portion of the land that has excessive slopes.

Q All right. That was my next question. Does not this proposal call for building of attached single-family residences on slopes and on ground which you have characterized today as having excessive slopes?

A It utilizes, however, that portion of the excessive slopes which may be developed.

Q Are these buildings located on any slopes which are greater than 10 percent?

A I could not say offhand. Possibly, yes.

Q Greater than 15 percent?

A I would hesitate to answer because I just don't know. Some of the land has, has slopes which are less, the general area has excessive slopes. And if you notice the peculiar configuration of the access road, it was dictated by the excessive slope which it traverses.

Q You are talking about this road here?

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A No, the one to the north of that.

Q This one?

A That S-shaped road. It was shaped to permit access to the top of the highest point on the tract.

Q So this point here that I am putting my hand on is the highest point?

A Essentially, yes.

Q We have a road coming down toward the brook and then running along here indicating --

A Yes.

Q -- the access road within two inches of the Peapack Brook?

A Correct.

Q Is this not a low area right here?

A That is a relatively low area, yes.

Q So we have a road coming from the highest point right down to the lowest point and then going up to what I think I recall is a general plateau over here?

A Yes.

Q Is it your opinion that the plan that is dated December, 1975, and you have prepared and marked as P-1 in this action is better in terms of construction on those excessive slope areas than this plan marked D-2 in evidence?

A Far better. And I have to remind you what I said previously. The evolution of a plan is a product of

1 an interplay between various disciplines after conferences,
2 conversations and discussions with engineers, traffic
3 engineers, civil engineers. We have discarded this piece,
4 this scheme, and we have developed a new scheme.

5 Q I understand.

6 Now, was D-2 in evidence presented to the Chester
7 Township Planning Board?

8 A Well, while I have not been involved in any presenta-
9 tion, I understand that -- oh, this one?

10 Q Yes.

11 A Yes, this one we presented to the Planning Board,
12 correct.

13 Q Is that the meeting you testified about earlier
14 today?

15 A Yes.

16 Q Is this the plan that was prepared at that
17 meeting?

18 A Yes.

19 Q On this plan and -- withdraw that.

20 As part of your presentation at which this plan
21 was made available to the Planning Board, what did you
22 tell them about septic disposal or sanitary effluent
23 disposal?

24 A I recall that what I said was that acceptable disposal,
25 acceptable means to disposing of sanitary effluent must be

End. of
Tape 5

1 found, you know, as a prerequisite to approving this
2 scheme.

3 Q Did you give them any suggestions as to what
4 those acceptable methods would be?

5 A No, sir. I was not in a position to be specific at
6 all. It was always assumed that there will be no septic
7 systems, no individual septic systems. Some method other
8 than individual septic systems was indicated and it was
9 assumed that they would be acceptable from an engineering
10 point of view by the DEP or else the development should not
11 be approved.

12 Q Was there any talk in your presentation of
13 a spray irrigation concept?

14 A I don't recall whether it was at that meeting or not.
15 I don't know when the idea, I don't recall when the specific
16 method of spray irrigation was first contemplated.
17 I just don't recall.

18 Q Are you familiar with the utility availability
19 in Chester Township in terms of sanitary sewers?

20 A For the entire township?

21 Q Yes.

22 A No, I am not.

23 Q Are you aware of the fact that there are
24 none in Chester Township?

25 A Well, there are none existing, but perhaps they are

1 available from adjoining municipalities.

2 Q Okay. Do you know if there are any sanitary
3 sewers at all available for Mr. Caputo's property?

4 A Not from outside of his property.

5 Q I will tell you I'm aware of none. I just
6 wanted to know if you're aware?

7 A Yes, I know that there is no practical means of
8 bringing in sanitary sewer line mains from another source
9 and that is why we have suggested an on-site method, an
10 on-site treatment.

11 Q Was there any --

12 MR. LINDEMAN: Excuse me just one moment,
13 Counsel. Counsel just mentioned something to the
14 Court. I think perhaps maybe I have an idea now
15 if we stipulate that there is no sanitary sewer
16 systems in the municipality. I know it to be a fact.
17 Counsel knows it and we will so stipulate that there
18 is no such system in the township. Will you stipulate
19 that?

20 MR. FERGUSON; Yes, and I would ask that you
21 also stipulate that there is no system existing
22 in any of the neighboring or bordering municipalities
23 which could be brought in to service the Caputo site.

24 MR. LINDEMAN: I am sorry, I just don't know.
25 I am sorry, I can't stipulate. Can't go that far.

1 MR. FERGUSON: Ask whatever inquiry is necessary
2 and perhaps we can later.

3 Q At your presentation to the Planning Board,
4 there was no possibility of any sanitary sewers servicing
5 this project and no discussion of spray irrigation.

6 What, if anything, did you tell the Planning Board
7 would be done with respect to sewage problems?

8 A We have indicated that there will be a central disposal
9 plant, treatment and disposal plant. And I say, I am not
10 sure whether we have mentioned what kind it would be
11 specifically.

12 Q If you have a central plant and you don't have
13 spray, how do you get rid of the effluent?

14 MR. LINDEMAN: Excuse me, if your Honor please.
15 Maybe the witness can answer and we would all be bound
16 by it. But he hasn't been qualified.

17 MR. FERGUSON: Well, I will withdraw the
18 question.

19 Q Where would the central plant be?

20 A The plant would be on the site.

21 Q On the site.

22 Is there a building on here indicating an on-site
23 plant?

24 A I'm sorry, I have to examine it. Yes. I believe, I
25 believe this was the structure designated for the treatment

1 plant.

2 THE COURT: Let the record show he is indicating
3 to D-2 down in the vicinity of the Peapack Brook
4 at the most southerly side of the property where the
5 property is approximately, what, a thousand feet from
6 Chester-Gladstone Road? Where there is an indentation
7 in the property away from Chester-Gladstone Road.

8 Off the record, show it to him.

9 MR. FERGUSON: Right here.

10 Q I note that there are two lines going out to
11 Chester-Gladstone Road. What would those two lines
12 be?

13 A That's an access drive.

14 Q It doesn't indicate pipelines or anything?

15 A No, no.

16 Q Are any pipelines shown on this map?

17 A There are no pipelines, no.

18 Q Would you tell us -- withdraw that.

19 Who else was with you at the presentation to the
20 Planning Board when you showed them D-2?

21 A I recall Mr. Caputo. I recall David Mendelson,
22 who was the Traffic Consultant, and the attorney for the
23 applicant.

24 Q Who, at that time, was who?

25 MR. LINDEMAN: I object, your Honor. I think that

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is inappropriate at this time.

MR. FERGUSON: Just to identify it. It doesn't make any difference.

Q But Mr. Caputo did have his attorney there?

A Yes.

Q Can you recall how many members of the Planning Board were there?

A All I can say, there was a quorum present.

Q Now, would you tell us what P-3 is?

THE COURT: What is --

MR. FERGUSON; D-3.

Q Can you indicate, tell us if it is yours and identify it as best you can?

A D-3 is a revised scheme. We were instructed to prepare a new scheme which would permit the development of lower-cost dwelling units on the site, which implied that we should do away with some of the expensive facilities on the tract, such as the golf course and substitute a greater number of dwelling units.

Q By the way, let me interrupt you.

On D-2, aside from the golf course, what recreational facilities or amenities are there?

A There is shown a swimming pool, several --

Q Tennis courts?

A Tennis courts and a community building, clubhouse kind.

1 Q Let the record show that Mr. Rakos is referring
2 to the structures immediately to the southeast of the lake
3 indicating a swimming pool, four tennis courts and a club-
4 house, is that correct?

5 A Correct. The revised plan.

6 Q It is now D-3?

7 A D-3 has eliminated the golf course, some of which
8 involved land suitable for development and we have substi-
9 tuted there dwelling units and that scheme resulted in
10 1,452 dwelling units.

11 Q Now, can you date D-3 for us, please?

12 A I will try. I see no, no date on the map.

13 Q Can you supply a date when you prepared it?

14 A I beg your pardon?

15 Q Can you tell us when you prepared it by reference
16 to your notes or your file?

17 A The only way I could, if I referred to our records
18 at the office. I don't have the record of that with me.

19 Q Okay. D-3 was after D-2?

20 A It was after D-2.

21 Q And it was before P-1, the 856 unit plan?

22 A That's correct.

23 Q You say you were instructed to prepare a plan
24 to offer lower cost units?

25 A To permit, to permit units at a lower cost.

1 Q Now, who instructed you?

2 A Mr. Caputo.

3 Q Was anybody else with him when he instructed
4 you?

5 A I just don't recall by what method he instructed me.
6 It could have been via his attorney. It could have been
7 on the phone. I don't remember.

8 Q Were you given a reason as to why you were
9 to supply lower cost units?

10 A He said, as I recall, that the lower, the lower cost
11 units would be more responsive to the general needs existing
12 in the housing market.

13 Q Was there any reference to the decision in
14 the Mount Laurel in your instructions?

15 A I don't remember. I have assumed there was.
16 Either specific reference to it or I have assumed that it
17 was considered.

18 Q As a reason for the preparation of D-3?

19 A Yes.

20 THE COURT: Excuse me, Mr. Ferguson, before we
21 go any further. There is something that I think
22 you gentlemen are assuming that I don't know the
23 answer to, although I suspect the answer when you
24 refer to Mr. Caputo.

25 MR. LINDEMAN: Yes, I want to clear that up.

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THE COURT: Which Mr. Caputo are we referring to?

MR. LINDEMAN: Joseph.

THE WITNESS: Joseph Caputo.

THE COURT: Okay.

MR. LINDEMAN: Mr. Aldo is no less a part in this action.

THE COURT: Okay. I just wanted to make sure, you know.

MR. FERGUSON: As far as I know, all the dealings which any of us have had have been involved with Mr. Joseph Caputo.

THE COURT: All right.

MR. LINDEMAN: Yes. So far, I think, that so far as any reference to the name is concerned up to now, it has been Joseph, but they are both equally involved.

THE COURT: All right. I just wanted to have it clarified.

Q Backing up to D-2. Did you have a cost estimate for what the units would sell for as to the first plan, 1,018?

A We did not have a specific estimate, but in general terms, it was reasonable to assume that if we eliminate the golf course, which is an expensive facility, and if we substituted a greater number of dwelling units, the

1 resulting improvement cost would proportionately be
2 less than the number of dwelling units when they marketed,
3 so that would bring the potential sales cost per dwelling
4 unit down.

5 Q The sales cost, therefore, would include less
6 of an improvement cost per unit?

7 A Correct.

8 Q Now, all that was eliminated from D-2 to D-3
9 is the golf course, is that correct?

10 The four tennis courts, the swimming pool, and the
11 clubhouse are still there?

12 A Remain.

13 Q What happened to D-3 and specifically did you
14 show it to anyone in Chester Township?

15 A I did not.

16 Q Do you know if anybody else did?

17 A Only as I was advised that it has been, has been shown,
18 submitted to the Planning Board. But I was not involved
19 in any presentation.

20 Q How is the sanitary disposal problem handled
21 in D-3?

22 A The same way as it was contemplated in D-2. And by
23 this time I am reasonably certain that spray irrigation
24 was specifically considered.

25 Q Where would the spray irrigation be considered

1 on this proposal?

2 A The area shown open, undeveloped.

3 Q That is on the excessive slope area here?

4 A Yes.

5 Q Did you have any indication from anyone that
6 a spray proposal was presented to anybody?

7 First, can you recall, if you can't recall, say so.
8 We don't want you to guess.

9 A No, I don't recall.

10 Q Okay. Do you know whether this was prepared
11 prior to the institution of the litigation in July of 1975?

12 A No. As you have correctly said, the only thing I am
13 certain about is about the, about when it was prepared
14 is relative to the other two schemes. That it was prepared
15 prior to P-1 and subsequent to D-2.

16 Q Would you check your records tonight or
17 tomorrow and advise Mr. Lindeman as to when D-2 and D-3
18 were prepared?

19 A Yes.

20 Q And can you also supply him with the dates of
21 the meetings you attended and then he will and I will confer
22 and perhaps we can stipulate? If not, we might ask you
23 to come back.

24 A Okay.

25 Q Mr. Rakos, did the scope of your engagement

1 as a professional planner -- I will withdraw that.

2 How many employees are employed by your firm?

3 A The total number of personnel is ten.

4 Q Ten?

5 Do you have any environmental scientists or engineers
6 on your staff?

7 A There is no engineer on our staff.

8 Q Do you have anybody trained in the environmental
9 sciences?

10 MR. LINDEMAN: I object, your Honor.

11 It is really irrelevant. I did not object to the first
12 question.

13 THE COURT: Where are you going with this?

14 MR. FERGUSON: I would like to find out what the
15 capability of Mr. Rakos' firm is and then see what
16 the scope of his engagement is and ask him what
17 is the scope of his engagement, what he was asked to
18 do and what he was not asked to do.

19 THE COURT: That doesn't help me too much.
20 But, all right, if he limited.

21 MR. FERGUSON: I will be very brief.

22 THE COURT: All right.

23 A While there is some knowledge of the implication
24 of environmental impact included in the education of any
25 planner, no personnel in our firm specializes in environ-

1 mental impact statements.

2 We have prepared several with, in collaboration with
3 other consulting specialists.

4 In terms of this project, I have relied on other
5 experts, on the advice of other experts, specifically
6 Norman Smith.

7 Q Who is Norman Smith?

8 A Norman Smith is a principal in Jaman Engineering.

9 Q Do you know the extent of Mr. Smith's staff?

10 A No.

11 Q Did you make any investigation independently
12 of the qualifications of Mr. Smith?

13 MR. LINDEMAN: I object on the grounds it is
14 irrelevant.

15 THE COURT: Sustained.

16 Q On what did you rely to -- withdraw that.

17 What areas did you rely on the advice of Mr. Smith?

18 A I have relied on his advice relative to sewage
19 disposal and on his advice relative to the extent and location
20 of the pond and the alignment and location of private streets,
21 the access roadways within the tract.

22 Q I thought you laid out the roads?

23 A I laid out the roads. As I say, there is a give and
24 take between various disciplines. I lay out a scheme.
25 I give it to him and ask for his comments.

1 Q In other words, if he says it is too steep to
2 build roads here, you move it someplace else and ask him
3 where you can put it?

4 A Correct.

5 Q Was the scope of your engagement to include
6 a study of the sewer and water utilities of Chester Township?

7 A No.

8 Q Either in general or related to Mr. Caputo's
9 property?

10 A No.

11 Q Does the scope of your engagement too include
12 what is sometimes referred to as a study of the infra-
13 structure, including the police, fire, social services,
14 health and care, schools and shopping areas as they may
15 relate to the zoning plan of Chester Township in general
16 or to the proposed development on Mr. Caputo's property?

17 A Well, the answer to your question is yes and no.

18 To some extent, I was asked to collate at one time
19 potential impact on some aspects of this development upon
20 the township wide facilities, such as anticipated school
21 enrollment and anticipated tax revenues and so on. And that
22 was discussed and it must be on the record of the Planning
23 Board at that meeting that I have attended.

24 Q Did you undertake such a study?

25 A I beg your pardon?

1 Q Did you undertake such a study?

2 A Yes. As I said, I presented those facts and figures
3 to the Planning Board.

4 Q Do you have them here with you today in court?

5 A No, they were verbal. It was a verbal presentation.

6 Q Did you ever reduce that to writing any place?

7 A Possibly. I might have given a summary of that to
8 Mr. Ambrose at one time, yes. I am not sure. But he might
9 have asked me inasmuch as he was not the attorney at the
10 time. He might have asked me what the summary of that
11 presentation, that meeting, was.

12 As I recall it then, I have given it to him.

13 THE COURT: Let the record show Mr. Ambrose was
14 prior counsel to the plaintiff in this action.

15 Q I believe you're referring to a counsel even
16 prior to Mr. Ambrose, did I understand you correctly?

17 A No, I am referring to Mr. Ambrose.

18 Mr. Ambrose inquired as to what transpired at that
19 meeting that I had attended prior to his engagement.

20 Q Okay. What areas did your study cover?

21 A Well, I recall specifically anticipated population,
22 anticipated school children, and anticipated revenue,
23 tax revenues.

24 Q Is that about the extent of it?

25 A There was probably more than that, but I don't recall.

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Q Were your studies based upon 1,018 units or 1,452?

A They were related to the one that was presented which was 1,018.

Q Was the scope of your engagement for Mr. Caputo, any analysis, does it include any analysis of the population trends in the State of New Jersey or whatever relevant region Chester Township may be found to be in by this Court?

A I don't think so.

Q Were you asked by Mr. Caputo to give your opinion with respect to regional planning concepts as enumerated by the Morris County, Somerset County Tri-State Regional Planning Commission, Regional Planning Association, New Jersey Department of Community Affairs, or any other regional planning body?

A There were discussions enunciated on housing proposals and requirements, but there was nothing reduced to writing on my part on this subject.

Q Have you been asked to testify with respect to any of those areas in this litigation?

A No.

Q So the discussions you are talking about are between you and Mr. Caputo and his attorney?

A His attorney.

1 Q Why was the number of units decreased from,
2 as it turns out, 1,452 to 856?

3 A It was reduced as more specific plans for the
4 sewage disposal scheme were developed by Jaman Engineering.
5 Those requirements to comply with design standards were
6 brought to our attention and the area requirements was
7 specified and that area included an acreage which was not
8 available on D-3. So we had to revise the plan to enlarge
9 the land devoted, to be devoted to spray irrigation which
10 reduced the number of dwelling units to 856.

11 Q Was that done on the advice of Mr. Smith?

12 A Not the reduction of units, but the increase of the
13 area to be devoted to spray irrigation.

14 Q Was it Mr. Smith that told you you had to have
15 so many acres and you eliminated those houses which you
16 thought should be eliminated?

17 A Correct.

18 Q Now, going over to Exhibit P-8 and P-9.

19 First P-8. This is the zoning layout pursuant to the
20 1964 zoning ordinance?

21 A Yes.

22 Q The 1964 zoning ordinance, have any cluster
23 provisions in it?

24 A I don't recall.

25 Q Going to P-9, the 1976 ordinance, 76-12 have

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1 any cluster provisions in it?

2 A Yes.

3 Q Would you tell us what those cluster provisions
4 are?

5 MR. LINDEMAN: Precisely?

6 MR. FERGUSON: As the witness understands their
7 substance and effect.

8 A Only in general terms.

9 I don't recall the specific standards. In general
10 terms, it permits the reduction of lot sizes and devotion
11 of some land to open space.

12 Q How much a reduction of lot sizes?

13 A I don't know how much, but the reduction of lot sizes
14 were so limited in this instance because of adverse
15 topography that we felt that clustering under detached
16 housing scheme was not practical inasmuch as the minimum
17 lot sizes were not so much dictated by the zoning ordinance.
18 They were to a large extent dictated by the physical
19 features of the land.

20 Q Could you explain that in more detail? I am
21 not quite sure I follow you.

22 A Well, the lots are as large as they're shown in
23 many instances because of the adverse topography and
24 because of individual septic systems.

25 In other words, some lots could not have been reduced

1 in size because of the adverse grade even though the
2 zoning ordinance might have permitted a smaller lot.
3 Other lots could not have been reduced because of the
4 individual septic systems involved.

5 Q Why couldn't the other lots have been reduced
6 because of the septic systems? There wouldn't be enough
7 land for a septic system?

8 A Percolation.

9 Q What data do you have reference to when you're
10 talking about percolation?

11 A I have none. All of this happened in discussions with
12 Mr. Smith.

13 Q Were you told then that the soil on much of this
14 property had adverse percolation for septic systems?

15 A No, I was not told.

16 Q What were you told?

17 A I was told to keep the lots as large as dictated
18 by the zoning ordinance without resorting to clustering
19 to have the minimum adverse impact resulting from individual
20 septic systems.

21 Q So you were told not to cluster in order to
22 avoid adverse impact from septic systems?

23 A Yes.

24 Q Were you told there was any way to have on-site
25 disposal and still cluster? Did anybody investigate this?

1 A Not to my knowledge. I have, even though I am not
2 a specialist in the field, I felt that it was totally
3 out of the realm of feasibility to develop a septic,
4 central septic disposal system for 51 lots.

5 Q The clustering provision, well, do you know what
6 the clustering provisions give a potential developer in
7 Chester Township in terms of the diminuation of lot size?

8 A No, sir, I don't know what the standards are.

9 Q Were you ever told it was about 50 percent?

10 A No.

11 Q If a developer were able to cluster, either on,
12 either the layout of P-8 or P-9, would that not result
13 in a significantly lower cost of site improvements in terms --

14 A Well, it depends on what extent he would, he could
15 reduce the lot size, not as a result of the zoning provision,
16 but as a result of physical conditions.

17 But --

18 Q You're saying there may be other reasons other
19 than the zoning ordinance why he couldn't reduce?

20 A Yes.

21 Q And to the extent that those other reasons
22 prevent reduction he would have the same site improvement
23 costs?

24 A Yes.

25 Q If he could reduce because of clustering he would

1 save a significant amount of money?

2 A If the lot sizes were significantly reduced, the
3 improvement costs would be significantly reduced.

4 Q You have testified briefly about the intent of
5 your proposal to minimize damage to the ground cover and
6 specific reference to P-1.

7 Now, drawing your attention to the spray field on
8 P-1 entitled, "Area Reserved For Open Space and Spray
9 Irrigation," were you told how the spray field was to be
10 constructed?

11 A In general terms, yes.

12 Q What were you told?

13 A I was told that pipes are going to be laid at a
14 uniform distance with spray laterals at another given
15 distance to one another.

16 And they're going to spray the effluent, the treated
17 effluent.

18 I was also told that a minimum of 200 foot buffer
19 must be maintained between any area used for spray
20 irrigation and the nearest dwelling units.

21 Q Were you told how deep the pipes were to be
22 buried?

23 A No.

24 Q Were you told that they were to be buried at
25 all?

1 A I don't recall.

2 Q Do you know how many linear feet of pipe would
3 be required to be in the spray area?

4 A My concern with spray irrigation was, and I have put
5 that question specifically to the engineer, quote,
6 "Do you think, is it your opinion that spray irrigation
7 would be a method of sewage disposal that would not damage
8 the aquifers, that would not present environmental damage?"

9 And his answer was, "Yes."

10 Q And you're relying on that for any environmental
11 assessment?

12 A I am relying on that, when I say that, this development
13 is feasible.

14 Q Okay. You did not take into consideration
15 yourself, then, the number of linear feet that had to be
16 buried to put in this spray field?

17 A None at all. No.

18 Q At your deposition, I believe you testified,
19 and correct me if I'm wrong, that Mr. Caputo's site is
20 one of the sites which is vacant and undeveloped in
21 Chester Township on one of the arterial roads paved with
22 relatively convenient access to a State highway and
23 a public transportation facility in the Borough of Peapack?

24 Is that an accurate statement of what your opinion is
25 with respect to Mr. Caputo's property?

1 A Without emphasis on one of the sites, it is correct.

2 I didn't emphasize that.

3 Q Well, I am going to emphasize one of the sites.

4 Did you make an investigation of what other sites are
5 vacant and undeveloped in Chester Township on one of the
6 arterial roads, paved arterial roads with convenient
7 access to either a State highway or public transportation
8 facilities?

9 A I did not make that investigation because I was not
10 asked to make that investigation and I have not suggested
11 to my employer that such an investigation was necessary
12 for what we were doing. And that, again, takes us back
13 to zoning philosophy. I did not feel that the, that we
14 have the burden of proving that this site is unique.

15 I --

16 Q All right. I think we are getting into an area
17 that might be a legal conclusion.

18 Let's stick to what you're asked to do.

19 A Okay.

20 Q And what you in fact did.

21 You did not then investigate other potential sites
22 in Chester Township for a proposal of this magnitude?

23 A We did not.

24 Q Do you know either from your own investigation
25 or what anyone else told you about the other sites?

1 A No.

2 Q That you, as a planner, professional planner,
3 could tell us with the authority of your professional
4 background?

5 A No, I don't know.

6 Q Referring to the public transportation facility
7 in the Borough of Peapack, that is, Peapack-Gladstone
8 Station on the Erie Lackawanna Branch, is that correct?

9 A Correct.

10 Q Have you made any investigation of the traffic
11 which goes over that road from the Chester, Mendham,
12 Peapack-Gladstone area?

13 A I have not. At the advice of David Mendelson,
14 the traffic consultant who assured me that the impact
15 of traffic resulting from this development would be
16 minimal and the roads as they exist can handle the traffic.

17 Q Did you -- is it correct to say, then, you
18 relied entirely upon Mr. Mendelson's opinion and expertise
19 with respect to any consideration of transportation?

20 A With respect to anything that involves transportation
21 and traffic off the tract.

22 Q Did you -- excuse me -- traffic off the tract?

23 A Off the site.

24 Q Thank you.

25 The non-residential use in the neighborhood, is that

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the nursing home?

A Yes.

Q You said, I think, that it was a very noticeable non-residential use?

A It was. It was notable more so than noticeable because it's the singular non-residential use out of an area which is very sparsely developed.

Q If you walked by it on the road, would it be very noticeable?

A Well, as a matter of degree. If you look at it, you can tell that it is other than a single-family development.

I would not consider it a high impact land use.

Q It is then notable when seen on the plan, but not necessarily when seen from the road?

A It is noticeable, but not, it is difficult to say, but you know, it is not something that I would call having a tremendous impact on development.

Q Do you have any opinion as a planner as to whether this is the best site in Chester Township for a proposal of this nature?

A No.

Q Do you have any opinion as to whether it is the worst site?

MR. LINDEMAN: Your Honor please, the questions

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I submit, are unfair, especially in light of the rulings of the direct examination regarding the fact of his not having made any examination of the other properties. How can he --

THE COURT: Sustained.

He answered part of it.

MR. LINDEMAN: That's true, yes.

THE COURT: Mr. Ferguson, you going to be much longer?

MR. FERGUSON: I assume I am going to have to say no. I think, maybe in fairness --

THE COURT: I'm sorry. I'm going to have to ask you to come back tomorrow morning at nine o'clock.

All right. Thank you.

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I, EARL C. CARLSON, a Certified Shorthand Reporter
and Notary Public of the State of New Jersey, certify
that the foregoing is a true and accurate transcript
of my stenographic notes.

Earl C. Carlson

1/29/99