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Stenographic Transcript
of proceedings,

Witnesses David Mendelson &
Clifford Earl.

pgs 158

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

JOSEPH CAPUTO and ALDO
CAPUTO,

STENOGRAPHIC TRANSCRIPT

Plaintiffs,

vs.

JAN 14 1980

JAN 30 1979

CHESTER TOWNSHIP,

Defendant.

CLERK

RM 10
Elizabeth McLaughlin
Clerk

Place : Morris County Courthouse
Morristown, New Jersey 07960
Date: Wednesday, October 19, 1977

BEFORE :

ROBERT MUIR, ASSIGNMENT JUDGE, SUPERIOR COURT

TRANSCRIPT ORDERED BY:

PHILIP LINDEMAN, II, ESQUIRE

APPEARANCES :

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

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

EARL C. CARLSON, C.S.R.
Official Court Reporter
Morris County Courthouse
Morristown, New Jersey 07960
285-6249

Earl C. Carlson

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DAVID MENDELSON	2	41	80	81
CLIFFORD N. EARL	93	143		

E X H I B I T S

<u>IN EVIDENCE</u>		<u>PAGE</u>
P-16A, B, C, D and E	DRAWINGS	25
P-17	MR. MENDELSON'S REPORT	37
P-18	AERIAL PHOTOGRAPH	102
P-19A and P-19B	SKETCHES	102
P-20	SKETCH	102
P-21	1976 HOUSING SALES	141
P-23	SALES OF MULTIPLE DWELLINGS	151
<u>FOR IDENTIFICATION</u>		<u>PAGE</u>
P-21	TWO PAGES OF LOT SALES	137
P-24	STUDY OF FEBRUARY, 1977	154

1 THE COURT: All right.

2 MR. LINDEMAN: Mr. David Mendelson, please.

3
4 D A V I D M E N D E L S O N , sworn.

5 MR. LINDEMAN: Your Honor please, Mr. Mendelson
6 will be offered as a traffic engineer and expert.
7 He will testify as to the current description of
8 Route 206 and the roads that ring the property in
9 question as well as a description of the property,
10 of the highways which are closer to the Borough of
11 Chester, namely, Route 24 and others in that area.

12 He will testify as to the existence, impact,
13 if any, of certain of the major highways that are
14 in or about the area. He will testify as to the
15 current traffic load on these properties and to
16 the expected traffic volume that they will bear, at
17 least as of 1985.

18 He will discuss the impact of certain commercial
19 enterprises on the presently existing highways in
20 or about the Borough of Chester and what they are
21 expected to do in the near and reasonable future.
22 And for that we will offer him.

23 THE COURT: Okay. All right, fine.

24 DIRECT EXAMINATION BY MR. LINDEMAN:

25 Q Now, Mr. Mendelson, would you tell us, please,

1 what your formal education is and when you were graduated
2 from whatever schools you went to?

3 A Yes. I was graduated from the City College of
4 New York in 1968 -- '58. I am sorry. 1958, and Yale
5 University in 1969 and '70.

6 Q What kind of a degree did you take from City
7 College?

8 A A Bachelor of Civil Engineering.

9 Q All right. And what was the nature of your
10 study at Yale University?

11 A I completed a course in traffic engineering and
12 transportation engineering.

13 Q That was in 1960, did you say?

14 A That was in 1960, that's correct.

15 Q Following your study at Yale, what did you do
16 by way of employment?

17 A I joined the firm of Edwards & Kelsey in Newark,
18 New Jersey. I was employed with that firm for five years.

19 Q In what capacity?

20 A I was a traffic engineer, project manager with that
21 firm.

22 Q Can you tell us some of the kinds of work that
23 you did and for what clients?

24 A Yes. I participated in a wide range of studies.
25 I designed projects for various public clients. I was

1 involved in the design of Route 21 in Newark. The Owens
2 Boro, Kentucky, Transportation, Urban Area Transportation
3 Study.

4 I worked for that firm in Massachusetts out of their
5 Boston Office for a bit.

6 Just trying to think.

7 I worked on the Newark Area Transportation Study.
8 I was involved in that particular project with transportation,
9 related analyses and designs.

10 I was also involved in studies for the Tri-State
11 Transportation Commission.

12 Q Let me hold you there for just a moment,
13 Mr. Mendelson.

14 When you are referring to transportation studies
15 with Edwards & Kelsey, for a certain public body, what did
16 you mean by transportation?

17 A Well, transportation is a kind of an all-encompassing
18 word. It relates to the observation of transportation and
19 related data, that is, the manner in which people are
20 traveling. It relates to the analyses of that data in
21 terms of the frequency of their travel. The manner in
22 which they use existing road systems and public trans-
23 portation facilities.

24 It relates to the future utilization of the base
25 system, form system. It covers the design of alternatives

1 and their ultimate evaluation. Multi-model in terms of
2 buses, highways, subways, airports, whatever the particular
3 mode of transportation available in the area is.

4 Q All right. I am sorry.

5 Following Edwards & Kelsey, you were talking about
6 subsequent employment.

7 A I was employed by the Traffic Research Corporation,
8 which became Peat, Marwick & Mitchell. I was with that
9 firm for five years to 1970 and my responsibilities were
10 essentially the same sort of thing, managing projects,
11 growing into more of a management type role doing marketing
12 for that firm. But my experience has primarily been in
13 the traffic and transportation areas doing studies or
14 design work or combinations thereof.

15 Q What did you have to do with the Peat, Marwick
16 & Mitchell Company?

17 A For Peat, Marwick & Mitchell, I planned the proposal
18 of the multi-center in New York for the M. T. A. I managed
19 a study in the highway of the airport operations.

20 I planned a project in Canada for the Canadian National
21 Railroad. I was involved in a study in Florida which
22 treated with the real organization of the road department
23 to the Department of Transportation.

24 I worked directly out of President Johnson's Office
25 of Science and Technology on a Federal Research and Develop-

1 ment Management Information System. I worked on a study
2 in Owens Boro, Kentucky, of urban and area transportation
3 problems and solutions thereof, and numerous small things.
4 But those are the major projects that come to mind.

5 Q Can you tell us about the Glens Falls area
6 transit feasibility study? Can you tell us about that?

7 A Yes, I participated in that study.

8 Q Now, since your employment with Peat, Marwick
9 & Mitchell, what did you do?

10 A I formed the firm of Garman & Associates and we are
11 a firm of traffic and transportation consultants working
12 in New Jersey and adjacent States, doing the essential
13 traffic and transportation consulting for a number of
14 public and private clients.

15 At the present time, our list of public clients
16 includes the State of New Jersey, Morris County; we have
17 worked for Mercer County. We have been involved in
18 various municipalities or are involved with work for
19 Ridgewood, Ramsey, Emerson, Fort Lee, Paterson, Sparta,
20 Orange. Almost all of the communities in Morris County,
21 Somerville, Bridgewater, Montgomery, Lawrence, Mercer
22 County.

23 We have worked for Lake Charles, Louisiana.
24 We are working in Troy, New York, now.

25 In the public sector, we represent a number of

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1 -- I am sorry -- in the private sector, we represent a
2 wide range of clients varying from clients such as
3 Mr. Caputo here to the Prudential Insurance Company, who is
4 the largest developer of property in the entire world.

5 Our role is essentially one of traffic engineering
6 or transportation planning and engineering, depending on
7 the particular assignment.

8 Q Are you a member of any professional organiza-
9 tions?

10 A Yes, I am a member of the Institute of Transportation
11 Engineers, the Transportation Research Board. I have
12 lectured at the Cooper Union, Manhattan College, the
13 Newark College of Engineering. I've been a guest lecturer
14 at Rutgers University. I have offered articles in
15 traffic and transportation and I am a registered professional
16 engineer in the State of New Jersey and New York, States of
17 New Jersey and New York.

18 Q What is Chi Epsilon?

19 A It is an honorary civil engineering fraternity of
20 which I am a member.

21 MR. LINDEMAN: I offer Mr. Mendelson.

22 MR. FERGUSON: No questions.

23 Q Mr. Mendelson, did you have occasion to
24 examine the premises which variously is known as the
25 Caputo tract, Lake Chester Village and its environs in the

1 Township of Chester, Morris County?

2 A Yes, I have.

3 Q And would you tell us, please, what the purpose
4 of your engagement was?

5 A Essentially to conduct a traffic impact assessment of
6 the proposed project.

7 Q Before telling us what you found, would you
8 tell us, please, how you went about making your study?

9 A Well, the process involved an inventory of area
10 conditions, that is, a determination essentially of the
11 basic characteristics of the roads and in terms of
12 widths, right of way, traffic controls, and signals,
13 or stop signs, site distances at critical intersections.
14 Pavement markings and the like.

15 Q That is an understanding, then, of the manner
16 in which the existing road system functions?

17 A We also, as part of this process, communicated with
18 both the County and the Department of Transportation to
19 determine what types of road improvements were under way
20 at the present time or those which were anticipated at
21 some time in the future.

22 We took a series of traffic counts to determine the
23 manner in which the critical roadway locations are
24 operating. Those were taken during the seven to nine and
25 four to six peak hours.

1 We had undertaken capacity analyses to determine the
2 manner in which the existing road system is functioning.
3 We prepared a trip generation study to determine the
4 amount of traffic that might be expected by -- expected to
5 be generated by Lake Chester Village.

6 We have done distributional analyses based on our
7 knowledge of the area to determine its orientation. That is,
8 essentially the amount of traffic that will be proceeding
9 north, south, east, and west.

10 Traffic was projected to 1985 as an estimate of the
11 time frame for completing Lake Chester Village. And we
12 have done capacity analyses again to determine what the
13 impact of the project is in that time frame.

14 We have prepared designs or improvement designs,
15 preliminary designs to accommodate 1985 traffic and
16 also prepared volume capacity analyses to determine how
17 traffic would function at that time given the limitation
18 of the designs that we had prepared.

19 Q Now, Mr. Mendelson, I am walking here toward
20 P-7 in evidence, which is a map showing the area of
21 Lake Chester Village and the surrounding area in a five-mile
22 radius.

23 I am going to ask you, please, if you will step down
24 from the witness stand -- hold it for a moment. Just one
25 moment. I am going to ask you to describe the road and

1 highway system in and about this area, including that,
2 in that goes up toward the Borough of Chester and also
3 to indicate where some of the other major highway systems
4 may be.

5 But before doing so, if you would like to take
6 any notes with you, I think the Court will permit you to
7 do that. Unless you feel you don't need it.

8 A Well, if I have to come back, I will.

9 Q All right.

10 MR. FERGUSON: Your Honor, I have a tentative
11 objection. I don't know whether this map really goes
12 to the scope of the question that the witness has been
13 asked and, therefore, I object unless he used a
14 larger scale road map.

15 MR. LINDEMAN: Well, if your Honor please --

16 THE COURT: Let's get a County map that we
17 have got.

18 MR. LINDEMAN: To use the County map, I just
19 don't think it is as graphic in terms of seeing this
20 piece of property. We do have --

21 THE COURT: Isn't it going to be easier for
22 him? I am sure he got a grasp of the area. Isn't
23 it going to be easier for him to identify the
24 roads with the County map than it is that map?

25 THE WITNESS: Yes.

1 has access and we will talk about that in just a moment
2 when we refer to the County map --

3 (The reporter requests the witness to speak up.)

4 Q For me too, please.

5 A From several local roads. But essentially, we are
6 talking about a regional system that is depicted here.
7 We have Route 24 providing for east-west movements. Route
8 24, of course, is a County road in this area.

9 We have Route 206 that serves north-south movements
10 as and is in direct proximity to Lake Chester Village.

11 Route 24 is a two-lane road in this area. At its
12 intersection with Fox Chase Road, it is, I believe,
13 24 feet wide. Route 206 varies from 20 to 30 feet in
14 proximity to Roger Road and through to Fox Chase Road its
15 extension to 206 there is a third lane provided for
16 northbound traffic. It is sort of a creeper lane for
17 trucks.

18 So we have two lanes provided northbound and one
19 south and generally through the area.

20 We have here Route 206 extending further to the
21 south tying into and it is not shown on our map, into
22 Route 78 ultimately. But more immediately to Route 287.
23 These are interstate facilities.

24 Q Mr. Mendelson, I assume you would be able to
25 show that on the larger map?

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THE COURT: It would seem to me for him and for me also.

MR. FERGUSON: I would rather have him use the County map, if you don't have any objection.

MR. LINDEMAN: All right. I think it isn't as clear to say 206 in relation to the property in question, but, of course, it is all a matter of preference.

THE WITNESS: I think perhaps we might compromise and use both maps.

MR. LINDEMAN: May we do that?

THE COURT: That is fine.

THE WITNESS: I think this map will show.

Q Mr. Mendelson, hold it just one moment, please.

THE COURT: Put that up underneath the five miles.

THE WITNESS: Why don't we superimpose it? I think perhaps we can start with this one and then superimpose the Morris County map right over it.

THE COURT: Okay.

MR. LINDEMAN: May we do that?

THE WITNESS: Apparently a great deal of effort has gone into the colored map. It is pretty dramatic in terms of impact. We are showing here Lake Chester Village by the star. Lake Chester Village

1 A It is not shown on the County map because it is not
2 in Morris County.

3 Q But you would be able to tell where it is,
4 in any event?

5 A If I have a map.

6 THE COURT: Off the record. No County map is
7 going to show that.

8 MR. LINDEMAN: Well --

9 THE COURT: It shows 287 and 78 where it travels
10 through Morris County, but not where he is discussing.

11 Q Can you show us generally perhaps where it is
12 relatively maybe off the map?

13 A A quick guess we can trace it. Unfortunately, the
14 index kind of falls --

15 THE COURT: 206 coming off.

16 A This is 287. We pick up the intersection of 206 and
17 287 in that area.

18 THE COURT: Right.

19 THE WITNESS: And 78 is just below that. I can
20 show that on the County map to some degree.

21 THE COURT: Okay.

22 THE WITNESS: The same thing, of course, is
23 applicable of the description of Interstate 80
24 which is to the north of the site. If one continues
25 to the north will run into Interstate Route 80.

1 These are all multiple State, multiple highway,
2 State highways separated freeways with access control.

3 I believe that the regional system in this
4 area is reasonably good.

5 We also have a train station located in
6 Peapack-Gladstone and that is directly accessible
7 by one of the local roads serving the area.

8 Regional bus services exist from the Chester
9 area to Morristown and I believe to New York at this
10 time. Now, if I may --

11 Q Just hold it one moment, please, Mr. Mendelson.

12 Can you tell us what, if any, commuter railroad
13 system is close to the area that I am pointing to now,
14 which is just south of the Borough of Chester Borough?
15 Is there any railroad?

16 A The railroad system is actually tied into the
17 Peapack-Gladstone. There is a train station located there.

18 Q And that is the closest train station to the
19 --

20 A To Chester Village.

21 Q To the Borough of Chester as well as the area
22 around the Borough of Chester?

23 A To the best of my knowledge.

24 Q Right. All right. Would you like to use the
25 other map?

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A Yes, I think that would be more instructive.

Perhaps in some areas we are dealing with a local system here of two lane roads for all practical purposes and those roads are maintained by the Department of Transportation in the case of Route 206 and by Morris County in the case of Route 24.

Can we just tack this up?

Q Referring now to P-6 in evidence.

A All right. I guess there is a dot on the map at a point that approximates Lake Chester Village that is located to the east of the Old Chester Gladstone Road which is the road that fronts the property on its westerly side.

MR. LINDEMAN: If the Court please, I would like to ask Mr. Mendelson to mark that with the understanding among all of us that that is not intended to be precise, but rather just to be a general location.

THE WITNESS: Is there any particular designation you prefer?

THE COURT: Make it probably with the felt pen will be better.

THE WITNESS: Is this a felt pen?

THE COURT: It is.

THE WITNESS: Yes.

End of
Tape 1
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1 Q Make a little circle and put your initials next
2 to it, Mr. Mendelson.

3 A I, shall I date it also?

4 Q No.

5 A All right.

6 Q It is marked with an X.

7 A All right. The X designates an approximate location
8 of the Lake Chester Village.

9 Q Right.

10 A That property is bounded on its north by Fox Chase
11 Road, or let's say northeast and it's bounded on its
12 westerly side by Old Chester Gladstone Road.

13 The Fox Chase Road at the present time is a gravel
14 road of some fourteen to sixteen feet in width. And it is
15 unimproved for existence of about 1.25 miles to the east
16 of the Old Chester Gladstone Road. The latter road is
17 a two-lane road that takes off essentially as a major
18 facility from Route 206 and runs right to the County line.
19 That road being a County facility on this map 671.

20 We are dealing with other roads that have been
21 identified in our report. Those roads represent the
22 intersections in Chester Borough of 24 and 206.

23 That is a fairly high type intersection with multiple
24 lanes provided on all of its approaches. We have fairly
25 high type roads provided at the other end of Chester Borough.

1 That is where the Dover Chester Road comes in. That is
2 County Road 513 tying into Route 24 and /510/ in that
3 general area. This is a high type intersection. That at
4 the time of our study had recently been improved by
5 Morris County.

6 Roger Road, I think, perhaps is one of great significance
7 because it is an improved road between Old Chester Road
8 and Gladstone being of the fourteen to sixteen-foot width,
9 and it ties directly out to Route 206.

10 Q A little louder.

11 A The road system, the local road system as characterized
12 to be different from the regional road system here to
13 consist of a series of two-lane roads with moderate
14 capacity.

15 The higher type roads, that is Route 24 and Route 206
16 have higher type capacities simply because they have been
17 designed to higher standards.

18 Q As compared with what, Mr. Mendelson?

19 A Roads such as the Old Chester Gladstone Road or
20 perhaps Fox Chase Road.

21 Q All right. Does that conclude your description?

22 A Yes, the description of the roads.

23 Q All right. Would you resume the witness stand,
24 please?

25 Perhaps using your report as a guide, if it is

1 necessary, Mr. Mendelson, you can tell us about the
2 surface character of Route 206 and Old Chester Gladstone
3 Road, Fox Chase Road and Roger Road and the peak hour
4 volume?

5 A I would be happy to do that.

6 Q Would you do that, please?

7 A Yes. Route 206 is a concrete road. The Old Chester
8 Gladstone Road and Roger Road are bituminous roads and
9 as represented before Fox Chase Road in proximity to the
10 site is a gravel road.

11 The traffic volumes and peak hour basis on Route 206
12 vary from a thousand to eleven hundred vehicles an hour
13 with the volumes on Old Chester Road, Fox Chase Road,
14 and Roger Road being dramatically different and lower
15 varying in magnitude during both the A. M. and P. M. peak
16 hours between five to 880 vehicles per hour. And quite
17 low, a judgment, quite frankly, there is virtually no
18 traffic on those roads.

19 Q Now, Mr. Mendelson, as to future conditions.

20 Would you tell us what the traffic stream will con-
21 sist of in future years and identify the years, if you
22 will?

23 A Yes. We have taken our study to the year 1985.
24 And I believe there is recognition on everybody's part
25 that should we proceed with this development it would not

1 be developed all at once, but in stages with perhaps
2 75 to 150 units a year being built.

3 So consequently, we are building up to the conclusion
4 of the project. But at any interim year, it would be
5 a dramatically less traffic association with this project
6 and over the road system as such.

7 We have not identified the years at which particular
8 improvements would be required, but nonetheless, I think
9 that is an important consideration for the Court.

10 The traffic stream in direct response to your question
11 will be comprised of local traffic, that is, traffic that's
12 on the road system now expanded to 1985 by some 3 to 5 per-
13 cent per year compounded.

14 We have superimposed on that traffic stream the
15 traffic associated with the Chester Spring Shopping Center
16 simply because at the time that we had done our study
17 that was the only major project in the area that was being
18 completed. And then we have superimposed on that the
19 activity associated with this project.

20 And just --

21 Q Tell us, please, first, Mr. Mendelson, where
22 the Chester Spring Shopping Center is?

23 A That would be to the north of the site on Route 206
24 on the easterly side.

25 Q Would it be of any, could you show us, please,

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on P-7 in evidence and maybe mark it?

A It is hard to identify its specific location,
but the zoning might help here.

MR. FERGUSON: Your Honor, I have a suggestion.
The zoning map which has been marked in evidence has
a much larger scale depiction of the road network.
It might aid the witness.

MR. LINDEMAN: I think that is correct.

THE COURT: Yes.

Q Can you find it on the County map?

A Yes, I can. I identify the approximate location.
It is located on this map north of the Township Borough
Line and below the designation of Main Street as Route 24.
I will mark its approximate location.

THE COURT: Is it in the borough or in the
township?

THE WITNESS: I believe it is in the borough.

Q Do you know about a bank that has been approved
in that area, Mr. Mendelson?

A I do not.

Q All right. Now, as to the conditions -- well,
had you finished your reference to the site and the fact
that you're going to be making projections based upon its
completion?

A Well, I just wanted to establish for the Court the

Mendelson - Direct

21

1 order of magnitude of travel associated with the shopping
2 center as opposed to Lake Chester Village.

3 I think that perhaps puts it in an appropriate reference.

4 The shopping center as we had studied it, was
5 200,000 square foot facility which had the potential for
6 generating in the evening peak hours some 1,100 trips.
7 The Lake Chester Village project, because it is a residential
8 project, generates traffic at a much lower level and it
9 would generate some 855 vehicular movements during the
10 P. M. peak hours with some 770 vehicular movements during
11 the A. M. peak hours.

12 So consequently, both of those volumes were added
13 to the local traffic determination during the period of
14 our observations and projected to 1985.

15 Q This accounts for the two shopping centers,
16 does it?

17 A Well, the one shopping center is in our travel count
18 already.

19 Q Right.

20 A The existing shopping center with the one that existed
21 at the time of our survey. The new center was not completed
22 at the time of our work and consequently we projected
23 its traffic.

24 Q But there are two separate centers?

25 A Yes. they are.

1 were to be extended and improved, perhaps by the Department
2 of Transportation in the County, it would provide a much
3 higher level of access to this area. And I believe a great
4 deal of pressure for the land use to change and the level
5 of development in the area to open up as well.

6 That same comment is apropos of Route 206 should that
7 facility be widened to four lanes perhaps immediately.
8 I think it would change the access to the area and create
9 a great deal of pressure towards, you know, increasing the
10 population and also expanding the commercial opportunities
11 in that area.

12 Q Now, tell us, please, about the impact upon
13 traffic of the Chester Springs Shopping Center or centers
14 on the area immediately servicing them?

15 A Well, obviously the area and the proximity to the
16 impacted, to the highest degree, we have not specifically
17 treated with the traffic associated with the shopping
18 center but have included it in the total volumes that
19 we have presently in our analysis.

20 Q Right. Would you tell us what your analysis
21 discloses?

22 A Yes. Our analysis shows that given the normal growth
23 of traffic in the area and the major shopping center that
24 we have accounted for, that the road system will be under
25 great pressure by 1985. In fact, we have roads and maybe

1 it makes some sense to display what I have brought with
2 me as a set of road improvements to detail the kinds of
3 areas that we have looked at.

4 Thank you, your Honor.

5 Q Why don't you keep, just keep those.

6 A All right.

7 Q Now, Mr. Mendelson, I show what purports to be
8 an illustration of traffic impact assessment study prepared
9 by your company and ask you if what I have in my hand is
10 what you are now talking about?

11 A I believe so, yes.

12 Q This is composed of five figures plus the cover
13 page, is that correct?

14 A That's correct.

15 Q Now, tell us generally, please, what that
16 is without any specificity what each page, what each figure
17 purports to do?

18 A Each illustration shows the existing condition at
19 a major point of access in the area's road system and
20 superimposed on that are recommendations made by us to
21 insure the proper level of service by 1985.

22 Q Were these drawings prepared under your
23 direction?

24 A Yes, they were.

25 MR. LINDEMAN: I offer this in evidence, your

1 Honor, for use for future testimony by this witness.

2 MR. FERGUSON: No objection.

3 THE COURT: P-16. Better mark it subject maybe
4 A, B, C, D, and E.

5 (The documents referred to were marked P-16A,
6 B, C, D, and E in evidence.)

7 Q All right. Now, Mr. Mendelson, would you proceed,
8 please?

9 A Well, I think first without direct reference to the
10 illustrations, the first point to be made is that our
11 analysis shows that --

12 Q David, slower.

13 A I am sorry. Our analysis showed that by 1985 during
14 the P. M. peak hour on Route 206 north of the Old Chester
15 Gladstone Road, volumes would exceed capacity by 31 percent.

16 Q Now, this without regard to any development on
17 Lake Chester Village so-called, so far that is including it?

18 A This is the total in table 4 of our report.

19 We have identified the portion or proportion of the capacity
20 that would be accounted for by local traffic. Its expansion
21 and site traffic, so, therefore, we can pull out at all
22 times that the traffic that would be generated by Lake
23 Chester Village and assess its impact.

24 In this particular case, Lake Chester Village accounts
25 for .12 of .131, which says that the volume capacity ratio

1 would be 1.19, or the capacity would be exceeded by 19 per-
2 cent if in fact Lake Chester Village would not be built,
3 which says that if improved would be warranted.

4 If we did not have a project in this area, if Lake
5 Chester Village, if Lake Chester Village were not built,
6 we would still require Route 206 to be improved by 1985.

7 We have looked at the intersection of Route 206 and
8 24 which is shown on Figure 3, or P-16C and our analysis
9 of the P. M. peak hour conditions at that location shows
10 that volumes would be in excess of capacity by some 52 to
11 55 percent.

12 Lake Chester Village is accounting for a critical,
13 on the critical approaches anywhere between zero and
14 .07, which says to me that at this intersection, no matter
15 what happens to the Lake Chester Project, the intersection
16 will break down and an improvement will be required.

17 Q An improvement will be required?

18 A An improvement will be required. That improvement
19 is shown on this illustration and it's proposed to provide
20 additional lanes on three of the four approaches within
21 the existing right of way.

22 That type of improvement will result in favorable
23 operating conditions with volumes in balance with capacities.

24 We have gone through a similar analysis at other
25 critical points in the system with the Lake Chester Village

1 contribution to the future situation identified.

2 Perhaps Route 24 and 513 we have a similar situation,
3 although it seems far less dramatic than the number cited
4 before.

5 Volume capacity ratios with Lake Chester Village
6 will vary from 1.08 to 1.09 with Lake Chester Village
7 contributing between zero and 0.19 percent of the capacity
8 so consequently at this juncture, we are close to capacity.

9 I think any time you get within 5 or 10 percent, that's
10 a tolerable situation.

11 Our science, in fact, is not an exact science, but
12 an art. In many sciences one has to get a feeling for
13 what is reasonable and what isn't reasonable. I don't
14 believe that we can identify very precisely up to the
15 nearest 5 percent or 10 percent how a condition will work.
16 But nonetheless, when you are dramatically over like 25
17 or 50 percent, then I think you have the sense that there
18 is going to be a problem and that problem has to be
19 corrected.

20 The other types of other improvements proposed and
21 these improvements relate, and I did not get to the
22 point before, to the allocation of traffic to the system.
23 We identified before the volume of traffic that would be
24 generated by Lake Chester Village, we have allocated that
25 traffic to the road system that is quantified during the

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A. M. and P. M. peak hours, what percentage will be turning left and right and what is going through at various locations as best we can given the facts that we were projecting some nine years into the future.

But those numbers become the basis for our judgment as cited in our report and also as reflected in the designs proposed.

If I just may go through those, I think the Court will gain some sensitivity to types of improvements necessary.

This is the intersection of Old Chester Road.

Q Now, you are referring, Mr. Mendelson --

A P-16A.

Q P-16A?

A Yes.

Q Figure I?

A Would it be more appropriate to turn them on its side?

THE COURT: Sure.

MR. FERGUSON: Fine.

A Route 206 is a north-south facility here. You are showing it to be widened in the intersection area with its linkage to Old Chester Road. Old Chester Road would continue to be maintained under stop control conditions. That is, no change will take place because of the very slow utilization of Old Chester Road now and that is anticipated

1 in the future.

2 In Figure 2, which is P-16B, we have presented a
3 conceptual intersection plan for both Roger Road and
4 Fox Chase Road at Route 206 because of the grades in that
5 area and the fact that below Old Chester Gladstone Road
6 we are dealing with a grade that on a single lane situation
7 that says probably works a lot better without a left-hand
8 turn being allowed.

9 Route 206 is shown to be a north-south facility
10 with Roger Road/Fox Chase Road conceptual coming in as
11 a T intersection.

12 And we have called for channellization and intersection
13 area with right turns only. That is, a right turn in,
14 right turn out. No left turns will be allowed at that
15 intersection.

16 We have talked briefly about P-16C before. That
17 intersection is signalized at the present time and will
18 remain signalized in the future. There are two lanes on
19 all approaches at the present time.

20 The tie-over time that one lane is used for left
21 turns on each of the approaches and consequently a third
22 lane and in three of the four approaches has to be added
23 to enhance sufficient capacity. That is, all improvements
24 within the proposal presented here can be done within the
25 existing rights-of-way.

1 P-16D shows the intersection treatment required at
2 Route 24 and 513 intersection in Chester Borough. The only
3 improvement required would be the widening of the Dover-Chester
4 Road to the north or perhaps to the east as it goes back
5 towards Route 10 to allow a second lane to be provided for
6 turns.

7 Everything on Main Street and everything on Route 24
8 as depicted here exists at the present time. At some time
9 the intersection will probably have to be signalized and
10 the County has made that provision in the improvement that
11 they have provided, when they upgraded the intersection
12 back in '75 or '76.

13 Finally shown a conceptual situation of the inter-
14 section treatment on the Old Chester Gladstone Road at
15 Roger Road at the site. This is the manner in which traffic
16 will enter directly and exit to the site. We have provided
17 for on the site a left turn and a right turn lane in a
18 fairly wide approach so that there is no conflict if the
19 people want to turn left or right, they can.

20 That is shown in this section site drive.

21 We have recommended widening of Old Chester Road
22 so that left turns can be made from, I guess, it would be
23 the north, on to, from the north to Old Chester Road and
24 then on to the site road, so, therefore, there would be
25 one lane through in each direction without any blockages.

1 That one southbound lane and left turn lane and then
2 a continuation of a through lane to the south and two
3 lanes on the approach at Old Chester Road so that right
4 turns coming from the south can easily turn to the right
5 and enter the site without any problems.

6 Q Mr. Mendelson, can the property needed for the
7 widening of Old Chester Road be taken from the Caputo
8 tract without having to disturb any of the lands on the
9 other side?

10 A That is correct. In fact, the right, there is no
11 right of way acquisition. Mr. Caputo would make that
12 property available and the widening of it because of the
13 alignment of Old Chester Gladstone Road. The widening can
14 take place on his property.

15 Q Right. Okay.

16 Now, have you finished with Roger Road and the treatment
17 of that?

18 A Yes, we have.

19 Q Is that your description, then, or your
20 need for P-16; if so, why don't you resume the stand.

21 A On P-16?

22 Q Yes. Are you finished?

23 A Yes, I am.

24 Q All right. Why don't you resume the stand.

25 A Surely.

1 at any location.

2 Q Now, have you made any studies of the residential
3 trip making at the site in question?

4 A Yes, that has been discussed.

5 Q And have you concluded that? I just want to be
6 sure that you covered that in those figures.

7 A I will just repeat those.

8 Q Referring particularly -- excuse me -- to
9 Table 3 in your report.

10 A Yes, I have it in front of me.

11 Q Right.

12 A The Lake Chester Village Project will generate some
13 770 vehicle movements in peak hours. That number will
14 increase to 855 during the P. M. peak hours.

15 In terms of orientation, as I generalized before,
16 but become specific about now, it is expected that 35
17 percent of the traffic to and from the site will be
18 oriented to the south on Route 206. 20 percent to the
19 south on the Old Chester Gladstone Road.

20 THE COURT: What was the percentage on that?

21 THE WITNESS: 20.

22 THE COURT: 20?

23 THE WITNESS: With 20 percent expected to use
24 Fox Chase Road to Route 24. And 25 percent oriented
25 to a, from the north on Route 206.

1 Q What impact, if any, will the proximity of
2 the Gladstone Railroad, Peapack Gladstone Railroad have
3 upon it?

4 A Well, we have reflected that by reducing the volumes
5 presented in our analysis.

6 We have separated out different kinds of trips and we
7 have taken into account the work trips or some portion of it
8 will be made to the rail station so those people commute
9 to whatever they commute to by railroad.

10 And at the time of our study, that station, I believe,
11 had some fifteen trains through it a day. Directional
12 trains to Hoboken where transfers to, could be made to
13 other areas.

14 Q Now, correct me if I am wrong. Have you told
15 us all about your analysis of the impact on the systems
16 here of the existence and development of Lake Chester
17 Village as well as the development of the rest of the area
18 through 1985?

19 A Yes, I have. And I think it is perhaps appropriate
20 to summarize and say that there are many instances in the
21 road system, regional road system where improvement would
22 be required by virtue of other changes taking place in the
23 area that have no bearing whatever on what happens to this
24 piece of property.

25 Q I am sorry.

End of
Tape 2

1 Q Now, correct me if I am wrong, Mr. Mendelson,
2 but have you given us whatever you have on the impact of
3 the development of Chester Springs Shopping Center shown
4 in your Table 2, the impact of that shopping center on
5 the traffic system there?

6 A Yes, that is reflected in the numbers that we have
7 shown for 1985 in our report. And I think is primary
8 the development of that center is the primary contributor
9 of the needs for improving the roads in proximity to our
10 site.

11 Q Then have you formed an opinion as to the
12 necessity for the improvement of Route 24 and its various
13 intersections as a consequence of the construction of the
14 Chester Springs Shopping Center? Will there be need for
15 its improvement?

16 A Well, we haven't addressed the, you know, the
17 specifics of that, as I said before. It is included and
18 as pointed out that the total numbers presented in terms
19 of relationships between volume and capacity without the
20 Lake Chester Development show that the road system will
21 require improvements and consequently that number, the
22 activity or trips associated with the shopping center are
23 accounted for in the numbers.

24 But I have not pulled out specifically what percentages
25 of the volume that they represent at any point in time or

1 A I am sorry. Most particularly Route 206 and the key
2 intersections in Chester Borough. That is, Route 24 and
3 206 and 24 with 513 and 510.

4 Q Tell us, please, what the present capacities of
5 the system will accommodate if at least by 1985 according
6 to your opinion, assuming that improvements are not made.

7 A Well, as pointed out previously, the volumes will
8 exceed capacity in many, many instances. But when the im-
9 provements will be made that have been proposed, the
10 volumes will be --

11 MR. FERGUSON: Objection. I don't know that
12 it is responsive to the question, your Honor.

13 Q Well, first if the improvements are not made.

14 A All right.

15 Q What is the capacity of the system?

16 A Okay. It is variable and it changes from location to
17 location.

18 Q Well, now, as to the area around Lake Chester
19 Village and Route 24.

20 A All right. At the intersection of, I think we should
21 be talking about the intersection of Route 24 with 206
22 and Route 513.

23 Q Right.

24 A Those during the A. M. peak hour and the P. M. peak
25 hour vary anywhere in a non-improvement situation by 1985 at

1 the first intersection which is 206 and 24, A. M. peak
2 hour volume capacity ratios were between .57 and 1.19.

3 And the P. M. peak hour they will vary between
4 .59 and 1.55.

5 Q Now, assuming that the improvements are made
6 as you have described them.

7 A All right.

8 Q Tell us again, please, the percentage that the
9 traffic generated by the Lake Chester Village would con-
10 tribute in the various areas that you have referred to.

11 A All right. Very, very moderate, I think. At the,
12 during the A. M. peak hour the first location, the percentage
13 or proportion of the volume capacity ratio varies from
14 .01 to .18. And during the P. M. peak hour varies from
15 .05 to .21.

16 But those, the, in both instances, the maximum
17 contribution occurs on an approach where the volumes are
18 below capacity, consequently where there really is no
19 operating difficulty or none projected.

20 MR. LINDEMAN: Now, if your Honor please,
21 it will be my intention now to offer Mr. Mendelson's
22 report into evidence. But before doing that, I think
23 an explanation is called for of some seemingly
24 impressive tables, namely, Table 4 and Table 5.

25 Q And I will ask you, please, Mr. Mendelson,

1 if you would explain the references on that table so that
2 when the document is looked at, assuming it is received
3 in evidence, it can be understood.

4 A All right. These are the tables, of course, to which
5 I have been referring during the presentation.

6 Q Right.

7 A The first column is location --

8 MR. FERGUSON: Well, I am going, not objecting
9 to the admission into evidence of the report, your
10 Honor. I think when the witness is testifying and
11 explaining what the column means, you ought to have a
12 copy of the report in front of you.

13 MR. LINDEMAN: I think that might be helpful.

14 MR. FERGUSON: I will, of course, object to
15 it, the relevance and weight to be given to the
16 findings, but that is a matter of weight and argument.

17 THE COURT: All right. It will be marked
18 P-17 in evidence.

19 (The document referred to was marked P-17 in
20 evidence.)

21 Q Sorry, would you --

22 A Page 4, your Honor.

23 THE COURT: Let me see.

24 MR. LINDEMAN: Do you have it, your Honor?

25 THE COURT: Let me just see if I can understand

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it to some degree.

I take it these are traffic counts that you took at the various intersections?

THE WITNESS: Yes, it is in the description of the location. It describes the approach.

THE COURT: The term that you are making that is the count that covers the turn?

THE WITNESS: Yes, that would be under existing volume.

THE COURT: Okay. For my edification, 206 northbound a right turn, a left turn --

THE WITNESS: A through --

THE COURT: And through movement?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: That would be the total approach.

THE COURT: Okay. And that's --

THE WITNESS: Where there is under southbound where there is a separate left turn lane we would have the left turn separated from through and right.

THE COURT: Okay. Then the capacity is what you said the capacity is and next is what the actual count was at that time?

THE WITNESS: Yes.

THE COURT: And the volume versus the capacity

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is obviously a percentage number?

THE WITNESS: Yes.

THE COURT: And the local growth that you are predicting?

THE WITNESS: That the increment to be added, 3 to 5 percent per year plus Chester Springs.

THE COURT: Okay. Then you give me another volume capacity ratio in percentage numbers then tell me site volume which from the Lake Chester Village?

THE WITNESS: That's correct.

THE COURT: And what bearing that has to the volume capacity and then total volume capacity percentage. So if I read you correctly on those north 206 northbound through, right turn and left turn, the volume by 1985 will be 73 percent of capacity?

THE WITNESS: That's correct.

THE COURT: Okay.

THE WITNESS: With Lake Chester Village contributing .18.

THE COURT: Right. Okay. I think I understand it.

MR. LINDEMAN: All right, fine.

THE COURT: It requires some analysis certainly, but I think I understand what he is doing.

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MR. LINDEMAN: The same thing would apply,
would it not --

THE COURT: Well, let's take Table 5.

MR. LINDEMAN: Yes.

THE COURT: Okay?

THE WITNESS: The same thing. The primary
difference is that this table reflects the improvements
made, consequently the capacity will change.

THE COURT: Yes, okay. All right. I think I
follow, Mr. Lindeman. I don't think there is any
need to explain.

THE WITNESS: Just one comment in Table 4.
I have referred on the right-hand margin --

THE COURT: Yes, I was going to ask A, B, C.

THE WITNESS: To the previous pages, to
Section, insert Section A, B, and I guess it is on
Page 5 as well.

THE COURT: All right.

THE WITNESS: So when we talk about a particular
location, we can then see how it relates to the
table.

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

THE COURT: Okay.

1 CROSS-EXAMINATION BY MR. FERGUSON:

2 Q When you were describing your field of expertise,
3 you used the word "alternatives" in describing, viewing a
4 traffic generation or traffic study problem.

5 Was it within the scope of your engagement to look
6 at alternative sites within Chester Township or Chester
7 Borough for high density housing or high density land use
8 and compare it with Mr. Caputo's site insofar as traffic
9 analysis was concerned?

10 A I was not.

11 Q Am I correct, then, that you did not make any
12 study of Chester Township or its environs with respect to the
13 preferable locations for high density residential use,
14 and specifically attached multi-family townhouses or
15 condominium type development?

16 A I believe you mean alternative locations.

17 Q Alternative locations.

18 A Yes, that's correct.

19 Q So you have no opinion about -- well, withdraw
20 that.

21 Did you review the 1974 plan of, comprehensive plan
22 of Chester Township with respect to its traffic, its
23 statement made about the regional road system and traffic
24 analysis?

25 A I may have looked at it, but I really don't recall

1 going into it in any great depth.

2 Q You said that there was a railroad station.

3 What railroad line is that, do you know?

4 A Yes, it is the Erie, was the Erie Lackawanna.

5 Q And what is it now?

6 A I guess it must be part of the Amtrack System.

7 Q I'm not so sure.

8 A It is not part of the Erie Lackawanna. I am sure
9 of that.

10 Q You said there were how many trains per day
11 when you looked at it?

12 A I believe it was fourteen. That information was
13 given to us by Mr. Reilly.

14 Q Who is Mr. Reilly?

15 A Mr. Reilly is the transportation executive director
16 for Morris County Board of Public Transportation.

17 Q Fourteen trains. Is that each way or must you
18 divide that in two?

19 A I can easily check my records.

20 Q Please do.

21 A Yes. Fourteen trains a day each way.

22 Q Fourteen east, and then, well, fourteen east
23 and fourteen west?

24 A Yes.

25 Q As of what date was that, approximately?

1 A I prefer to make the direct reference to the note.

2 It seems like a long time ago. On 4/21/76.

3 Q Mr. Mendelson, when did you, when were you
4 first retained by Mr. Caputo or somebody on his behalf?

5 A I believe we had worked for Mr. Caputo with Mr.
6 Villoresi. I have a proposal to Mr. Villoresi dated
7 October 2, 1974.

8 Q Mr. who?

9 A Alfred J. Villoresi. Sent to Villoresi & Flanagan,
10 of Boonton.

11 Q All right. Did you make any proposals or --
12 withdraw that.

13 Did you appear before the Chester Township Planning
14 Board at any time?

15 A I believe I did.

16 Q When?

17 A I don't recall the date.

18 Q Well, was it before the Complaint in this action
19 was filed?

20 A Pardon?

21 Q Was it before the Complaint in this lawsuit
22 was filed, which is July of 1975?

23 A It's hard to say. I would guess that it was, but
24 I cannot be sure of the dates.

25 Q How many times can you recall appearing before

1 the Planning Board?

2 A Just once.

3 Q Did you have any written material which you
4 gave to the Planning Board?

5 A I don't recall submitting any written material,
6 but I do recall having some mounted material on a
7 display board that was used in the presentation.

8 Q Can you briefly tell us what kind of, amount
9 of material you had? What was its thrust?

10 A To the best of my recollection, it was a table
11 summarizing the trip generation characteristics of the
12 project. That is, the number of trips and also, I believe,
13 we had something showing the specific orientation of
14 traffic. That is, the directions in which traffic will
15 approach and leave the site and also there was a map that
16 showed the intersection or road sections requiring improve-
17 ments.

18 Q Near the site?

19 A Yes.

20 Q How many units did you use as the basis upon
21 which to base your trip generation studies prior to your
22 testimony before the Planning Board?

23 A I don't recall.

24 Q How many units did you use for this study here?

25 A 856.

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what studies you had completed at that time and what studies

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Q Do you recall whether the prior numbers were

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greater or lesser?

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A I don't recall.

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Q Do you recall whether your testimony as to the

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trip generation statistics was different than it is now?

6

A I have no recollection of that.

7

Q Okay. You have no written document which

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could give us that?

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A I may have, but it would be in a separate file.

10

Q All right. When did you prepare P-17,

11

and I call your attention to the fact that it has a date

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on it of May, 1976?

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A Our report was submitted on May 11, 1976, to Mr.

14

Anthony Ambrose, Jr.

15

Q Do you recall having your deposition taken

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at, in this action by me?

17

A Yes, I do.

18

Q When was your deposition taken? And I will

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refresh your recollection.

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MR. LINDEMAN: April 27th?

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Q April 27, 1976 sound accurate?

22

A I rely on your judgment in the matter.

23

Q The record indicates when the deposition was

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taken. It is April 27, 1976.

25

Can you recall Mr. Mendelson on April 27, 1976

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1 an addendum section and that addendum section which is the
2 very last page refers to the design of Old Chester
3 Gladstone Road with Roger Road and the site drive.

4 And to the best of my recollection, the only thing
5 that we had done subsequent to your deposition was to
6 prepare the illustration, I believe, that is, you know,
7 shown at the present time which is P something. I can't
8 read that.

9 Q Are you referring to P-16E?

10 A Yes.

11 Q The intersection of Old Chester Road and
12 Roger Road site drive?

13 A Yes, that's correct.

14 Q Am I correct then this was prepared shortly
15 after your deposition and attached to your other document?

16 A Yes.

17 Q Would I be correct, then, to conclude that this
18 document was not in existence at any time prior to at least
19 April, 1976?

20 A That is correct.

21 Q Referring to P-16E.

22 Going back to the railroad station and what we all
23 hope is the Erie Lackawanna.

24 Are you aware of any plans of the Department of
25 Transportation of the State of New Jersey to relocate the

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station which is now in Peapack-Gladstone to some other location?

A I am not.

Q Were you aware that there was a public hearing scheduled for July of 1977 about this topic?

A No, I am not aware of that.

Q Did you investigate with the State when you made your report whether they had any plans to do anything with respect to the railroad service over that line?

A I think things have changed pretty dramatically with the advent of Amtrack and the manner in which public transportation is treated in the State of New Jersey.

I really don't think they were aware of, you know, who is going to own it. In fact, I still think the State has relative control over railroads in this State except that they subsidize them.

Q Lots of money but no control?

A Yes, very little, unfortunately.

Q You testified about the bus service from Chester to Morristown and New York.

First I'd ask you as of the date. Can you differentiate between the date of your report and what you know exists right today?

A That I cannot do because the information --

Q You first -- can you tell us if there is a

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End of
Tape 3

1 difference, if you know there is a difference, tell us how
2 you know it?

3 A No, I do not know if there is a difference.

4 Q Tell us what you know and as of what time you
5 know it.

6 A Okay. The information that I obtained also was from
7 Mr. Reilly relative to the infant service, if you will,
8 of Lake Land Bus Company from Chester to New York and the
9 establishment of the Morris County route, I believe it was
10 472 to serve the Chester area.

11 Q You say infant bus service?

12 A Well, anticipated infant quote unquote.

13 Q So are you telling us that your investigation
14 was confined to what Mr. Reilly told you?

15 A That is correct.

16 Q Have you made any independent investigation
17 either then or now as to whether buses actually run between
18 Chester and Morristown or New York?

19 A Well, Mr. Reilly is the responsible individual for
20 establishing bus routes and operating them in this County.
21 And that's why we went to him because we were working at
22 that time with him directly for the County. But I did not
23 physically stand on the corner of Route 206 and 24 to see
24 if the bus was going through.

25 Q What did Mr. Reilly tell you?

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A As indicated that service would be established via Lake Land and also Morris County.

Q Morris County what?

A Morris County, local Morris County Route 472 and express New York route via Lake Land.

Q Lake Land is the name of a bus company?

A Lake Lane Bus Company, yes.

Q So did he tell you when this was anticipated to occur?

A He really could not pin down a date simply because the Lake Land matter, he did not have any control over and in the Morris County matter, I guess, that is always a very controversial question that is a subsidy of public transportation in the County and really changes from year to year as the budgets are proposed and modified.

Q Do you have any knowledge beyond what Mr. Reilly told you?

A I do not.

Q Now, where would the bus leave from, if Mr. Reilly is correct and there is any bus service by indeed any other carrier?

A I don't know that.

Q Did you ask?

A No.

Q Oh! Based upon your expertise as a traffic

1 engineer and upon your knowledge of Chester and Chester
2 Borough, where in your opinion would the buses have to
3 leave from to make any transportation sense at all?

4 A I would concentrate the bus service at two major
5 intersections.

6 Q Which are what roads?

7 A Route 24 and 206 and 24 and 513 or Main Street.

8 Q You say concentrate?

9 A Well, those are the focal points. Obviously there
10 would be stops in between or stops in major developments.
11 The transit companies are in business to service the
12 people and if there are, you know, close to a thousand
13 homes located on a site such as this, obviously the service
14 could be extended such as this facility or this development
15 would be a stop on the line.

16 Q Is this development a stop on the line between
17 Chester Borough and Morristown?

18 A There is no development there at the present time.

19 Q Well --

20 MR. LINDEMAN: Should this not by way of
21 clarification -- excuse me -- that by this development
22 we are referring to --

23 THE WITNESS: Lake Chester Village.

24 MR. LINDEMAN: -- precise in the question, right?

25 MR. FERGUSON: All right, I will.

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Doesn't make any sense, I guess.

Q How many miles is it from the center of Chester Borough's intersection of 24 and 206 to the Caputo site?

A I don't know the precise mileage. I could measure it, if you would like.

Q Well, I don't need you to measure it.

Is it your testimony that you, as a transportation engineer, would recommend that a bus company go from the center of Chester Borough down to the site and then over to Route 24 on Fox Chase Road on a route from Chester to Morristown in order to service this site?

A I would have to make a feasibility study of the economics of extending the service from the center of Chester Borough to this site.

But certainly I think intuitively it makes sense to serve a large number of families that we are talking about. The exact route I think is really a function of design. I don't know at this point in time, but I certainly believe 206 would be the primary, you know, path to be followed. I can't imagine where service would be continued over Fox Chase Road unless there is a very specific reason for it.

Q How do you get from this site to Morristown?

A Well, I believe the buses, if it were to be servicing

1 this area would probably come down 206 to the Old Chester
2 Gladstone Road.

3 Q And then do what?

4 A Pass through the center of the borough simply because
5 public transportation needs maximum exposure to become
6 economically viable. And then perhaps Route 24, or the
7 bus may travel over the Dover Chester Road to Route 10
8 to service the community colleges. You know, just depends
9 upon how the route is structured.

10 Q As a general proposition, does it make sense
11 to put concentrations of persons who are to be serviced
12 by public transportation as close as you can to the center
13 of your road network so it makes it easier to collect them
14 for public transportation?

15 A I think as a general rule, yes.

16 Q Looking at P-7 in evidence --

17 THE COURT: Let's take a break.

18 (A short recess was taken.)

19 Q Mr. Mendelson, during the recess at my request,
20 did you measure the two distances for me?

21 A Yes, I did.

22 Q The first one, I believe, was from the center
23 of Chester Borough at the intersection of 206 and 24 to the
24 proposed entrance to the Lake Chester Village site?

25 A Yes.

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Q How many miles was that?

A That was approximately three miles.

Q The next one was from the X, which indicates the center of Chester Springs Shopping Center to the line between Chester Borough and Chester Township?

A That was approximately a quarter of a mile.

Q And I asked you to give me one more distance, if you could, between Chester Springs Shopping Center and the intersection of 206 and 24.

A I am missing a dimension. I don't have that one.

Q It is approximately another quarter of a mile?

A Then it is approximately.

MR. LINDEMAN: Is that testimony, or I object?

MR. FERGUSON: Well, if the witness would just come down and tell me about how far it is between the intersection to the center of Chester Springs Shopping Center and then to the Borough Line, it would clarify the record a great deal.

A I would say it is approximately the same distance. So we are talking about a half mile between the center of Chester as defined by its intersection of Route 24 and 206 and the Borough Town Line with a quarter of a mile roughly between the shopping center and the center, and the shopping center and the Borough Town Line.

Q Thank you. Now, Mr. Mendelson, what do you

1 look at when you do a traffic generation study?

2 In other words, what factors, what do people in the
3 project like Mr. Caputo's need to go out for?

4 A Well, we would kind of stratify our trip generation
5 rates by purpose. Trip purpose. For example, people will
6 travel for the purpose of work. People will travel for the
7 purpose of shopping trips. Will also be made for social,
8 recreational purposes. School trips are made. Business
9 trips. Really a whole wide range of travel.

10 The variable is growth and perhaps the time really
11 is the key factor. Most of the peak hour trips are
12 made, are usually work trips. About 85 percent of the
13 trips made during peak hours. The work trip. During off
14 peak hours, trips for shopping.

15 Q First work. What did you use? How did you
16 arrive at the result of your study insofar as the work
17 trips went? What employment center did you consider?
18 How did you arrive at that?

19 A When we located employment. I based it on the
20 census at that time for all municipalities in the County
21 and to say in proximity to it and also determine the
22 travel time over the road system to get to each of the
23 places from the project.

24 Q Would you give us the ten major centers of
25 employment that you used in your study?

1 A I can't recall ten. Obviously there is a variable
2 level of employment in each of the areas. Hackettstown
3 is certainly a major employer in proximity to the site.
4 Morristown --

5 Q Hackettstown is to the west?

6 A Yes, sir. To the west.

7 Q And you use 24 West to get there?

8 A Some people will go that way or come down 78 and
9 proceed that way or whatever the regional road system is.
10 I did not go through specific allocations myself, but the
11 process is very standard and we do it all the time.
12 What we do is identify the major centers of employment as
13 quantified through, let's say, the census or some other
14 definable source and we determine the amount of time it
15 takes to each of those.

16 Obviously, there are lots of jobs in New York City,
17 but it takes an awful long time to get there. So
18 consequently, we kind of what we put an impedence in
19 our evaluation. That impedes everybody from working in
20 New York, so therefore, we try to keep people as close
21 to the area where they live as they might work.

22 Q By the way, do you have a travel time from
23 downtown Newark to Chester Borough?

24 A I am sure we do.

25 Q Can you locate it?

1 A I can look through my files.

2 Q When we have another recess or you have an
3 opportunity, please do.

4 A Sure.

5 Q Also, the travel time to New York City, if you
6 have it.

7 A Sure.

8 Q If you leave aside work, you listed some other
9 things, shopping, social, business services for the subject
10 site, Mr. Caputo's proposed development.

11 What services did you examine in terms of trip
12 generating services, shopping, et cetera?

13 A Well, the attraction you mean?

14 Q Attraction?

15 A Where the people live here be attracted to in terms
16 of activity? Well --

17 Q That's correct.

18 A Well, obviously, the place of various attraction
19 will be Chester Borough because of the concentration of
20 shopping opportunities there.

21 Q But tell us in your judgment as a traffic
22 engineer what shopping opportunity or attractions there are
23 in Chester Borough?

24 A Well, the two regional -- I am sorry -- the two
25 shopping centers that are located there. The 200,000

1 square foot Chester Springs and the other one that is
2 located at the intersection of 206, 202 -- I am sorry --
3 206 and 24.

4 Q Do you have the square foot count on the other
5 one across the road?

6 A We must have that, yes. Again, I don't have all
7 those numbers at my fingertips.

8 Q Is it bigger or smaller than Chester Springs?

9 A I don't really recall. You know, I think I can check
10 if we have the files.

11 Q Can you recall approximately if it is about the
12 same size?

13 A I don't know. It would be a guess.

14 Q All right. Go ahead. I don't mean to interrupt
15 you.

16 A Yes. There are different kinds of shopping trips
17 made. For example, there are convenience good shops,
18 versus good kinds of shops or activities. Somebody going
19 to the supermarket would tend to travel a relatively short
20 distance simply because of picking up groceries. Something
21 that they need on a fairly regular basis. Somebody doing a
22 larger dollar expenditure shopping traveling, might be
23 traveling further. I think people shopping, what we call
24 shopping goods would be traveling perhaps up to the shopping
25 center and Route 10 or into Morristown or perhaps down into

1 You know, the Route 22 area, wherever. But, you know,
2 those types of opportunities are not located in proximity
3 to the tract.

4 Q What about ancillary services, accountants,
5 lawyers, doctors, whatever else?

6 A I think most people would probably travel for doctors
7 locally. I think Morristown is the legal center and
8 the financial center, if you will, of the County, so those
9 trips may be made there. Some of the people may have
10 an orientation perhaps to Somerset County or, you know,
11 beyond to Newark, whatever.

12 Q What about recreation?

13 A Recreational trips, if they're in short-term trips
14 they would tend to be made locally. Our County, of course,
15 is blessed with a number of opportunities for that type of
16 thing. And if they're longer trips, they will just travel
17 longer distances, longer in time, I mean.

18 Q In terms of mass transportation to service the
19 Chester Borough and the Township based upon your examination
20 of the area and your expertise, what is your opinion as to
21 what that mass transportation will have to be?

22 A I think we are talking about bus lines.

23 Q To where?

24 A I think the linkage would be between Chester and
25 Morristown.

1 Q What about bus service north, east, or south?
2 Northwest or south?

3 A I think it would, you know, really not be warranted,
4 although we would have to go through some type of test
5 determination to make adjustments. But I think the primary
6 travel corridor would be one that links perhaps the
7 Chester Township to Morris Township in terms of public
8 transportation simply because you pick up a lot of other
9 people on the way.

10 Q What is the major convenience shopping area in
11 terms of supermarkets, five and tens, that kind of
12 facility closest to the Caputo site?

13 A The two shopping centers described.

14 Q The center of Chester Borough?

15 A Yes.

16 Q I call your attention to Exhibit P-7 for
17 identification.

18 MR. LINDEMAN: No, that is in evidence.

19 Q In evidence, and ask you if you are familiar
20 with the three brown areas that I am pointing to in the
21 south, on the south side of the line between Chester
22 Borough and Chester Township?

23 A No, I am not.

24 Q Kind of a reddish brown, is a quarter of a mile
25 walking distance between a place you live and a bus station

1 a reasonable walking distance, i. e., will people walk a
2 half a mile between their house and a bus station in order
3 to use the mass transportation?

4 A A quarter of a mile is a reasonable distance.

5 Q What about a half a mile?

6 A It depends on the area, you know, in a city with very
7 frequent bus service, people are tending to walk a quarter
8 of a mile. If you are out in a more suburban rural area,
9 people will walk a half a mile. It just depends on whether
10 they need the service or not.

11 Q In Chester Township, as far as we know,
12 only one anticipated bus service, will they walk a half a
13 mile?

14 A I think so.

15 Q Your experience as a transportation engineer,
16 is it feasible for an 856 unit such as Mr. Caputo's to
17 establish a jitney bus service to take the residents to and
18 from mass transit or to and from neighboring shopping
19 areas?

20 A I believe it is feasible.

21 Q Is it more feasible -- strike that.

22 Does the feasibility vary inversely with the distance
23 between those areas?

24 A Well, you know, you are only talking about three
25 miles from the center and if the bus travels for the sake of

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computation at sixty miles an hour, it takes three minutes to get to the center of Chester or Chester Borough.

Q Can anything travel sixty miles an hour on Old Chester Road?

A I am sure there is something that can travel sixty miles an hour.

Q Within the speed limit?

A No, not within the speed limit.

Q And not safely?

A I don't think safely.

Q If jitney-type bus service to be considered, doesn't it make sense to locate to reduce the distance that it has to run?

A It depends on who is paying for that service. If that service is to be supported privately, I really don't think it makes a heck of a lot of difference.

If that service is to be a public service, then I think one tends to try to be as economical as they possibly can.

Q The greater distance you have to go the more it is going to cost?

A Sure.

Q No matter who pays for it?

A That's correct.

Q Does your experience go into the realm of how

1 many vehicles are required per unit or per family living
2 in a development such as is proposed by Mr. Caputo?

3 A How many transit vehicles?

4 Q How many private automobiles.

5 A I think from experience you will find the range
6 would be anywhere between one and three.

7 Q Do we have any average figure which you could --

8 A Two.

9 Q -- competently tell us that you have been able
10 to apply to such a development as this depending on the
11 facts and circumstances and where it is located and obviously
12 it is different than it is in New York City or in
13 Chester Township?

14 A Yes.

15 Q Is there any way for you to tell us within
16 the realm of your expertise with your professional planning
17 experience and background and traffic engineering experience,
18 a projection of the number of vehicles that will be owned
19 per unit in this project?

20 A Two per dwelling unit, I believe is broadly accepted
21 statistic, and I would say that given the type of develop-
22 ment we have here, that two would be a reasonable number.

23 Q Is your -- withdraw that.

24 Are there any public transportation facilities between
25 the railroad station and the center of Chester at the

1 intersection of 206 and 247

2 A I don't know of any.

3 Q Now, when you project ahead in your study you
4 projected the volume growth. You only used a three,
5 used a series of three percentages. I think 5, 4, and 3?

6 A Yes.

7 Q '74 to '77 it was 5. From '77 to '82 it was
8 4. '82 to '85 it was 3, is that correct?

9 A That's correct.

10 Q Isn't that a significant decrease in the rate
11 of growth over a period of time?

12 A Not significant.

13 Q Well --

14 A It is only 1 percent per year.

15 Q But, no, but in the rate, what is the rate of
16 change applied to those percentages? Aren't you decreasing
17 it 20 percent per year, the 20 percent the first year?

18 A Yes, but the numbers are, you know, they're standard
19 in terms of the growth experience for this part of the
20 world.

21 Q Why are we decreasing it?

22 Would you expand upon that?

23 A Sure. It is a function of the utilization of the
24 roads. If we had an unconstrained road system in terms
25 of capacity, you could fill it up. You know, it will con-

End of
Tape 4

1 tinue to grow at a very high rate per year.

2 Q Is it then only the limitation of the road
3 system which will keep a lid on the growth of traffic?

4 A I think it, there are a lot of different parameters.
5 It is a function of over-all area growth, but that, of
6 course, is constrained by the accessibility to the area.
7 I guess it is really a traffic engineer's way of trying to
8 using a growth rate of X number of percent per year.
9 It is really a traffic engineer's way of trying to account
10 for a lot of things that are, he cannot account for
11 specifically. Like the economic changes that occur in
12 an area. Like the broad base development that may take
13 place in the area. The constraints imposed by the fact that
14 there are, you know, limited regional facilities in an
15 area. A whole bunch of things. We really do not know until
16 we get in a very, very detailed study.

17 Q You mentioned a couple of things. One was
18 limited access and the other the limited regional
19 facilities.

20 A Yes.

21 Q Tell us about limited access.

22 A Well, for example, if you have no roads into an
23 area, that area will not grow.

24 Q Are you using those terms in relationship to
25 Chester Township?

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A No, I am --

Q That was just --

A General sense.

Q General, all right.

In making your projections, did you use any factor for the additional development called for in the 1974 comprehensive plan for Chester Township?

A We did not.

Q Did you use any development called for by the master plan of Chester Borough, if there is one?

A No, simply because there was nothing to find at the time that we did our study. It is not a matter of coloring a block on a map and saying we like that to be commercial, we like that to be residential. What we tried to do is be as realistic as we can. If we know what is going to be accounted for, then we superimpose an appropriate growth per year. That is a kind of catch-all, but when somebody presents a master plan like that, there is no way to consider for it.

In fact, we recently did a study for Randolph Township where we looked at the implications of their zoning and we found that every road in town had to be widened to at least four to six lanes.

You know, that floored everybody simply because no one ever thought to design the roads to accommodate

1 what is put on the master plan.

2 You know, two normally done independently of each
3 other.

4 Q Doesn't it make just as good sense to design
5 the master plan to accommodate the roads?

6 A I think they should be done together. I don't think
7 you can separate land use planning from transportation
8 planning. You know, that is an opinion of mine.

9 Q Now, when you were doing your count and projection
10 of Fox Chase Road, I believe you told me on your deposition
11 that the volume over Fox Chase Road was not a function of
12 the type of surface on Fox Chase Road?

13 A I seem to recall you were talking about that.
14 I don't remember the specifics of our discussion. I think,
15 you know, obviously you are not going to get high volumes
16 of traffic on a road that is gravel as opposed to a road
17 that's surfaced with bituminous material or concrete.

18 Q Didn't you tell me that your standard handbook
19 for traffic engineers made no distinction between whether
20 it was gravel or bituminous?

21 A That's right, it doesn't.

22 Q So your calculations as to capacity makes no
23 distinction between whether Fox Chase Road is gravel or
24 bituminous?

25 A That is correct, except common sense dictates that

1 if you are going to carry Fox, continue Fox Chase Road
2 as a land service road serving the homes in proximity to it,
3 you can carry a couple of cars a day over a road like that.
4 If you're going to change to a large volume of traffic,
5 obviously the road has to be improved and I believe that
6 ultimately this road will have to be improved as part of
7 the area's development.

8 Q Would the, so the development of -- strike that.

9 The paving of Fox Chase Road would by itself increase
10 the traffic over Fox Chase Road?

11 A I believe it will.

12 Q When you use 1974 as the base year for your
13 projections, did you take account of the energy shortage
14 of 1975 and its effect upon automobile traffic in this
15 area and indeed in the United States as a whole?

16 A No, we didn't. For that reason, we are probably
17 very conservative. We tried to be conservative and I
18 feel that if the road improvement that we have designed,
19 you know, will handle the higher number of cars, that
20 obviously will handle a lower number of cars.

21 You know, we did not say that traffic growths will
22 instead of being 5 percent per year during the energy
23 crisis year, it would be 3 percent. We were working with
24 the Turnpike Authority then and there has been a short
25 decline in utilization of that facility during the energy

1 crisis. But what has happened, the volumes in terms of
2 annual growth have increased pretty drastically to pretty
3 much at the same level they are now which leads me to
4 believe by the 1985 numbers are reasonable.

5 Q At least insofar as the recommendations you
6 have made about improving the roads are concerned?

7 A Yes, and the volumes of traffic warranting those
8 improvements.

9 Q Now, on the specific -- just a few more things.
10 This is the intersection of 206 and Old Chester
11 Road north of the proposed site. P-16A. That intersection
12 now is controlled by a stop sign?

13 A Would the Court mind if I --

14 THE COURT: No, go ahead.

15 A Perhaps an illustration.

16 Q Please come over here.

17 A Thank you. Yes, that intersection is now controlled
18 by a stop sign.

19 Q Is there a potential danger from increased
20 traffic making a left-hand turn?

21 A Well, that's why we recommended the road be improved
22 to four lanes in that area.

23 Q 206 be improved?

24 A Yes, that is correct.

25 Q So there would be a left turn lane?

1 A Well, so left turns can be made there, one of two
2 lanes rather than from a single lane with the volumes of
3 traffic on that facility left turns will be somewhat
4 constrained. And the traffic behind those vehicles
5 turning left will tend to back up.

6 Q Now, on the intersection of Roger Road/
7 Fox Chase Road 206 sketch in P-16B, first, does Fox Chase
8 Road run into Roger Road?
9

10 A No.

11 Q Now --

12 A No, they are parallel facilities.

13 Q Well, on this sketch they seem to be the same
14 road.

15 A No, it is a conceptualization as explained in our
16 report rather than to draw the picture twice.

17 Q So it is really a drawing of two intersections?

18 A Yes, it is either Roger Road if you cover up
19 Fox Chase or it's Fox Chase if you cover up Roger, and
20 it is at its intersection with Route 206.

21 Q In effect, then, P-16B is two for the price of
22 one?

23 A Yes.

24 Q All right. Both of these intersections then
25 there will be no left turn?

A That's correct.

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Q Tell us why?

A Well, I am concerned that because of the long, steep grade in that area that left-turning vehicles would have some difficulty negotiating a left turn, so consequently, for safety purposes I proposed that those turns be confined to right turns.

Q Long, steep grade on what road?

A On Route 206.

Q Which direction is the grade?

A It runs from north to south down.

Q Down from north to south?

A Up from south to north.

Q Likewise, there would be a No Left Turn sign running south, if you were going south on 206?

A That's correct. The sign would be shown as depicted on our illustration.

Q What is the danger there?

A Well, that's a left turn, would be for essentially we don't want anyone turning left from 206 into Roger Road or Fox Chase Road.

Q But you don't have a No Left Turn sign going in the same direction on the turn to Old Chester Gladstone Road?

A That's correct.

Q What is the difference?

1 A Well, the grade changes for one. That is a flat
2 section of road. And two, the number of lanes increase from
3 two to four.

4 Q So if people want to turn left here, you
5 recommend going to four lanes even if the grade were not
6 there?

7 A All right, if there were no grade here and Fox Chase
8 Road became the manner in which the, primarily manner in
9 which people would be proceeding north, then we would make
10 the recommendation that four lanes be provided through
11 this section. But that is hypothetical simply because that
12 does not exist.

13 Q Okay. Is there a name for us, the communities
14 and employment generators south on 206, if you can?

15 A Communities?

16 Q Yes.

17 A Immediately to the south is Peapack Gladstone.

18 Q On 206?

19 A Yes.

20 Q The Borough of Peapack Gladstone?

21 A Yes, did you not say that to me?

22 Q Well, I should say town or city centers.

23 A I am sorry. I thought you said communities.

24 Q My mistake.

25 A I guess the first major concentration of employment

1 would be in the Bedminster area.

2 Q What is there?

3 A We would have A. T. & T.

4 Q And what is in Bedminster that A. T. & T. has?

5 A The long lines division.

6 Q Do you know the number of square feet in that
7 building?

8 A I do not.

9 Q Do you know the number of employees?

10 A I do not.

11 Q Would 3,000 surprise you?

12 A Nothing surprises me.

13 Q Do you think that is high?

14 A No. I think it depends on how many people that have
15 to locate there.

16 Q Does A. T. & T. have a facility in Basking Ridge?

17 A Yes, they do, on North Maple Avenue, right off 287.

18 Q What is the quickest way to get to 287?

19 MR. LINDEMAN: From where?

20 Q From the subject site.

21 A It depends where you want to go on to 287.

22 Q All right.

23 A To the south?

24 Q To the south.

25 A I think it would make sense to continue down 206.

1 Q Isn't that the fastest way to get to 287 to the
2 south?

3 A That's what I said.

4 Q To come out Roger Road or Fox Chase Road and
5 turn left?

6 A Or to continue down through Gladstone Peapack.

7 Q On Old Chester Road?

8 A Yes, we have, you know, kind of split the traffic.

9 We said that as I recall the allocation numbers, there
10 would be about 35 percent on 202-206 and 20 percent on
11 Old Chester Gladstone.

12 Q Old Chester Gladstone runs through what
13 village centers, do you know, before it goes to 287?

14 A There are several, but you can get right back on
15 206 much before you have to traverse the village center.
16 You wouldn't go through the village center.

17 Q You would have to go down Old Chester Road
18 to the south and then take a right turn?

19 A Right.

20 Q And then still make a left turn on 206?

21 A Yes, there is a major intersection. I forget the
22 name of it. That is a very nice wide open intersection
23 just below the site.

24 Q Which direction is that?

25 A I don't recall.

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Q Is there a red light there?

A I don't think so. I don't think so.

Q Controlled by a stop sign?

A Yes.

Q No traffic control device other than a stop sign?

A A stop sign is a pretty significant traffic control device.

Q For 206 it would have to be?

A For any road it is.

Q Would Route 78 be to the south also?

A Yes.

Q 78 is a primary improved road going west, to western New Jersey and Pennsylvania?

A And across the United States.

Q To Hackettstown --

THE COURT: On the site?

Q From the Chester area or from the site?

A You can get to Hackettstown and 78.

Q It is a primary road. You mentioned Hackettstown as a significant employment generator.

A Well --

Q I want --

A We can identify how that is done. There are several ways to do it, obviously. 80. Hackettstown site between

1 80 and 78 somewhat closer to 80, but it could be served
2 by both of those facilities.

3 Q Isn't the most direct route from Hackettstown
4 to Chester Route 24?

5 A Well, if you like to stay on it, yes, you can do that.
6 The routing, of course, as I follow it, is Route 24 through
7 Long Valley and up to Hackettstown. But the road system
8 is not quite as good as it is on the higher intensity
9 interstate throughways.

10 Q In order to get south via the quickest route
11 to 206 and then to 287 and 78, you would have to make
12 a left turn on 206 from those two roads, Roger Road and
13 Fox Chase Road. Is that an accurate statement?

14 A Fox Chase --

15 Q Is that an accurate statement?

16 A We are not letting the people do that.

17 Q So they will have to go some other way?

18 A Yes, we are. People going south will essentially
19 be turning left on to Old Chester Gladstone Road and
20 be turning on to Route 206 at the first opportunity they
21 have.

22 MR. LINDEMAN: I missed a lot of it, too.

23 THE COURT: He said something to the effect,
24 but not on the two intersections that have been
25 studied.

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A But not on these two roads.

I forget, can you read that back?

(The reporter read the last portion of the answer.)

A I said people have not been turning south from Roger Road nor from Fox Chase Road.

Q I realize.

A Of course they will be turning right when they turn from the south perhaps during the P. M. peak hour they can turn directly from Route 206.

Q Without crossing the traffic?

A That's correct.

Q The intersection of 24 and 513, is that a major intersection in Chester Borough?

A Yes, it is.

Q Are there a variety of different land uses close by that intersection?

A Yes.

Q Is the intersection of 513 and 24 a likely stop on the bus route between Chester Borough and Morristown?

A Yes, I believe so.

Is it all right for me to return to my seat?

Q Yes.

A Thank you.

Q Did you make any study of first the capacity

1 of the local road network to handle other developments in
2 the Chester area and specifically Chester Borough or
3 Chester Township generally south of the Borough?

4 A Those have only been accounted for in the growth
5 factor used simply because there were no specific develop-
6 ments at the time we made the study. No major developments.

7 Q Have you become aware of any specific proposals
8 since the time you did the study?

9 A Well, we had also worked on Graystone Farms.

10 Q Where is that?

11 A That would be in both the Borough and the Township.

12 Q What is the Graystone Farms Project?

13 A At the time we were involved with it, it was a
14 townhouse project. But I assume, or it is my under-
15 standing based upon subsequent conversations with your
16 Honor that has changed. But I don't know what the
17 configuration is at the present time.

18 Q Is the proposal still around?

19 A Pardon?

20 Q Is the proposal still being made?

21 A I don't know.

22 Q Were you advised whether the Graystone Project
23 is the subject of another lawsuit pending against Chester
24 Township?

25 A Am I aware of that fact?

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Q Yes.

A No, I am not.

Q All right. I should have said are you aware. Whether it is, I don't know. I don't want to imply that is the truth of that statement.

A No, I do not. I do not know.

Q Did you make any study of what improvements -- strike that.

Did you make any study of what the least amount of improvements would be to the road system to handle any proposed development with the one variable being its location within Chester Township or Chester Borough?

A I guess that statement leads directly to the recommendations that we made.

MR. LINDEMAN: Well, I think the witness should be instructed to answer it.

A I guess what I am saying is yes. Our, the least amount of improvements that are the ones we proposed.

Q In the Caputo's development?

A Yes.

Q All right. My question is directed to a similar proposal in another area of the town and I am specifically referring to the rust brown area, whether the traffic improvements which would be necessary for those developments would cost less on a per unit basis than the

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improvement necessary for Mr. Caputo's project?

A I have no idea. We have not studied that.

MR. FERGUSON: I have no further questions.

MR. LINDEMAN: Just briefly.

REDIRECT EXAMINATION BY MR. LINDEMAN:

Q Mr. Mendelson, you said there were proposals that were extant at one time for the Graystone Development?

A Yes.

Q And that you worked on it?

A That's correct.

Q And what were those proposals, if you know?

A It was a townhouse development.

Q Of how many units?

A The specific number escapes me. I do not recall.

Q Do you know the general range?

A I would say perhaps a thousand.

Q And what has it changed to so far as you know?

A I relate my most recent conversation which is some time ago with the developer and I believe that in the Borough they had proceeded with the construction of single-family homes.

Q What impact, if any, would such a development on the Graystone Site have on the improvement of Route 206

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and some of the other roads which you referred to?

A They would be very similar to the improvements that we are talking about.

The gist of the testimony is that the roads in that area will break down independently of major development, any major development in Chester Township or Chester Borough, or perhaps the adjacent communities will warrant major improvements to be made to that road system.

MR. LINDEMAN: I have no further questions.

RE-CROSS-EXAMINATION BY MR. FERGUSON:

Q Mr. Geurin, the developer of the Graystone Development?

A He was one of the principals that I had worked for.

MR. FERGUSON: I have no further questions.

THE COURT: Step down, Mr. Mendelson.

Thank you.

THE WITNESS: Thank you, your Honor.

THE COURT: Before you go any further, I had occasion to pick up P-15, the Morris County Master Plan, future land use element. And it occurred to me that there is a great deal of reading in that document. And being basically a lazy person, I'm going to ask you to point out to me, being the lazy person I am, I am going to ask you to point out to me the areas

1 that you want me to read because it is a hundred-page
2 document.

3 Reading it will be one thing. Digesting it
4 will be another thing, and it is a document with
5 extensive comprehension and understanding referring
6 to many things.

7 For instance, you know, how much do you want me
8 to concentrate on the open space element of the
9 Morris County Master Plan? I'd like you to tell me
10 those areas that you want me to concentrate my reading
11 in because, very frankly, potential sources of
12 water for Morris County for the year 2000 to understand
13 and digest is a lot of work, right?

14 MR. LINDEMAN: Yes, your Honor. I really do not
15 intend to make an exhaustive examination of that
16 land use element at all. We intend, if my memory
17 serves me, to refer to very limited parts of it.

18 THE COURT: Okay. It is something to comment
19 about. It is something that you just marked into
20 evidence and you are saying here, Judge, this is
21 --

22 MR. LINDEMAN: You observed the site.

23 THE COURT: -- this is it.

24 MR. LINDEMAN: Oh, no. I can even tell the
25 Court now what --

1 THE COURT: No, it is all right. Then I was
2 presumptuous. I thought what you had done in marking
3 it was here it is, Judge, read it. Digest it, under-
4 stand it. You are just going to concentrate on certain
5 areas?

6 MR. LINDEMAN: Yes.

7 THE COURT: Fine. Then I was a little premature
8 in my --

9 MR. LINDEMAN: Dignified by the word "concent-
10 tration." I may not concentrate, we were going to
11 refer to parts of it.

12 THE COURT: Okay. All right.

13 MR. FERGUSON: Your Honor, I think we will be
14 asking the Court to look at areas of it very
15 specifically.

16 THE COURT: Okay. The burden becomes yours,
17 then, to point out to me then the areas.

18 MR. FERGUSON: We also have a number of
19 planning documents, such as the Somerset County
20 Master Plan. The Tri-State Regional Planning Commission
21 and RPA. What we propose to do is to have the documents
22 here. We have already pre-marked them and have a
23 list of them and pages we want you to read and
24 note.

25 And we propose to submit to the Court Xerox

1 copies of those pages.

2 THE COURT: Okay.

3 MR. FERGUSON: I anticipate Mr. Lindeman saying,
4 well, if you want Page 18, Ferguson, I want Page 42.

5 THE COURT: Fine.

6 MR. FERGUSON: I would fully expect him to do
7 that. And I would invite him to do so. I have
8 conceded that is the appropriate way of bringing
9 before the Court either documents in evidence or more
10 properly those of which you can take judicial notice.

11 THE COURT: You see why I am doing this? My
12 experience in the past has been that in a case of this
13 magnitude when I have two documents placed before me,
14 I do not want to be unfair to anyone in any findings
15 of fact. Give you all findings of fact that you have
16 produced.

17 However, when a document of a hundred pages
18 or maybe five documents of a hundred pages each are
19 presented to me, I don't want, as I have had in the
20 past, an attorney write me and say, "Well, you
21 disregarded Page 99 of Morris County Future Land
22 Use Plan."

23 And my response has been, "Well, yes, I dis-
24 regarded it because you didn't emphasize it to me
25 and I didn't consider it that significant in the

1 over-all phase of the things." Because I just don't
2 have time to read and re-read and digest the magnitude
3 of some of the things.

4 In particular, what I think of is one sentence
5 that was quoted to me for not considering out of
6 a hundred-page document, that is difficult. That is
7 a difficult onus on any human being. So I just want
8 to make sure you know beforehand that what I am
9 saying to you is point out to me those parts that you
10 want me to concentrate on that are significant to
11 you from your area of proofs so that I will not
12 unfairly make findings of the facts.

13 That is all.

14 MR. FERGUSON: Right.

15 MR. LINDEMAN: Your Honor please, I think at
16 this point I think it is a good time to have a few
17 words about these various documents.

18 We did go over them in evidence because the
19 very fact of a Morris County Master Plan Use Element
20 is an appropriate thing to have in a proceeding of
21 this kind, just as the two zoning ordinances in
22 question are appropriate.

23 It is our position, of course, that both of the
24 zoning ordinances are invalid and it may very well
25 be that many of the findings that are contained in

1 certain of these documents, such as the Somerset
2 County Master Plan and even the Morris County Master
3 Plan may either be invalid or perhaps inaccurate,
4 or in any event, not evidentiary of what they say.

5 I think, and I think that Mr. Ferguson might
6 as well know it now too, that these being perhaps
7 indicia sources, much less secondary sources,
8 that many of them will say that the population of
9 Somerset County is going to increase from forty-three
10 hundred to forty-three hundred twenty-six in the
11 next six months, I will object to that.

12 I will object to the introduction of that
13 evidence as being proper to prove the point.

14 I think the fact that the document says it may
15 be useful, but whether it is correct or not is
16 something else. And I will object to all of these
17 documents too. I will object to their introduction
18 for the purpose of proving the proof of everything
19 that they say in them.

20 THE COURT: Well, any document of this nature
21 has to be a projection based upon reasonable,
22 what they consider reasonable calculations and I
23 recognize --

24 MR. LINDEMAN: Right.

25 THE COURT: And I recognize that given life as

1 it is with its variable economic depreciations and
2 what have you, that a projection can be blown out
3 the window.

4 MR. LINDEMAN: Sure.

5 THE COURT: And, I mean, I recognize these
6 plans for what they are. They're a future land use
7 plan. This is what we hope Morris County will be
8 and this is what we think Morris County will have.

9 I think in that fine work they're a guidance
10 as to what the professionals think Morris County
11 is going to look like, or Somerset is going to
12 look like. But there is no, as you say, evidentiary,
13 solid evidentiary basis for it. It is a projection,
14 an expert projection, if you will.

15 I have had the planner, I have had the
16 Morris Planner -- what is his name?

17 MR. FERGUSON: Dudley Woodbridge.

18 THE COURT: Dudley Woodbridge come in and
19 testify in some cases along this line. And really
20 what he has done, he has told me what I already know.
21 That these are projections.

22 MR. LINDEMAN: But they may say that they
23 based them on the census for various ten-year
24 periods and they have arrived at a pattern that is
25 a reasonable one. But it isn't the language that

1 is contained in the Master Plan itself that it
2 suddenly becomes possible.

3 THE COURT: Okay. I just wanted to bring that
4 point up before we get to --

5 MR. FERGUSON: I have a problem, your Honor.
6 I had what I thought was an understanding with Mr.
7 Lindeman's predecessor that there would in effect
8 be no objection to the introduction into evidence
9 of these regional planning documents.

10 MR. LINDEMAN: I will --

11 MR. FERGUSON: I don't want to bind Mr. Lindeman
12 to that, if we are going to have a problem.
13 I have some things I have to do, including Mr.
14 Rakos and Mr. Zimmerman to testify that these are
15 in fact regional planning documents which planners
16 within the scope of what they did for Mr. Caputo
17 would look at. And that they are accepted standards
18 within the profession.

19 THE COURT: Well, I will let you talk to Mr.
20 Lindeman about that as you walk out at lunchtime.
21 If you are going to have any difficulties with it,
22 come back and let me know.

23 MR. FERGUSON: I fully understand the position
24 that a Master Plan is a project and that the Court
25 is not bound by it. You know, you can take judicial

1 notice of it for the purpose of this case so I don't
2 think we have much of a dispute. But I would like
3 to resolve that.

4 MR. LINDEMAN: I don't think we are going to
5 have any dispute.

6 I take issue with the Master Plan when it says
7 Chester is not a developing municipality or it
8 doesn't have to do this, such-and-such, that kind of
9 thing. Of course, I can't be bound by it. And I
10 don't concede that any statement of that kind are
11 really proper evidence to be received by the Court.

12 MR. FERGUSON: Well, I argue that the kind of
13 statements which the municipal land use compels the
14 planners to use and indeed compels this Court use --

15 THE COURT: All right. I think it would now
16 be an appropriate time to get those items that
17 F relief that were requested.

18 MR. LINDEMAN: All right.

19 THE COURT: Page 5, Mr. Lindeman, would be
20 one area.

21 MR. LINDEMAN: Yes.

22 THE COURT: That we left a question mark on
23 was F.

24 MR. LINDEMAN: Yes. Well, I do believe we need
25 that, your Honor. I am not sure.

1 THE COURT: Okay. You don't have to argue it.
2 I just want, there may be those that I am going to
3 ask you for a little substance on.

4 MR. LINDEMAN: Right.

5 THE COURT: Because I feel that perhaps they
6 are extensions of judicial responsibility that I may
7 not feel appropriate. But that one is not one of them.

8 All right. How about I, on Page 6?

9 MR. LINDEMAN: Your Honor please, I confess
10 that notwithstanding my efforts, I just haven't
11 been able to find that executive order. I stopped up
12 at Judge Gascoyne's Chambers yesterday and today
13 again and he hasn't been available. His law
14 secretary is not familiar with the case that involved
15 the Order and I confess that I do not know what it
16 says. I have no idea about it and, therefore, I
17 am satisfied to be guided by whatever, to be bound
18 by whatever the Court would direct at this time.

19 THE COURT: Well, I will leave it as a matter
20 of proof then. The executive order does not come
21 into the proofs. Then I will consider it to be
22 something that I am not going to dispose of.

23 MR. LINDEMAN: Right. As far as Item M on
24 the next page --

25 THE COURT: Hold it just a second. I want to

1 make a note.

2 All right. Item M.

3 MR. LINDEMAN: I think that that ought to
4 stay in for this reason: There will be no proofs
5 that will be offered that will bear upon it. But we
6 ask for relief because we could be in a situation
7 where two or five acre site construction were permitted,
8 the people in the area conceivably would be up in
9 arms against us. I think they shouldn't be, but
10 anything can happen. And while I know of no imminent
11 application for site plan approval on any two or
12 five-acre lots in the environs of this property,
13 I think should one be made and approved and construction
14 started, the very fact of this litigation may not be
15 enough of a -- I don't know -- estoppel or whatever.

16 THE COURT: Okay. Now, before you have anything
17 to say, Mr. Ferguson, in light of L and M are related?
18 In light of the fact that it is a very broad
19 provision, any more residential development in the
20 R-2 and R-5 under L and approving this Planning Board,
21 restraining the Planning Board from approving any
22 subdivision for site plans involving the creation of
23 residential lots of more than one acre in size?

24 I want a brief from you, Mr. Lindeman, on the
25 point that I have one, that authority and where I get

1 that authority from. And two, the due process
 2 ramifications on persons not a party to the litigation
 3 owning property in the Township or having it under
 4 contract and getting specifically as limited as
 5 a minor subdivision where you might be subdividing
 6 off one lot where a property owner already has
 7 a home on the other lot.

8 I will ask you to give me that within ten days.
 9 And I will allow Mr. Ferguson to respond within the
 10 same period of time.

11 All right. Now, that's it. All right.

12 MR. LINDEMAN: Yes, I think that is, your
 13 Honor.

14 THE COURT: Could I see both of you a minute?

15 MR. LINDEMAN: I assume we will adjourn for
 16 lunch?

17 THE COURT: All right, yes. We will adjourn
 18 for lunch until 1:30.

19 (The noon recess was taken.)
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AFTERNOON SESSION

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4 THE COURT: I am sorry. My best laid plans
5 seen to go astray. Okay.

6 MR. LINDEMAN: Mr. Clifford Earl, please.

7
8 C L I F F O R D N. E A R L , s w o r n .

9 MR. LINDEMAN: May it please the Court, Mr.
10 Earl is a licensed real estate broker and an expert
11 knowledgeable in the values of real estate, sales,
12 the character of the sales in and about the area
13 of Chester Township and the environs of Morris County.

14 He will be offered to testify on the values
15 of acreage of one, two and five acres and the sale,
16 the market price of sales for vacant, improved lots
17 as well as unimproved lots of those sizes. He will
18 comment upon the Morris County Master Plan, land use
19 element, future land use element insofar as it
20 applies to this township and the region in which it
21 finds itself.

22 He will comment from the point of view of his
23 opinion as to whether or not the facts contained in
24 it are justified and correct or not correct as the
25 case may be.

1 He will testify as to the nature and quality
2 of the properties that are available for sale in the
3 Township of Chester. And he will testify as to the
4 marketability of the premises in question, namely,
5 the Caputo site, if it is developed as a, either
6 two-acre zone tract or combination two and five-acre
7 zoned tract. And for that purpose, I will offer him.

8 THE COURT: Okay, fine. Thank you.
9

10 DIRECT EXAMINATION BY MR. LINDEMAN:
11

12 Q Now, Mr. Earl, tell us, please, your formal
13 education, when and where?

14 A I am a graduate of Cornell University, Bachelor of
15 Arts Degree. A licensed real estate broker in --

16 Q The class of what year?

17 A 1944.

18 Q 1944. Right.

19 A I am a licensed real estate broker of the State of
20 New Jersey.

21 Q Slower.

22 A Serving as vice-president of Dobbs Associates in
23 charge of their land and investment division.

24 Q Now, are you -- do you have any title such as
25 SRA or the like?

A I hold the designation of Senior Residential Appraiser

1 in the Society of Real Estate Appraisers.

2 Q Tell us, please, what that is?

3 A A Senior Residential Appraiser is pass the
4 courses, the thesis and has had the experience to achieve
5 the designation.

6 Q What has your professional experience been
7 since graduation from Cornell and limit it, please, to
8 the real estate.

9 I don't know if there have been others. Tell us.

10 A Yes. The last twenty years I have been in the
11 real estate field as a realtor and as a real estate appraiser.
12 I received my formal designation in the Society about nine
13 years ago.

14 Q Are you licensed in the State of New Jersey?

15 A Yes, sir.

16 Q As what?

17 A As a real estate broker.

18 Q Tell us, please, what the nature and character
19 of your experience has been in the real estate business
20 for the last twenty years, just generally?

21 A I started in the real estate business in Welsley Hills,
22 Massachusetts, and returned to my home town of Bernards-
23 ville five years later buying Country Properties, Inc.,
24 which is the corporate name I now use and the facility is
25 at the corner of North Maple Avenue and Route 202.

End of
Tape 6

1 I operated a real estate appraisal and brokerage
2 business until two years ago when my office building was
3 partially destroyed by fire, at which time I joined the
4 Dobbs organization as their vice-president and set up a
5 separate appraisal company by the name of Country Properties,
6 Inc.

7 Q What, if anything, have you done by way of
8 acting as a broker or salesman in the purchase and sale
9 of tracts of land in or about the region of Chester Town-
10 ship and its surrounding communities?

11 A The area served by the North Somerset Realtors where
12 the concentration of realtors is, covers South Morris and
13 North Somerset.

14 So that my office individually and I, individually,
15 have been active in the Chester, both in house and lot
16 sales and in large tract sales.

17 Q Are you familiar with the character of Chester
18 Township?

19 A Yes, sir.

20 Q Are you the member, a member of any professional
21 entities?

22 A Yes.

23 Q What are they?

24 A I am a member of the Somerset County Board of
25 Realtors and past president of same.

1 A member of the New Jersey Association of Realtors,
2 past vice-president of same.

3 A member of the National Association of Realtors.
4 The National Institute of Real Estate Brokers.

5 MR. LINDEMAN: I offer Mr. Earl.

6
7 CROSS-EXAMINATION BY MR. FERGUSON:

8 Q Mr. Earl, previously I had a sheet of your
9 qualifications which stated that you completed courses
10 of M. A. I. Number 1?

11 A Yes, sir.

12 Q What is that?

13 A There are two main appraisal groups of the Society
14 of Real Estate Appraisers and have, which have a senior
15 member and residential field. And then the American
16 Institute of Real Estate Appraisers of which the designation
17 is normally known as M. A. I. And I took Course Number 1
18 given by the American Institute of Real Estate Appraisers.

19 Q What are the requirements for full accreditation
20 as an M. A. I.?

21 A The M. A. I. designation is similar to and equal
22 to the SRPA. There are many residential member designations.
23 Their M. I. A. designation is the same as SRPA in the
24 Society.

25 Q What is the SRPA?

1 A Senior real estate property analysis.

2 That gets into the industrial field and more of the
3 income flow-type of real estate than it does the residential
4 field.

5 Q Are you an M. A. I.?

6 A No, sir.

7 Q What courses or experience would you have
8 to have in order to become an M. A. I.?

9 A The M. A. I. is, and society of similar courses
10 and may overlap in any numbers. But as the society has
11 course 101 and 102, the institute has 110 and 111, I
12 believe, corresponding.

13 Then both groups have courses which specialize in
14 certain fields so if you're going into the M. A. I., if you
15 want to take the appropriate courses, your third course
16 before you do your thesis, you could do that. That might
17 be a city broker that is doing mainly apartment houses.
18 Where we might choose the residential end where we are
19 dealing mainly in land and the residential field.

20 Then having done the thesis, you may complete it with
21 the experience you have had.

22 In other words, each one of the groups requires a
23 certain minimum number of appraisals per year for the
24 precedent two years to taking the exams and a total of
25 a certain number of appraisals during the five-year span

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prior to that.

They become very similar now and that's why probably this November in Miami, they will join forces as one appraisal group.

We are going to vote on it in November.

Q What was your thesis on?

A I am doing a single family house in Basking Ridge.

Q An analysis of that house?

A Yes.

Q And the land?

A What they do, it's a schoolroom type thesis. In other words, you must take every detail of the subject and use in the three approaches to value cover it completely. It is about a hundred and fifty page report.

Q All right. Have you done any appraisals on vacant real estate?

A We do a lot of appraisals on vacant real estate. Yes, sir.

Q Appraisals on large tracts of vacant real estate?

A Yes, sir.

MR. FERGUSON: No further questions.

THE COURT: May I ask one question?

When you talk about vacant real estate, are you talking about residential vacant real estate or all vacant real estate?

1 THE WITNESS: All vacant -- well, I hold
2 the senior residential appraisal designation. We
3 are called upon to do everything up to the highest,
4 heaviest industry in the way of appraisals, mainly,
5 Judge, because there are very few appraisals in our
6 area.

7 THE COURT: So the answer would then be the
8 same for large tract real estate appraisals you
9 do all?

10 THE WITNESS: All types. Yes, sir.

11 THE COURT: Okay. All right, Mr. Lindeman.

12 MR. LINDEMAN: All right.

13 At the outset, your Honor, please, I would like
14 to present to the Court for marking in evidence two
15 pictures. The two of them are respectively designated
16 as P-59 in evidence and --

17 THE WITNESS: That -- excuse me -- that has
18 been covered over with, that was marked because I
19 have used both sides that it was identification on
20 that, I don't know.

21 MR. LINDEMAN: All right. The second one is
22 P-58 in evidence. These are, these two sketches, if
23 your Honor please, were the subject of the examination
24 of Mr. Daniel Klarnet, who has since died, but
25 during the course of his examination they were offered

1 to be marked for identification and then were conceded
2 to be admitted into evidence by Mr. Ferguson's
3 associate.

4 Now, I --

5 MR. FERGUSON: Objection, your Honor. I am
6 going to ask for a halt to that. I don't know.

7 MR. LINDEMAN: Well, I am sorry. You know, I
8 don't have Mr. -- I think I do not have Mr. Klarnet's
9 deposition. But it's represented to the Court and
10 I checked it myself in the record. It was your
11 associate --

12 MR. FERGUSON: I don't know.

13 THE COURT: Off the record.

14 (A discussion had off the record.)

15 THE COURT: We will mark it P-18 and P-19
16 in evidence. P-18 for the aerial photograph.

17 THE WITNESS: Yes, with three plastic overlays.

18 THE COURT: With a plastic overlay.

19 P-19 will be A and B. Both sides.

20 It will be P-19A on the front and B on the back,
21 if there is such a designation.

22 MR. LINDEMAN: I am offering the, only the
23 front because I don't know the proposed zoning map
24 and it is dated September 25, 1964.

25 P-19B is the zoning map for 1976.

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(The documents referred to were marked P-18, an aerial photograph, and P-19A and P-19B, in evidence.)

DIRECT EXAMINATION BY MR. LINDEMAN: (CONTINUED)

Q Mr. Earl, I show you what purports to be another sketch with drawings on it and ask you if you can identify it?

A This is a map I prepared having colored in the zoning map of 1976.

Q And the map itself is taken from the official records, is it not?

A Yes, it is.

Q And the coloring was done by you or under your direction?

A It was done by me.

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

MR. FERGUSON: I could object on the basis of surprise, but I think it is -- surprises are irrelevant.

THE COURT: P-20 in evidence.

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

MR. FERGUSON: This is called what?

MR. LINDEMAN: That is the 1976 zoning map colored in by Mr. Earl.

1 Q All right. Now, Mr. Earl, would you step down,
2 please, with the Court's permission and tell us about these
3 documents or pictorials that have just been admitted into
4 evidence, first, as to Exhibit P-18 in evidence.

5 Tell us, please, where the premises in question are
6 and then what is shown on the over-all lay with relation
7 to the premises in question.

8 THE COURT: Let's do it this way because the
9 glare was too much.

10 Q Tell us, please, where the premises in question
11 are shown.

12 A The property is outlined in red with this being the
13 Old Chester Road and this being Route 206.

14 Q Are they designated on that overlay?

15 A They are, sir, by name.

16 Q What are the little white squares around the
17 overlay?

18 A Those are identification of neighboring properties
19 and the use to which they have been put other than
20 single-family residential.

21 Q Tell us what they are, please, and approximately
22 their location.

23 A Across the street from the subject is the Mount Rose
24 Nursing Home. And to the, this is actually to the east.

25 This map would be north like this, is the Zimmer Machine

1 Tool Company.

2 Now, I am having trouble reading it. St. John
3 Academy occupies a large tract here. The St. Bernard
4 School, a large tract here.

5 Q Excuse me, Mr. Earl. For the purpose of the
6 record, when you identify those schools, would you also
7 do it by direction a little bit because --

8 A Yes, certainly. St. John's Academy is out east of
9 the subject property about one mile as the crow flies.

10 St. Bernard's School, about a mile to the south
11 of the subject property.

12 Q Now, is there a railroad station shown on that
13 exhibit?

14 A Continuing beyond the St. Bernard School another
15 half mile or about a mile and a half south of the subject
16 is the Erie Lackawanna Railroad which is the starting
17 point of the Peapack Gladstone Branch.

18 Q Now, is there anything else shown on that
19 that you have not referred to?

20 A There is a complete composite of all the names
21 of the property owners surrounding the subject and
22 the sizes of the tracts of land upon which they are located.

23 Q Now, were those names and the amount of acreage
24 taken from records by you?

25 A No, Mr. Beers, of the Klarnet office.

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Q I see.

A But those on there --

Q All right.

MR. FERGUSON: Could I ask one question on the document? I didn't get a chance to before it was introduced.

The name of this land owner and acreage here that has been rubbed off, do you know what that would be?

THE WITNESS: No, I don't. I, all I see is the word corporation left and a hundred twenty-one acres.

MR. FERGUSON: That is a hundred and twenty-one acres?

THE WITNESS: Yes, there is a hundred twenty-one plus or minus. No, that is too big for a plus or minus. Must go further off than that and constituted a piece of a hundred and twenty-one acres.

MR. FERGUSON: Thank you.

MR. LINDEMAN: All right. This is --

THE COURT: That you may put up on the board.

MR. LINDEMAN: Yes, which is marked as Exhibit 19A and B in evidence.

Q Right now, referring first to Exhibit A, tell us, please, what that depicts?

1 A This was prepared by Smith Associates back in 1954
2 and actually depicts the zoning as it was at the time the
3 application was made by Mr. Caputo. In other words,
4 this is the pre-existing zoning ordinance at which time
5 the subject property was wholly within the R-2 Zone.

6 Q Do you know what the colors are intended to
7 mean?

8 A The colors that are on the map are four.

9 We have got the business zone in yellow, the
10 parklands are in green, the industrial zone in brown or
11 orange and the black is a blackout of Chester Borough
12 itself.

13 Q When you say parklands, you mean lands that
14 are owned by the government, either County, State or
15 otherwise?

16 A Yes, sir, or individually.

17 For instance, Rutgers Arboretum down there was held
18 for park recreation.

19 Q Can you tell us, please, what this striped
20 line is intended to mean?

21 A This is Route -- that is Route 206 running north-south
22 through Chester.

23 Q And the other lines, can you tell us about them?

24 A You have main arteries, such as Route 206 and
25 Route 24 south roads and north roads, all major, and the

1 Future Land Use Element which has been admitted to, into
2 evidence as Exhibit --

3 THE COURT: P-15. I am sorry. P-13.

4 MR. LINDEMAN: P-13, right. Yes, P-13.

5 Q I invite your attention to the bottom of Page 2
6 and the top of Page 3 of the Introductions, that part which
7 deals with the basic principles upon which the future land
8 use element is constructed.

9 The first one is that all future development proceed
10 only after careful analyses of environmental considerations
11 and within any limitations imposed by such analyses.

12 Before asking you a question about that principle,
13 Mr. Earl, have you examined about Morris in this particular
14 document?

15 A Yes, sir.

16 Q Now, can you say whether or not the balance of
17 this document follows that principle?

18 A Yes, it does.

19 MR. FERGUSON: Objection, your Honor. I thought
20 Mr. Earl had been qualified as a real estate broker
21 and appraiser of real estate. I don't know that he
22 is competent to evaluate Morris County's Master Plan
23 and future land use element.

24 Secondly, I don't know what relevance his
25 characterization of that document may be to this

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lawsuit.

MR. LINDEMAN: Your Honor please, I will withdraw the question as to that item 1 because I think that really is not worth arguing about.

THE COURT: All right.

MR. LINDEMAN: But I will say that as to others I am going to ask Mr. Earl his opinion as a real estate person, maybe perhaps not with respect to the entire land use element.

THE COURT: Let's wait until we get to the questions. Let Mr. Ferguson do it on a one-on-one basis.

MR. LINDEMAN: All right.

Q Now, Item Number 2 which refers to the fact that future growth -- I am quoting -- "That future growth clustered action in order to preserve open land and to render utility services and public transportation feasible and economically."

Is there reference later in this document to the clustering of housing?

A Yes, sir.

Q To which you will refer in your testimony?

A Yes, sir.

Q Now, can you tell us as you understand real estate development to require whether or not small lots

1 of 150 units or less can economically be developed with
2 its, with the requirement that its own sewage system be
3 constructed on it?

4 MR. FERGUSON: Objection. I don't know that
5 there is any foundation for that laid with this
6 witness.

7 I think the question was small lots of 150
8 units or less and I don't understand it. But my
9 fundamental objection is that this witness has not
10 been qualified as someone with the expertise as to
11 the suitability of development with septic or sewer
12 systems of any size and cost and the economies of
13 building and developing that kind of development.

14 THE COURT: I think it would be fair comment on
15 the objection to suggest that you haven't laid a
16 foundation with respect to his knowledge of cost for
17 economic development.

18 You have qualified him as a real estate expert
19 in the appraisal of real estate expert, but not as to
20 his ability to determine costs for economic development.
21 Certainly there is a relationship between the two,
22 but I don't think the qualifications went far enough
23 to cover that. So from that standpoint, the objection
24 at this point --

25 MR. LINDEMAN: Your Honor please, yes, I

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understand.

THE COURT: Broaden the qualifications, if you will.

MR. LINDEMAN: I am not even going to request the Court to do that because it isn't worth it. I will not do it.

THE COURT: Okay.

MR. LINDEMAN: All right.

Q Now, going to Page 10 of the Land Use Element and particularly Paragraph 6, which appears at the top of that page. The first sentence which refers to sociological research which says this: "Sociological research would seem to indicate that Americans have a marked preference for single-family detached housing and that such a preference is directly related to increase in income."

Now, what comment, if any, do you have with respect to the truth of that statement?

MR. FERGUSON: Objection, your Honor. This witness, once again, is not qualified as a sociologist or as a planner. While he may have been qualified here today to talk about values of property and marketability, I don't think there has been any foundation laid for that question.

MR. LINDEMAN: If your Honor please, I will limit the Americans, the reference to Americans in

1 that sentence to the Americans who buy property,
2 buy and sell property within the area of the Township
3 Chester and its immediate environs.

4 THE COURT: Can't he say as a realtor within
5 the scope of his qualifications what are some of the
6 motivating factors in the relationship to the factors
7 of wealth and ownership of single-family dwellings?
8

9 If I said that correctly, that might have been
10 poorly said. Let me rephrase it.

11 Can he not as a realtor say people who buy
12 single-family dwellings indicate a preference for
13 single-family dwellings as opposed to other types of
14 residential dwellings and that their ability to
15 purchase those single-family dwellings are related
16 to their income status? Why can't he as a realtor
17 testify to that without getting into the specifics
18 of sociology without trying to suggest to us all
19 America, if it is limited to the people he has dealt
20 with in the area?

21 MR. FERGUSON: If that were to be his testimony,
22 I think he could say that.

23 THE COURT: Okay --

24 Q What can you say --

25 THE COURT: -- with that qualification, that
it is limited to the people that you run into in

1 Chester Township and Chester Borough in the area.

2 A It is true that our experience shows that as income
3 enables a person to purchase a single-family house, they
4 will tend to do so, all things being equal.

5 Q All right. What experience, if any, do you
6 have with regard to the truth of the, or the validity of
7 the statement which starts about half-way down on that
8 paragraph stating this:

9 "However, other type of housing are often preferred
10 by some segments of demographically mixed population,
11 the elderly and newly-married, for instance, have no need
12 for large living areas, therefore the future goals for
13 Morris County should include adequate provision for other
14 types of housing in sufficient numbers to provide a
15 choice for all residents."

16 MR. FERGUSON: Same objection once again with
17 the qualification of what he has seen in his area.

18 I suppose in this kind of trial it is appropriate
19 to ask him to comment on that.

20 THE COURT: I think, I will have to assume
21 -- let's say for the sake -- unless you want to
22 broaden it, Mr. Lindeman, that his testimony will
23 all be related to the experience that he has
24 developed from this area and that while the statements
25 here may have much greater breadth, he is talking

1 about his experience as a real estate broker that
2 he has developed over the years.

3 MR. LINDEMAN: I will accept that, your Honor.

4 THE COURT: Okay, given that, he may answer the
5 question.

6 A The experience we have with our offices is that
7 probably the statement by the Morris County Planning Board
8 is not broad enough. We have found that not only the
9 elderly and newly-married are occupying attached housing
10 rather than single-family housing. And we are getting into
11 age brackets we didn't expect before. That people in the
12 thirty to fifty-year-old bracket are going into attached
13 housing.

14 We also find with numbers of sources there are
15 immense amounts of single men and women occupying this
16 type of housing. And this is, of course, partially created
17 the shortage we have now because now there are two houses
18 for each of those families rather than one.

19 But in short, there is a tremendous demand for
20 attached housing in the Morris-Somerset County areas.

21 Q Now, going to Page 13, Mr. Earl, and Paragraph 5
22 on that page.

23 Do you have an opinion as to whether or not housing
24 types such as apartment townhouses, et cetera, exist
25 in reasonable numbers in Morris County at the present time?

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A They do not exist in either reasonable or necessary numbers.

Q Is it your view, therefore, that the first sentence of paragraph 5 is correct?

A That is correct.

MR. LINDEMAN: I will not raise any question as to the second sentence except I would ask the Court to look at it. That is really a recommendation. It doesn't state any factual data.

MR. FERGUSON: Well, you know, after the fact I will just register my objection, I suppose, as to the admissibility of the propriety of this witness agreeing or disagreeing with a recommendation by the Morris County Planning Board.

MR. LINDEMAN: I am not asking him to, I am not going to raise any question about that second sentence.

MR. FERGUSON: What about the first sentence?

MR. LINDEMAN: He did.

THE COURT: I suspect he was doing what I had asked him to do this morning. If there is something you want me to refer to in this, point it out and all he was saying was, look at the second sentence, Judge. Okay?

MR. LINDEMAN: That's correct, your Honor.

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That's exactly right.

THE COURT: All right.

Q Now, going to Page 51, Mr. Earl, Will you read the first sentence of the first and second sentence of the first full paragraph, please?

THE COURT: You mean to himself?

MR. LINDEMAN: I think to himself rather than clutter up the record, your Honor. And perhaps the Court would do so as well. I don't have to read it.

THE COURT: The only reason I am asking that is so he understands when you say would you please read. There is two ways of doing it. Either out loud or to himself.

MR. LINDEMAN: Right.

Q Read it to yourself.

A I have read it many times. I am familiar with it.

Q All right. Okay.

MR. FERGUSON: Page 51?

MR. LINDEMAN: Page 51, first two sentences of the first full paragraph.

Q Now, have you formed any opinion as to whether the statements made in the second sentence would be correct or is correct?

A I have no reason to doubt it.

MR. FERGUSON: Excuse me. The question is,

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do you have an opinion?

THE WITNESS: Yes, I do.

MR. FERGUSON: All right. I will allow --

Q What is your opinion, then?

MR. FERGUSON: Objection. I submit, your Honor, that there are assumptions of underlying facts made by this Morris County Master Plan Future Land Use Element and this paragraph about populations, projections and the last figure on Table 8 --

MR. LINDEMAN: Right.

MR. FERGUSON: Which this witness is not either aware of or taking into account or has not evaluated and are unexpressed in the question, therefore, the question is improper as to form.

Secondly, this witness has no expertise which qualifies him to agree or disagree or express any opinion whatsoever about whether those populations projections are accurate. Whether they had changed in the recent several months or years since this document was prepared, in short, about the validity at all.

THE COURT: Doesn't the, first of all, with respect to your last objection.

Doesn't the question, or doesn't the sentence say, start out, it does start out by saying, "If

1 population projections for 1990 are accurate,"
2 so it has a premise on which the statement is laid.
3 If they are accurate then.

4 MR. FERGUSON: Well, that is true.

5 THE COURT: Okay. So whether he knows whether
6 they're accurate or not has nothing to do with his
7 answer because if the premise is that they are
8 accurate.

9 Another way of saying it, assuming the accuracy,
10 what have you then? We are going to have a shortage.
11 So I don't see any problem with that one.

12 MR. FERGUSON: I have some problem with the
13 qualifications of the first part of it, though.

14 MR. LINDEMAN: Well, if your Honor please --

15 THE COURT: That may anticipate 246, but let
16 me get to the nub of it. What difference does it
17 make whether he agrees with that or not?

18 MR. LINDEMAN: Not much.

19 THE COURT: It is there. You brought it to
20 my attention. Let's pass on.

21 MR. LINDEMAN: All right. So be it.

22 THE COURT: Rather than spend a lot of time on
23 it.

24 MR. LINDEMAN: I am satisfied, your Honor.

25 THE COURT: Okay.

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Q Now, referring to Page 73, Mr. Earl, and particularly Page 5 which refers to Mendham, Chester and Long Valley Centers.

THE COURT: Excuse --

A Paragraph --

THE COURT: -- Paragraph 5. You said Page 5.

MR. LINDEMAN: I beg your pardon. Paragraph 5.

THE COURT: All right.

Q Page 73, Paragraph 5. I ask you first, Mr. Earl, if you have formed an opinion as to whether or not those three towns share much in common, in particular, as to their age, their aesthetic characteristics, their longevity age, history and the like.

THE COURT: In other words, are those statements those first, let's say, three sentences in that paragraph true to his knowledge?

MR. LINDEMAN: Yes.

A Yes, these towns all go along Route 24, which goes back into history as one of the main connecting links in Morris County so that each one of the towns was a little stopover and has the same history and the same background practically as the other one to the other.

Q Now, in your experience in Morris County generally and in this area in particular, have you formed any opinion as to whether or not these three concentrations

1 as it is referred to in this paragraph constitute major
2 towns, or at least towns where there is pressure for
3 development as new growth seems likely to occur?

4 Have you formed any opinion about that?

5 A Yes, I have.

6 Q What is your opinion?

7 A Basically we are getting tremendous pressure coming
8 from the east, of course, and with the advent of new
9 highways and new industries we are getting pressures for
10 growth all over the area of the towns that have zoned
11 for potential building of industry or smaller density
12 lots, such as Long Valley, which is in Washington Township,
13 are receiving tremendous growth.

14 Mendham, the Mendhams have practically no zoning for
15 industry. They have some zoning for attached housing.

16 Chester has zoning for industry, but no zoning for
17 attached housing. So that the combination of demand and
18 arterial link of major State highways is bringing the
19 growth pattern to these undeveloped areas.

20 Q Have you formed any opinion as to whether or
21 not the correction of the problems in this area should be
22 done slowly, carefully, and with consideration for every
23 possible consequence?

24 A I have no doubt that all zoning should be done under
25 that precept.

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2 THE COURT: I am sorry. Would you read that
3 question back?

4 (Last question read by the reporter.)

5 MR. FERGUSON: Your Honor, at this point I
6 would ask that the doctrine of fair comment, which is
7 certainly applicable of Counterclaim Law and I hope
8 too in this trial would allow me at this point to
9 request the Court and the witness and Mr. Lindeman
10 to read the sentences between the first sentence
11 in Paragraph 5 and the last sentence in Paragraph 5
12 since that last question was in fact the last sentence.

13 And I think the context and the flow of this
14 trial require that the trier of fact read what is
15 between the first and the last sentence in context.

16 MR. LINDEMAN: For the purposes of continuity
17 of the case, I have no objection to that, your Honor.

18 THE COURT: All right. Let me just make a
19 note and I will read it at this point.

20 All right.

21 MR. LINDEMAN: This will be done, will it not,
22 your Honor, under the assumption this is part of the
23 defendant's case?

24 THE COURT: Well, I don't know what assumption
25 it is done, Mr. Lindeman. It is done for the trier
of the facts to be able to assimilate this information

1 together with some degree of logic, if you will.
2 That's why I allowed it, because for me at some later
3 point, maybe this afternoon, some later time to go
4 back and think about that and then try to read it,
5 either side, is much more difficult.

6 MR. LINDEMAN: I understand that.

7 THE COURT: I think it is reasonable to assume
8 that part of the case, whether you want to consider it
9 part of your case, or part of the defendant's case,
10 it is in the case and I am aware of it. All right?

11 MR. LINDEMAN: Fine. Also add the next para-
12 graph too, your Honor please.

13 Are you going to read them out loud?

14 THE COURT: No, I think it is in evidence.

15 MR. LINDEMAN: All right.

16 THE COURT: The entire paragraph to the end of
17 Page 73.

18 MR. FERGUSON: Yes, sir.

19 THE COURT: All right.

20 MR. LINDEMAN: Okay?

21 Q Now, referring to Page 76, Mr. Earl, which by
22 the way I think the Court can accept still involves the
23 discussion of the region known as Mendham, Chester and
24 Long Valley Centers, referring particularly to the last
25 sentence of the tcp paragraph which says, "One such service,

End of
Tape 8

1 public transportation, at present is totally lacking in
2 this region, although limited bus service hopefully will
3 be started in the foreseeable future."

4 I ask you if with regard to the property of the
5 Caputos as it is located in the Township of Chester, if
6 it is your opinion that that sentence is correct?

7 MR. FERGUSON: Oh, your Honor, objection.

8 Why can't the witness be asked if he knows if there
9 is public transportation to the Caputo site? If that
10 is the question, I have no objection to it.

11 But by some process of inference or osmosis, we are
12 supposed to take this statement and then get down to
13 the Caputo tract, I have a hard time with it.

14 THE COURT: All right. Let's try to get some
15 kind of format here so that we understand and we don't
16 have this constant interruption because otherwise,
17 first of all, I am sure Mr. Earl wonders what goes
18 on in a court of law that successfully produces anything
19 at the rate we are going. But secondly, we've got
20 to move along a little better. Why don't we have
21 every question asked conditioned with his personal
22 knowledge.

23 In other words, what he knows of the area so
24 that we are not dealing with generalizations.

25 Would that be agreeable to you, Mr. Ferguson?

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MR. FERGUSON: Yes, sir.

THE COURT: Okay.

MR. FERGUSON: I have no problem with that.

THE COURT: Okay. Every question that will be asked then as it relates to anything from here will be based upon your personal knowledge. What you know.

THE WITNESS: Yes.

Q As to that last sentence on top of Paragraph -- Page 76, what is your personal knowledge about the Caputo's site and the Township of Chester and the availability of public transportation?

A Well, I am sure the County Planning Board was referring to the whole area. But uniquely southern Chester Township where the Caputo property is located is served by the Erie Lackawanna Railroad which is a mile-and-a-half to the south of the subject property.

So it may be unique in that instance to the area generally known as the Long Valley, Mendham, Chester area.

MR. LINDEMAN: Your Honor please, rather than ask the witness to comment about the next item, next to the last item of land use element, I will ask the Court to look at the first full paragraph and I am only interested in the first two sentences of

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the next paragraph. But, of course, have no --

THE COURT: On the same page?

MR. LINDEMAN: Yes, I have no objection to the Court reading the balance of the paragraph for continuity purposes.

MR. FERGUSON: The end of 76?

MR. LINDEMAN: Yes.

THE COURT: All right.

Q All right. Just one small observation. Do you happen to have any personal knowledge of contemplated improvement of Route 206 in this area, Mr. Earl?

A Only reports coming from the State and the County Planning Board that 206 will be expanded.

Q All right. So much for the land use element, future land use element.

Now, Mr. Earl, have you had occasion to examine the sales, residential sales of vacant land in the area surrounding the Caputo land within the last few years? And if you have, tell us over what breadth of area you have made such examination.

First, the answer would be yes or no.

A The answer is yes, I've made such a study and the scope of it was to take every sale off the SR 1A Forms in the Assessor's Office of Chester Township to record every sale of real estate for 1973, '74, '75, and '76.

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My firm did the 1976 report. Klarnet's office did the three preceding years.

Q Now, what can you tell us about sales of vacant land in this area in that period in terms of the price, the purchase price and the size of the parcels sold, if you know?

MR. FERGUSON: May I suggest that if the report is reduced to writing, perhaps it would aid us all in following it if we had copies of it.

MR. LINDEMAN: Sure.

A I don't have extra copies of it, but I have a copy that was marked at the depositions.

MR. FERGUSON: That's what I had in mind.

A I have just that one copy of that report. I think counsel may have at least one other.

THE COURT: Off the record.

(Discussion had off the record.)

THE COURT: Let's mark that then for -- well, are we going to mark it for identification or in evidence?

MR. LINDEMAN: Let me offer it first.

Q Mr. Earl, I show you two pages, two pieces of paper with typewriting on them stapled together entitled Lot Sales by Price Range, and the second one showing such sales for the years '75, '74, and '73.

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A Yes, sir.

Q And ask you if you can tell me what they are and what the source of the information is?

A This report was again taken from the SR 1A in the Assessor's Office and is a composite of the sales of vacant lots in Chester Township for those four years.

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

MR. FERGUSON: As to this document, this is taken from the SR 1A?

THE WITNESS: Yes, sir.

MR. LINDEMAN: Where did you inspect the SR 1A?

THE WITNESS: In the Assessor's Office.

MR. FERGUSON: Are you aware that at least insofar as the State recording, there are twenty-six categories of exemptions? They're the transactions from the SR 1A that aren't required to be kept?

THE WITNESS: Yes, I do.

MR. FERGUSON: Now, on the record you looked at in the Assessor's Office?

THE WITNESS: Yes, sir.

MR. FERGUSON: Is it indicated are all lot sales on those records before the exemptions are subtracted or the exempted property not even reflected on the SR 1A?

1 THE WITNESS: We are able to take from his
2 records all the sales with the Assessor's comments
3 as to the category of that sale. And we have those
4 noted in a separate column by classification.

5 MR. FERGUSON: You mean the Assessor's comments
6 being what appears as to whether it was exempt or
7 what it was?

8 THE WITNESS: Now, in the, let me just say
9 this: All that is important to me in these charts
10 when they come back to me that is prepared by someone
11 in my office normally, someone else would usually
12 get this information for me. I am only interested
13 in the sales that we know are arm's length. No
14 exemptions, no problems. We just have bona fide
15 sales that we can use of single-family lots in
16 Chester Township.

17 That guide is enough to give us a complete
18 picture as to real estate values in the Township.

19 MR. FERGUSON: Well, are you telling me that
20 before you put your figures from your raw data
21 that you have in front of you to this, these two
22 charts, you make a judgment about which things should
23 go on here and which should not?

24 THE WITNESS: We clear with, in our conversations
25 with the Assessor and this would in Chester Township

1 happens to be the most cooperative, we go down
2 his knowledge as to whether he knows of any reason
3 there shouldn't be an arm's length transaction.

4 MR. FERGUSON: Such as?

5 THE WITNESS: Oh, a family estate sale, a
6 sale in bankruptcy, whatever it may be.

7 MR. FERGUSON: Why shouldn't an estate, in an
8 estate sale or bankruptcy sale be reflected on the
9 lot sale?

10 THE WITNESS: They might be, but we want to
11 be sure that it was exposed to the market so that
12 somebody in the family didn't get it in an estate
13 sale that it was actually a bona fide market sale
14 and submitted to the marketplace for that purpose.
15 If I know of any reason to doubt that, we wouldn't
16 use it.

17 Now, that may mean we got more here than we
18 need because we wouldn't know everything about
19 every sale.

20 But if you are asking me --

21 MR. FERGUSON: What about the accuracy of his
22 information?

23 THE WITNESS: And ours. And ours.

24 MR. FERGUSON: Well, do you make any independent
25 investigation of any specific sale to determine whether

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it should be included for your purposes or not?

THE WITNESS: Normally we will contact either the buyer, the seller, or the realtor or the attorney handling the sale.

MR. FERGUSON: Have you done so with each of those?

THE WITNESS: I have done each one of the comparables that I will present today.

MR. FERGUSON: But have you done it with the ones on the raw data sheet in front of you with which you prepared P --

THE WITNESS: No.

MR. FERGUSON: Whatever it is for identification?

THE WITNESS: Absolutely not. That would be a waste of time.

MR. FERGUSON: Well, I object, your Honor, until we have some clarification as to the standards used by the Township Assessor or Mr. Earl or both to arrive at these figures.

I don't see how we can form a basis of whether this really is a category of the price of the lot sales in Chester Township. Obviously it is not. It is only those which Mr. Earl through the process of talking with the Assessor which is all, of course, second and third-hand hearsay, has determined can be

1 something approximating a market price at arm's
2 length.

3 MR. LINDEMAN: Your Honor please, I think the
4 witness did not say that. He said that he not only
5 discussed the matter with the Assessors, but he
6 checked the property sales and identity of the
7 parties with brokers. He was only talking about
8 comparables that he used, he checked that out. He
9 hasn't checked them all out.

10 MR. FERGUSON: That's correct.

11 MR. LINDEMAN: Right.

12 THE COURT: He accepted, as I understand it,
13 Mr. Earl, am I correct that you accept an Assessor's
14 representation that if it is something that makes
15 this less than what we would call a bona fide sale
16 it is not included on this list?

17 THE WITNESS: That's right, sir.

18 THE COURT: Why?

19 THE WITNESS: Otherwise it is on there without
20 having contacted the known buyer, seller, attorney
21 just because it is a recorded sale in the SR 1A.

22 Q Does it reflect the sales of a willing seller
23 and a willing buyer at arm's length, Mr. Earl?

24 A Yes, I think that the, and I don't have the book,
25 Assessor's book in front of me. I have an Assessor's code

1 also for each sale which had the book with me to tell you
2 what each one meant. But obviously we are interested in
3 what sales have gone through the builder's-seller's
4 book page, everything else which we normally do when we
5 are appraising real estate, we go to the County records.

6 If we have to, if an Assessor isn't cooperative
7 and then taking from that bank of information we have
8 we will take specifics in order to determine a specific
9 value. But there is no reason that this was of sales
10 compiled into a composite picture of what land is
11 selling for in the way of lots in Chester Township
12 wouldn't be almost correct, if not precisely correct,
13 it might have one or two percent variation.

14 But for the purposes of an appraiser to try and
15 determine what lot values are in a town, it is the best.

16 MR. LINDEMAN: Your Honor please, I submit that
17 this is really the way this kind of testimony should
18 be offered in court. That is, it is --

19 THE COURT: You are offering these two
20 or this list of lot sales to show the price ranges
21 on the lots that --

22 MR. LINDEMAN: Yes, what a willing seller and
23 a willing buyer at arm's length.

24 THE COURT: So I can understand a basis for
25 doing this, this is the way it is to be and as an

1 acceptable way in the trade? I have got to say that
2 from an evidentiary standpoint until I know the
3 basis for excluding or including some of the other
4 sales, it is hearsay. It has to be.

5 MR. LINDEMAN: Well --

6 THE COURT: I don't see how I can do it if
7 I had the entire record before me, that would be one
8 thing. But I don't have that. I don't have the
9 book before me and it has to, it is not a business
10 record that he keeps. So it doesn't have that
11 potential exception to the Hearsay Rule.

12 So I would say that while it may be in part
13 the practice and he might utilize it for establishing
14 values, even he, himself, admits that with those
15 that he goes and uses for specific comparables
16 he checks them out. So I can't, I can't overrule.
17 I have to agree with the objection.

18 MR. LINDEMAN: Well, if your Honor please,
19 the witness has selected properties which, as I said
20 before, are those that are bona fide sales where a
21 willing seller and willing purchaser have been
22 involved and the transactions bona fide transactions
23 dealing at arm's length.

24 That is to say, whether or not that is not
25 a family relationship or an estate transfer.

1 THE COURT: He hasn't done that. He has
2 done it on the basis of what an assessor has told him.

3 THE WITNESS: That's right.

4 THE COURT: If he does it, I would agree with
5 you, I would accept it. But he didn't do it. An
6 assessor told him this. So it is hearsay. That's
7 the problem that I am having with it.

8 MR. LINDEMAN: In that respect it is true,
9 your Honor. But that has been the nature of the
10 testimony in this case. I am not saying that it is
11 a legal argument.

12 THE COURT: Okay.

13 MR. LINDEMAN: To offer this kind of thing.
14 But, obviously, the burden upon the Court, counsel
15 and the parties to produce an assessor and all of the
16 people in the chain of information would be so great
17 that we would never finish a trial.

18 THE COURT: Let me just make it clear. I am
19 not necessarily a dedicated proponent of the Hearsay
20 Rule in all positions. I will accept from this
21 man's representations that he, himself, checked
22 out and asked, which is hearsay.

23 MR. LINDEMAN: Yes.

24 THE COURT: This is an acceptable method.
25 However, what you are saying to me is not only --

1 must I not -- must I accept his calling someone
2 and asking? I have got to accept the fact that he
3 asked the Assessor or without knowing the foundation
4 upon which the Assessor based his information.
5 He tells me he called and in all the appraisal cases,
6 that I have ever gotten involved with, I will accept
7 that from an appraiser. He checked on it. That's
8 a permissible way of doing it. But not when he
9 doesn't know the precise basis for the Assessor
10 excluding or not including because he is not depending
11 then on his expertise. He is depending upon what
12 the Assessor has evaluated and maybe the Assessor's
13 evaluating on the basis of something that I might
14 have said to him which might even be called double
15 hearsay.

16 I can't do it. I don't think it is appropriate
17 under those circumstances.

18 But I, just to clear the air, I will allow him
19 to utilize his information that he has received with
20 respect to the comparables that he relies on, that
21 is hearsay evidence because that is the way it is
22 done. And it is the acceptable way, in my opinion.
23 It is an approved way. And I think if you research
24 the cases, you will find it to be so.

25 MR. LINDEMAN: Yes, sir.

1 THE COURT: But I don't think you will find
2 what the Assessor has told him as the basis for it
3 and ask me to be able to evidentially accept the
4 price range that you set forth. I can't do it and
5 the objection is sustained from that standpoint.

6 MR. LINDEMAN: Well, I will offer the document
7 then at least for limited --

8 THE COURT: Mark it P-21 for identification.
9 The document just for the record, consists of two
10 pages of lot sales by price range, Chester Township,
11 for the years '73, '74, '75 on one, and for the
12 year 1976 on the other.

13 You have any objection if a copy is used,
14 Mr. Ferguson?

15 MR. FERGUSON: Oh, no, sir.

16 (The document referred to was marked P-21
17 for identification.)

18 Q Now, Mr. Earl, have you made any examination
19 of housing sales by price range and type in the Township
20 of Chester?

21 A Yes, sir.

22 Q Over the last three or so years?

23 A Yes, sir.

24 Q What kind of examination have you made?

25 A This was again a calculation of SR 1A and was resale

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of homes and new homes to indicate the price ranges of each of those four years.

Q What is the source of information, the documents in front of you.

A Again, these were taken from the SR 1A.

Q By you?

A The front page, '76 was done by my brother. The three years preceding were done by Klarnet's office.

THE COURT: Would you explain just for the record what the SR 1A is that is kept in the Assessor's Office?

THE WITNESS: Yes. It is a record that comes from the County to let an Assessor know the closing of title and tax stamps in the amount of the sale.

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

MR. FERGUSON: Same objection, your Honor.

THE COURT: Okay. Now, do we have the same type situation, Mr. Earl, where there have been exclusion based upon what the Assessor has told you?

THE WITNESS: No, in this case we probably used them all, sir. In this case it may be worse. I didn't call anyone on these because my next report has to do with lot sales. That's why I confirm a group of those for the purpose of the map we have up

End of
Tape 9

1 there. But I did not confirmation with property owners,
2 realtors or lawyers on the housing sales.

3 THE COURT: Now, are there exclusions here
4 that the Assessor told you should be excluded because
5 they were bona fide sales?

6 THE WITNESS: I assume they are, but I am not
7 sure of that. It seems to me that at least in my
8 own report in '76 report, which I took from my
9 brother's figures, I included everything. Included
10 all sales --

11 THE COURT: You included all sales?

12 THE WITNESS: Yes, sir.

13 THE COURT: So there are no exemptions at all?

14 MR. FERGUSON: Let me ask a couple of questions?

15 THE COURT: All right, go ahead.

16 MR. FERGUSON: Now, go back a little bit.

17 SR 1A, are there properties that don't get reported on
18 the SR 1A at all?

19 THE WITNESS: Not that I know of.

20 THE COURT: Let me, my understanding of the
21 SR 1A is every deed that is recorded in the Morris
22 County Clerk's Office by law the Morris County
23 Clerk is required to provide a copy to the Morris
24 County Tax Board which recites all the information
25 with respect to the deeds.

1 Now, you have figures cited in the consideration
2 clause in the deed. This is all documented by the
3 Morris County Tax Board and then the Assessors in
4 all of the municipalities are notified of the sale
5 value.

6 MR. FERGUSON: Is it your understanding, Mr.
7 Earl, that each and every property is reported on
8 the form that goes down to the Assessor's Office,
9 that nothing is excluded before it gets there?

10 THE WITNESS: I know of nothing that is
11 excluded before it gets to the Assessor.

12 MR. FERGUSON: Is it your testimony on the
13 record that you prepared for 1976 that you used every
14 house sale indicated on the SR 1A in/ ^{the} Assessor's
15 Office of Chester Township?

16 THE WITNESS: That's correct.

17 MR. FERGUSON: Then I withdraw my objection
18 as to that one. But as to the subsequent years
19 prepared by Mr. Klarnet's office that this witness
20 can't tell what the foundation is, I have to state
21 the objection.

22 MR. LINDEMAN: Really, I think we are spending
23 too much time on it anyway, your Honor.

24 THE COURT: Okay.

25 MR. LINDEMAN: I will withdraw the others.

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I offer the 1976 housing sales.

THE COURT: P-22 in evidence.

The 1976 house sale price ranges from the
SR LA Form.

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

THE COURT: Gentlemen, before I didn't mean to
testify, but I thought I could clear it up. It is
a matter of record. The Statute talks about this
being done.

MR. FERGUSON: I understand. I wasn't
quite sure what this witness knew the procedure and
I wanted to test him, if he did. I know there are
twenty-six exemptions. I just wanted to make sure
they didn't get exempted down to the point where
the witness could look at them.

THE COURT: I think if you read the Statute,
it requires all sales. Every sale, so that --

MR. FERGUSON: Every transfer.

THE COURT: Every transfer of title has to be
listed. It is done for subdivisions. You got to
have your lot and block number. Every deed before
it can be recorded so they make sense of the data
once they get it down to do something with it.

All right, go ahead.

1 BY MR. LINDEMAN:

2 Q Now, Mr. Earl, as to P-21 in evidence.

3 The house sales in Chester Township in 1976.

4 Tell us, please, the aggregate number of sales that you
5 examined.

6 A Curiously there were 90 resales and 10 new sales
7 for a total of 100 sales even.

8 Q And tell us about the percentage of sales
9 in the various price ranges that you have on this evidence,
10 on this document?

11 THE COURT: He is just going to read what he
12 has got there. I don't know that it is necessary.
13 it is in the record.

14 MR. LINDEMAN: I am satisfied.

15 THE COURT: It is marked in evidence. Let me
16 see it, if you would, please.

17 THE WITNESS: Yes,

18 THE COURT: Thank you. All right.

19 Q Mr. Earl, have you made a study of the sales
20 of multiple dwellings, such as condominiums in or about
21 the time of February, 1977, in the Morris-Somerset-Hunterdon
22 County area?

23 A Yes, sir.

24 Q And do you have a listing of those sales?

25 A Yes.

1 Q Can you tell us what the source of the information
2 is?

3 A In all cases, the owner of the condominium area.

4 Q How did you ascertain the identity of the sales
5 in the first place, the fact that the sales took place?

6 A We, of course, are aware of the major condominium
7 areas in the three Counties and we simply went to each
8 one of them and interviewed the owner of the tract.

9 Q You have a document which lists those sales
10 before you?

11 A Yes, sir.

12 MR. LINDEMAN: I will offer this document in
13 evidence.

14 MR. FERGUSON: I have a couple of questions.

15
16 CROSS-EXAMINATION BY MR. FERGUSON:

17 Q These are only condominiums?

18 A Yes.

19 Q Do they include cooperative apartments?

20 A No, sir.

21 Q Are there any cooperative apartments that you
22 know of?

23 A Not in the true sense of the word cooperative where
24 we would use the term. Condominium to the letter. This is
25 fee ownership of the property.

1 Q Is it your testimony that these units enumerated
2 on this list constitute all the condominiums in the Morris,
3 Somerset and Hunterdon County areas?

4 A No, sir. We tried to get the largest units.
5 In other words, the ones with the most, the largest number
6 of units that would be built so it would have comparability.

7 Q Comparability to what?

8 A To the proposal here of a large number of units.

9 Q Does the selling price of a condominium depend
10 upon how many units it is being sold with or in which
11 it is located?

12 A Very often it will, yes. The atmosphere there is,
13 that is created by an 800 unit community would be a lot
14 different than one of 15 units being built someplace.

15 Q So doesn't this document really represent
16 a study of the selling price of condominiums in projects
17 of over 200 units with the exception of two which are
18 64 and 857

19 A Yes, there are specific reasons for having included
20 each one of those. But basically we were just looking for
21 the largest number that we could find.

22 Q If I had a 10-unit condominium project, that
23 is not included in your study?

24 A That's correct. You wouldn't have the same recrea-
25 tional facilities. You wouldn't have the same broad

1 picture that is generated by the larger subdivisions.

2 Q So in effect, your study is limited to
3 large subdivisions with recreational facilities and the
4 amenities of the projects which you are about to describe
5 to us?

6 A Yes, the only exception, only one doesn't have any
7 recreational facility is Russet Mewes in Bernardsville.
8 That is the one under construction now.

9 Q Russet Hills?

10 A Russet Hills. Excuse me. I was thinking of
11 condominiums.

12 Q Your basis for entertaining this information
13 is a phone call to who?

14 A No, personal interview that we did, either my brother
15 or myself did, with the owner of the condominium that was
16 developing it.

17 Q What information did you gain during the
18 personal interview?

19 A May I take my copy and tell you?

20 Q Go ahead.

21 A Mainly what we were after was to try to get an idea
22 of how many one-bedroom, two-bedroom units and how many
23 total units, of course, were to be offered. The price
24 range of the units and then the personal questions that we
25 were interested in in trying to develop some of the

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information from the Madison Township case having to do with the region because how far the people traveled to commute, whether they needed public transportation.

We then asked the ages of the people occupying it. How many had been sold. How many were under contract and, therefore, how many were still for sale and what their demand was.

Q And what would the owner of the project do during your personal interview to give you this information?

A He would take it from his recollection. In other words, there were no particular attempts on his part to take 102 people that moved into his tract and each individual one mark it down and evaluate it. This was a broad spectrum of a person selling his own product of the type of person that was coming to him for that product.

Q What about the data, about the number of units occupied and the number of units under contract?

A Yes, sir.

Q Where did he get that data from?

A That would be his knowledge, of course, how many he had were occupied and how many were sold and being constructed.

Q He would have records on that?

A Right.

Q If he needed to look at them, would he look at

1 them during your interview?

2 A The two that I interviewed did not look at any
3 records like that. They were spoken out, we sold about
4 120, we got about 110 under contract, that type of
5 conversation.

6 Q Did they consult any of their records at all
7 about the distance driven to work or about the age of the
8 occupants?

9 A There was the union, at Union Gap, which was one of
10 my interviews. I am trying to think here of the name.
11 He and his wife. Mrs. McNally referred to certain
12 documents while I was there. I am not sure that they were
13 contracts of sale or what we commonly call a qualification
14 sheet or what they were. The other site I --

15 MR. LINDEMAN: Excuse me just a moment.

16 MR. FERGUSON: Excuse me.

17 Q Mrs. McNally, from what project?

18 A Union Gap in Clinton. That would be the first.
19 Would be under 100 condominiums. Only one under 100.

20 Q 437 units?

21 A Yes, sir.

22 Q How many sheets did she look at during your
23 interview?

24 A I couldn't tell you. I don't know.

25 Q More than ten?

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A I don't think so.

Q All right. Now, what about -- now, what about --

MR. FERGUSON: Well, within the testimony of the witness, your Honor, as to the selling price being approximate and if this witness will, is going to testify that it is an accepted practice in the real estate industry to do this kind of sampling to get an idea of the selling price, I have --

THE COURT: Let me ask him about it.

Is that the way you do it, Mr. Earl?

THE WITNESS: No, sir, didn't do it in this case.

One question that you haven't asked me.

The one --

THE COURT: There is no question on that subject.

Q Where did you get the selling price, from the brochure?

A We know what they're offering and selling these at from the actual brochure of the subdivision.

Q How do you know what they're actually trading for?

A Every single one of them is.

Q How do you know that?

A We know the sales there.

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Q Tell me how you know?

A Honestly, we have --

Q I believe you're honest. Tell me how you know.

A From the owner who knows what they sell them for.

"We sell the one-bedroom house, 37 to 38,900, one-car garage and one air condition will do."

Q But that is what they're selling for?

A I have no problem with the selling price.

Q Okay. In other words, you are telling us that as a result of your twenty years of experience and your interviews and your knowledge of this area, these condominiums are selling for those prices?

A Right. For me to interview the seller of a property as to the selling price is precisely to the point and not hearsay.

Q Well --

THE COURT: The practice and custom that you utilize in establishing the sales price for using for basing your comparable sales?

THE WITNESS: Yes.

THE COURT: Yes.

THE WITNESS: Particularly in this type of circumstances, your Honor. If we had to interview all 400 of the people that have gone into it instead of that one person, it becomes impractical.

1 MR. FERGUSON: I think the document has been
2 qualified with respect to the number of units,
3 location, number of units occupied, number of units
4 under contract, and selling price. And, of course,
5 the name and the County.

6 I submit, however, that the distances commuted
7 to work and the percentage of occupants within that
8 category of the commuters and percentage given
9 in the 30 to 50-year age bracket is not admissible
10 into evidence since the witness has in fact testified
11 that it is done on the recollection only of the
12 person that he interviewed.

13 And I submit common experience tells us that
14 no one can recollect statistics of that magnitude
15 for units which have 437 as is in Clinton, 347 in
16 Hillsboro, 200 in Kimberwick, 260 in Somerset
17 Park.

18 THE COURT: Okay. Mr. Lindeman?

19 MR. LINDEMAN: I don't care, your Honor.

20 THE COURT: All right.

21 MR. LINDEMAN: The Court will accept it.

22 THE COURT: I will accept it with the
23 age bracket and distance traveled not in evidence.

24 MR. LINDEMAN: As non-evidential, right?

25 THE COURT: Okay. Mark it P-23 in evidence

1 with the qualifications that the distance traveled
2 and age bracket is not in evidence.

3 (The document referred to was marked P-23
4 in evidence.)

5 MR. FERGUSON: It also goes to the conclusions
6 contained on Page 2 relating to those categories
7 and my objection and I take it you are ruling --

8 THE COURT: Okay.

9 MR. LINDEMAN: This is your copy. I am sorry.
10 Yes.

11 THE COURT: All right.

12 MR. LINDEMAN: I accept that too, your Honor.

13 THE COURT: May I have that document?

14 You may ask him to testify on that.
15

16 DIRECT EXAMINATION BY MR. LINDEMAN: (CONTINUED)

17 Q On that last point as to the items in
18 P-23, which have not been accepted in evidence, namely,
19 the distance of commutation and the age of the people,
20 how was that information obtained?

21 A By interview with the owner of the subdivision.

22 Q You did not check any documents with him
23 or her at the time in question?

24 A No, I did not.

25 Q All right. Now, have you formed any opinion

1 as to whether there is a demand for this kind of construction,
2 this kind of dwelling in these three Counties? And if you
3 have any opinion, would you tell us what it is based upon,
4 but first tell us whether or not you have formed an opinion
5 as to the nature of the demand.

6 A I have.

7 Q Now, what is that based upon?

8 A It is based upon the experience we have in our own
9 real estate firm. We have offices covering those three
10 Counties and upon interviews with the owners of these
11 condominium tracts.

12 And with certain periodicals we subscribe to as to
13 the housing crisis.

14 Q What is your opinion as to whether the
15 demand equals or exceeds or is less than the supply of
16 condominiums in this region?

17 A In these three County area, the demand exceeds the
18 supply.

19 Q Now, have you made an examination of the
20 listings of property in the Chester Township area in recent
21 months?

22 A I made one study as of February 3, 1977.

23 Q For what area?

24 A The Chester Township listings between the Morris
25 and Somerset Multiple Listing Service.

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Q Between what was that?

A The accumulation of all listings between those two services that were effective as of February 3, 1977.

Q What multiple listings is it you are referring to?

A The multiple listing service in this part of the County is a part of the Board of Realtors in Morris County, the Board of Realtors run into multiple listing service of Somerset County Board of Realtors' Multiple Listing Service and a property listed with a member realtor of either of those services is disseminated to all member realtors of the Multiple Listing Service. So that what I did, since our office is a member of both services, was to take the date of February 3, 1977, and made an accumulation by copying every listing that was available through the brochure they have of every property that was for sale in the services, their price range and the average listing price of those properties.

Q It is a fact, is it not, Mr. Earl, that property, that the Multiple Listing of property does not contain all of the properties which are being offered for sale?

A That's correct.

Q The location in question?

A There would be sales offered by property owners, by

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independent brokers, attorneys, estates, banks.

Q All right. I ask you, Mr. Earl, what your search showed as of the February, 1977, time?

MR. FERGUSON: Objection. I think we ought to mark the document and then if this is going to be offered, I have some questions.

MR. LINDEMAN: Well, I guess that is the easiest way to do it.

THE COURT: All right. Let's mark it P-24.

(The document referred to was marked P-24 for identification.)

THE COURT: All right, go ahead.

CROSS-EXAMINATION BY MR. FERGUSON:

Q Mr. Earl, these, all the multiple listings are active in the files of these two services for Chester Township?

A Correct, sir.

Q What about Chester Borough?

A Not included in the report.

Q Did you make any review of the number of acres of land with respect to being offered in each listing?

A That wasn't the purpose of the study, no. I did not do it because it was not the purpose of the study.

1 Q All right. Are there, is there vacant lots
2 or parcels included in here?

3 A No, sir.

4 Q Is this only a structure on a lot of land?

5 A This is a single-family residential house and a lot
6 of land.

7 Q And how do I know, Mr. Earl, whether the acreage
8 that goes with any of these listings is five or a hundred and
9 five?

10 A By inspecting the records I have here of every sale
11 and done by brochure.

12 Q Doesn't the amount of acreage that goes with
13 the structure have a major effect upon the selling price?

14 A Yes, sir.

15 MR. LINDEMAN: If your Honor please, before the
16 next question, just so that we needn't extend this
17 unnecessarily, the offer is made solely for the purpose
18 of showing that a unit of land and building was
19 offered for a particular price. With regard to the
20 acreage, what might be done with the property --

21 THE COURT: Why don't we leave that for
22 cross-examination rather than the weight that I give
23 to it. I think it is obvious that every listing,
24 well, I think it is obvious that every listing is
25 going to have some differences in the land area being

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sold, all right?

MR. FERGUSON: True.

THE COURT: Okay.

MR. FERGUSON: Of course, my concern has been that these documents go in and they purport to come out with a figure which will be then used as a foundation question for another witness or argument way down the line.

It is important that I try to exclude it, if I can, in a non-jury case. I can understand the Court's --

THE COURT: You can qualify it on cross-examination. The weight I give to the information has to be based, I think, on your opportunity to cross-examine it as in any document. So why don't we do it on that basis, recognizing, of course, that, as I say, every single family dwelling listing has some quantity of real estate related to it that probably varies from every other one in some degree.

And certainly has an effect on the real estate, on the total sale price. Strike the word real estate.

MR. LINDEMAN: Even volunteer, your Honor, that the reference at the bottom of the exhibit, namely, average listing price, \$100,000 be not taken as evidential because I don't think it is necessary.

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THE COURT: All right.

MR. LINDEMAN: The number speaks for itself.

MR. FERGUSON: I would agree, certainly agree, but Mr. Earl drew a line through the exhibit to take it out.

THE COURT: All right. Can you do that, Mr. Earl? Take the reference to the average listing price out.

Excuse me, gentlemen. See you a minute?

(Discussion had at side bar.)

THE COURT: Tuesday, nine o'clock.

C E R T I F I C A T E

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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

4/29/79