

~~Caputo~~ - Caputo v. Chester  
ML

OCT. 25, 1977

Stenographic Transcript of Proceedings Direct and  
Cross-examinations of Clifford Earl and R. Lee Hobough

pg. 138

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*no by*

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

JOSEPH and ALDO  
CAPUTO,

STENOGRAPHIC TRANSCRIPT

Plaintiffs,

vs.

CHESTER TOWNSHIP,

Defendant.

**FILED**

OF PROCEEDINGS  
APPELLATE DIVISION

JAN 30 1979

JAN 14 1980

*Elizabeth W. Langlin*  
Clerk

**FILED**  
APPELLATE DIVISION  
JAN 30 1979

Place: *in W. Townsend*  
MORRIS COUNTY COURTHOUSE  
MORRISTOWN, NEW JERSEY  
Date: Tuesday, October 25, 1977

BEFORE:

*Elizabeth W. Langlin*  
CM  
ROBERT MUIR, CLERK

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.

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

*cbm*

EARL C. CARLSON, C. S. R.  
Official Court Reporter  
Morris County Courthouse  
Morristown, New Jersey  
385-6249

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

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
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JK/hl

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THE COURT: All right.

MR. LINDEMAN: Before we commence with the examination, Judge Muir, I find in my file P-24 which --

THE COURT: I have a note from my court clerk that it was missing.

MR. LINDEMAN: Yes.

THE COURT: Okay.

MR. LINDEMAN: It was marked for identification, perhaps. I know that it has been offered and received in evidence. I think it should be re-marked.

THE COURT: I had marked it in evidence, yes.

MR. LINDEMAN: Yes.

MR. FERGUSON: The multiple listing --

THE COURT: The active multiple listing of Morris and Somerset multiple service sales price.

MR. FERGUSON: I object.

MR. LINDEMAN: Shall I have it marked?

THE COURT: No, I just did it. I marked it in evidence.

(The document referred to was marked in evidence by the Court.)

THE COURT: All right.

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

1 CLIFFORD EARL , previously sworn,

2 DIRECT EXAMINATION BY MR. LINDEMAN:

3 Q Mr. Earl, continuing, and you were previously  
4 sworn.

5 Have you made a study of the values of the market  
6 values of unimproved and/or improved lots in the area around  
7 the Caputo tract in Chester Township recently?

8 A I made a specific --

9 Q Excuse me. The current market --

10 A I made a specific study of vacant lots for the two  
11 acre and five-acre zone as close to the subject as possible.  
12 I made a broad study of values of improved lots.

13 That was the other half of your question?

14 Q Right.

15 A But not in one. The one I did, the two and five-acre  
16 lots to determine the value of this property as previously  
17 zoned in two and five-acre lots.

18 Q Could you tell us, please, what you did to  
19 arrive at your evaluation?

20 A Yes. In determining the value of vacant land, the  
21 appraiser will go to the marketplace and try and estimate  
22 what the retail value would be, if subdivided. Then have  
23 an engineer to get the cost of the subdivision, direct  
24 costs and then the indirect costs, such as interest, legal  
25 fees, sales fees, and overhead.

1           And from that, we can determine what value remains  
2 in the land. And that's called the development or anticipated  
3 development method of appraising real estate under the  
4 market data approach.

5           Q       And you did form an opinion, did you not,  
6 as to the value of vacant lands, or the sale prices and  
7 the market value of vacant land of the two and five-acre  
8 sizes?

9           A       Yes, sir.

10          Q       In or about this area, tell us what was the  
11 nature of your examination?

12          A       First of all, I selected from the bank of sales we  
13 had of lots in the area, three of each in the two-acre and  
14 the five-acre zone which would be appropriate to the subject.

15          Q       What do you mean by appropriate to the subject?

16          A       In other words, would have a similar neighborhood and  
17 the lots were of similar nature. There are many variations.  
18 This, of course, and all types of real estate we try to  
19 discard those comparables which are not the same in either  
20 shape, size, topography or land cover.

21          Q       And did you find other sales of property similar  
22 to that of the property in question?

23          A       Yes.

24          Q       Can you tell us what you found or, and what  
25 conclusion you arrived at?

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A May I leave the stand?

Q I think that would be a useful thing to do.

A I brought my own this morning just in case. The subject property at the time of this zone plan, this incidentally, this is the existing map. The first study we made was when the property was in the R-2 Zone. I think that was another inter-map.

Q Hold it just a moment, Mr. Earl.

THE COURT: This is what, P-19?

MR. LINDEMAN: P-19A.

THE WITNESS: Right.

P-19A shows the zone plan when the property was in the R-2 Zone. I just wanted to point that out and I will flip this map because I got my information on the other side. But Lake Chester Village are shown in the R-2 Zone. Old Chester Road, and there is 206, the property is right in here with Fox Chase Road.

Q Lake Chester Village the Caputo tract?

A That's correct. The name that was put on it at that time. Now, for the purpose of comparables. First of all, pointing up I did the development method of appraising. First of all, the R-2 residential zone that was entirely in that zone. And going to the two-acre comparables.

Number 4 comparable is marked on the map. Subject

1 property is here. That was 3.140 acres with 180 feet  
2 front on Cooper Lane. Was 900 feet deep.

3 THE COURT: How much frontage?

4 THE WITNESS: 180. Lot 22, in Block 25.

5 MR. FERGUSON: How deep?

6 THE WITNESS: 900 feet. Book 2383, Page 96.  
7 Sold for \$30,000 on September 16 of 1976.

8 Now, I want to point out that is the highest  
9 price that we found in the two-acre site sold for  
10 in the township.

11 Comparable Number 5, and you see how we had  
12 to stretch a little bit to find another five-acre  
13 site? That was 2.10 acres with 200 foot front and  
14 on Brook Drive. 400 feet deep. And it's irregular  
15 in its depth.

16 Lot Number 37, in Block 32, Book 2305, Page  
17 953. That sold for \$16,200.00 in March of 1976.

18 Q How many acres is that?

19 A That is 2.10.

20 Q Right.

21 A And comparable Number 6 east of the subject at  
22 two acres even with 695 feet front on Mill Drive. This was  
23 on the curve of the road. It was triangular piece-shaped  
24 property which longest depth was 350 feet.

25 Lot Number 5, Block 26-3, Book 2365, Page 1028.

1 Sold for \$24,000 on July 7 of '76.

2 That covers a good cross-section of values for this  
3 size lot in the R-2 Zone in Chester Township.

4 What I did in doing the development method for the  
5 R-2 Zone was take the \$30,000 price, the top price paid for  
6 an R-2 lot, the engineer laid out a map which has been  
7 presented to the Court of a subdivision of this land in the  
8 R-2 and from which a maximum of 87 lots were laid out on  
9 paper.

10 So that the calculating 87 lots at \$30,000 would  
11 have a retail value of \$2,610,000.

12 Q Do you want to resume the stand now, Mr. Earl?

13 A Yes, I will come back for the five after we get  
14 through these numbers.

15 The engineer Smith -- is that name known to the Court?  
16 Has he appeared here yet?

17 Q It has been mentioned. The witness is referring  
18 to Mr. Norman Smith, of Jaman Engineering. I think, however,  
19 Mr. Earl, you are jumping the gun a little bit. So let me  
20 put the question to you.

21 Based upon your investigation and discovery of what  
22 the value of vacant land is in Chester Township, have you  
23 arrived at a valuation of the lots in the Caputo tract,  
24 assuming that the property were still zoned for fully,  
25 for two acres based upon engineering information which is

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about to be furnished to the Court?

A I have.

Q Would you tell us the method by which you arrived at that valuation?

A The valuation of the land retail?

Q Yes.

A Number 1, by going through the process that I just gave of using comparable sales for the purposes of this report, I used the top of that market of \$30,000 a lot. And then using the map that was prepared for Lake Chester Village of 87 lots.

Q That is the map that was prepared by Mr. John Rakos?

A Rakos is correct. So 87 lots at \$30,000, the top retail value for this land, would be \$2,610,000. I keep using the word top because even though his map shows 87 that is laid out on a flat surface. Whenever we subdivide land, we lose because of topo corners. Something is lost. So I am sure 87 is the top number.

And I know that the value of \$30,000 is the top number.

Q Then what did you do in order to find how this property could be marketed after it is fully developed with its engineering, roads, drainage, that kind of thing put in?

1 A The appraiser then has to go outside his own  
2 capability and get an engineer who can determine the  
3 improvement costs of a tract of this type.

4 And in this case it would include the on-site costs  
5 of roads, water, sewer construction, construction of a  
6 lake, a dam, bonds, whatever it may be, and Mr. Smith might  
7 determine that for me.

8 Q I state now and offer to the Court that the  
9 figures to which the witness will now testify regarding  
10 the cost of improvements are those to which Mr. Smith,  
11 of Jaman Engineering, will testify. That, of course, will  
12 be subject to that testimony actually being offered.

13 THE COURT: Assuming that he testifies to  
14 those figures.

15 MR. LINDEMAN: Right.

16 THE COURT: They're acceptable to the Court.  
17 I will allow the question.

18 MR. LINDEMAN: Right.

19 Q Would you go forward, please, Mr. Earl?

20 A Rather than go through a very detailed chart of  
21 every calculation done by the engineer, unless the Court  
22 wishes it, I would take the bulk figure that he has given  
23 me and then there is a copy of it available for anyone.  
24 A total cost for pavement, curbs, sidewalk excavation,  
25 inlets, manholes --

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THE COURT: Hold it. Pavement, curb, side-walk --

THE WITNESS: Excavation.

THE COURT: Excavation.

THE WITNESS: Inlets.

THE COURT: Yes.

THE WITNESS: Manholes, head rolls, 15-inch R. C. P., 16-inch R. C. P.

THE COURT: You agree R. C. P., reinforced concrete pipe?

THE WITNESS: Yes.

THE COURT: Okay, go ahead.

THE WITNESS: Did I give you 24-inch, sir?

THE COURT: No.

THE WITNESS: 24 R. C. P., 30-inch R. C. P., 48-inch R. C. P., electric, clearing, wells, and septic --

THE COURT: Wells?

THE WITNESS: Yes.

THE COURT: And septic?

THE WITNESS: And septic. SED Control --

THE COURT: You mean sediment control?

THE WITNESS: Yes, and dam. The total costs for all of these items which have been calculated for each of the roads and each unit is \$1,659,500.

1 Q Are there additional costs in the engineering  
2 of the property?

3 A Yes, sir.

4 Q What are they?

5 A They're normally three groups that we put together  
6 after that. The sale costs and advertising, grouped at  
7 3 percent. Engineering at \$500.00 per lot and overhead,  
8 which would include taxes, legal inspections, cost of  
9 monuments, et cetera, 4 percent. So that the sales cost,  
10 advertising, \$78,300.00. Engineering, \$43,500.00, and  
11 overhead, \$104,400.00.

12 Q For an aggregate of what?

13 A Direct costs, \$1,885,700.00.

14 Q Now, what is the sales price then less those  
15 direct costs?

16 A Subtracting the \$1,885,700.00 from \$2,610,000,  
17 we've got a remainder of \$724,300.00.

18 Q In order, then, to define the value of  
19 this land, are there any sums that would be due to the,  
20 should be received by the developer, the Caputos,  
21 out of that \$724,300.00?

22 A Yes. Actually, the developer would look for --  
23 today they only look for 10 percent on the sale of each  
24 retail lot. So that 10 percent of the \$30,000 lot,  
25 the developer would expect \$3,000 per lot times 87 lots,

1 \$261,000.

2 And then we have a cost which has got to be charged  
3 against the operation of the tract of interest.

4 I have assumed that this will be a five to six-year  
5 tract. In other words, the job will take five to six  
6 years to complete and I have applied an interest rate of  
7 only 10 percent and that is for three years.

8 In other words, you start with the entire interest  
9 charge at the beginning and as it went down to the last  
10 six or five or four years, so zero. So I am applying it  
11 only for three years. That is \$217,200.

12 Q And the aggregate of those two figures are what?

13 A \$478,200.

14 Q The sales price then, well, then what is the  
15 final figure that you arrived at and tell us, please,  
16 what the meaning of that is.

17 A Yes. What we are trying to determine is what  
18 somebody would pay for the land. Knowing all these  
19 costs and the retail value of the property when it is  
20 finished and the, by subtracting again the last two  
21 numbers I gave which total \$478,200 from the sales price  
22 less direct costs which was \$724,300, there is a remaining  
23 value given to the land of \$246,100.

24 Q Now, do you have any opinion, Mr. Earl, as to  
25 the value of the over-all tract without its having been

1 subdivided and approved with all these engineering costs?

2 A Yes, we have run through the value of vacant large  
3 tracts.

4 There has been only one sale in Chester Township for  
5 the last few years. So we have gone out into other  
6 towns. The land in a two-acre zone sold in a tract the  
7 size of this would have a retail value of about \$3,000 an  
8 acre.

9 Q And that the aggregate of that multiplied  
10 by the number of those lots is what?

11 A That would be on a bulk land value, which is the total  
12 number I gave you what this would be sold for in bulk to  
13 a developer. So that obviously at \$246,000, after having  
14 done all this work, we find the property is worth a third  
15 of what it would be if it were sold as one estate.

16 Q Right.

17 THE COURT: I am sorry. I didn't get the  
18 remainder. Find the property what?

19 Q If sold as one estate, what is that figure,  
20 Mr. Earl?

21 A Assuming the 250 acres as an even number, how much  
22 would be taken out for the Caputo house which has not been  
23 appraised in any of my figures, that would bring it up  
24 to three-quarters of a million dollars from --

25 Q From that, and that is the figure to which you

1 compared the \$246,100?

2 A That's correct, sir.

3 Q All right. Now, using the same approach but  
4 now with regard to the property as it is zoned under the  
5 zoning ordinance 7612, namely, as two-acre and five-acre  
6 zones, tell us, please, by the process you followed to  
7 appraise the sale of the various parcels?

8 A I had the benefit again of the Rakos sketch which I  
9 think has been submitted to the Court showing the property  
10 as it might have been subdivided with the lots that are  
11 on Old Chester Road in the R-2 Zone and the balance of the  
12 property in the R-5 Zone.

13 Q You have examined that sketch as prepared by  
14 Mr. Rakos, did you not?

15 A Yes, sir.

16 Q All right. What did you do?

17 A Going through the same method as we did with the  
18 R-2 Zone, first of all, the sketch as developed by Rakos  
19 showed that there would be twenty lots in the R-2 Zone  
20 and thirty lots in the R-5 Zone. So that having determined  
21 what our two lots were worth at \$30,000 each, I went to the  
22 five-acre sales that we had to determine what a five-acre  
23 lot would sell for. And a comparable number 1, which is  
24 just south of the subject property in the R-2 Zone --  
25 it is in the R-2 Zone. It is a five-acre lot.

End of  
Tape 1

1 All right. I will go through this. 5.045  
2 acres, about 600 foot frontage on Route 206. Has an  
3 irregular 500-foot depth and is heavily wooded.

4 It is Lot 6-3, Block Number 11, Roger Road, is  
5 Book 2381, Page 348. \$25,000 in September 23rd of '76.

6 That is a low sale for a lot that can be subdivided  
7 again in the R-2 Zone. I will just mention that and also  
8 mention it is on Route 206.

9 Comparable Number 2 and 3 are in a very comparable  
10 area to the subject. They're up on Hacklebarney State  
11 Road. And Comparable Number 2 has 6.006 acres with 400.9  
12 foot frontage and is wooded. It is an irregular average  
13 depth of 750 feet. It's Lot Number 21, Block 2383.

14 I will have to correct that, because that is the  
15 book number. Oh, all right. It is alongside the  
16 next lot too, so they're in the same block. That would be  
17 Lot Number 21 and Block 16, Book 2383, Page 89. That sold  
18 for \$25,000, October 8 of 1976.

19 THE COURT: What did you say the frontage is  
20 on Hacklebarney Road?

21 THE WITNESS: 400.9 feet. And then just to the  
22 south of Comparable Number 2, Comparable Number 3  
23 has 5.06 acres with 450 feet frontage. It is  
24 wooded, has an irregular depth of 550 feet average.  
25

1 It's Lot 18-2 in Block 16. It's Book 2331, Page 216  
2 and that sold for \$40,000 on July 22 of '75.

3 THE COURT: Where is that located?

4 What street?

5 THE WITNESS: This is the property here.

6 THE COURT: Same Roger Road?

7 THE WITNESS: In Roger Road, is right in here,  
8 sir.

9 THE COURT: Oh, I am sorry. I thought --  
10 okay -- I am sorry.

11 THE WITNESS: Comparable Number 1.

12 THE COURT: Hacklebarney State Park.

13 THE WITNESS: Hacklebarney State Park, yes.

14 THE COURT: All right.

15 THE WITNESS: Now, from those comparables and  
16 from the whole book of comparables that we have in the  
17 area of sales, there aren't too many of the five-acre  
18 lots. The top sale for the past two years was  
19 \$40,000, which was comparable Number 3. So again,  
20 using the top value of \$40,000 for a five-acre lot  
21 and \$30,000 for a two-acre lot; twenty lots in  
22 the two-acre zone at \$30,000 apiece, comes to  
23 \$600,000.

24 The thirty lots in the five-acre zone at  
25 \$40,000 comes to a million two hundred thousand

1 dollars for a total of \$1,800,000.

2 MR. FERGUSON: Your Honor, Mr. Earl is reading  
3 from a sheet. I would ask Mr. Lindeman if he is  
4 going to offer this in evidence. If so, why don't  
5 we mark it and perhaps it would save a lot of  
6 note taking.

7 THE COURT: Okay.

8 MR. LINDEMAN: I don't think the sheet I have  
9 has all the notes on it. Might be of some help.

10 MR. FERGUSON: Perhaps I am premature.

11 THE COURT: Okay.

12 MR. LINDEMAN: It might be helpful to do that,  
13 your Honor.

14 THE COURT: It is difficult for keeping up  
15 with the notes.

16 MR. LINDEMAN: Right.

17 THE COURT: Got to write fast and sometimes  
18 it is difficult to read your notes when you write  
19 too fast.

20 Q Mr. Earl, I show you what purports to be a  
21 copy of the data as to which you were about to testify.

22 A Yes, sir.

23 Q And ask you if that is a true copy of it?

24 A Yes, it is. There is one more on my sheet that I am  
25 not going to testify to and I took it off your sheet before

1 I gave it to you. I will cross it out on mine so you  
2 know what I am crossing out.

3 MR. LINDEMAN: I will offer this either in  
4 evidence or for identification. It is not really  
5 important to me.

6 MR. FERGUSON: Just scratch that out.

7 THE WITNESS: No, you want to ask the question?

8 MR. LINDEMAN: What?

9 THE WITNESS: The Court will know what you are  
10 talking about.

11 Q What is that pen and inked figure?

12 A The number of costs of the streets and utilities  
13 given by Smith on this one. He gave me two different  
14 numbers. I am going to use the first number, the higher  
15 of the two numbers. I checked it out and find that to be  
16 the correct one. You can discard the one that is inked in.

17 MR. LINDEMAN: I will just put a pencil through  
18 it. I haven't given it to him.

19 MR. FERGUSON: Mark it for identification.

20 THE COURT: P-25.

21 (The document referred to was marked P-25  
22 for identification.)

23 (Changed to P-25B.)

24 MR. LINDEMAN: I would just as soon offer it  
25 in evidence so your Honor can follow it as well.

1  
2 MR. FERGUSON: I have no objection if the  
3 Court wants to read it and see it. I think the offer  
4 of evidence should come at the end and then I can  
5 make whatever objections --

6 MR. LINDEMAN: Well, as a matter of procedure  
7 then, I wonder if counsel would have any objection  
8 to the Court looking at it now?

9 MR. FERGUSON: None whatsoever.

10 THE COURT: All right.

11 MR. FERGUSON: Indeed, the first sheet was  
12 also.

13 MR. LINDEMAN: Yes. Why don't I do that. I  
14 am sorry, your Honor.

15 THE COURT: All right, change the identification  
16 to P-25B and the first sheet will be P-25A for  
17 identification.

18 (The documents referred to were marked  
19 P-25A and P-25B for identification.)

20 THE COURT: Estimates of the value of the  
21 Caputo tract. Okay.

22 Q Mr. Earl, now with regard to the property as  
23 it is presently zoned, that is, in combination, two and  
24 five-acre parcel arrangement, tell us, please, if you  
25 arrived at any valuation of the property bearing in mind  
the various parcels, did you arrive at valuations of the

1 parcels bearing in mind the various development and other  
2 costs associated with it, with the improvements of the  
3 property?

4 A Yes, sir.

5 Q And tell us the process that you went through,  
6 please.

7 A We followed the same process. Let's start again with  
8 the criteria that the fifty lots were laid out in sketch  
9 form by the planner. That's the maximum number of lots.  
10 The values I used for retail were at the top of the market  
11 and we came up with a gross sale.

12 I came up with a gross sales price of \$1,800,000.  
13 The same categories of expenses were used, but adjusted to  
14 the change in subdivision. Streets and utilities from  
15 Smith, \$1,456,500. Again sales costs and advertising  
16 3 percent, or \$54,000. Engineering 700 per lot, \$35,000  
17 and overhead of taxes, legal expenses, costs, monuments,  
18 et cetera, 4 percent or \$72,000 for a total direct  
19 expenses of \$1,617,000 -- excuse me -- \$1,617,500, leaving  
20 a sales price less direct costs of \$182,500.

21 Using again the same 10 percent profit from the lots,  
22 the developer would expect \$3,000 per lot in the two-acre  
23 zone. Twenty lots times \$3,000 would be a profit of  
24 \$60,000 for the two-acre lots.

25 And in the five-acre zone, 10 percent of \$40,000,

1 \$4,000 times thirty lots, \$120,000, for a gross profit of  
2 \$180,000.

3 Charging the same 10 percent interest in this case,  
4 a smaller subdivision, less lots, for two years instead of  
5 three years, we have an interest cost of \$36,500, for a  
6 total profit and interest of \$216,500, leaving a minus  
7 value to the land of \$34,000.

8 Mr. Smith made some adjustments and, frankly, I  
9 don't remember why he did and gave us a new number on the  
10 streets and utilities of \$1,425,000, \$31,000 less than  
11 before so this report could be using those numbers minus  
12 \$3,000 to the land instead of minus \$34,000 to the land.

13 Q What is your opinion, therefore, as to the  
14 practicality economically of development of this property  
15 as a two and five-acre zoned lots or parcels under  
16 present zoning?

17 MR. FERGUSON: Objection, your Honor. I don't  
18 know that this witness is qualified to give an  
19 opinion answer to that question.

20 MR. LINDEMAN: If your Honor please, this is a  
21 question about real estate and the marketing of real  
22 estate of a person who is experienced and qualified  
23 in the field.

24 THE COURT: Would you read the question back?

25 (Last question read by the reporter.)

1 MR. HILLAS: That assumes, your Honor, all of  
2 the assumptions that the witness has made, which is  
3 that the land is as Mr. Rakos laid it out and that  
4 is the only layout which, in effect, can be made  
5 under the zoning ordinance.

6 Now, that clearly is not true. It further  
7 assumes that all the improvements must be made as  
8 Mr. Rakos apparently conceives them and as Mr. Smith  
9 has estimated them. It also assumes no deviation from  
10 any requirements contained in the present ordinance  
11 by way of variance or application for a realization  
12 of any of them, and particularly reference to side-  
13 walks and curbs. There has been a lot of talk,  
14 for instance, there of not having to require side-  
15 walks and curbs. I don't know what the status  
16 of that is in the town, but I think any developer  
17 would certainly find out. It seems to me that this  
18 is a very technical, very stratified, very rigid  
19 appraisal and I just don't think the foundation has  
20 been laid for this witness to answer that question.

21 MR. LINDEMAN: Your Honor please, it is correct  
22 that the basis for the opinion is the testimony  
23 offered on behalf of the plaintiffs by Mr. Rakos  
24 and that which will be offered by Mr. Smith.

25 It is when the statement is made, however, that

1 the dividing of the property into 87 or 50 lots  
2 as Mr. Rakos did, is untrue or that assumption is  
3 untrue. I submit that it is not really a proper  
4 characterization. It is the best estimate that  
5 Mr. Rakos could make of a subdividing of that  
6 property under the two ordinances and isn't really  
7 a case of whether it is true or not. It is subjectively  
8 of what he was able to do.

9 It was our expert who was, who said that he  
10 divided the property into just so many lots as  
11 possibly could be done.

12 Now, in the actual development of the property,  
13 I think it would be inappropriate and the objection  
14 is not well taken to say that this is not necessarily  
15 the best that the developer can do because it may be  
16 that he would apply for and be successful in obtaining  
17 variances.

18 I think, that we are not really permitted  
19 in this kind of a context to make any such assumption.  
20 I think on the contrary the assumption is that the  
21 property is to be developed under the existing law  
22 and without regard to any special concessions that  
23 might be made by the municipality.

24 THE COURT: Well, I will allow him to testify  
25 to the question. - I think most of your objection is

1 one of weight rather than admissibility of the  
2 answer.

3 I recognize that perhaps some of the facts  
4 may be variable, but I know the facts on which he  
5 is basing his opinion.

6 MR. FERGUSON: What particularly concerned me  
7 is that Mr. Rakos testified that was the maximum  
8 number of lots which could be laid out on the  
9 property. He did not testify as to whether there was  
10 a different scheme which might decrease the maximum  
11 number of lots, but would significantly decrease the  
12 amount of road and pipe, et cetera, which would have  
13 to be built to service it.

14 THE COURT: I realize that. You know, he has  
15 got a right to base his opinion on what the other  
16 expert has said.

17 If there are other alternatives, then they're  
18 going to have to be presented to me, but through  
19 other means. I will allow it.

20 Do you remember what the question was now?

21 THE WITNESS: Yes, sir. And recognizing the  
22 fact that this type of report in a trial of this  
23 kind and I have appeared in many of them, is not  
24 a scientific report. It is one of opinion of  
25 several people and it is the best opinion I have.

1 That is why I use the maximum of lots that we were  
2 able to sketch on the price and the maximum price,  
3 it would be that amount of credence to the report.  
4 We are not going to say each lot is worth \$15,000 or  
5 something and come up with a ridiculous report. But  
6 the subject to this is that the property zoned in the  
7 R-2 and R-5 residential zone as now reduces the  
8 property to about zero land value for development  
9 purposes.

10 Q Therefore, is it a practical thing economically  
11 for the owner of the property to develop it in that manner?

12 A No, the owner would then sell it in the marketplace,  
13 if he had to, as a tract of land for an estate.

14 Q What is your opinion? It is your same opinion,  
15 is it not, as to the property zoned solely as R-2 lots?

16 A There is still some value left in the land under the  
17 R-2 zone but it would still be sold in one, two, three  
18 big pieces, not where you would have to put roads and  
19 subdivide.

20 MR. FERGUSON: I don't understand that last  
21 question, your Honor. I, therefore, object. Perhaps  
22 Mr. Lindeman can clear it up.

23 MR. LINDEMAN: I don't think I really have  
24 to. I will withdraw it, your Honor. I did ask it  
25 before. It is in the record.

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THE COURT: All right.

MR. LINDEMAN: If I may?

THE COURT: Strike the question and answer, then.

Q Now, Mr. Earl, have you formed an opinion as to the availability of improved parcels of one-family single-family dwellings having a value of under \$50,000 in Chester Township?

A This is the availability of them, is that right, sir?

Q Yes.

A Yes, sir, I have.

Q What is that opinion?

A There are, there were no houses as of the date that I made my study filed with the two multiple listings for properties under \$50,000.

Q Approximately when was that date?

A That was made in February of 1977.

Q In your experience in the real estate business in or about Chester Township, Morris County, do you know if the situation of availability of property varies dramatically from time to time, such as from the time that you made your examination until now, let's say?

A It wouldn't vary dramatically. Of course, it can vary at any time, but what's offered in the marketplace, but by putting the availability as of that date as one example and knowing the sales and offerings in the township.

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1 over the past two years, we know that the report accurately  
2 shows a, the range of properties that are offered in  
3 Chester Township at any given time.

4 Q Now, you are familiar, are you not, with the  
5 proposed cluster development of this property as recommended  
6 or suggested by Mr. Rakos, are you not?

7 A Yes, sir.

8 Q Have you formed any opinion as to the effect,  
9 whether it be negative, positive, or otherwise on the  
10 market value of the lands in the area in question should  
11 the plaintiff's property be developed as Mr. Rakos has  
12 suggested it?

13 A You are talking about neighboring --

14 MR. FERGUSON: I don't understand the question.

15 THE COURT: I don't either. You said familiar  
16 with Rakos' cluster proposals before an opinion on  
17 the market value of the lands.

18 MR. LINDEMAN: Of the area around -- well,  
19 let me put it this way.

20 Q The effect upon the market value of properties  
21 in the immediate environs of this parcel, if the plaintiffs'  
22 property were developed as Mr. Rakos has testified with  
23 the 856 units?

24 A There would be no negative effect on neighboring  
25 property values by the creation of this attached housing.

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

CROSS-EXAMINATION BY MR. FERGUSON:

Q Mr. Earl, on P-25A and B that have been marked --

A That is the valuation of the property?

Q Yes.

A In the two zones --

MR. LINDEMAN: Excuse me. May I interrupt  
since he hasn't fully started? May I offer those  
in evidence, your Honor? I didn't actually do that.  
P-25A and B.

MR. FERGUSON: I would object, your Honor.  
I would prefer to wait at the end of the cross-examina-  
tion and then the Court can make a decision at that  
time.

THE COURT: All right, go ahead.

Q On the copies of those evaluations which  
I received earlier in this litigation, there were some other  
figures at the bottom?

A Yes.

Q What, would you tell us what those figures  
were which I received and which are not on the one marked  
for identification?

A This has to do with what you mentioned before while

1 I was on direct that there is talk in the town about getting  
2 rid of these ridiculous requirements in the two and five-acre  
3 zone for sidewalks and curbs.

4 And I was trying to calculate if they did get rid  
5 of those what that would mean as a net value to the land.  
6 And was also a part of a discussion I had with former  
7 counsel on the Madison Township case where towns have  
8 overloaded their ordinances with costs that are unnecessary  
9 and, therefore, take the net value away from the land  
10 unnecessarily.

11 Q You are referring to the requirement of  
12 Mount Laurel of Madison Township that they're not undue  
13 costs generating factor?

14 A That's correct.

15 Q Would you tell us what figures you had on  
16 your sheets P-25A and B that I received and that are not  
17 on the sheets today with respect to sidewalks and curbs?

18 A Absolutely. Yes, sir.

19 Q All right.

20 A We had, I put in if I took out the sidewalks and  
21 curbs.

22 Q First, what sheet are we on, P-25A?

23 A I don't have my map. I don't know which number is  
24 which.

25 THE COURT: P-25A is the R-2 residential only.

1 THE WITNESS: Okay, fine. Taking the land  
2 value that I have given of \$246,100, that was the  
3 remaining value to the property owner, adding back  
4 the sidewalks and curbs would be a plus of \$290,600.

5 Q For a total --

6 A That would be to the land of \$536,700.

7 THE COURT: Would be how much?

8 THE WITNESS: It would leave then a total of  
9 value to the land of \$536,700. And then again,  
10 if we just took out the sidewalks --

11 Q Wait a minute. Per acre value, you divide  
12 \$536,700 by 270, and what figure do you get?

13 A Two thousand.

14 Q \$2,000 per acre if you don't have to construct  
15 sidewalks and curbs?

16 A Yes, assuming that \$270.00 an acre and that again  
17 is figuring there is absolute top with the Caputo house  
18 and all included.

19 If we just take out the sidewalks, it would be  
20 \$163,800, leaving to the land \$409,900 and a per acre price  
21 of \$1,500.00.

22 Q In effect, then, on the R-2 only if you have  
23 to build sidewalks and curbs you come up with \$900.00 after  
24 you subtract all of your profit and costs?

25 A The price per acre, value per acre?

1 Q That's correct.

2 A Yes, sir.

3 Q And you come up with \$1,500.00, if you don't  
4 have to construct sidewalks?

5 A Right.

6 Q And you have \$2,000 if you don't have to  
7 construct sidewalks and curbs?

8 A Right, which is still under what it is worth as a  
9 single tract.

10 Q Now, would you do it for the R-2 and R-5,  
11 P-25B?

12 A We just did one number. There is, as your report  
13 shows without sidewalks and curbs.

14 We had a plus of \$264,700 applied to the minus  
15 \$34,000, which the land had in my report, leaves a value  
16 of the total of 270 acres of \$230,700, or a per acre  
17 value of \$850.00. Still considerably under the market  
18 as one tract.

19 Q You say you did an investigation of what this  
20 land would sell for as one large lot?

21 A Yes, sir.

22 Q Would you tell us what comparables you had on  
23 that?

24 A I don't have those with me, sir. That was done as  
25 a broad survey. I am sorry, I don't have them with me.

1           There was only one sale just south of the subject  
2 property in Chester Township and we left the township with  
3 other sales, to get that I just gave you the benefit of.

4           Q       Well, what --

5           A       Broad experience on that one.

6           Q       Your best recollection?

7           A       \$3,000 an acre is the minimum that you would pay for  
8 a 250-acre tract as good as this one.

9           Q       What would be the maximum that you might pay,  
10 a willing buyer and a willing seller, fair market value  
11 as of today?

12          A       I think that if you were in a five-acre zone in  
13 Bernardsville that much closer in, \$5,000 an acre.

14          Q       Why do you say closer in to Bernardsville?

15          A       Closer in to the metropolitan New York just increases  
16 the value of real estate considerably.

17          Q       Is it your testimony that acreage in a large  
18 tract such as this is going up each year as the development  
19 moves out?

20          A       Yes, sir.

21          Q       So that the --

22          A       As long as the demand is there.

23          Q       Is it your testimony that there is a demand for  
24 this acreage in a 250 or 275-acre tract?

25          A       It is difficult to say, believe me, in Chester.

1 We just haven't had the sales to show the demand. That  
2 may be also because people won't sell. But there have not  
3 been sales in Chester other than the one estate sale  
4 on Old Chester Road just south of the subject.

5 Q Have you gone outside, west of Chester at all  
6 to look --

7 A The zone changes, sir, west of Chester, Washington  
8 Township, just below that Califon, smaller, they're  
9 in the Tewksbury area. There is a three and five-acre  
10 zone. No sales of very large tracts. Smaller tracts,  
11 thirty, forty.

12 Q What are thirty and forty-acre tracts selling  
13 for?

14 A I don't know. I would have to get that.

15 Q Could you not divide the Caputo tract into at  
16 least two smaller tracts fairly easily?

17 A Yes, as I testified, this might be sold as one large  
18 tract or maybe sold, as two, three, four, five small  
19 estates.

20 Q Did you make an estimate or an appraisal of  
21 the value of the marketability of land and the value of it  
22 as subdivided into five or six smaller pieces?

23 A That wasn't the purpose of my report, nor the purpose  
24 of my study. The purpose of it was to show that this  
25 property could be subdivided for R-2 and R-5 and just an

1 R-2. I could have gone into a cluster. I could have gone  
2 into all kinds of things. That isn't the way it is zoned.  
3 I just, I just studied it as it was zoned.

4 Q Did you take into account, speaking of  
5 clustering in your estimate of the value of the cluster  
6 provisions of the present 1976 zoning ordinance?

7 A No, sir.

8 Q Why not?

9 A Because the map as submitted to me by Rakos Number 1,  
10 was not on that form.

11 And Number 2, cluster zoning by my own experience,  
12 having done it myself, does not produce that much of  
13 a savings.

14 Q Does it produce some saving?

15 A It can and it cannot. All according.

16 Q What are the variables?

17 A The variables are in the improvement costs and what  
18 you will get out of the eventual sale.

19 Now, if you are going to save something on the  
20 roads that are going in and utilities and then you are  
21 going to be selling two-acre lots instead of five-acre  
22 lots, the value of the lot that you are selling goes  
23 down. So a study has to be made, made of each specific  
24 one very carefully.

25 Clustering by itself, in my opinion, is a great

1 environmental factor, but it doesn't save the builder that  
2 much. Very few developers today want cluster zoning.

3 Q When you say it is a great environmental  
4 factor, what do you mean?

5 A It leaves such as your cluster zoning, leaves open  
6 spaces that a full development of the tract does not permit.

7 Q Have you inspected the Caputo tract?

8 A I walked it entirely.

9 Q Are you aware of the ravine on either side  
10 of the Peapack Brook and the Peapack Brook running down  
11 the middle of the subject property?

12 A Yes, it is a beautiful area.

13 Q Do you have an opinion as to whether it would  
14 cost more or less to develop the land, if that brook  
15 weren't there?

16 A If the brook were not there?

17 Q Yes, sir.

18 A The cost of development is higher when you have  
19 a brook there. But unfortunately, a brook always com-  
20 pensates back to the property owner more than the  
21 cost. People will pay additional for a lot that has a  
22 brook running on it.

23 Q What about the lake?

24 A Again, any water would be an asset to the property.

25 Q Is it your estimate of value on your sheet

1 P-25A and B dependent in any way on the existence of  
2 a lake?

3 A No existence because I didn't have any comparables  
4 that showed me that with a lake. I didn't have anything,  
5 a positive value because it was a lake or a stream there.  
6 My appraisal is made at the very top of the market based  
7 upon lots that do not have those assets.

8 Q Speaking of the top market, did you go to the  
9 east of Chester Township when you looked for comparables?

10 A Into the Mendham area?

11 Q Yes.

12 A No, I did not.

13 Q Did you think that was inappropriate? Why  
14 didn't you?

15 A I had no reason to leave Chester.

16 Q Are you aware of a development in the  
17 Mendhams by a developer named Mr. Bellensh?

18 A I know the name Bellensh, but I don't know where he  
19 is right now.

20 Q You are not aware of his development of  
21 five-acre lots in the Mendhams?

22 A No, I am not. I sold Oak Knolls right adjacent to  
23 Chester to McNally. I am familiar with that completely.  
24 But I don't know where Bellensh is unless he bought out  
25 McNally.

1 Q What is Oak Knolls?

2 A That's the five acre, three-acre subdivision just  
3 to the east of Chester in Mendham Township.

4 Q What are five-acre lots going for in that one?

5 A They aren't going. This is a subdivision by a  
6 builder.

7 Q They have not been sold yet?

8 A Yes, but I mean he didn't sell the lots. He built  
9 houses on them.

10 Q Are you familiar with that property as to  
11 what a lot is worth, if he sold it?

12 A Yes, I am. I am not going to give you something  
13 that specific because I don't have comps with me, but  
14 I know there have been enough sales of five-acre lots  
15 in Mendham. Not Oak Knolls, but up in that region.  
16 I forget the name of the subdivision. It was done by  
17 Mulkey & Coloden. Those sales went from thirty to  
18 thirty-five thousand for five-acre lots in the last two  
19 years.

20 Q You don't know what Mr. Bellensh has been  
21 selling his lots for?

22 A I don't know where he is. I am amazed I don't have  
23 the name of the subdivision.

24 THE COURT: Off the record.

25 (Discussion had off the record.)

1 THE COURT: With the Court having identified  
2 the location of what I think is the Bellensh tract,  
3 Mr. Ferguson is talking about?

4 THE WITNESS: Being that same tract, the  
5 only reason I've been on there is to do mortgage  
6 appraisals. I don't know what the lots were selling  
7 for.

8 Q P-25A and B, are they appraisals?

9 A They are, yes. Yes, they are. They are not  
10 complete. They would be part of, normally they would be  
11 part of a study in order to develop a certain portion of  
12 it and that's what they serve us here. If it were a  
13 full appraisal, we would have a name description, site  
14 description.

15 Q Would you tell the Court what else would be  
16 with P-25A and B, if they were appraisals?

17 A That's what I was just doing. I was going through,  
18 we go -- I think the Court is familiar with what an  
19 appraisal is.

20 Q For the record, Mr. Earl.

21 A We do go through a table of contents which include  
22 a description of the property description of neighborhoods.  
23 Our approach to the value and analysis interpretation of  
24 everything that we have found.

25 Q Would it give a purpose of the appraisal?

1 A Oh, sure.

2 Q Would it give a definition of the value which  
3 you were appraising?

4 A It would give a definition, highest, best use.

5 Q Well, assuming the fair market value, the  
6 purpose of an appraisal --

7 A The fair has been driven out of our business. We  
8 only speak of market value now.

9 Q Market value?

10 A Yes.

11 Q Anything you say got to be fair by definition.

12 A Thank you, sir.

13 Q I am speaking about real estate appraisers  
14 in general.

15 A Oh, you're being serious. I am sorry.

16 Q Yes, quite.

17 A Everything. It was a misinterpretation of that word  
18 that the society asked us to drop. People don't under-  
19 stand what the word "fair market value" meant.

20 Q All right. The purpose of your appraisal  
21 would be stated as if, if you were giving an appraisal?

22 A Yes, sure.

23 Q Okay. Tell us what the purpose of these  
24 estimates of value is?

25 A To determine the market value of the property to a

1 purchaser or to the present owner under the existing zoning  
2 and now the changes in zoning.

3 Q And assuming only, however, for the purpose of  
4 developing to the maximum allowed under the zoning  
5 ordinance?

6 A That's correct. In other words, what effect the  
7 zoning ordinance has on it. For that purpose.

8 Q Is only for development value?

9 A It is the value to the property owner after someone  
10 has determined what the development value is which is  
11 the number 1 number.

12 Q You have already testified that there is  
13 three-quarter of a million dollar value which he could  
14 get, if he sold it in the open market as one tract?

15 A Yes, sir. Now, this is again, you remember, that's  
16 a broad estimate.

17 THE COURT: Excuse me just a moment. Gentlemen,  
18 another judge in the vicinage would like to talk to  
19 me for a moment.

20 (A short recess was taken.)

21 THE COURT: All right, Mr. Ferguson.

22 MR. FERGUSON: There was a question pending.

23 THE COURT: I think I stopped you the last  
24 time he talked about was the selling of the tract  
25 as an estate at three-quarter of a million dollars.

1 Q There is no doubt in your mind that there is  
2 a market for that acreage in a 270-acre lot, if placed  
3 on the market?

4 A That's correct, sir.

5 Q And your estimate of the value, although not  
6 a formal appraisal because of like comparables, is at  
7 least \$750,000?

8 A That's correct, sir.

9 Q By the way, do you know what the zoning  
10 was fifteen years ago when Mr. Caputo took title to this  
11 property?

12 A No, I do not.

13 MR. FERGUSON: May I have this marked?

14 I would ask that Mr. Lindeman consent to have  
15 this marked P-25C, which is the detailed cost  
16 sheet from which the witness testified as to the  
17 costs given for improvement by Mr. Smith.

18 MR. LINDEMAN: May I see it?

19 MR. FERGUSON: It will help in the numbering  
20 and keeping track of the documents.

21 MR. LINDEMAN: Mr. Earl, this document that I  
22 have in my hand, one which was furnished to you  
23 by Mr. Smith?

24 THE WITNESS: Yes, sir, it is.

25 MR. LINDEMAN: Your Honor please, I have no

1 objection to its being offered.

2 I do not personally know whether these figures  
3 are the final figures of Mr. Smith or what.

4 THE COURT: Let's do this. Let's mark it subject  
5 to the same qualifications that we had before,  
6 assuming that Mr. Smith supports them. We will just  
7 use it. Make it P-25C for identification.

8 MR. LINDEMAN: Right.

9 (The document referred to was marked P-25C  
10 for identification.)

11 Q On P-25C, is this the cost figures which you  
12 used in testifying as to the development costs on your  
13 sheets, P-25A and B?

14 A This was the one that was used for 25A and then it  
15 had to be adjusted for the improvements under P-25B.

16 Q Do you have a similar sheet for the improvements  
17 under 25B?

18 A No, sir.

19 Q Well, how did you get the figures to testify?

20 A Mr. Ambrose gave me the adjusted figure when he  
21 had gotten it from Mr. Smith.

22 Q Am I correct, then, that P-25B was based  
23 on information given to you by Mr. Ambrose who told you  
24 he got it from Mr. Smith?

25 A That's correct, sir.

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Q You didn't talk to Mr. Smith yourself?

A I didn't talk, I never talked to Mr. Smith.

Q Did you ask Mr. Smith any questions about his improvements?

A I think I can help. I never talked --

Q You never talked to Mr. Smith at all?

A That's correct.

Q About what improvements would be necessary?

A No, I took the list that was given to me by counsel out of Mr. Smith's report and then the adjustments for the 25B.

Q All right. So 25C, the detail sheet, is for 25A and there are 80 lots, plus or minus?

A 87, I think was the number.

Q All right.

A Yes.

Q I show you one entry on the bottom of 25C.

A Yes.

Q A dam for \$286,000?

A Yes, sir.

Q Is there anything in your expertise which would let you shed some light today on what the dam is for and whether it is required for the development of 80 lots under two-acre zoning?

A No.

1 Q I ask you the same question about under two  
2 and five-acre zoning --

3 A No.

4 Q -- 50 lots?

5 You're just taking this dam for \$286,000 and a given --

6 MR. LINDEMAN: Excuse me, a what?

7 Q A given assumption.

8 MR. LINDEMAN: All right.

9 Q Under that lists all his figures?

10 A That's right.

11 MR. LINDEMAN: What was that?

12 Q With respect to multiple listings, what was  
13 the date when you said you, that you examined it, the  
14 multiple listings of Somerset and Morris Counties and  
15 found nothing under \$50,000?

16 A My recollection, as I said, was February of '77.  
17 I don't have the lead sheet.

18 Q Well, let's show this, you this. Is that  
19 P-24 in evidence?

20 A Yes, I do have mine. All right, February 3, 1977.

21 Q Would you tell us from your experience  
22 in the area what kinds of sales, what kinds of properties  
23 are listed on multiple listings and what kinds of sales  
24 do not get consummated through multiple listings?

25 A That's very broad, but I would say this: That multiple

End of  
Tape 3

1 listing is basically a residential sales vehicle. We do  
2 have commercial properties. We do have vacant land and  
3 vacant lots, but it is primarily a residential vehicle.  
4 It represents a cross-section of the marketplace at all  
5 times, but predominantly I would say of the residential  
6 sales that are made normally, the upper priced properties  
7 would be handled by an agency with its own brochure, or  
8 it would be handled by Previews or something like that.  
9 So we have --

10 Q For the benefit of the Court, what would you say,  
11 would you tell us what Previews is?

12 A Previews is an international marketing company.

13 Q And what do they specialize in?

14 A They specialize mainly in larger properties.

15 Q What price range are you talking about?

16 A I guess the list price on one we have right now  
17 from them is about \$85,000.

18 But frankly, when most of them come in, they're  
19 \$175,000, \$200,000 up.

20 Q They also specialize in islands in the  
21 Caribbean or indeed anyplace in the world?

22 A That's right. It is international.

23 Q If you want to spend a lot of money on very  
24 exotic real estate you go to Previews?

25 A That's right.

1 Q Isn't it also true that typically your lowest  
2 price range houses don't get sold through multiple listing?

3 A No, sir. They're the people normally that need our  
4 help most. They don't have counsel. They don't have  
5 mortgage sources. The lower priced ones are normally  
6 marketed through multiple.

7 Q And P-21 in evidence, that's housing sales by  
8 price range and type, Chester Township, 1976, am I correct,  
9 in that thirteen houses sold under \$50,000?

10 A That's correct. That would indicate just about the  
11 broad spectrum of it for what I just said. That they are  
12 listed with us and sold by us.

13 Q Well, you indicate that there are no houses  
14 listed in multiple listing for under \$50,000 on February 3rd.

15 A That's right, sir.

16 Q And in spite, you don't see the contradictions  
17 between those thirteen houses actually sold in '76 and  
18 yet your testimony is that there are none listed at all?

19 A I gave --

20 Q February, '77?

21 A Yes, that is the consequence of that and is only a fact.  
22 I mean, all I did was report the facts of that date.

23 Q Did you go back and see how many of those  
24 thirteen were sold through multiple listing and how much?

25 A Those are -- excuse me -- that's right. That is not a

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multiple listing sheet. No, I did not.

Q P-22 is not from the multiple listing?

A That's correct.

Q That is from the SR-1A, which you personally examined?

A That's right.

Q You don't know how much the multiple listings, how many of those thirteen were multiple listed sales?

A No, sir.

Q Mr. Earl, did you investigate the housing situation in Chester Borough?

A No, sir.

Q Did you look at the price ranges of the sales of housing, of houses in the Borough at all?

A As I said, no, I did not make a study of Chester Borough.

Q May I ask you why you did not?

A I didn't make a study of any other towns. I am only interested in what the zone plan of Chester Township has done to housing in its township.

Q Do you consider Chester Borough an integral part of Chester Township?

A No, sir.

Q Why not?

A It is not a part of it. It is a separate community.

1 Q Well, there is a municipal boundary line, isn't  
2 there, that the two central roads of Chester Township cross  
3 in Chester Borough?

4 A Yes.

5 Q Isn't it true that most, the great majority of  
6 your services, such as they are for residents of Chester  
7 Township are located in Chester Borough?

8 A The only services they would have available there would  
9 be some of the shopping centers, but the township itself  
10 has its own little, I think, area the same as Morristown  
11 and Morris Township. They're two distinct separate  
12 entities, different zoning, different uses. They're not  
13 comparable. One might supply a service, but it wouldn't  
14 have anything to do with my study of what the zoning of  
15 Chester Township has done for housing in Chester Township.

16 Q As long as we understand that your studies totally  
17 ignored the hole of the doughnut, the hole being Chester  
18 Borough.

19 A I see the picture you are saying. I'm just saying it  
20 is unnecessary to study and I did not make it.

21 Q I believe you either listened to a piece from the  
22 Morris County Master Plan Land Use Element, either agreed  
23 with it or did something about it, about Chester, Mendham,  
24 Long Valley to the effect they have said historically  
25 they are the same corridor and pretty much should be treated

1 alike, is that more or less true?

2 A I don't remember how they came to that, but that is  
3 in that Morris County Land Use Plan.

4 Q Where is Long Valley?

5 A Long Valley is north of Chester and Washington Township  
6 is the official name of the town.

7 Q Did you make any investigation of comparables  
8 in Long Valley?

9 A No, sir. That would not have been a realistic apprai-  
10 sal to make for my purpose.

11 Q Why?

12 A Because it is too far away to start with.

13 But would have a different value, different zoning,  
14 different purposes.

15 Q What about the Mendhams?

16 A No, sir.

17 Q Why not the Mendhams?

18 A I am only interested in Chester Township. I could have  
19 done Washington Township, Bedminster, Peapack Gladstone,  
20 Bernardsville. They all touch Chester. There is no  
21 purpose of that.

22 Q Well, when you say that, didn't you say there  
23 were a few comparables in the five-acre zones in Chester?

24 A I said there were a few comparables as in both lots  
25 and in vacant land because there has never been a sub-

1 division of five-acre zoning in Chester Township.

2 It is not economically possible.

3 Q Isn't it true that there is substantial five-acre  
4 zoning in Bedminster and Far Hills?

5 A No, sir. Just in Bedminster. Far Hills, 95 percent  
6 ten acres.

7 Q Ten-acre zoning?

8 A Yes, sir.

9 Q Do you know what a ten-acre lot sells for  
10 in --

11 A Ten-acre lots in Far Hills?

12 Q Yes.

13 A Yes, sir. They're running from about eighty to  
14 a hundred and twenty thousand dollars. That's a status  
15 town. Anybody that has a lot for sale sells it quite  
16 readily, there.

17 Q Is there a market for lots at that price range?

18 A In Far Hills? Yes.

19 Q What is the zoning in Bedminster?

20 A Basically five-acres. It has a hamlet where the  
21 zoning is less, but basically five-acre zoning.

22 Q Are you familiar with the lot values in  
23 Bedminster?

24 A Yes, they're selling for forty to fifty thousand  
25 dollars, if and when they're available.

1           Bedminster doesn't have the demand that Far Hills has  
2 even at the five-acre zone. We get very little activity  
3 in Bedminster.

4           Q       Did you do any comparables in Bedminster?

5           A       No, sir.

6           Q       Is it your opinion that they are not, the sales  
7 in Bedminster five-acre lots would not be comparable?

8           A       There is no purpose for me to make a comparable sale  
9 that comes from another town unless I am lacking comparables  
10 in the town I am appraising.

11           Basically, the appraiser going in and doing a land  
12 appraisal will select comparables in the town in which  
13 he is to have of similar nature because every town is  
14 different.

15           Now, we are permitted, and I think the Court will  
16 agree, we are permitted even in court work to leave that  
17 town, if we have to, if there is no comparable.

18           But otherwise, we would never do it.

19           Q       There are two comparables for five-acre lots  
20 in Chester Township that you used?

21           A       No, sir. The lot sale that I had --

22           Q       Were three --

23           A       Were disqualified in court, I think, and I have got  
24 every sale in here.

25           Q       Well, two and three are, if my recollection is

1 correct, were five-acre comparables?

2 A One, two and three.

3 Q All right. Number 1 is a lot on 206?

4 A Right. I purposely got that one because it was closest  
5 to the subject.

6 Q What is the effect of being on 206 on the value  
7 of that property?

8 A As I mentioned in my direct, the two things that  
9 affect that lot, and I got caught a little unaware when  
10 I saw where it was. It is in the R-2 Zone, and it is also  
11 on 206. So the value would increase from the standpoint  
12 that it could be subdivided, but it is down because it  
13 is on Route 206.

14 And I went past it yesterday. It is a most attractive  
15 lot, but it is on 206.

16 Q That is a major arterial highway in Chester?

17 A Yes, sir.

18 Q They're upgrading it from south to north at  
19 that point in the road?

20 A Just about starts there. Just off Roger Road.

21 Q Is that where the road widens into three lanes  
22 for a passing lane?

23 A Yes, just beyond the property.

24 Q Okay. 2 and 3 are in the five-acre zones?

25 A Yes, sir.

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Q And Hacklebarney Road, is there a State Park across the road from those lots --

A Yes, sir.

Q 2 and 3?

And what were the sales price of those lots?

A One was the top price I gave you, \$40,000, and the other was twenty-five.

Q Now, with respect to the \$40,000 lot.

A Yes.

Q What utilities or services were furnished to that lot when sold?

A There are no utilities or services with the comparables on the five-acre zone.

They both had to have all three, had to have sewer, septic tanks and wells installed.

Q Now, isn't it true that on your sheets P-25A and B, the selling price includes a septic system installed?

A I beg your pardon. You mean it would have been installed?

Q Yes.

A Yes, sir.

Q So the 2 and 3 comparables, 2 and 3 up in Hacklebarney Road should have added to their sales price the cost, at least, of installing a septic system?

A Yes, sir.

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Q What about curbing and sidewalks, if we are going to make them comparable?

A No, sir. There are no sidewalks or curbing there.

Q It is a flat piece of ground totally unimproved?

A That's correct.

Q On your P-25A and B, the improvements which are installed, include septic, storm drains --

A Yes, sir.

Q -- electric?

A The underground electric is in there, yes.

Q And pavement?

A Well, there is pavement.

Q Pavement on the road?

A Yes.

Q Curbs, sidewalk excavation costs?

A Yes, sir.

Q Whatever may be necessary for storm drains?

A Yes, sir.

Q Electric and clearing and wells and septic?

A Yes. The item you adjust for is that a purchaser coming to Chester might be in a five-acre zone in a subdivision such as Lake Chester Village as compared with Hacklebarney would be a well and septic primarily.

Q So your \$40,000 price for a five-acre lot for 2 and 3, whichever it was, should be added that component

1 of the cost?

2 A As long as we have to make an adjustment for the  
3 shape of, to make an adjustment for the topo, all types of  
4 things, I will admit that the amount that you are talking  
5 about, the well and the septic should be added. Other  
6 items I would not add. So you probably got around \$35500.00  
7 would be adjusted for the well and septic.

8 Q So the price should be forty-three five?

9 A That would be -- yes, I am not so sure that you would  
10 get it, but that should be the adjustment.

11 In other words, the total amount of the cost would  
12 not probably be reflected in the difference in sales.

13 Q To make the comparison that you have been making  
14 in P-25A and B that the adjustment should be made?

15 A Yes, sir.

16 Q Do you have any idea about the topography of  
17 Hacklebarney Road and the requirements for a septic system  
18 or a well on those lots in terms of how expensive it would  
19 be to put in those services?

20 A That wouldn't be that bad. They're sloping lots  
21 down to the river. But they're good lots.

22 Q Down to what river?

23 A The river to the right in the park area.

24 Q The whole area slopes down from your left to  
25 your right?

1 A That's right.

2 Q Isn't there a road between the river and the  
3 lots?

4 A Yes, I am just talking about the grade of the lots  
5 themselves. They're graded. They got a grade, but there  
6 would be nothing difficult about using them.

7 Q I would like to show you Page 12 and 13 of  
8 the Morris County Master Plan Land Use Element and ask you  
9 to read Paragraph 2, beginning, "Intensive use be made of  
10 lands."

11 A Yes. The Morris County Planning Board recommends  
12 that more intensive use be made of lands which are to be  
13 used at all, that such intensive use be gathered in  
14 concentration with decreasing high intensity use radiating  
15 outward from them.

16 Q And the next sentence I will read it.

17 "Such use would render municipal services both cheaper  
18 and more efficient, would facilitate public transportation  
19 checkpoints and would create a sense of community identi-  
20 fication."

21 A Yes, sir.

22 Q Would you apply that paragraph to Chester  
23 Township, please, and tell us if you believe that the  
24 proposal for Lake Chester Village is consistent with that  
25 paragraph?

1 A Absolutely. Yes, it is one main factor in this report  
2 applies precisely to Lake Chester Village is the fact  
3 that we have a sizeable tract of land the owner who will  
4 willingly develop it for this purpose. That permits the  
5 concentration that is mentioned in the first paragraph.

6 Q Don't you --

7 MR. LINDEMAN: Excuse me. I object, your Honor.  
8 I think the witness should be permitted to answer the  
9 question fully.

10 THE COURT: Go ahead. Finish it.

11 A The Planning Board throughout this report cites that  
12 are in the automobile age and these concentrations should no  
13 longer be near the commercial centers.

14 And this paragraph buttresses that.

15 It also says such use would render municipal services  
16 both cheaper and more efficient. We already know that be-  
17 cause of the size of this, a disposal of sewage can be  
18 designed.

19 We know that water can be brought to the property  
20 and we know that public transportation is just south of the  
21 property.

22 Q What public transportation are you talking about?

23 A The Erie Lackawanna Railroad which is the finest mode  
24 of transportation we have for our communities.

25 This property is unique and all of Chester is located for

1 services, both water and transportation and has the size  
2 inherently built into it to provide the other major utility,  
3 which is sewage.

4 Q Now, what other areas in Chester did you study?

5 A What other areas?

6 Q Yes.

7 A I actually made a visual study of the major holdings  
8 of the lands in Chester that are outside of park control.  
9 And you have got several of them. The Mennen Holdings.

10 Q The what?

11 A The Mennen ---

12 Q What is that?

13 A Mennen has several holdings in the center part of  
14 Chester Township.

15 Q In the center?

16 A On Route 24.

17 Q Come around to the map and show us.

18 A Yes.

19 Q Where is that?

20 A This is Mennen here.

21 Q Are you including portions of the RM Zone  
22 on the western side of the Borough?

23 A Yes, sir.

24 Q Is the Mennen Tract inside, partially inside the  
25 RM Zone there?

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A Yes, sir.

Q All right. What else did you study?

Also Mennen's over here with the other RM Zone alongside the Bell facility. That's a smaller tract. You have several large farms off of South Road and North Road. And the largest tract of all, the Hacklebarney Hill tract off Route 206, which is about 500 acres.

Q They're large tracts in the RM Zone?

A No, sir. They're smaller tracts chopped up by Mr. Guerin. Part of it has been used, is being used now for single family residences. There is a small piece that went into the RM and had the watershed. That is Peapack Gladstone just south of it.

Q Now, are you familiar with the proposals for development in the RM Zones?

A Not to detail. It was part of the Planner's charge.

Q Which Planning?

A Rakos.

Q Rakos? Why do you say that?

A Because I was in the room at the time he was charged with that.

Q What did you hear him charged with?

A I don't know.

Q Well --

A But I know it was taken away from my study, wasn't part

End 4

1 of my study.

2 THE COURT: I think the Grand Jury is coming in  
3 at eleven o'clock. Mind taking a break now and coming  
4 back at 11:15? Okay. Thank you. Step down, Mr.  
5 Earl.

6 THE WITNESS: Yes, sir.

7 (A short recess was taken.)

8 THE COURT: All right.

9 Q Now, you were telling us, Mr. Earl, about a  
10 conversation you had with Mr. Ambrose and Mr. Rakos?

11 A Yes, sir.

12 Q And you were saying something about Mr. Rakos  
13 was being directed to study the remainder of the township  
14 and that was not your --

15 A The second part of your statement is more to my  
16 recollection. I remember my being told in that conversation  
17 that that was not a part of my study. It was the Planner's  
18 study. Whether he said it was to be Dave Zimmerman or  
19 Rakos, I am not really sure at this point. I thought it  
20 was that Rakos was going to do it.

21 Q Your recollection is one planner was told to  
22 investigate other areas of the township?

23 A Yes, either Rakos or Zimmerman.

24 Q Getting back to Paragraph 2 of the Morris County  
25 Master Plan objectives, Page 12. What is your definition?

1 How do you read the word concentration in the second line  
2 of that paragraph?

3 A The, again taking the intense use this would be  
4 obviously a more intense use than anything that's in  
5 Chester now and concentrating it. If you took an intense  
6 use on thirty acres, one parcel and thirty on another, thirty  
7 and fifty on another, that would not create the area, that  
8 would develop the services and the possible transportation.

9 Q Okay. Let me interrupt you now.

10 Are you, you mean concentration as the concentration,  
11 for instance, in the center of the township with the shopping  
12 areas and service areas and then less intense uses radiating  
13 out from it?

14 A That's one of the theories also.

15 Q But a difference.

16 A Getting away from the concentration of residential  
17 use in a commercial district because of the automobile age.  
18 But when you say is a commercial district, with the services  
19 and concentration, of course, it is.

20 Q Turning to Page 13. Read, if you would,  
21 Paragraph 4 and particularly the last sentence how density  
22 zoning is the least costly governmental action to preserve  
23 openness in the form of private open space. And that  
24 sentence is stated with respect to future water supply  
25 in the form of major watershed reservoirs or well-field areas?

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A Yes, sir.

Q How does that -- does that statement give you any -- well, withdraw that question.

MR. FERGUSON: If your Honor please, while -- excuse me, Mr. Lindeman, but I wonder if it would not be appropriate just to mention for the record that the section that we are talking about has to do with objectives of the Morris County Planning Board and recommendations. I say that for the purpose of the record.

THE COURT: All right.

MR. FERGUSON: All right. I will rephrase the question. Did you review any environmental data with respect to Mr. Caputo's tract? That is, the types of soils involved?

A Did I do a study of soils?

Q Are you aware of the types of soils?

A No, sir.

Q Did you review any data with respect to topography, possible settlement control or erosion? Did you review any of that development data or data with respect to the nature of the lands on the Caputo site?

A The only part of that question I can answer yes to would be having visited the site and walked it. The topography, not the other parts of your question.

Earl - Cross

1 Q How would you compare the topography of the  
2 Caputo site with the other areas, the large tract area  
3 which you said you were aware of?

4 A The Caputo property, while smaller than Hacklebarney  
5 Hills is similar.

6 They have about the same amount of open space, same  
7 topography, streams going through the middle of the property.

8 Q Which stream goes through Hacklebarney Hills?

9 A I don't know the name of it.

10 Q Is this the one down here?

11 A No, sir. Just to the up, to the right, right there,  
12 yes.

13 Q Indicating -- indicating Bambo Brook. Is that  
14 the name of it? I believe so.

15 A Many years out here, I never, never heard thatword.  
16 Bambo Brook. Okay.

17 Q What about the topography of the other large  
18 tract?

19 A Similar to Chester. Of course, it is rolling down.  
20 It is hills. Mr. Mennen's piece slopes to the southwest  
21 from Route 24.

22 Q This is the piece in the RM Zone?

23 A And R-2 Zone.

24 Q And R-2 Zone?

25 A Yes, sir.

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Q On the west of the Borough?

A Yes.

Q How many acres in there?

A I believe he is around 250 acres, 270 acres.

Q Is there any stream running through that piece of land?

A The stream I don't believe is on his land. He may have the headwaters from, with springs, or something. But the stream is further to the west near the border.

Q And the stream you are talking about is the Black River?

A Yes, sir.

Q Is not the Black River a major river of the township in, starting in the upper northeast corner and runs through the green parkland and then down, straight south more or less?

A That's one of them.

Q Do you know if Mr. Mennen proposes to develop his land in the RM Zone?

A No, sir.

Q Do you know if he does or don't you?

A The answer to your question, no, I do not know whether --

Q Are there any topography problems that Mr. Mennen has similar to what Mr. Caputo has?

MR. LINDEMAN: Assuming Mr. Caputo has topographi-

1 cal problems.

2 A Yes. Number 1, I wouldn't assume that. But more  
3 important than that, I think the only problem with Mr.  
4 Mennen would face would be services and the size of the  
5 tract. The tract is too small from an appraiser standpoint  
6 to be able to generate services. And the services are not  
7 there in the way of sewers and water.

8 Q How many acres?

9 A I'm not sure.

10 Q Then how do you know the size is too small?

11 A In the -- well, you're asking me right now. If I  
12 had the tax map in front of me and checked out the number of  
13 acres, I have looked at and walked those three pieces as  
14 well. So I knew what they were. But it seems to me  
15 they were somewhere in the neighborhood of 100 acres or less  
16 than that.

17 Q What about the -- I think you said there is  
18 a slightly smaller tract, smaller than the Caputo tract  
19 in the middle of the RM Zone? A smaller lot?

20 A That is part of the Guerin piece. He has used some  
21 of his for single-family housing. And he has more than  
22 the RM Zone the town has provided there which is still  
23 available to the east of the property and to the south of the  
24 property.

25 Q Talking about the triangle to the east and

1 the little trapezoid shape to the south?

2 A Yes.

3 Q Are you aware if Mr. Guerin has a proposal  
4 before the Planning Board or a proposal to develop his  
5 property in the RM Zone?

6 A It is reported that he wants to put a different use  
7 than RM in there. He wants to go to a different use.

8 Q And you're aware he is one of the plaintiffs  
9 in the other lawsuit against Chester Township?

10 A I understand he is.

11 Q What about the easternmost RM Zone? Well, let  
12 me back up.

13 What about the topography of Mr. Guerin's land in  
14 the RM Zone here?

15 A That again is similar to all of them. It is a sloping  
16 piece of ground coming from a high spot where his home is  
17 sloping down to the Peapack Watershed, which is the green  
18 area just below it.

19 Q By the way, what is this green striped area here?

20 A That's one of the problems Guerin has. That's  
21 the Peapack Watershed. He is sitting above a watershed there.  
22 He doesn't have any of the services and he doesn't have the  
23 size. He is locked on back roads.

24 Q You say Peapack Watershed. What do you mean?  
25 Explain that term to us.

1 A That is owned by the Peapack Water Company and is  
2 a wooded collection area for water.

3 Q From your study of the tax map, the Peapack  
4 Water Company owns all of the land shaded in green stripes?

5 A Yes, there may be overlapping there of some kind,  
6 but that is pretty general what the Peapack Water Company owns.

7 Q Are there any streams running through Mr.  
8 Guerin's property?

9 A No, sir. Not that I have ever seen. It is open farm  
10 land for the most part.

11 Q Are there any ravines of any slope greater than  
12 twelve percent?

13 A I don't believe so. That is sloping, just open property.  
14 Generally it slopes there. I would think that right at the  
15 top where his house is there may be a five percent. Down  
16 the back may be ten, twelve percent, grade.

17 Q Moving over here, moving over here to the  
18 easternmost RM Zone. Are you familiar with that property?

19 A I have walked it.

20 Q What kind of topography does that have?

21 A That slopes again down from north to south and is  
22 open farmland.

23 Q How big is that piece of ground, that tract?

24 A Pardon?

25 Q How big is that tract?

1 A Again, I think each one of those RM is somewhere in  
2 the neighborhood of 75, 100 acres. That is by memory.

3 I am not sure.

4 Q Going back now to P-25A and B.

5 I think we established, and correct me if I am wrong,  
6 to make a comparable, to make a comparison between your  
7 comparable and a lot as developed on either P-25A or B,  
8 you would have to add \$3,500.00 to the purchase price of  
9 the developer for the Caputo tract?

10 A Given a credit against what the costs are for the  
11 services, yes.

12 Q To make P-25A and B more accurate, should the  
13 selling prices be, therefore, \$30,000 on P-25A as to --  
14 that's the two acre lots?

15 A Now, I have allowed for that type of variance as  
16 I outlined clearly in my direct. There are more lots out-  
17 lined here, whatever the development of the tract. My price  
18 is five to ten thousand higher than what the average site  
19 is selling for in Chester. So that if we get down to  
20 just a computation thing from the expenses of \$3,500.00, we  
21 are dealing in a small percentage of a planning variance  
22 that I have allowed here. Just a change to five thousand  
23 less per lot, which is even still higher than the average  
24 sale in this town would change the, this whole thing by half  
25 a million change. You're asking for is a minor comparison

1 to that. So I think if we start talking about what we are  
2 going to change, just for those two minor things, then we  
3 have to get down to where the real average price is.

4 I was trying to allow for the purpose of the Court  
5 seeing where the, where the R-2 and R-5 Zone had affected  
6 this property, a maximum allowance of retail. So I wouldn't  
7 accept an adjustment by you now for septic and wells unless  
8 then we'd accept a five or ten thousand dollar per lot  
9 reduction in what the true retail lot is worth in Chester  
10 Township.

11 Q Your only comparables for five acres are  
12 1, 2 and 3?

13 A Yes, sir. And just using those three, the average of  
14 the three is somewhere around thirty thousand.

15 Q Just a moment. What were, were there any other  
16 five-acre lot sales in Chester Township? Were there any  
17 comparables that you discarded?

18 A The only ones I discarded would have been at lesser  
19 value than what I have given, or in a less attractive area  
20 than the Caputo tract.

21 In other words, they sold for fifteen, eighteen,  
22 twenty thousand dollars. And I threw them out as not  
23 truly comparable because the Caputo tract is one of the  
24 finest in Chester.

25 Q But you are telling us that one of the lots on

1 Hacklebarney State Road sold for \$40,000 with the owner  
2 having to put in a septic and well system himself which  
3 would add to the cost?

4 A That's right. One just two down from it sold for  
5 \$25,000.

6 Q You did not go outside of Chester Township to  
7 get other comparables on five-acre lots?

8 A As I have said before, no, that would not be a  
9 proper appraisal.

10 Q Unless you didn't have enough comparables within  
11 the township?

12 A That's right. I had enough.

13 Q You think essentially those three are enough?

14 A Oh, I got them all. When an appraiser takes an  
15 appraisal, takes the bank of work he has done, got all his  
16 appraisals or all his comparables to go, then he selects the  
17 ones that would be most appropriate for the job he has  
18 got before him.

19 Q Well, do you have a -- what other comparables  
20 were there? Do you have a list of them?

21 A I have the full list.

22 Q Can I see them?

23 A Well--

24 Q Well, this is your compilation of SR-1A's?

25 A That's right. That is so we have every sale and then

1 we review these and take out from those the appropriate  
2 and you will find not one sale over forty. You will find  
3 your R-2 Zone sales and this is the most recent years,  
4 incidentally, the one we did last.

5 And you might be interested in right across from the  
6 subject, within the last two weeks we have sold a five-acre  
7 piece from our office which will be divided into two  
8 parcels. And that was \$43,000. Now we are again back down  
9 in the 21, 22 price bracket for R-2 lots right immediately  
10 opposite Mr. Caputo.

11 Q Well, now it's a sale of acreage from the  
12 R-2 Zone for \$43,000, which will be subdivided into two  
13 lots?

14 A Two lots, that's correct.

15 Q Those two lots have not been re-sold, have they?

16 A Those two lots are going to be built upon by Fox  
17 Chase. They bought them.

18 Q So it is the sale of a piece of acreage in the  
19 R-2 Zone. How many acres?

20 A Five acres.

21 Q And what was the total price?

22 A Forty-three.

23 Q Is this the entry Cleary to Perretti, is that  
24 the \$40,000 lot?

25 A Yes.

1 Q Am I wrong or are the two sales, the three sales,  
2 one, two and three, the only five-acre sales you feel  
3 roughly comparable to anything on Mr. Caputo's property?

4 A I found them to be the most illustrative of what  
5 the five-acre zoning was doing in Chester Township as  
6 compared with the Caputo tract.

7 Q And once again, P-25A, B, and C is not an  
8 appraisal. It is an estimate of value on the development  
9 method only?

10 A It is an appraisal under the development method  
11 as a part of the total study that we did, yes.

12 It doesn't include segments that would be normally in  
13 a formal appraisal and we would present it to clients.

14 Q Did you arrive at an opinion as to the value of  
15 this land to a willing buyer from a willing seller as of  
16 a date?

17 A As what?

18 Q As of any date?

19 A This appraisal was made again as of February, 1977,  
20 and both of my conclusions are the market value of this  
21 property under the R-2 Zone. And then the R-2, 5 Zone.

22 Q The market value?

23 A Market value.

24 Q Didn't you tell us that it has a value -- well,  
25 withdraw that.

1 Are you telling us that under your appraisal it has  
2 a negative value of \$34,000?

3 A That's correct. That's why there is no five-acre  
4 subdivision ever in the history of Chester.

5 Q Under your appraisal, Mr. Caputo should pay  
6 me \$34,000 to take it off his hands?

7 A No, rather than use what the town has overlaid as a  
8 political subdivision on his property, he will sell it as  
9 a tract rather than use the zoning.

10 Q In any appraisal as to market value, would you  
11 not have to state in writing and sign it as an appraiser  
12 that it is worth at least \$750,000 as vacant acreage on the  
13 open market?

14 A No question about it.

15 MR. LINDEMAN: I object, your Honor, relevant to  
16 what the witness would do by way of a formal appraisal  
17 for a client that's going to pay a substantial sum of  
18 money for planning purposes and for estate purposes,  
19 or for anything.

20 We are here and now and I think the witness  
21 fully and adequately has answered the question as to the  
22 purpose and the basis for his appraisal. And what  
23 he would have done under other circumstances, I submit,  
24 is irrelevant. The witness already answered, your  
25 Honor, Number 1. - Number 2, he said that's his

End Tape  
5

1 appraisal at market value and cross-examination --

2 THE COURT: I will allow it. Just going over  
3 old ground, but I will allow it.

4 Q Very briefly. The market value, any market value  
5 in any appraisal must include the items that it is worth  
6 \$750,000 minimum on the open market as vacant acreage?

7 A Be fair on that, please. Number 1, as you and I have  
8 agreed, no appraisal was made. I gave you an estimate of  
9 raw acreage and you're using that number as a bona fide  
10 number.

11 My study was to make out whether this property could  
12 economically be developed under the two zones that we  
13 found the property in. I didn't make an appraisal as  
14 to the market value per se.

15 Q All right. That's the important point. Your  
16 detailed study was only under the development method and  
17 appraisal limited to the development method as you have  
18 so testified?

19 A It was for the purpose of this zoning, yes, to find  
20 out whether this zoning could be economically developed.

21 Q To see where these two zones, before and after --

22 A Right.

23 Q -- the R-2 and R-5?

24 A Right.

25 Q What the market value might be of the lots and

1 what the development costs would be?

2 A That's correct.

3 Q Any appraisal to give the market value to  
4 this Court, or to anyone else, you, as an appraiser, would  
5 have to include a detailed appraisal as to what the land  
6 would bring as vacant acreage?

7 A If my charge had been, develop a market value for this  
8 property, then we can forget all the rest of the development.  
9 All we will do is find out what tracts of this kind sell for  
10 and I would have appraised Mr. Caputo's house and go through  
11 all those things.

12 Q I understand. And your rough estimate without  
13 having done a detailed study is plus or minus \$750,000?

14 A My estimate to you was that the value of the land  
15 was around \$3,000 an acre. We would have to make the  
16 compilations from there.

17 MR. FERGUSON: No further questions.

18 THE COURT: Mr. Lindeman?

19 MR. LINDEMAN: Your Honor please, I have no  
20 further questions, but I have a problem.

21 THE COURT: You can step down.

22 THE WITNESS: Thank you.

23 MR. LINDEMAN: That is, Mr. Hobough is not  
24 expected here for fifteen minutes. I hope he will be  
25 on time. I asked that he be here. I changed my

1 appointment to make him make it for eleven, but  
2 apparently he was unable to do that.

3 THE COURT: I got work on the other side of that  
4 door that I can do.

5 MR. LINDEMAN: Good.

6 THE COURT: I just, you know, so many interrup-  
7 tions. I guess, as long as it doesn't bother anybody  
8 else, it doesn't bother me.

9 Okay. When he gets here, please let me know.

10 MR. LINDEMAN: Thank you.

11 (A short recess was taken.)

12 THE COURT: Okay, what have we got?

13 MR. LINDEMAN: Your Honor please, the testimony  
14 of Mr. Clifford Earl having now been concluded,  
15 I offer into evidence Exhibit P-24A and B.

16 THE COURT: 25A and B?

17 MR. LINDEMAN: I beg your pardon. 25A and B.  
18 And if Mr. Ferguson would like to C, I am satisfied  
19 to offer that too although it is not necessarily part  
20 of his case.

21 MR. FERGUSON: I object, your Honor, on several  
22 grounds as to P-25C. That has to wait until Mr.  
23 Smith gets here to authenticate it, plus there has  
24 to be testimony that that, those improvements are  
25 needed and no witness has given any such testimony

1 to date. Specifically, the dam for \$286,000.

2 THE COURT: I think I am going to cut you short.  
3 I agree with him because the foundation upon which  
4 Mr. Earl is allowed to testify was that Mr. Smith  
5 would support these figures.

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

7 THE COURT: Okay.

8 MR. FERGUSON: Now, secondly --

9 THE COURT: Given that, he can't. Until he does  
10 testify, I don't see how I could allow those figures  
11 to be marked in because they encompass what Mr. Smith  
12 is going to testify.

13 MR. LINDEMAN: I concur with that. I agree with  
14 that, your Honor. Excuse me. It is just that the  
15 witness did testify to it and, of course, his testimony  
16 is based upon Mr. Smith's testimony and the exhibit  
17 would be received the same way. But it is really not  
18 a matter of any great consequence.

19 MR. FERGUSON: As to P-25A and B, they should be  
20 allowed into evidence only when the figure, backup  
21 figures are allowed in.

22 MR. LINDEMAN: That's right.

23 THE COURT: Yes.

24 MR. FERGUSON: Secondly, however, a bigger  
25 objection. That is, that there is no testimony that

1 this is the best layout to allow a developer to  
2 develop the land for the most profit. The thrust of  
3 this testimony is that given these layouts, this is  
4 what it is going to cost, therefore, you end up with  
5 a negative value of the land.

6 The testimony that I see as the proper foundation,  
7 if this testimony is going to be relevant at all,  
8 is that the most efficient and best layout will be  
9 the layout as if it will cost you so much money and,  
10 therefore, you can only develop it by expecting that  
11 much money and realize that much profit.

12 There is no testimony about these layouts other  
13 than these layouts are designed to give the maximum  
14 number of lots without clustering and without using  
15 any of the other provisions in the zoning ordinance  
16 which allow a lower cost. And I call the Court's  
17 attention to Exhibit P-10 in evidence, to the provisions  
18 for clustering, which is 13.200 and flag lots,  
19 13.100.

20 Now, in clustering in the R-5 Zone, the basic  
21 requirements for the cluster are that you can have the  
22 same number of units that you could have had, had you  
23 not clustered and the width and other requirements  
24 are the same as the R-2 Zone, which is a greater than  
25 50 percent clustering factor, which is a significant

1 clustering factor. And according to my information  
2 is significantly greater than any other surrounding  
3 towns. Certainly that is common in the development  
4 industry.

5 Also, the flag lot provision of 13.100 allows  
6 you in effect of private housing build on driveways,  
7 that is, particularly true of the R-5 Zone where you  
8 can have a driveway and then a balloon at the end of  
9 the driveway on which to put the houses. This is  
10 particularly relevant when you got the brook running  
11 through the middle of the property and you can run  
12 one straight road in or have a common road with the  
13 next landowner and run lots in one single driveway  
14 lots and then have the balloon and then have the  
15 land sloping off down toward the brook.

16 There would be magnificent lots indeed at a  
17 much higher value perhaps than the average value  
18 testified to by Mr. Earl.

19 THE COURT: Well --

20 MR. FERGUSON: So I don't think there is any  
21 foundation to let this evidence in as to the zoning  
22 ordinances' confiscation of the plaintiff's property,  
23 if this testimony is being offered for that issue.

24 THE COURT: I am going to allow it to be marked  
25 in. I think much of what you argue is, in my opinion,

1 something that deals more with weight than with  
2 admissibility. This is what the man says. This is  
3 what Mr. Rakos laid it out as.

4 Certainly there may be questions with respect  
5 to what Mr. Rakos says and the way he laid it out.  
6 But insofar as it's directed to these two layouts,  
7 I am going to allow it to be marked admissible from  
8 that standpoint. However, the first foundation still  
9 is not there and so without that, I will not allow them  
10 to be marked.

11 MR. LINDEMAN: All right. That is satisfactory.  
12 Fine.

13 MR. FERGUSON: I am a little concerned with the  
14 burden apparently this casts upon me to have my  
15 people go out and draw a layout for Mr. Caputo which  
16 would make his profit to show that the ordinance  
17 isn't taking his land. I do really think it is  
18 incumbent upon Mr. Caputo to come up with that kind  
19 of evidence, if he is going to ask this Court to pass  
20 upon that issue.

21 MR. LINDEMAN: I am not really sure, your Honor,  
22 that we have ever alleged, nor do we expect to prove  
23 that the municipality has gone about the course of  
24 confiscating our property, or taking it without  
25 due process of law. We are not showing that.

1 THE COURT: It is one of the things.

2 MR. FERGUSON: It is one of the issues and I have  
3 been under the mistaken impression his testimony,  
4 Mr. Earl's testimony, was directed toward that issue.  
5 If that issue is withdrawn --

6 MR. LINDEMAN: I state that the testimony thus  
7 far has not necessarily gone to that. Whether we are  
8 going to pursue it or not, I think is something else.

9 THE COURT: I just know that at this present  
10 position, confiscation is not a position of the  
11 plaintiff but may be proved later. However, my  
12 ruling will not change even though it appears to me  
13 to have been an issue in the case.

14 MR. FERGUSON: All right, thank you.

15 THE COURT: All right, go ahead. Break for  
16 lunch.

17 (The noon recess was taken.)  
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A F T E R N O O N      S E S S I O N

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4 THE COURT: Okay, Mr. Lindeman.

5 MR. LINDEMAN: Mr. Lee Hobaugh.

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8 R.        L E E        H O B A U G H        ,        sworn.

9            MR. LINDEMAN: Your Honor please, Mr. Hobaugh,  
10 who has credentials, will show he is the president of  
11 Resolve, Inc., which is the successor company to  
12 Herbert H. Smith Associates, will be offered to testify  
13 as a planning expert, including analyses of the  
14 ordinance as it relates to certain aspects of the  
15 Master Plan of Morris County and the Township of  
16 Chester.

17            He will testify on the socio-economic compati-  
18 bility of certain aspects of the zoning ordinance of  
19 Chester as it affects present population and as it  
20 will affect population in the future.

21            He will testify further on demographic trends  
22 in this relevant area from several decades back up  
23 through to the present and then projections of  
24 population expectation for the future. And in connec-  
25 tion with all of this, he will testify as to the

1 definition of certain regions versus large, moderate  
2 and small, what their effect, if any, is upon the  
3 development of the Township of Chester in particular.

4 He will also testify on the level of income  
5 of people in this area and the kind of income levels  
6 that can be attracted to the community now.

7 Those who would be excluded from it based upon  
8 the present zoning ordinance. He will testify on  
9 the value or cost of property, of improved residential  
10 dwellings -- that is a redundancy -- but that persons  
11 in various income levels can afford. And he will  
12 testify on the effect, if any, of the existence of  
13 industrial and commercial areas and the presence of  
14 job opportunities under current law and prospective  
15 law, or prospective governing law and regulations  
16 in the area.

17 The impact of the availability of jobs upon the  
18 influx of population. And if I haven't mentioned,  
19 any other particular subject in connection with  
20 planning as it relates to these demographic factors,  
21 it is intended that he will testify on items related  
22 closely to them.

23 MR. FERGUSON: I think we have a recitation  
24 of most of the major areas that might be considered to  
25 be within the realm of planning. Offhand, I would be

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hard pressed to name any additional ones.

MR. LINDEMAN: There is a lot of testimony here.

MR. FERGUSON: There is no testimony yet, so I can't object. But I have reservation.

DIRECT EXAMINATION BY MR. LINDEMAN:

Q In any event, Mr. Hobaugh, tell us, please, your academic background?

A Undergraduate degree in economics from Haverford College and a Master's Degree in City Planning from the University of Pennsylvania.

Q Tell us, please, when you took those degrees?

A The degree from Haverford was in 1959. From the University of Pennsylvania in 1961.

Q Now, have you had any other educational or have you taken any courses in related fields since your having taken your Master's Degree?

A I attended different seminars. Prior to the degree from Haverford, I had architectural training from what was then Carnegie Institute of Technology and now is Carnegie Mellon Institute.

MR. FERGUSON: Excuse me, your Honor. I am having difficulty hearing the witness.

THE COURT: Yes, if you keep your voice up, please,

1 Mr. Hobaugh.

2 THE WITNESS: Yes, sir, try to.

3 THE COURT: You got a sore throat?

4 THE WITNESS: It is not sore, but it is swollen.

5 THE COURT: Let's get him a drink of water first.

6 Q What is your present occupation, Mr. Hobaugh?

7 A I am president of Resolve, Incorporated, a consulting  
8 firm in Municipal Planning, located in West Trenton, New  
9 Jersey.

10 Q How long have you been associated with that  
11 company?

12 A Since 1964, including the time under the preceding  
13 name of the organization, which was Herbert H. Smith  
14 Associates.

15 Q When you first became associated with that  
16 company, in what capacity did you come to it?

17 A I would have been what we could call a project planner  
18 at the time I first came with the company.

19 Q And what is your, have you had experience in  
20 planning as such?

21 A Yes, sir. Prior to joining my present organization  
22 I was with Pennsylvania Power & Light Company located in  
23 Allentown, Pennsylvania, working in their area development  
24 department with duties of several different major thrusts.

25 Q Tell us what some of them were, please?

1 A In part, seeing to it that active planning process  
2 was initiated within the municipalities and counties which  
3 were a portion or within their electrical service area.

4 And in part analyzing the service area on behalf of  
5 the company in order to provide input to those who did the  
6 planning for facilities and equipment on behalf of the  
7 utility, providing information to them regarding anticipated  
8 growth rates in the various geographical areas and/or  
9 portions of their service territories.

10 Q What other companies and associations?

11 A Prior to that, I was with the City of Philadelphia  
12 working with the office of the development coordinator  
13 as a researcher. Doing things such as preparing monthly  
14 employment and unemployment estimates for the city. Working  
15 on a long-range project of pulling together information  
16 and desirable goals and objectives for development within  
17 portions of the city from civic and community leaders,  
18 both city-wide and then individual neighborhoods or sections  
19 of the city.

20 That work was primarily research, heavy on the  
21 economic aspects of things.

22 Q By the way, Mr. Hobaugh, what principal courses  
23 have you studied in your term at the University of Pennsyl-  
24 vania when you were taking a Master's?

25 A Well, there are courses on transportation, housing,

1 courses on the history of city planning and about 50 percent  
2 of the time during both years of the curriculum was  
3 spent on courses that were essentially the practice of  
4 city planning. Practical experience exercise-type things.

5 Q Now, since your employment with Herbert H.  
6 Smith Associates, tell us the nature of the projects on  
7 which you have done some work and what you personally  
8 performed on some of those?

9 A Well, I worked in many of New Jersey's municipalities,  
10 a number of municipalities in New York State, some in  
11 Pennsylvania, some in Delaware, and Maryland.

12 Q Approximately how many municipalities?

13 A Me, personally?

14 Q Yes.

15 A Definitely more than fifty. I don't have a precise  
16 number.

17 Q Right.

18 A Much of this work, well, work for the municipalities  
19 has been either total comprehensive master planning  
20 preparation including implementing regulatory materials  
21 or special studies of one type or another dealing with the  
22 subject of planning and the use of land within the  
23 municipalities.

24 Q What, if anything, have you done in the nature,  
25 in the way of recreational studies?

1 A Some of the special studies have been on traffic  
2 circulation. Some have, many have been on recreational  
3 areas. Some have been on housing matters.

4 Q Have you done any work for private clients?

5 A Yes, sir.

6 Q Would you tell us what some of that has been?

7 A I have done work on feasibility and market studies  
8 in the area of housing, industrial land, commercial enter-  
9 prises, including shopping centers and financial institutions.

10 Q Do you know what a community impact statement  
11 is?

12 A Yes.

13 Q And tell us briefly what that is, please,  
14 and whether or not you have performed any work?

15 A Community impact sometimes is an analysis of the  
16 anticipated effect of a proposed development upon the  
17 systems and finances of a municipality.

18 Sometimes the term is used to include certain environ-  
19 mental considerations. Sometimes not.

20 Q How about in environmental impact statements?  
21 Tell us what that is, please, and whether or not you have  
22 worked on one or more?

23 A An environmental impact statement is a study which  
24 attempts to judge the effect, a proposed action will have  
25 upon all aspects of the environment within which it is

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proposed to be created --

Q Have you worked --

A -- take place.

Q Have you worked on the preparation of any such statements?

A Yes, sir, I have.

Q Can you name just a few or one?

A One for a proposed housing development in Ocean County. Another housing development in Somerset County. Another housing development in Mercer County. A proposed industrial park in Hunterdon County.

Q Have you participated in the preparation of any housing market studies?

A Yes, sir, I have.

Q Tell us what a housing market study is and tell us one or more of those that you have participated in preparing?

A A housing market study is the delineation of an area within which the primary demand for housing at a particular location is expected to occur and then quantification of the number of units of the type proposed or may be beyond the type proposed also which are expected to be demanded within that primary market area. Normally this is done with a breakdown either as to the categories of income which would be served by the unit.

1 Q Category of what?

2 A Categories of income, family income which would be  
3 served by the proposed units or translating that income  
4 into maximum affordable prices and using categories of  
5 price levels.

6 Q Tell us about one or more of the housing market  
7 studies that you have worked on?

8 A Well, I would say at least fifteen to twenty for  
9 private interests ranging from Stroudsburg, Pennsylvania,  
10 through Warren County, Morris County, Ocean County, Burling-  
11 ton County --

12 Q Have you had any experience -- I am sorry.

13 A Among others, let's say.

14 Q Have you had any experience in the preparation  
15 of site plans for parcels of land?

16 A I have had some experience in it personally, yes, sir.  
17 Primarily I rely upon others in the office for actual  
18 preparation of the site plans.

19 Q And what work, if any, have you done in the  
20 preparation of estimating the cost of construction of  
21 various proposed structures to analyze them and analyze  
22 the return on investment and the projected cash flow needs?

23 A Well, often. I won't say frequently. I distinguish  
24 the two. Often we have been called upon to determine the  
25 most advantageous use of a piece of land for either a land

1 owner or prospective purchaser which has included considering  
2 various alternatives of potential development for the land  
3 and carrying through the anticipated secondary and tertiary  
4 effects of the alternatives, such as the required cash  
5 outflow versus anticipated cash inflow and the resulting  
6 net return on investment. One alternative versus the other.

7 Q Do you have any -- I am sorry -- are you the  
8 holder of any professional licenses? If so --

9 A Professional Planner in the State of New Jersey.  
10 Yes, sir.

11 Q Are you a member of any professional associations?

12 A Yes, sir. I am a member of the American Institute of  
13 Planners, a member of the New Jersey Association of  
14 Consulting Planners and the American Society of Consulting  
15 Planners.

16 Q Have you held any offices in any of these  
17 associations?

18 A Yes, sir, I have.

19 Q What are they?

20 A I forget which year, but I was secretary-treasurer  
21 of the New Jersey Association of Consulting Planners and  
22 I am now president of the New Jersey Chapter of the American  
23 Institute of Planners.

24 Q Have you had any teaching experience?

25 A A little bit.

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Q If so, what?

A I have lectured at Rutgers on a couple of occasions.

Q What subject?

A And for -- I don't remember the specific subject.

Obviously they were within the planning area, but I really don't remember offhand what they were.

Q Right.

A And then for a period of time, I would say about three years, I taught at the United States Department of Agricultural Soil Conservation Service Training Center, which is located in Upper Darby, Pennsylvania.

And the name of that course was something similar to planning for resource management, or, that is close. I don't know precisely.

MR. LINDEMAN: I offer the witness, your Honor.

THE COURT: Mr. Ferguson?

CROSS-EXAMINATION BY MR. FERGUSON:

Q Do you hold any other licenses than planning?

A Pardon me, sir?

Q Do you hold any license from the State of New Jersey other than your planning license?

A Yes, I do.

Q What?

1 A I hold the real estate broker's license which basically  
2 is inactive, but I do hold the license.

3 Q When did you get that?

4 A About two years ago. Not more than two years ago.

5 Q It was in between the time of your first  
6 deposition and your second deposition in this action, I  
7 think?

8 A That could well be. Yes, sir.

9 Q Where is your real estate office?

10 A It is located, such as it is, it is located in the  
11 same premises as the planning office.

12 Q When you taught at the Soil Conservation Service,  
13 planning for resource management, what were the topics  
14 of your -- what were the topics you discussed in class which  
15 were studied in that course?

16 A The class was attended by persons employed by soil  
17 conservation services and I believe primarily the type  
18 person who is designated as an agent and located in the  
19 various counties. And the intent of that course was to  
20 provide them with an overview of the technique of  
21 community planning so that they might have better under-  
22 standing and abilities to work with those who were engaged  
23 in doing planning work within the territories to which they  
24 were assigned.

25 Q Was it your job to teach planning to the soil

1 people as opposed to working with the soil people in  
2 technical areas to better make soil resources?

3 A The first is correct..

4 Q The second would not be correct?

5 A Not in this instance. That's right.

6 Q Is it within the scope of your expertise to  
7 determine the alternative layouts of site plans to determine  
8 which would give the greatest return to the developer in  
9 terms of lessening site improvement costs?

10 A We are sometimes charged to do that and can perform that  
11 work in our office. Yes, sir.

12 MR. FERGUSON: No questions.

13 THE COURT: No objections?

14 MR. FERGUSON: Well, I think I have to. Well,  
15 he is a planner. I don't object to that.

16 THE COURT: You have no objection to his  
17 testifying as a planner?

18 MR. FERGUSON: But within, once again within the  
19 range of Mr. Lindeman's opening statement I --

20 THE COURT: As you said, he covered everything  
21 that a planner would possibly testify to. All right.

22 MR. FERGUSON: And maybe some more.

23 THE COURT: Okay.

24 DIRECT EXAMINATION BY MR. LINDEMAN: (CONTINUED)

25 Q Mr. Hobaugh, you do have in front of you a

1 notebook which contains notes, does it not, and it is  
2 fair to say, is it not, that the notes in there relate to  
3 the testimony which you are about to cover?

4 A That is correct.

5 Q And is it also not correct that those notes  
6 are for the purpose of refreshing your recollection on  
7 certain detailed data, numbers and things of that kind and  
8 other complicated data which is not normally committed to  
9 memory?

10 A Yes, sir. That is correct.

11 Q Does it not also contain copies of various  
12 charts and other statistical data that either you or others  
13 have compiled?

14 A Yes, it does.

15 Q All right.

16 MR. FERGUSON: Excuse me. Am I to understand that  
17 there is no written report from this witness, Mr.  
18 Lindeman?

19 MR. LINDEMAN: There is no written report as  
20 a report. There is, there are charts that will be  
21 offered from time to time, but not as continuous  
22 report of the entire testimony.

23 MR. FERGUSON: Is it your intention to take a  
24 chart out of the notebook and offer it, from time to  
25 time?

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MR. LINDEMAN: Yes, I think we will be doing that from time to time.

Q Tell us, please, Mr. Hobaugh, what you were retained to do in connection with your testimony before this Court?

A Well, we were retained to examine the Master Plan and zoning ordinance of the Township of Chester.

Q For what purpose?

A To determine any and all aspects of the same which might relate to this proceeding.

Q Having anything to do with future growth, development and conservation?

A Yes.

Q All right. Go ahead.

A In other words, to make a determination as to what the stated policy for growth within the township was based upon the Master Plan to make a determination as to permitted kinds of development and the regulations under which same would be permitted according to the terms of the zoning ordinance.

Q And next under Question 14, which you have in front of you, what, if anything, did you do about preparing an economic and demographic profile?

A Another area of our chart was to prepare information on the demographics and economic characteristics of the

1 population of Chester Township and the county and the larger  
2 region in which it is situated in order to be able to  
3 make comparisons and draw conclusions regarding Chester  
4 Township vice-versa the larger areas.

5 Q And were any comparisons of the various profiles  
6 made?

7 A Yes, gathered the statistics and prepared them in  
8 such a way that a comparison could be made from Chester to  
9 larger areas or between Chester and the larger areas.

10 Q Could you tell us what, if anything, you did  
11 about considering regions which you have just referred to?

12 A All right. We considered the regions within which  
13 Chester is situated in our opinion for a primary market area  
14 which we defined.

15 We established and anticipated demands for housing units  
16 and based upon knowledge as to the approximate bottom level  
17 at which houses can be produced on the open market. Es-  
18 tablished a portion of that demand which I would identify  
19 as a need, meaning that it is a portion of the demand which  
20 could not anticipate to be satisfied by operation of the  
21 free market.

22 Q Now, as previously been designed in this case,  
23 Mr. Hobaugh, that Chester Township is comprised of 18,355,  
24 acres, or 28.68 square miles, do you have any information  
25 as to the percentage of the township that is developed?

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A Well, the '74 Master Plan establishes, states that 58 percent of the township which does include farmland is not developed.

Q That amounts to, that is, how many acres?

A Approximately 10,650.

Q Therefore, how much is developed?

A The remainder is approximately --

MR. FERGUSON: Objection, your Honor, unless we have a definition of the word "developed."

THE COURT: Sustained.

Q Tell us what you mean by developed in property?

A Undeveloped would include land, parcels of land upon which there were no improvements.

Q That is undeveloped.

A Developed would include parcels of land upon which there was some improvements, other than an improvement in connection with farmland which is excluded, which is included in the undeveloped number.

Q What do you mean by improvement, then, for the record? Just generally. There doesn't have to be any --

A The number from the taking, from the plan -- I thought it would be wise for me to look specifically here.

Q My question, Mr. Hobaugh, what do you mean by, what is the definition of improvement as such?

A The definition of improvement would be a residence,

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1 a commercial building, an industrial building. Some manner  
2 of improving the land or otherwise placing upon the land  
3 an instrument of active use.

4 Q All right. What percentage of approximately is  
5 developed in this municipality?

6 A Approximately 42 percent.

7 Q And that is about how many acres?

8 A Approximately 7,705 acres.

9 Q Now, have you made a study of the history of  
10 the population growth of Chester Township?

11 A Yes, sir.

12 Q And what sources of information did you use?

13 A Primarily information from the census, population of  
14 the United States Government Bureau of Census.

15 Q Tell us, please, what the history of the  
16 population development of the defendant has been starting  
17 with 1950 and coming up through 1970.

18 A As of 1950, the census listed the population of  
19 the township to be 12,000 -- excuse me, 1,297 persons.

20 As of 1960, 2,107 persons.

21 As of 1970, 4,265 persons.

22 Q What projection, if any, has the Morris County  
23 Planning Board made?

24 A They have made population estimates for the municipality  
25 as of January 1, 1975, and in that particular listing

1 Chester Township is estimated at 4,890 persons.

2 MR. FERGUSON: 800 what?

3 THE WITNESS: 90. Nine zero.

4 Q And what, if any, projections have been made  
5 by the New Jersey Department of Labor and Industry?

6 MR. FERGUSON: For what year?

7 Q Tell us the years too, if you have them.

8 A The New Jersey Department of Labor & Industry published  
9 population estimates for each municipality for July 1 of  
10 that particular year, as of July, 1975, the State estimate  
11 for Chester Township was 4,530 persons.

12 And as of July 1, 1976, 4,560 persons.

13 Q Can you tell us what the percentages of increases  
14 there have been based upon those figures that you have  
15 just given to us?

16 A Well, if we use the 4,500 figure for July 1, 1976, and  
17 roughly the 1,300 figure for 1950 --

18 MR. FERGUSON: Objection, your Honor. He is  
19 making a comparison between census figures and  
20 projected estimates. I don't think that is a valid  
21 comparison.

22 Secondly, I think it should be broken down  
23 to be meaningful at all in some kind of segments.

24 Q Let me withdraw the question and put it to you  
25 this way. Tell us what the percentage of increase in the

1 census figures between 1950 and 1960 was?

2 A Okay. That was 62 percent approximately.

3 Q And the increase from 1960 to 1970?

4 A Approximately 102 percent.

5 Q Now, between 1970 and the July 1, 1976, figure  
6 of the Department of Labor & Industry?

7 A Just slightly under 7 percent.

8 Q Now, in examining the figures for population of  
9 Chester Township, did you determine what portion of this  
10 population was non-white?

11 A Yes, sir.

12 Q What was that?

13 MR. FERGUSON: As of what date?

14 Q In 1960, let's say.

15 A As of 1960, 2 persons were listed as non-white and  
16 residing in Chester Township.

17 Q What percentage of the population is that?

18 A Approximately 1 percent.

19 Q The 1970 census?

20 A That listed 25 persons non-white.

21 Q What percentage does that represent?

22 A Approximately 6/10ths of a percent.

23 Q Now, did you make any examination of the age  
24 composition of the population in Chester Township in the  
25 various periods about which you have testified?

1 A Yes, sir. We determined the median age in the township.

2 Q Tell us, please, what it was as of the 1970  
3 census.

4 A 29.1 percent.

5 MR. FERGUSON: Well, I don't want to interject.  
6 If we have it for '60, we can get all the figures at  
7 the same time.

8 Q Do you have that for 1960?

9 A I don't have it right here, no. It may or may not  
10 be available. I am not sure.

11 Q Now, what percentage of the population as of  
12 that census period was under eighteen years of age?

13 A As of 1970? 40 percent.

14 Q And what percent was 65 years of age or older?

15 A 7.1 percent.

16 Q Now, did you secure any data respecting the  
17 income of families in the Township of Chester during any  
18 of these periods?

19 A Yes, I did.

20 Q All right. What does that information reveal,  
21 but tell us, please, what the source of it is and also  
22 tell us the time periods for which you will give the  
23 information.

24 A Well, the basic information that I have is from the  
25 1970 census and it reports on the year 1969 income.

1 And this material is broken down into a series of income  
2 categories and the number of families within each  
3 of those categories is given as well as the median and  
4 minimum income of all families.

5 There are then percentage figures for each of those  
6 categories which have been developed by ourselves.

7 Q Tell us, please, what they show?

8 A The total number of families responding and included  
9 in this particular table of the census is 1,028. Of those  
10 1,028 families, 7 are listed as having income of less than  
11 \$1,000. And if I may at this point, this number includes  
12 many numbers that end in 39 and I am simply going to round  
13 out to the nearest thousand for ease of presentation.

14 Q All right.

15 A Ten families between one and two thousand dollars.

16 Six families between two and three thousand dollars.

17 Four families between three and four thousand dollars.

18 Twenty-three families between four and five thousand  
19 dollars.

20 Twenty-seven families between five and six thousand  
21 dollars.

22 Twenty-three families between six and seven thousand  
23 dollars.

24 Forty-four families between seven and eight thousand  
25 dollars.

1           Forty-seven families between eight and nine thousand  
2 dollars.

3           Fifty-four families between nine and ten thousand dollars.

4           One hundred four families between ten thousand and  
5 twelve thousand dollars.

6           One hundred sixty-two families between twelve and  
7 fifteen thousand dollars.

8           Four hundred six families between fifteen and twenty-five  
9 thousand dollars.

10           Eighty-one families between twenty-five and fifty  
11 thousand dollars.

12           And thirty families at fifty thousand or more.

13           The median income for the township was listed as  
14 \$15,074, And the mean income at \$16,296.00.

15           Q       That's as of 1970?

16           A       From the 1970 census. It reports on 1969 income.

17           Q       Right. Is that the latest information that you  
18 have about the incomes of families in Chester Township?

19           A       Well, it is the latest hard data. Those numbers  
20 can be updated based upon changes in the value of money  
21 inflationary factor. And we did do that to bring those  
22 numbers up to our estimate of what they would, categories  
23 would be as of 1975.

24           Q       So your updating, if any, would be based  
25 purely on projections or upon the computation taking into

1 account the value of money from 1970 to 1975, is that what  
2 you are saying?

3 A The updating is based upon the change in the value  
4 of money, 1970 to 1975.

5 Q Can you tell us whether or not the method of  
6 estimating the increase of, or the change in income based  
7 upon the change of value of money is or is not an  
8 accepted method of making such a projection?

9 A It is essentially the only method available other than  
10 actually, physically taking a survey similar to that which  
11 would be taken by the census.

12 Q What does your projection show?

13 MR. FERGUSON: I object, your Honor. The fact  
14 that it is the only method available does not say  
15 anything about whether it is valid or not. The mere  
16 fact that the cost of money has increased, there is no  
17 necessary relation to the distribution of total  
18 family income in any given locality.

19 And this witness hasn't been able to offer any  
20 foundation to this update.

21 MR. LINDEMAN: Well, I think he has offered the  
22 foundation. He has testified in his capacity as  
23 a, having knowledge in demography and in income  
24 economics, in connection with his planning work.  
25 The accepted manner of updating levels of income is

1 what he said it is. It is based upon the change in  
2 the value of money.

3 It seems to me that he is qualified to testify in  
4 that regard. I don't know. I can't conceive of what  
5 other kind of an expert would be able to so testify.

6 THE COURT: I am not worried about his  
7 qualifications. I am worried about the foundation  
8 of what he is telling me. How reliable that is.

9 It seems to me that as he said, it may be the  
10 only method available. But how helpful to me as the  
11 trier of the facts? All he is doing is projecting  
12 what my income would have been, if the dollar had  
13 increased.

14 Now, let's just take, for example, myself. Since  
15 I have not had a salary increase since a certain time  
16 ago, I am not trying to lobby for it, just trying to  
17 use an example. It is not reliable. I don't see how  
18 that can be, how that can in any way help me to  
19 project.

20 You're just talking about the dollar inflation.  
21 I don't think it necessarily means that because --  
22 well, it doesn't. I can see many, many problems.  
23 One salary may be ahead of the inflation. This may  
24 be behind the inflation. They don't reflect the  
25 people who have moved in and out of the area. You

1 might get somebody who moved in that was making  
2 \$20,000 and moved out. And somebody moved in who was  
3 making \$30,000. I don't see how this is going to  
4 help me.

5 MR. LINDEMAN: Well, if your Honor please,  
6 when the witness says that this is the method that  
7 is used to make this computation --

8 THE COURT: He said it was the only method  
9 available. That is a difference. There is a difference  
10 there. I think a substantial difference.

11 MR. LINDEMAN: Well, the argument that I make  
12 on the subject, though, is this: For one thing,  
13 he is not talking about inflation. He is not saying  
14 that he is equating this to the consumer price index  
15 of one kind or another. He is talking about the  
16 value of money. It is a difference.

17 THE COURT: All right. You tell me what the  
18 difference between the value of money and the  
19 general connotation of inflation is, Mr. Hobaugh.

20 THE WITNESS: In terms of us updating the  
21 individual categories of income, it is correct that  
22 we relied upon the basic inflationary factor. And I  
23 think your point is well taken. And I don't know  
24 a way around that in terms of categorization. However,  
25 with regard to the money income, it is a different

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matter because there are some statistical bases.

THE COURT: That isn't what I asked you.

I'll sustain the objection.

Q Then I will ask you if you have information about the increase in money income.

A Yes, sir.

Q From the period of 1970 to 1975.

A Well --

Q Wait, before you say you have?

A Yes, sir.

Q What is the method that you utilized to fix that figure?

A The Bureau of the Census published a document, population, 1970 and 1973, and related per capital income for revenue sharing areas. And that was published in 1975.

Q Was there a mean income figure published in the year 1970?

A What that document provided to us was the fact that income in Chester Township had increased a total of 37 percent between 1969 and 1972.

MR. FERGUSON: Your Honor, I object, lately but object. The income basis with which the Federal Government allocated revenue sharing may or may not be relevant. But until this witness can tell us, you know, the basis of what that figure is, I am going to

1 object to the testimony.

2 THE COURT: You know, I expect the fact that the  
3 Federal Government calculated this, but without knowing  
4 how they calculated it, I think it's not improper.  
5 Particularly unfair because there is no way that the  
6 reliability of that information can be explored.

7 If Mr. Hobaugh knows how they collected the  
8 information, you know, the census is one thing. We  
9 know how the census is done. I don't know how they  
10 did this on the basis of revenue sharing. I don't  
11 know whether they achieved revenue sharing from the  
12 government and the extent they did and how they  
13 arrived at that.

14 What the conclusion for that conclusion, if  
15 it is just a conclusion based upon everything that  
16 has happened in the United States for the last three  
17 years. I think that would be quite some problem for  
18 me. It is not helpful to me and it is not fair to  
19 have facts like that brought out or opinions, if you  
20 will, without knowing something about the foundation  
21 so that there can be reasonable cross-examination.

22 MR. LINDEMAN: Well, if your Honor please,  
23 in a case of this kind which the Court well knows  
24 is most expensive to begin with. It is obviously  
25 impractical, if not impossible, to go around to all

1 of the families in the town in 1970 and then again in  
2 1972 to make an actual physical count. Even if you  
3 were to do that, your information might be somewhat  
4 faulty.

5 THE COURT: I am not saying get in a person by  
6 person basis. What I am saying before he tells us  
7 that, tell us what the foundation is so that it can  
8 be explored.

9 MR. LINDEMAN: I am getting to the point.  
10 I would ask him that. I don't know what information  
11 the witness has, but I would ask him that.

12 However, I want to make this point. I think  
13 that even in testifying as to the governmental census  
14 figures, either the Court or any of us as counsel  
15 really inquire as to how and what the government did  
16 statistically in arriving at whatever figures it  
17 finally published. And similarly, when the reports  
18 on what the revenue sharing, what the revenue sharing  
19 purposes, the increase may have been, we can only  
20 presume that in its expertise it has employed methods  
21 which are acceptable, otherwise it must by definition  
22 be worthless.

23 MR. FERGUSON: Well, your Honor, --

24 THE COURT: Let me just clear the air on this.

25 The census and the information that the census

1 people take is allowable in evidence on the basis that  
2 it is an accepted opinion or poll-taking method.  
3 It has always been that way. But it deals with  
4 present facts or prior facts. Okay? It never deals  
5 with projections. The census is as of that moment.  
6 It has always been that way. That's why we allow those  
7 type of polls to be admissible.

8 However, here you are talking about something  
9 else. And I don't know what the basis of it is.  
10 And because the Census Bureau says that it is true  
11 doesn't mean that it is true without having the  
12 foundation of how they do it.

13 Now, he ties it to revenue sharing. Well,  
14 all right. Maybe it is an acceptable poll basis,  
15 if it is a poll basis, I don't know.

16 How is it tied? That is all I am saying.  
17 What is the basis for it? I don't think I can allow  
18 it in on this same basis that the census is taken  
19 in each decade.

20 MR. LINDEMAN: Well, I don't know --

21 THE COURT: I don't think it meets the same  
22 standard because they're tying it to something else.  
23 I don't think, because the Census Bureau has done it  
24 per se makes it admissible. I think if the Census  
25 Bureau has done it in accordance with an accepted

1 procedure that we recognize poll-taking as they do  
2 each decade. Then it is admissible, but I don't  
3 know the foundation.

4 What I am saying is, it is from a point of  
5 fairness, Mr. Lindeman, more than anything.

6 One, you're asking me to rely on it;

7 Two, Mr. Ferguson has to have the right to  
8 find out some background to show the weight that I  
9 would give it.

10 Right now, it just hangs out there and I have no  
11 way to evaluate it. There has got to be some evaluation.

12 With respect to the census figures, I can  
13 evaluate it because I know this is a standard practice  
14 and an admissible standard practice. I don't have  
15 any idea.

16 MR. LINDEMAN: Perhaps the witness knows.  
17 I don't know whether he does.

18 THEWITNESS: No, sir, I don't. I don't have  
19 the document here.

20 MR. LINDEMAN: If your Honor please, it seems to  
21 me that this kind of evidence, therefore, should be  
22 received with whatever weight the Court is willing to  
23 ascribe to it. It is true I understand the Court's  
24 position when it says if you don't know the basis  
25 upon which certain information is published, then you

1 have difficulty in evaluating it and perhaps it is  
2 unfair. But I say that, or I submit that kind of  
3 a position can be taken as to almost any of the  
4 information that has been presented thus far. And we,  
5 of course, have presented it. But much of that  
6 information comes from documents such as the Morris  
7 County Master Plan Land Use Element and the Chester  
8 Township Planning Document of August, 1974, which  
9 contains estimates and projections.

10 All of them we are accepting for one purpose  
11 or another. Maybe not necessarily as Gospel, but  
12 we accept them for what they are.

13 Now, we are talking about a United States Govern-  
14 ment projection which I think simply ought to be  
15 presumed to have some validity. How much, we just  
16 don't know.

17 THE COURT: You want me to accept it on the basis  
18 of a projection being made per se, as a projection and  
19 nothing else, I am willing to do that. But what I am  
20 saying to you is that how much you're going to ask me  
21 to rely on, that is going to be based upon the facts  
22 that you elicit, how they are arrived at. I don't  
23 know whether somebody in Washington said, well, the  
24 revenue sharing in this area is such and such per-  
25 centage, therefore, bang, out of the air comes

1 a figure of 27 percent. I think with projections  
2 of population you have a different thing. You have a  
3 rate of growth that is seen by building permits and  
4 population shifts that they can go back and look at  
5 in the prior situation, prior years before the  
6 existing changes.

7 I don't have that here. I don't even -- what  
8 does it mean they're related to revenue sharing?  
9 How long did revenue sharing start? That is all I am  
10 saying.

11 I have a great deal of difficulty of laying too  
12 much weight on it.

13 MR. LINDEMAN: I think, your Honor is correct  
14 and I am willing to offer the testimony on that basis.  
15 I think it has to be on that basis.

16 MR. FERGUSON: The problem we are going to  
17 have, if a foundation for other testimony, it will be  
18 almost impossible to --

19 THE COURT: Well, it is one item, Mr. Ferguson.

20 MR. FERGUSON: Also, I have a feeling we are  
21 comparing apples and oranges. We got the 1970 census  
22 data and now we have a projection based upon what  
23 we know not what, as the Court now conceived, and  
24 we are comparing them, getting percentage increases.

25 THE COURT: While rightly or wrongly, what I am

1 going to say is this: That if you expect me to  
2 accept something as a fact and to put any great  
3 amount of weight on it, I have got to have some  
4 understanding of how that projection, if it is a  
5 projection, is arrived at.

6 MR. LINDEMAN: Perhaps we will be able to furnish  
7 that information. But at this time, your Honor, I  
8 would request that the Court accept --

9 THE COURT: I will allow it to be in, but I have  
10 forewarned you on the weight.

11 MR. LINDEMAN: Right. Okay.

12 Q All right. Would you tell us, please, what  
13 according to the United States Census projection the mean  
14 income of families in Chester Township will have to go to  
15 in the periods that you are going to tell us?

16 A The census report, that is, between '69 and '72,  
17 there was a 37 percent increase in income in Chester Town-  
18 ship. Applying that to the 1969 mean family income indicates  
19 a 1972 mean family income of \$22,326.00.

20 And we did it in turn project that forward to 1975.  
21 But on the same basis as we did the, essentially the same  
22 methodology.

23 Q Who is we?

24 MR. FERGUSON: I have another objection, your  
25 Honor. We are taking --

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THE COURT: Let me find out who we is?

THE WITNESS: It is my office.

THE COURT: Okay. Okay, go ahead.

MR. FERGUSON: Now, we are taking the projection in revenue sharing figures, 37 percent increase from '69 to '72. Applying that hard census data, projecting that ahead. And now we are apparently doing that at the same rate from '72 to '75. And that's another step that somebody is making, assuming we are going ahead another three years, for the past three years.

THE COURT: Before he tells us the figures, let's find out if he did that.

MR. FERGUSON: May I just point out that the prior evidence from this witness tends to indicate that the percentage of increase in the early 1970's is much less than the percentage from 1960 to 1970. And indeed, it is under 7 percent from 1970 to 1976. And with that kind of testimony already in the record, I think this kind of straight line projection is very, very suspect and without a proper foundation I must object very strenuously.

THE COURT: I will allow it on the basis I did before. I just, you know, how much weight that I give it is up to me. But I will allow it.

Q Tell us first how you arrived at those figures,

1 Mr. Hobaugh?

2 MR. FERGUSON: Would you give the figures again?

3 I missed them.

4 THE COURT: The last figure he said was the  
5 mean family income was \$22,326.00.

6 THE WITNESS: Yes.

7 THE COURT: That was as of 1972. Now he is  
8 projecting it from, through '75 or to '75?

9 THE WITNESS: To '75.

10 Q How did you make that projection?

11 A The projection was made on the assumption that the  
12 same average annual percentage increase would continue  
13 in '73, 4 and 5 as had occurred from '69 through '72, based  
14 upon the census document previously cited.

15 MR. FERGUSON: I object, your Honor. I just  
16 think that is speculative.

17 THE COURT: It is.

18 MR. FERGUSON: Very.

19 THE COURT: I will allow it on the basis it is  
20 speculative.

21 Q What is the figure then for '75?

22 A For 1975, the mean family income resulting is \$28,355.00.

23 Q Now, Mr. Hobaugh, did you obtain any information  
24 about the number of dwelling units in Chester Township  
25 at the time of your examination of this township?

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A Yes, sir.

Q Did you also investigate as to the type of dwelling units in the township?

A Yes, sir.

Q Did you compile any data as a result of your investigation?

A Yes, sir.

Q Tell us, please, what that data reveals as to the number and type of dwelling units and the time involved, the time period involved?

A Again relying on the 1970 census, there were listed 1,171 year-round housing units of which 979 were owner-occupied. 164 renter occupied and 28 vacant.

THE COURT: What was the first figure, 900 --

MR. LINDEMAN: I think the first figure was 1,171.

THE COURT: No, I am talking about the first figure of owner-occupied.

MR. LINDEMAN: 979.

THE COURT: Right.

THE WITNESS: 90 percent of the year-round housing units had one unit within a structure. In other words, single-family homes.

3/10ths of 1 percent were mobile homes or trailers and 4.3 percent were within structures which

1 contained 2 through 4 individual dwelling units and  
2 3/10ths of 1 percent of the units were within  
3 structures containing five or more units.

4 The total of all units within structures  
5 containing more than one dwelling unit was 55, or  
6 4.6 percent of all-year-round housing units.

7 THE COURT: I am sorry, I didn't get the last  
8 figure.

9 THE WITNESS: 55 units.

10 THE COURT: Right.

11 THE WITNESS: Or 4.6 percent of all-year-round  
12 housing units.

13 MR. FERGUSON: Had what?

14 THE COURT: Now, he is telling us that there were  
15 55 units where there were more than one unit per  
16 dwelling and that represents 4.6 of all the all-year-  
17 round units.

18 MR. FERGUSON: All right.

19 Q Did you reach any conclusions as to the relative  
20 amount of multiple family housing in the township as  
21 compared with all of the housing as of the 1970 census?

22 A Well, 4.6 percent is the total of all units within  
23 the could be considered multi. The remainder being  
24 single-family, approximately 95 percent.

25 We also utilized building permits which I believe

1 were subject to stipulations issued through 1975.

2 I am of the opinion that it was stipulated that 158  
3 permits were issued from '70, '75. And that would indicate  
4 if all those building permits were exercised, that there  
5 were approximately 1,340 actual -- statistically works out  
6 to 1,342 year-round housing units as of the end of 1975.

7 Q Did you make an analysis of the occupation of the  
8 residents of Chester Township in any particular year?

9 THE COURT: Excuse me. Could I go back on  
10 one thing?

11 You said 1,342 year-round housing units assuming  
12 all building permits were used?

13 THE WITNESS: Correct.

14 THE COURT: You didn't check the certificates of  
15 occupancy?

16 THE WITNESS: No, sir, we did not.

17 THE COURT: Okay. I am sorry.

18 Q Item 28, Mr. Hobaugh.

19 A Yes.

20 Q Did you make any analysis of the occupations of  
21 the residents?

22 A Yes, sir. I have information here from the 1970 census  
23 on employment by category.

24 Q Would you tell us what that showed?

25 MR. FERGUSON: Your Honor, it is a great deal of

1 data in the census report and I suppose a lot of  
2 projections can be made. How is this all relevant to  
3 the issues which this Court is going to be asked to  
4 decide?

5 THE COURT: Mr. Lindeman?

6 MR. LINDEMAN: Your Honor please, the municipality  
7 now has a certain amount of industrial or commercial  
8 areas zoned or developed as of now. There is  
9 commercial and industrial areas beyond the confines of  
10 the municipality. It is relevant under the criteria  
11 of Mount Laurel as well as the other cases that have  
12 come down since that decision to show how the  
13 municipality, how the zoning ordinance of any munici-  
14 pality accommodates those who work in the municipality  
15 and what percentage of those people work out of the  
16 community because of whatever factors may be involved.  
17 So, therefore, --

18 THE COURT: Excuse me.

19 MR. LINDEMAN: I think it is important to know  
20 what either the numbers or the percentages are  
21 respecting the various modes of employment of the  
22 people who live in the town now.

23 It may be that the town is not able to support  
24 whatever industry is here or on the other hand, the  
25 conclusion that this Court may draw is that the

1 township doesn't provide for enough commercial or  
2 industrial zoning and, therefore, enough development  
3 for those purposes to employ people who should be  
4 employed and who should live in the town.

5 MR. FERGUSON: Well --

6 MR. LINDEMAN: So for these purposes --

7 THE COURT: Hold it, hold it.

8 MR. LINDEMAN: I think the testimony is relevant.

9 THE COURT: Well, I would agree with you that  
10 the number of people, percentage of people who work  
11 outside the municipality and where they work is  
12 relevant since both, well, since specifically Oakwood  
13 says, doesn't get involved in formulas that specifically  
14 relate to providing a number of houses in the future.  
15 I don't see, or as, and I read that not only housing,  
16 but other types of uses. I don't see how the specific  
17 category of employment, I mean, the number of  
18 lawyers, the number of doctors, using the professions,  
19 the number of nurses, I don't see that as being  
20 particularly helpful. But I would agree with you  
21 that the number of people who worked outside of the  
22 municipality, fine.

23 Are you saying that Oakwood and Mount -- I know  
24 Mount Laurel doesn't, but are you saying that Oakwood  
25 talks about the number of people, employment, the type

1 of employment and those type of employment relate  
2 to the types of uses permitted in the town that it is  
3 relevant?

4 That is the only way I could see that it could be  
5 relevant.

6 MR. LINDEMAN: Not precisely, your Honor. I  
7 think for one thing, perhaps I didn't state it fully.  
8 But I think for one thing the nature of the employment  
9 of the various residents is --

10 THE COURT: Well, let's --

11 MR. LINDEMAN: -- interesting, if not material.

12 THE COURT: Yes. I think it is interesting too.  
13 You know, I don't want to spend a lot of time on these  
14 objections, because we are not getting anywhere with  
15 them.

16 How many categories do you have, Mr. Hobaugh?  
17 Ten or twelve?

18 THE WITNESS: Eleven.

19 THE COURT: Eleven? All right. One bite at the  
20 apple. I will allow you on this one. I don't want  
21 any more problems with these. They are interesting,  
22 but I don't think they're particularly relevant.

23 I may be overlooking something in Oakwood, but  
24 I can't see the relevancy of them in this case.

25 MR. LINDEMAN: Well, I won't offer any more

1 argument about it, your Honor.

2 THE COURT: Okay. Go ahead. I will allow it  
3 at this time.

4 Q Go ahead.

5 A Okay. I am not sure of the specific question to  
6 answer.

7 THE COURT: He wants you to give an analysis,  
8 an analyses of resident occupation.

9 THE WITNESS: Fine. What I have information  
10 from is the 1970 census population housing. Information  
11 as of 1970 showing total employed sixteen-year-olds  
12 and older and in an attempt to avoid reading the entire  
13 chart, what is significant to me about this chart with  
14 regard to Chester Township is that 24.3 percent of  
15 all respondents are in the professional, technical  
16 and kindred working category and 17 percent are in  
17 managers and administrators, excluding farm, meaning  
18 that better than 40 percent of the total employed  
19 sixteen and over are in two categories that are  
20 distinctly different from, just to make the point,  
21 the remaining categories which are such things as  
22 clerical and kindred craftsmen, foreman and kindred  
23 operatives, laborers, farm workers, service workers  
24 and private household workers.

25 Q All right. Now, you made an examination, did you

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not, of the Master Plan Land Use Element of Chester Township for, well, to the extent that there is a land use element adopted in August of 1974?

A Yes, sir, I have examined that.

Q And by percentages, do you know what the Master Plan calls for in terms of various area zoning categories?

A Well, according to the figures that are found on Page 19 of that document --

MR. FERGUSON: Excuse me, your Honor. Can I get my copy? I wasn't aware that the Master Plan calls for any zoning. I think I have it.

THE COURT: Let me. Thank you.

Table 2, you are talking about?

THE WITNESS: Yes, sir. Page 19.

THE COURT: Okay.

Q Go ahead.

THE COURT: All right, go ahead.

A If one converts the proposed zoning listed in acreage into percentages and aggregates the R-1, R-2 and R-5 zone districts under the proposed zoning, that's approximately 72 percent of the area of the township.

THE COURT: You're talking about current or proposed or both?

THE WITNESS: Proposed.

THE COURT: Proposed?

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THE WITNESS: Yes, sir.

Q What about the conservation, preservation zone?  
What percentage would be called for in that area?

A The zone would be approximately 22 percent. And then the remainder among the, on this table, it is MDR, Medium, Dense, Residential Listing, with no acreages assigned to it.

Q What percentage of it has -- must it be?

A Oh, the remaining percentage would be about 8 percent. 6 to 8 percent. 72 and 22 is 94, so it is 6 percent.

MR. FERGUSON: That's a hundred percent of what, is that the medium residential zone?

THE WITNESS: Of the total 18,000 acre, 18,355.

MR. FERGUSON: Well, do we have three categories and ending up with a hundred? I am just confused, your Honor. I don't know whether to object or not.

THE COURT: That is for cross-examination.

MR. FERGUSON: All right.

THE COURT: Go ahead.

Q Have you obtained from the Morris County Planning Board a list of the major subdivisions approved within Chester Township since 1954?

A Yes, sir, and as to number, it is my understanding that there is a stipulation regarding the number that were approved and the acreage involved and the number of lots.

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Q From 1954?

A The two points that I would make, which are not to my knowledge in the stipulation are that the, that result in an average of 2.3 acres for each lot that was created.

Q Excuse me, Mr. Hobaugh.

A Yes, sir.

Q Notwithstanding that the stipulation contains this information, but for the purposes of the record, please tell us what the basis for that --

A Certainly.

Q -- acreage computation is so that we will have it.

A This covers the years '54 through '74. It is based upon information provided by the Morris County Planning Board under date of December 12, 1975.

Q How many major subdivisions are reported?

A Nineteen major subdivisions.

Q Covering --

MR. FERGUSON: How is this part of the stipulation or are we now on a separate document or is he relying on the stipulation?

THE WITNESS: I was attempting to, yes, sir.

Q How many acres does that cover?

A 869 acres. 390 lots.

Q What is the average size of each lot?

A Based on those numbers, 2.3 acres.

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Q Tell us about the number of subdivisions that were allowed in the period 1971 through 1974?

A Three within Chester Township.

MR. FERGUSON: Your Honor, there was a moratorium in effect on major subdivisions.

MR. LINDEMAN: That's argumentative, your Honor. That may very well be.

THE COURT: All right. You can point that out on cross-examination.

MR. FERGUSON: All right.

MR. LINDEMAN: If it is the fact. Whatever is the fact, is the fact.

It might also be interesting to know what the basis for the moratorium was.

Q How many lots did that cover?

A Thirty-eight lots.

Q And how many acres?

A 94.

Q The average size is what?

A 2.47 acres per lot.

Q Now, under stipulation Number 10 admitted into evidence of the stipulations admitted into evidence, the number of building permits for residential construction is shown.

MR. FERGUSON: Could I just have the stipulation?

1 MR. LINDEMAN: Well, I may withdraw this. I am  
2 sorry.

3 MR. FERGUSON: I would like to look at what we're,  
4 what number is the stipulation?

5 MR. LINDEMAN: I'm going to withdraw the question  
6 on the stipulation because it is too repetitive.

7 THE COURT: Number 10 on Page 4 deals with the  
8 building permits. And the last stipulation from  
9 1971 to 1974, three major subdivisions were given  
10 approval by the Chester Township Planning Board.

11 MR. FERGUSON: Yes, that's accurate. I have  
12 just lost my copy.

13 THE COURT: Oh, all right. Here.

14 MR. FERGUSON: Thank you.

15 MR. LINDEMAN: I think those last stipulations  
16 were items Number 21, 20, 21 and 22, your Honor.

17 THE COURT: Let Mr. Ferguson just take a minute  
18 to look at it to refresh his recollection.

19 MR. LINDEMAN: All right.

20 MR. FERGUSON: Your Honor, you know, it is  
21 a naked fact and I can divide as well as Mr. Hobaugh  
22 can. So I suppose that is waived.

23 THE COURT: Okay.

24 MR. FERGUSON: Whatever it may be worth, one  
25 can divide. No question about that.

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THE COURT: All right. Go ahead, Mr. Lindeman.

Q Getting back to the employment of the residents in Chester Township, Mr. Hobaugh. Tell us, please, what the 1970 census report indicates as to the work trips for the employed residents in Chester Township. Explain to us what you mean, what is meant by work trips.

A The census reports on persons residing in Chester Township and breaks down into different locations their designation when traveling to their place of work.

Q What does it show?

A The total number of persons included in the reponse were 1,425. Of those, 69.3 percent commuted to a job location within Morris County.

Q Does that include the Township of Chester as well?

A Yes, sir, it does.

Q All right.

A The second largest designation was Essex County, which includes the City of Newark. In this instance being 8.3 percent.

The third into Somerset County, 7.1 percent. And any other single place had a value of less than 5 percent. So that the predominance is Morris County.

THE COURT: Does it break it down with respect to, in Morris County, those traveling to Morristown as

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opposed to Dover or as opposed to other communities?

THE WITNESS: No, sir. I do not have access to that.

THE COURT: Okay.

Q Now, with regard to the housing prices within Chester as reported by the Census Bureau, please tell us what the 1970 census showed respecting single-family houses in Chester.

A As of 1970, the medial value of a single-family home was \$38,600.00.

Q Have you been able to adjust that to the 1975 median value?

A Yes, sir, we have.

MR. FERGUSON: Objection, your Honor. The same as stated before unless we know how the projection was made and what basis the reliability of the method and the figures to which the method is applied.

THE COURT: All right. Let him tell us how he arrived at it before he tells us what the figure was.

Q Will you tell us, please, what method you used to make the computation?

A Yes, sir. The survey of current business published by the United States Department of Commerce has a number of price indices, one of which is for home ownership. And they list an index for each month of the year. And we

1 utilized the index from 1970 up through September of 1975  
2 in order to be able to convert that value from 1970 to  
3 one which would be comparable to September, 1975.

4 Q Now, are you saying that that tabulation shows  
5 the percentage of increase in values, is that what it does?

6 A It gives an index of the cost of homeowner.

7 Q Cost of home ownership or value of house?

8 I don't understand.

9 A It is cost of home ownership.

10 MR. FERGUSON: Well, that's not what -- the  
11 witness has been testifying about the price of the house.

12 MR. LINDEMAN: I asked for the median value of  
13 a single-family house of Chester as of 1970, and the  
14 witness testified to that. Now I am asking --

15 MR. FERGUSON: No, he testified as to what the  
16 census --

17 THE COURT: Let Mr. Lindeman finish.

18 MR. LINDEMAN: The census report as the United  
19 States Bureau of the Census reported it, right?  
20 And then now I am asking for the adjustment of that  
21 figure to the 1975 values.

22 MR. FERGUSON: And it is a different publication  
23 and there is no foundation laid that the values of  
24 the 1970 census sampling of this index are the same.  
25 Maybe applying figures to apples and oranges and coming

1 out with tangerines.

2 THE COURT: The symptoms are a little different  
3 than what the index indicates.

4 Does the indices indicate what the reflection  
5 in the increase in the median value of ownership would  
6 be if you went from '70 to '75, or does it give you  
7 the index to the cost of home ownership? Because,  
8 I think those are two different factors, aren't they?

9 MR. LINDEMAN: I think they are, your Honor.  
10 I was asking, I thought I was asking the witness if  
11 that's what the table shows.

12 Q Is the cost increase in the cost or the value,  
13 and is there a difference between those two?

14 A First it is the cost of home ownership. It is not  
15 the cost of home purchase, so differentiate between those  
16 two.

17 THE COURT: Okay.

18 A Second, yes, it, yes, home ownership will include an  
19 additional factor beyond purchase price of a dwelling.

20 THE COURT: Okay. Now, tell us why you would  
21 rely on that index then to prove the cost? Well, to  
22 prove the median value of a home?

23 THE WITNESS: I consider this to be the most  
24 reliable set of indices as reliable as any, let's say,  
25 available, in addition to which these are broken out

1 as compared to an over-all consumer price index.  
2 And under the category unless one were to take simply  
3 broad categories of housing which includes a number of  
4 individual items under it, the index would, this is  
5 the most appropriate -- I am sorry -- just a minute.  
6 This is the most appropriate of the indexes or indices  
7 which are available for that purpose. And it is under  
8 the sub-heading of shelter costs of increase of  
9 rent cost of increased home ownership.

10 Fuels and utilities and other things are broken  
11 down individually.

12 The term "home ownership" to me indicates an  
13 inclusion of all costs of owning and operating a house-  
14 hold. Not just the value of the home.

15 THE COURT: I think I got to sustain the  
16 objection to it.

17 Q Now, since the 1970 census, and have you had  
18 occasion to make a determination of more recent housing  
19 prices in Chester?

20 A I have not directly, but other persons participating as  
21 co-experts in this matter have.

22 Q And who is that?

23 A That I have the benefit of.

24 Q Who is that?

25 A Initially, Daniel Klarnet and then Clifford Earl.

1 Q What is the result of your -- can you tell us  
2 upon what you relied from Mr. Earl's testimony?

3 MR. FERGUSON: Objection. I don't know that is  
4 a proper question. Mr. Earl has testified here. If  
5 Mr. Earl has testified to anything that this witness  
6 can be advised of, that's the proper way to do it.

7 MR. LINDEMAN: That is what I meant. I didn't  
8 mean to give a factual data.

9 Q I mean, what was the subject matter of Mr.  
10 Earl's report or testimony that you relied upon without  
11 telling us what it was in detail?

12 A Okay. The first point is what I have is from Mr.  
13 Klarnet and I know Mr. Earl has seen it and agreed as  
14 to it. But I don't have a report from Mr. Earl. I have  
15 information that was provided by Mr. Klarnet.

16 MR. FERGUSON: I object, your Honor.

17 THE COURT: Well, I don't know what the  
18 information is. I don't know whether he has  
19 testified to that information or not. If he has  
20 testified to it, then --

21 MR. FERGUSON: I don't either.

22 THE COURT: -- that is one thing. If he hasn't,  
23 it seems to me I have to find out somehow what this  
24 information is.

25 Q Just tell us what it is.

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A It is a chart which provides information on the price category of home sales in Chester Township 1973 through 1975 and there are two categories of this particular --

MR. FERGUSON: Your Honor, those exhibits were objected to and I think the objection was sustained.

THE COURT: I allowed one.

MR. FERGUSON: We allowed one for 1976.

THE COURT: Yes, we allowed the '76.

Okay, except with respect to the '76, he is precluded from referring to it, and, therefore, relying not to answer the second, but with respect to the '76 he can do.

We will stop here. I am about ready to have four or five young juveniles.

MR. LINDEMAN: That's one of my redundancies.

THE COURT: One of them is young. One is twelve.

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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*

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*1/29/79*

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