

CA

Chester

Nov. 2, 1977 ~~1979~~

Stenographic Transcript
of
proceedings

- Norman Smith direct + cross exam
- List of Costs, etc

pgs 114

ML0006898

A-813-78 A 150 SEP 1979

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

JOSEPH CAPUTO and ALDO
CAPUTO,

STENOGRAPHIC TRANSCRIPT
OF **REC'D.**
PROCEEDINGS APPELLATE DIVISION

Plaintiffs **FILED**

vs.

CHESTER TOWNSHIP,

JAN 14 1980

FEB 6 1979

Defendant. *W. Townsend*

CLERK

Elizabeth McLaughlin
Clerk

Morris County Courthouse
Morristown, New Jersey
Wednesday, November 2, 1977

BEFORE :

ROBERT MUIR, JR., Assignment Judge, Superior Court

TRANSCRIPT ORDERED BY:

PHILIP LINDEMAN, II, ESQUIRE

FILED
APPELLATE DIVISION
FEB 6 1979

APPEARANCES :

CM
Elizabeth McLaughlin
Clerk

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

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

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

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

ECM

Nov. 2,
1977

I N D E X

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JK/hl

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THE COURT: All right, Mr. Lindeman.

MR. LINDEMAN: Mr. Norman Smith, please.

N O R M A N S M I T H , sworn.

MR. LINDEMAN: May it please the Court, Mr. Smith will be offered for the following purposes: He will testify as to a review of the preliminary layout of the road and building pattern of the 856-unit development which I think is P-1 in evidence for unattached dwellings under the 19 -- no, and for development of attached dwellings on the 1964, two-acre zoning from the point of view of feasibility based upon the terrain and other topographical features.

He will testify as to a determination and recommendation of the various methods by which potable water could be supplied to the site. He will testify respecting his conducting preliminary studies and investigations as to the feasibility of providing a source of potable water from an engineering point of view.

Further, on the feasibility of obtaining potable water from wells, a public supply or some related source.

He will testify as to a determination and recommendation of the various methods by which

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1 sanitary waste may be disposed of. And in that
2 connection, he will testify as to the feasibility
3 from a topographic and engineering point of view
4 of the various methods, including conceptual design
5 and layout with regard to disposal of sanitary waste.

6 He will testify as to a determination of the
7 methods of storm water management, including conceptual
8 design and layout. Next, a determination of the
9 feasibility and the conceptual design and layout of the
10 lake and dam to which there has been reference in this
11 trial in connection with the storm water management,
12 and even as it relates to aesthetics.

13 Then he will testify as to a determination of
14 the cost of roads and the associated development that
15 goes along with the construction of roads, such as
16 the drainage system. He will testify as to the
17 determination of the cost of the lake and to the
18 extent that his experience permits to the cost of the
19 dam and related site improvements based upon the
20 preliminary design.

21 He will then testify as to the preparation of
22 well, he will actually start out with an environmental
23 impact statement to show the effects of the construction
24 of the dwelling units as shown on P-1. The roads,
25 the drainage systems, the sewage disposal system,

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the lake, the dam, and other site improvements.
And he will, of course, testify as to his experience
in the preparation and handling of applications for
conceptual approval of the spray irrigation generally
and he will testify particularly to the application
for conceptual approval of a spray irrigation waste
disposal system to the Department of Environmental
Protection.

That is the purpose of his testimony.

THE COURT: All right. Let's proceed.

Thank you.

DIRECT EXAMINATION BY MR. LINDEMAN:

Q As to your qualifications, Mr. Smith, please
tell us what your present profession is and where your office
is located.

A I am the owner of Jaman Engineering Associates in
Randolph Township. It is a professional engineering,
planning and surveying office.

Q Engaged in what field particularly, professional
engineering?

A Primarily engaged in design and supervision of
construction of basically municipal type of engineering,
types of engineering such as road design and construction,
storm drainage, sanitary sewer collection systems, water supply

1 lines, layout of housing developments and apartment complexes,
2 preparation of site plans for commercial and industrial
3 areas.

4 Q Tell us, please, what your educational background
5 is from post-secondary school on.

6 A I have a Bachelor of Engineering Degree from the
7 University of Oklahoma from June of 1952.

8 Q Are you the holder of any professional licenses,
9 and if so, what?

10 A Yes. I am a licensed professional engineer, land
11 surveyor and professional planner in the State of New Jersey.

12 Q And with what professional societies or
13 organizations are you affiliated?

14 A The New Jersey Society of Professional Engineers,
15 the New Jersey Society of Professional Planners, of which
16 I am presently vice-president; New Jersey Society of
17 Municipal Engineers, and the Association of Practicing
18 Civil Engineers and Land Surveyors.

19 Q Tell us, please, what experience you have had
20 since you entered this profession, which I assume was right
21 after taking your degree?

22 A Yes, it was. Right after graduation from college
23 in 1952 --

24 Q Tell us, please, what your first experience is
25 and describe it a little bit, giving us briefly an idea

1 of what your experience is.

2 A Yes, my initial experience from 1952 through the
3 beginning of 1956 were in one form or another with the
4 Army Corps of Engineers.

5 Initially I had worked for the inspection branch
6 of the Corps of Engineers, New York District Office, after
7 getting out of college.

8 After a year, a little more than a year I was inducted
9 into the Army and I was put in the Scientific and Professional
10 Corps and stationed at Redstone Arsenal, the site of the
11 development of our missile program.

12 At that time, I headed the civil section of the
13 planning office for planning site development facilities
14 for the missile program and the support office structures
15 that were to house the personnel to work on these projects.

16 Q Was any work done in connection with sanitary
17 systems?

18 A No, this was primarily from a planning viewpoint in
19 planning road networks to support it and bring traffic in
20 and out of the arsenal, which was the research center for
21 the locus siting of buildings as far as test facilities
22 to determine which were the most practical location and
23 economical location for these facilities.

24 After that, my work then took me to an engineering
25 office, private engineering practice and it has been basically

1 that from early 1956 to the present time.

2 I, from about '56 until mid-1960, I was solely in
3 private practice. The latter three years I ran an engineering
4 office for another consultant in Randolph Township in 1960
5 and for the next three years, I was employed as a full-time
6 municipal engineer and director of public works in
7 South Plainfield.

8 I left them in 1963, at which time I opened my own
9 engineering office in Randolph Township.

10 Q Before getting to that, Mr. Smith, I have here
11 a note of your having been with a company known as
12 Earl W. Bailey. Did you mention that?

13 A Yes, this is in early 1956 when I first went into
14 private practice I worked, this was the first office I
15 worked for. I left them at the beginning of 1957 to run
16 an office for a consulting engineer in Randolph Township.
17 This was during that period from the time I worked for the
18 Federal Government until I started doing municipal,
19 specifically municipal engineering work.

20 It was in 1960 through '63 that I did almost solely
21 municipality work as a full-time engineer and director of
22 public works for South Plainfield. This work at that time
23 primarily included review of plans that were submitted to
24 the municipality by private individuals wishing to construct
25 either housing projects or commercial or industrial complexes

1 in the Borough of South Plainfield.

2 It included the design of those roads and drainage
3 facilities that the township, that the Borough itself
4 were putting out the contract to construct, the supervision,
5 let the contract, award of bids, and supervised construction
6 of these improvements.

7 At the time I was there, the sanitary sewer system
8 for the town was just in the process of being constructed
9 so the control of contracts on it as far as the Borough
10 itself was placed on my shoulders, although there was
11 consulting design engineering that did all design work
12 and the major supervision of construction.

13 I also was director of public works which put me in a
14 position where I laid out and supervised the maintenance
15 program in the Borough and also established our own
16 construction forces within the public works department
17 itself. And we did a significant amount of construction
18 ourselves. At that time, I also physically involved myself
19 in the construction so that I have a basic knowledge of it
20 from the ground up.

21 I ran just about every type of piece of construction
22 equipment that was available at that time in order that I
23 knew its capabilities and I would know what the department
24 was capable of doing.

25 Q When you say I, you mean personally?

1
2 A I physically did this, yes, in order to be fully
3 familiarized with any project that we undertook from the
4 point of knowing what I could expect from our department
5 since it was the department itself had not done
6 construction work prior to the time that I took it over.
7 Took over its supervision, and therefore, I wanted to know
8 what the men themselves could be expected to do. So I
9 familiarized myself from that point of view.

10 In 1963, I opened my own engineering consulting
11 office and primarily performed the type of services that
12 I reviewed for the municipality when I was a full-time
13 engineer on the Borough of South Plainfield. I then handled
14 the work primarily from a developer's viewpoint. Later,
15 I then went back into municipal engineering work on a
16 consulting basis and over the past, oh, since 1968, I have
17 been or actually since 1966, I have been a consulting
18 engineer from as few as one to I believe six or seven
19 municipalities in Morris County.

20 Q Would you identify them, please, both in
21 Morris --

22 A One in Sussex County.

23 Q -- Sussex, right.

24 A The one in Sussex County was Byram Township.

25 In Morris County, the Borough of Mt. Arlington,
the Town of Dover, Randolph Township, the Borough of Netcong,

1 the Township of Mt. Olive, the Township of East Hanover,
2 the Borough of Victory Gardens, and also in Middlesex
3 County, the Borough of South Plainfield I have served as
4 a consulting engineer there on and off since the time I
5 left them as a full-time municipal engineer.
6

7 When they get into a situation where they need
8 additional engineering help or expertise, they call,
9 have called on me over the past number of years, as recently
10 as a year, I'd say six months ago, for some road design
11 work.

12 Q Now, in your experience as a consultant to
13 municipalities and even private developers in the development
14 of major residential or industrial or commercial enterprises,
15 would you state your experience respecting the selection
16 and the construction of waste disposal systems?

17 A My experience along this line has been in, primarily
18 in the review and selection of types of systems rather than
19 the design.

20 I have not been in my capacity with my office been
21 involved in the actual design of sewage disposal systems,
22 sewage treatment plants, I should say. I have been,
23 my experience has been primarily the collection system
24 itself and individual septic systems for housing, individual
25 homes, for commercial and industrial buildings and in a
minor extent the departments that have been serviced by

1 service systems rather than disposal treatment plants.

2 My experience along the lines of sewage treatment
3 plants has been primarily in the phase review of the
4 applications that have been put before me in my capacity
5 as municipal engineer in one of the number of communities
6 I have served.

7 Primarily in Mt. Olive Township where as municipal
8 engineer a couple of projects were to be serviced by
9 on-site sewage treatment facilities and it became necessary
10 for me to review applications and designs prepared by
11 a sanitary engineer that was submitting it for the applicant
12 to the DEP with the Township as the vehicle of submission.

13 These applications in their final stage must be
14 endorsed by the municipality in which they are located
15 prior to submission to the DEP for final approval.

16 Q With regard to the spray irrigation systems,
17 tell us, please, what your experience has been.

18 A My experience as far as spray irrigation systems
19 themselves are concerned fall again in the stage of having
20 reviewed the proposal of two systems that were later
21 constructed in the Township of Mt. Olive after I no longer
22 was consulting engineer in the Township.

23 I had reviewed their extensive designs in respect to
24 the systems and on a number of occasions to see if they were
25 functioning and how they were functioning. To discuss the

1 matter with the sewer plant operators to see if I felt
2 there were any problems that we might consider doing some
3 alternative designs for. If there was a problem.

4 I have viewed spray irrigation in operation Rockaway
5 Township where it's presently being used for a major
6 commercial mall. And in addition to this, I have done a
7 significant amount of reading of prepared texts on the
8 design and functioning of spray irrigation systems.

9 Q As to the spray irrigation systems in Mt. Olive,
10 were they for commercial, industrial or residential
11 developments?

12 A A combination. They, there is one system, one very
13 major system that was designed for a PUD in Mt. Olive
14 Township.

15 Q PUD for the record being what?

16 A A plant unit development would be a mixture of
17 the three major uses which would be residential, commercial
18 and industrial uses.

19 And initially the initial stages were to service
20 the residential portion of the PUD. This is the, presently
21 what it is servicing.

22 The second was for a garden apartment project located
23 on Route 206 in the Flanders area of Mt. Olive Township.
24 The project was, I believe initially installed some four
25 or five years ago.

1 It was servicing initially a few garden apartments.
2
3 At present, I believe, there are approximately 400 to 450
4 of the apartments built and I believe they intend somewhere
5 around eight or nine hundred units eventually on this
6 system when the whole project is completed.

7 Q Now, in connection with determining feasibility
8 of various sewage disposal systems, what experience, if any,
9 and what background do you have with regard to sub-soil
10 investigation?

11 A Well, my experience in sub-soil investigations is
12 that it is, it has been as an integral part of the design
13 of sewage disposal systems.

14 Now, initially and to my greatest experience in the
15 lines of individual septic systems where the means of
16 disposing of the effluent from the septic system is by
17 putting it back into the ground. And there are numerous
18 methods of doing this. But they all require sub-surface
19 soil investigations to determine porosity and percolation
20 rates of the soil.

21 Q Have you done any reading on the subject of
22 sub-soil explorations by test borings, for example?

23 A Yes, I did. Of course it became necessary both in
24 my field of study and also since that time to keep myself
25 abreast with the methods outlined by the State for this,
 for these procedures and also the changing requirements of

1 the local Boards of Health that I have to deal with on
2 this subject. So it has been mandatory that I keep up to
3 date on this type of literature.

4 Q What experience, if any, have you had with
5 respect to the placement and investigation of test pits as
6 such?

7 A Well, again over the past twenty years with the type
8 of engineering practice I am involved in, it has continuously
9 been necessary for me to do sub-surface soil investigations
10 on the small tracts of land, that is, quite evidently how
11 you place them. You put them on the, you're limited to
12 the area, so there isn't much choice where you place them.

13 In the case of larger tracts of land, you're, and
14 especially in the last couple of years since the Soil
15 Conservation Service has published their soil survey for
16 Morris County, it has been of great assistance in helping to
17 select the location of test pits and soil borings because it
18 sets some parameters and guidelines.

19 So you generally know where to anticipate change in
20 types of soil formations.

21 And so if I was to go into, if I had a tract of land
22 of 100 acres and I was concerned with doing a representative
23 sampling of the soil borings of the soil with the assistance
24 of the soil map which generally categorizes the types of
25 soil and what I might anticipate as far as porosity, it

1 lets me know that. How to space out my borings, so that
2 I try to test, so I try to get a representative boring in
3 all of the different types of varying soils that I would
4 anticipate in a tract. And this helps me determine whether
5 the initial reports do basically coincide with what we
6 actually find in the field because they're based on, they're
7 not based on detailed soil borings. They're based,
8 the original reports are based on information that has been
9 gathered through the years and what they can anticipate
10 finding in the area. And supporting them with such test
11 pits helps either verify the information or show that it is
12 incorrect.

13 Q All right. Tell us, please, what percolation
14 tests are and what your experience is with respect to them.

15 A Percolation tests are a means of determining the rate
16 at which water may be absorbed by the soil. These tests are
17 accomplished by digging a test hole normally six to eight
18 inches in diameter at any depth you wish to test and by
19 saturating it with water over a period of time and then
20 timing the rate at which water is actually absorbed by the
21 surrounding ground.

22 It's used for design of individual septic systems.
23 It is also used in order to give, helps support and give
24 you general characteristics of the soil that you are
25 dealing with.

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End of
Tape 1

Q What is your experience with them?

A Oh, I have performed them in my work. I would say for the last twenty years I have done countless numbers of them.

Q What experience, if any, have you had respecting the reading of test boring logs and even taking test borings?

A Well, this again is pretty much the same experience I have had in doing percolation tests. It has been over this extended period of time in conjunction with projects that I have designed and in conjunction with projects that I have reviewed where we have required test boring information from the design engineers who were submitting plans for my review.

Q Have you had occasion to study the relative literature prescribing the types of soil and the rates of percolation acceptable or desirable for the construction of septic systems?

A Oh, yes.

Q Septic systems and related systems?

A Yes, sir.

Q Now, would you tell us, please, if there is anything further about your experience regarding spray irrigation in which you have testified to before or was that pretty much it?

A No, I believe that was it. No, I believe I basically

1 covered it, yes.

2 Q With respect to the construction of the roads
3 and associated drainage systems, tell us, please, if there
4 is anything further you have to add about your experience
5 with regard to them?

6 A No, sir. I believe I pretty much outlined that. There
7 is a possibility I may have not hit on the point of
8 cost estimating that may be connected with this work.

9 As far as cost estimating on most of the municipal
10 type of improvements that I had outlined previously, I
11 have designed these improvements for municipalities. I
12 have prepared the plans and specifications, the bid
13 documents. I have formally received the bids, made
14 recommendations on the award of bids, and supervised
15 construction of the projects. So I am quite current and
16 familiar with construction costs.

17 Q What about the construction of dams and creation
18 of lakes?

19 A As far as the construction of dams and the creation of
20 lakes, the basic soil earth-moving procedures I am familiar
21 with. Of course, I am familiar with it because of my
22 other type of construction work.

23 As far as the construction of dams itself, I have no
24 experience in developing costs for the construction of a
25 dam itself.

1 Q In connection with whatever work you did at
2 Mt. Olive with respect to two or more projects where spray
3 irrigation was used, what experience, if any, did you have
4 regarding the cost of such a system?

5 A At this time it was necessary that estimated costs
6 of construction be a part of the application to the
7 Department of Environmental Protection. When these
8 applications were made, I, therefore, familiarized myself
9 with the costs at that time and have attempted to
10 contact with sanitary engineers primary to this type of
11 work to stay current with the estimated construction costs.

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

13
14
15 CROSS-EXAMINATION BY MR. FERGUSON:

16 Q Mr. Smith, is it correct to say that the work
17 you have done as you described it in the work you have
18 done for Mr. Caputo has been done by others in your firm
19 as well?

20 A Yes, that's correct.

21 Q How many employees do you have in your firm?

22 A Employees involved in engineering or professional
23 type of work, two others.

24 Q What are their names?

25 A One is John Gibbons and one is Ruth Smith.

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Q Who is Ruth Smith?

A My wife.

Q Does she, what are her qualifications?

A She is a graduate biologist.

Q Does she -- when did she graduate?

A I believe it was three years or four years ago from St. Elizabeth.

Q Here in Morris County?

A That's correct.

Q Does she have any professional licenses?

A She does not.

Q Mr. Gibbons, does he have any professional licenses?

A He is a licensed professional engineer.

Q Did he not get that recently?

A He has recently attained that license, yes.

Q Between the date of the time you testified at depositions and now?

A Yes.

Q Okay. What other qualifications does he have?

A He has a degree in mathematics and a Master's Degree in physics and a Master's Degree in engineering.

Q And how long has he been with you?

A I am not sure. I believe it's approximately three years at this time.

1 Q The other personnel in your firm now are not
2 in the professional category?

3 A They are not. They are primarily field personnel that
4 I use for doing survey work and helping to conduct some of
5 the soil investigations, such as collecting data from the
6 field for me.

7 Q Will you tell us how many of those types of
8 employees you have?

9 A Two other employees.

10 Q Who are they?

11 A John O'Brien.

12 Q And --

13 A And Joe Steinberg.

14 Q Would you tell us briefly what their job
15 descriptions are?

16 A John O'Brien is a surveying party chief for me. He
17 has served, he has been with my company for ten to twelve
18 years, I would say.

19 Q Is he a licensed surveyor?

20 A No, he is not.

21 Q What about the other one?

22 A The other person works as an instrument man and
23 survey field party. His experience is much more limited
24 and he does work only under the supervision of John
25 O'Brien.

1 Q At the time of your deposition, I believe,
2 your son was working for you?

3 A That's correct.

4 Q He no longer works for you?

5 A No, he is going to college more full time now than he
6 had been at that time.

7 Q What percentage of the time of you or your firm,
8 and if there is, tell us what is devoted to planning?

9 A It's hard for me to put a time percentage on this,
10 because the planning end of any of our work is such an
11 integral part of it. It is pretty hard for me to separate
12 one from the other.

13 Q All right. Did you take a separate examination
14 for your planner's license?

15 A No. As far as planner is concerned, I was given,
16 awarded my planner's license under the initial grandfather
17 clause of the Planning Act.

18 Q That was fairly recently, I believe?

19 A Yes. I don't recall what year the Planning Law
20 came into effect that established the licensing of
21 planners.

22 Q Can you tell us what percentage of your firm
23 time is spent on survey work?

24 A I would say that the work of the firm more or less
25 is split up relatively evenly between surveying and

1 engineering and planning. One basically supports the other.

2 Q With respect to your work as an engineer for
3 various townships or municipalities, were you a full-time
4 engineer for South Plainfield for approximately three years?

5 A Yes, sir.

6 Q After that you said you did consulting work
7 for other municipalities. Have you ever been appointed the
8 municipal engineer for those?

9 A Excuse me, I am sorry --

10 Q Who is that?

11 A I am sorry, excuse me. You know, I was distracted by
12 saying hello to someone.

13 Q You ever been appointed the engineer for the
14 municipalities you mentioned?

15 A For all of them I was appointed as municipal engineer
16 for these varying communities which I mentioned on a
17 consulting basis, differentiating from full-time municipal
18 engineer. You might consider part-time municipal engineer.

19 Q Were any of those municipalities mentioned,
20 did they have a municipal engineer other than yourself?

21 A No, I was the municipal engineer.

22 Q You were it.

23 Are you the municipal engineer to any municipality
24 right now?

25 A One municipality, the Borough of Mt. Arlington.

1 Q Whereis that?

2 A In Morris County.

3 Q When were you so appointed?

4 A 1976. I have been there two years.

5 Q And the others were from time to time?

6 A That's correct.

7 Q With the exception of Dover, the Town of Dover,
8 the latest one would have been 1973 which would have
9 been Randolph, am I correct?

10 A No. Dover actually was, other than that was one
11 more recent one, 1975.

12 Q I say, with the exception of Dover, all the
13 others were before '73 or before?

14 A That is correct.

15 Q And Dover ended in 1975?

16 A That's correct. Most of the municipalities in the
17 last number of years have started to go to switch over to
18 full-time municipal engineers rather than consulting
19 engineers. Just about all of the municipalities that I
20 have worked in have now gone to full-time municipal
21 engineers.

22 Q Now, with respect to either hydrology or waste
23 disposal systems or sewer systems, would you tell us what,
24 if any, formal classes, education you have participated
25 in those areas since you received your Bachelor of Engineering

1 Degree from the University of Oklahoma?

2 A No formal classes.

3 Q No formal training at all?

4 A No formal training. It's all been through the years
5 through merely my practical experience, my consultation with
6 other engineers in the field and my contact with them at
7 our professional meetings where we discuss many of the new
8 theories that come up and the problems that arise in the
9 field. So we call on each other's experience in that manner
10 to help solve our own problems.

11 Q Now, with respect to Mt. Olive, will you give
12 us the names of the two spray installations that you say
13 you had some experience with?

14 A I am sorry, I can't give you the names of them. The
15 one that I had said was a PUD type of development, the
16 plant is located on Wolf Road in Mt. Olive Township.
17 I cannot tell you what the name of the development was.

18 The second one is the Oakwood Garden Apartments on
19 Route 206 in the Flanders section of Mt. Olive.

20 Q Now, in what capacity did you deal with those
21 two spray systems?

22 A With those two spray systems I reviewed the plans
23 prepared by the sanitary engineer that designed the plan.

24 Q Were you consulting with the township?

25 A I was the municipal engineer at that time.

1 Q Now, I believe you stopped being the municipal
2 engineer of that township in 1971?

3 A I have to check because I don't recall. Time slips
4 by. I don't recall which year is which. 1971. Yes, sir.

5 THE COURT: Mr. Ferguson, I got something I got
6 to do. It will take about ten minutes. I am sorry,
7 okay?

8 MR. FERGUSON: Okay.

9 MR. LINDEMAN: Sure.

10 (A short recess was taken.)

11 THE COURT: All right, go ahead.

12 Q Did you review the two spray proposals in your
13 capacity as township engineer in 1971 or prior thereto?

14 A During the, prior to my termination as municipal
15 engineer in Mt. Olive, I had reviewed them. Yes, sir.

16 Q From what aspect did you review them?

17 A I reviewed them at that time from a point of determining
18 the methods that were proposed to be used at that time.
19 They were almost a brand new concept in the, in the disposal
20 of effluent from a treatment plant in New Jersey, although
21 it had been tested and used to some extent in Pennsylvania.

22 Q Where in Pennsylvania, do you know?

23 A Major studies on it were done by Penn State University
24 and they were tested by the staff working on it at that
25 location.

1 Q What processes did you go through as the
2 consulting engineer to Mt. Olive Township when you reviewed
3 those proposals?

4 A My review of those proposals were merely on the
5 nature of familiarizing myself with what was proposed and
6 how they planned to dispose of the effluent. It was not a
7 point of view of reviewing for rejection or approval by
8 the municipality.

9 Q Did you do any soil analyses of the sites
10 on which the spray was proposed?

11 A I did no soil analyses on the sites. I, in fact,
12 at that immediate time I did not go into the question as
13 what type soil actually was tested on the sites other than
14 the fact that I had been relatively familiar with both
15 sites due to some other earlier investigations I had made
16 by myself on them. Totally disconnected with the proposed
17 use. I subsequently and much prior to getting involved in
18 this matter for Mr. Caputo had looked quite deeply into the
19 types of materials and the functioning of this type of
20 system because I have a particular interest in its proposed
21 use in another location and totally different municipality.

22 Q That's not the Rockaway one?

23 A No, sir, that was not. This is a proposed use in
24 Readington Township.

25 Q Having nothing to do with the Caputos or anything?

1 A No, it was just prior to my being engaged by Mr.
2 Caputo was because of interest that I had in the type of
3 disposal.

4 Q Can you recall what literature you consulted
5 in 1971 when you reviewed the Mt. Olive Township matter?

6 A No. In 1971, my initial review, and this is why I
7 made stress to this was strictly from the viewpoint of seeing
8 exactly what was proposed by the, by the applicant and
9 his consulting engineer, sanitary engineer and more or less
10 of a descriptive nature. So we would know what the
11 plan that was proposed and whether it would have any basic
12 adverse effects. And this wasn't to say that we weren't
13 into the point of any real environmental study, it was not
14 done. It was to determine whether its aesthetics, whether
15 we felt it would have any ponding of water or special
16 erosion or anything such as that.

17 Whether it would function for the purpose it was
18 designed was left to the Department of Environmental
19 Protection for their review and approval.

20 Q Was the site on which those two projects were
21 proposed, was that zoned for the use proposed or was it
22 necessary that there be a zoning change?

23 A To the best of my knowledge, the both cases there
24 had been zone changes. And I don't say at the particular
25 moment that these applications were made, but there was

1 some changes, to the best of my knowledge, made in the two
2 or three years prior to that time, at least.

3 One of the areas, what is now the PUD Complex was
4 a major area in, I would say, the southwesterly part of
5 Mt. Olive Township. It had varying terrain.

6 Q Let me interrupt you. It was already zoned
7 for a PUD type development?

8 A Prior to the submission, yes.

9 Q All right.

10 A And the other one was, the second one was for
11 a garden apartment complex in the Flanders area of Mt.
12 Olive, that was two or three years before it had been zoned
13 for single-family residential and they determined that they
14 would re-zone this other for garden apartment use. That
15 they didn't feel the terrain was suitable for single-family
16 detached type.

17 Q Was that before or after the proposal?

18 A Oh, prior to.

19 Q Prior to.

20 Once again, both of them were zone changes as far as
21 you know were prior?

22 A Yes, the application at the time I know of them
23 were permitted uses. At that time, yes.

24 Q Now, so you didn't get into comparing the,
25 whatever criteria or performance standards may have been

1 implicit in the proposals to the environmental data in
2 the Master Plan of Mt. Olive Township, if indeed it had
3 any at that time?

4 A No, I didn't get into that point of it at that time.

5 Q Subsequent to 1971, did you say you went back
6 and visited --

7 A Yes, the sites. I'm sorry, I answered too soon.

8 Q The sites?

9 A Yes, I did visit them. I inspected them. I was there
10 with the sewage treatment plant operator that operated both
11 plants who happens to be the same licensed operator, or
12 at the time I went back if my memory serves me correctly,
13 was some time in 1974, I believe.

14 Q Who is the licensed operator?

15 A I do not recall offhand.

16 Q Can you recall who you talked to?

17 A No, I don't know who the licensed operator who was
18 with us then.

19 Q By whom was the operator licensed by?

20 A Licensed by the State of New Jersey to operate a sewage
21 treatment plant.

22 Q Was it the same individual or the same firm
23 at both sites?

24 A The same firm had designed the plans for both sites.
25 The same operator operated both sites. They were not, the

1 operator was not a member of the staff of the firm that
2 designed. He was a separate individual.

3 Q Do you recall the firm who designed them?

4 A Pardon me?

5 Q Never mind.

6 What was the extent of your visit other than to talk
7 with the operator? Did you make any tests or walk the site?

8 A No, yes, no and yes. I made no tests on the sites.
9 I walked the sites and viewed the operation of the plant
10 and discussed it to some extent with the operator.

11 I did it on two different occasions. I was very
12 concerned at the time with the operation of it and the
13 effect on the surrounding area.

14 Q At what time were you concerned?

15 A Back in 1973 and 4 because I, this was the type of
16 plant that I was considering proposing in another municipality
17 and I wanted to assure myself that it was something desirable.

18 My second visit to the site was with members of the
19 governing body of another municipality to make them
20 aware of the type of treatment plant that might be proposed
21 for a site.

22 Q What was the capacity of the treatment plant
23 on those two sites, do you recall?

24 A I do not recall the capacity of them. I do know that
25 the capacity of the PUD site, although not knowing the amount

1 of capacity, knowing the basic area that was under plan
2 for that area, the plant would be extremely larger than what
3 is proposed on Mr. Caputo's property, the quarter million
4 gallon plant that is proposed for his property.

5 Q Extremely larger, being what magnitude?

6 A In capacity?

7 Q Being of what magnitude?

8 A I would say in my estimation it was a minimum of a
9 million gallon plant. Million gallon per day plant.

10 Q Did you talk or do any investigations about the
11 cost of the spray irrigation system vis-a-vis the more
12 traditional method of ways of water disposal?

13 A No, per se. And the reason being that the area in
14 Mt. Olive Township that was proposed to be sewered by these
15 two plants and the area that I was then later concerned
16 with trying to provide, there was not the ability to dispose
17 of the effluent in what were normally the standard methods
18 of disposal, which was discharge into a body of water.
19 Therefore, it more or less limited the manner in which you
20 could dispose of the effluent and this at that time, and I
21 still believe presently, is one of the only methods that
22 the State has approved for disposal other than into another
23 body of water.

24 Q Mr. Smith, have you had any training or
25 experience with water quality engineering or sampling or

1 testing?

2 A My training, I've had no formal training along these
3 lines. My knowledge along this is from experience gathered
4 through my years of practicing engineering.

5 I had for a period of approximately -- let me think
6 back -- two or three years operated a small water company
7 in Randolph Township. So I was familiar with that through
8 sampling procedures of water and we, of course, did none of
9 the actual testing ourselves. They were all submitted to
10 testing laboratories to perform the proper tests.

11 Q That would be testing of the potable water
12 output from that plant?

13 A That's correct.

14 Q And I take it the input also to see what came
15 in and went out?

16 A Well, yes. Actually back in those days and since the
17 water system was totally supplied by wells and they were
18 actually, I believe, four or five individual systems that
19 were operating. All but one of them required no treatment
20 at that time so it wasn't a question of in and out.

21 When tested, it was both the same in the case of the
22 one it required chlorination and that was it and those,
23 of course, we had to continually test to make sure when
24 chlorine is required.

25 Q Have you had any experience in the testing or

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management of free surface water in a watershed area such as exists in many places in Morris County?

A You mean by that sampling, testing the stream's flow?

Q The stream's flows, the quality of the water and the stream flows and the quality may be affected by various types of development or the absence of development in the area?

A Most of this from a rather practical viewpoint rather than a technical viewpoint due to the fact that I have been a municipal engineer for such a long period of time in these municipalities and to the fact that development has taken place and all types of development.

And again, if I can continue?

The fact that until very recently there has been really no stress on storm water management per se or erosion control procedures per se. All these matters that have come up through construction have been the type of thing that through a practical viewpoint we have viewed.

When a problem arose we checked it to see what had caused it and what we may do now to try to eliminate the problem and what we might do for the next type development that comes along to try and stop this so the municipality would not be affected with these problems.

...protecting or finding views to

1 a problem which came up in one of the municipalities with
2 which you consulted?

3 A That's right, in order to resolve that. In order
4 to try to design and protect the municipality against it,
5 the future.

6 Q The next time around?

7 A The next time around. That's right.

8 Q You mentioned Rockaway. Did you perform any
9 investigations in Rockaway with respect to the project
10 or anything there?

11 A Yes, I did, as far as Rockaway Town Square Mall
12 was concerned.

13 At the time that this was conceived and construction
14 started on it, I was town engineer for the Town of
15 Dover. The Town of Dover being immediately down-stream
16 from the proposed project in Rockaway Township.

17 In fact, the street dividing, the street running
18 along the one side of the proposed mall was the municipal
19 boundary line.

20 Yes, I was involved here. Here was the Town of
21 Dover itself, was extremely concerned with what impacts
22 might be brought and placed upon the Town of Dover by the
23 construction of this mall.

24 Concerned along three major lines --

25 Q Which were?

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A Dover -- Pardon me?

Q Which were?

A Oh. Okay. Dover primarily has served as a, I would say a retention basin unfortunately for the drainage from the surrounding communities. The Town of Dover lies at the foot of a drainage basin which comes from Rockaway Township, Rockaway Borough, the Borough of Wharton, Jefferson, Mine Hill and Randolph Township.

Any time anything is built in any one of these surrounding communities, when I say any place, the majority of the areas of the surrounding communities may impact upon the storm water situation in the Town of Dover since the Rockaway River runs through the center of the Town of Dover and most of these drainage basins drain directly, or in the direction of the Rockaway River before or during or someplace within the Town of Dover. And Dover has been tremendously impacted over the last number of years.

Q By the storm water run-off?

A By the storm water run-off by the surrounding communities.

Q Did you get involved in any water quality -sampling in Rockaway?

A No, I did not get involved in the water quality sampling at that time. We were primarily concerned ourselves

1 in this particular project with the storm management from
2 the point of view of its effect. Well, its water quality
3 to see to some extent to determine what effect erosion
4 would have on the quality of the water coming into the
5 Town of Dover. But to a greater extent, the impact,
6 the physical impact it would have upon the flooding in
7 the Town of Dover. That was one viewpoint.

8 Q That quantity of water as opposed to quality.

9 A To the greatest extent quantity of water, yes.
10 And I was instrumental in a study that has since been
11 undertaken too by Morris to try to abate the flooding
12 conditions coming out of the Rockaway Township area in
13 general.

14 The design of retention basins, and so forth, were
15 done under my supervision and strict review prior -- in
16 fact, it was brought before the local court here in
17 Morristown to insure that they did take proper steps
18 to protect the Town of Dover.

19 So it was quite involved in the review of these
20 designs and detailed as far as the sewage treatment plants.

21 Q That was one area of concern?

22 A Yes.

23 Q The others what?

24 A I guess the second one to a greater extent was
25 its traffic pattern that would be affected within the Town

1 of Dover.

2 Q The vehicle traffic?

3 A The vehicular traffic because of the great number of
4 people anticipated to be brought into the area.

5 The third was a, to a minor standpoint, was a
6 question how they service with potable water and fire
7 protection water for Rockaway Town Square because there
8 was no public water system in the Township of Rockaway
9 in close, very close proximity.

10 There was consideration to acquiring water from the
11 Town of Dover and we looked into the methods of whether
12 we had adequate supplies and how they could be brought to,
13 the cost and bring them to the Square.

14 Next we were involved to the point that there are
15 nine communities in Morris County that are presently and
16 have been, I guess, for the last seven or eight years
17 under a court imposed sewer ban control on them.
18 Different municipalities.

19 Q Why were you involved in that?

20 A Why?

21 Q No, no. Were you involved in any way in that?

22 A Yes.

23 Q With that problem?

24 A Quite intimately involved in that, yes.

25 Q Why was the sewer ban imposed?

1
2 A The sewer ban was imposed because of the possible
3 pollution of the Rockaway River and the rivers into which
4 it flowed that were in the nine community area and which the
5 water from the sewage treatment plant in Boonton Township
6 area flowed into the Rockaway River.

7 Q Was the ban on all construction or just on
8 sewers?

9 MR. LINDEMAN: Your Honor please -- one moment,
10 please, Mr. Smith -- I am delighted that my client
11 is being qualified so much more extensively even
12 than I attempted. But I do think I detect that some
13 of the questions now are more designed to elicit
14 factual evidence on a subject which I have no
15 intention of putting in and would request the Court
16 that either a ruling be made. This is not part of
17 my direct testimony because I don't want any cross-
18 examination on it, or that it be terminated because,
19 I think, it goes far beyond the scope of inquiry
20 into qualifications.

21 THE COURT: What are you trying to get at
22 as to his qualifications?

23 MR. FERGUSON: The witness' prior experience
24 with potential adverse impacts on water supplies and
25 ground water supplies and surface water supplies
because that will be one of the major issues of the

End Tape
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case.

THE COURT: Okay. But the Rockaway River Valley Sewage Treatment problem is, you know, my working knowledge of it, it is such a tremendous project that he could spend, you can spend hours asking questions about that.

MR. FERGUSON: I certainly don't intend to.

THE COURT: Okay. Well, all right. Just try to curtail it. I am going to consider it part of your direct case, Mr. Lindeman. Peripherally, you can touch on it. I'd you rather you didn't get into that. That's an extensive problem.

MR. FERGUSON: I know.

THE WITNESS: I think his Honor is more aware of it than most of us because he looked down several manholes as I did during this problem.

THE COURT: As a practicing attorney.

Q Was there a problem in that litigation or series of problems about the potential pollution of the ground waters supply through septic, individual septic systems?

A Due to individual septic systems?

Q Yes.

A The individual septic systems, not really part of that case was that certain municipalities were prohibited

1 from using individual septic systems as part of their
2 contractual agreement with the, at that time the Jersey
3 City Sewage Treatment Plant which serviced the area.

4 Q Are you familiar with the reasons why the
5 geological and soil and whatever physical reasons there
6 may have been for the provision in that contract?

7 A Yes, it was called for because it was felt at that
8 time that individual septic systems may tend to pollute the
9 Rockaway River more than a sewage treatment plant would
10 and Jersey City constructed the sewage treatment plant
11 because they wanted to use the water from the Rockaway
12 River for providing potable water to the City of Jersey
13 City.

14 So as a condition of this --

15 Q The potential pollution that they wanted to
16 avoid because of the possibility of polluted ground water?

17 A And because their experience in my estimation indicated
18 very often individual septic systems, because they are not
19 monitored adequately by governmental agencies tend to fail
20 and when they do fail, nobody is aware of them and they
21 just continually pollute.

22 Q Okay. Getting back to your visit of the
23 Rockaway Project.

24 Would you tell us what you specifically did?

25 A I think if I recall, I got sidetracked a little bit.

1 I was through the major portion of what my function
2 was on it. The only other point that was raised was the
3 manner in which they would provide sewage treatment for the
4 tract of land and the Town of Dover's concern was twofold.
5 It was that, Number 1, that they, the Township of Rockaway
6 -- not Rockaway, not be given a disproportionate share of
7 gallonage available in the Jersey City Treatment Plant
8 because any that was given to anyone --

9 Q Excuse me.

10 A Okay. Sorry.

11 Q I was talking now as to the spray project
12 as to Rockaway.

13 A That is what I was coming up to. I think this, two
14 reasons they were concerned and the second one was that
15 the governing body of the Town of Dover was not totally
16 unaware of what a spray irrigation project was and there
17 they had also wanted me to look into this project to see
18 that it had generally complied with the standards that have
19 been established for it, and whether in fact this is a
20 type of disposal that has truly been approved by the
21 Department of Environmental Protection and that it would be
22 definitely under their supervision and control so that we
23 could feel adequately safe that the water flowing from the
24 tract which all flowed into the Town of Dover would not be
25 polluted by this source of sewage disposal.

1 Q Did you familiarize yourself with -- withdraw
2 that.

3 Did you visit the Rockaway site after it was built?

4 A Yes, I have.

5 Q For the purpose of this litigation?

6 A Not for the purpose of this litigation. Just the
7 site has only been in operation for, to the best of my
8 knowledge, about a month now. It's a very new shopping
9 mall that has been constructed.

10 I have seen, physically viewed the spray irrigation
11 system. As I say, it has just been put into use and it is
12 being used in a very nominal way now.

13 We would anticipate that there should be no adverse
14 effect at this time. And I am no longer employed by the
15 Town of Dover for this purpose, so, therefore, I would not
16 go into that.

17 Q You haven't looked into it in detail?

18 A Not since the time, not since the design stage.

19 Q Which was 1971?

20 A Oh, this one was, I would say '73.

21 Q You left Dover in 1975. I stand corrected.
22 So it was '73 to '75?

23 A Yes, left there in '75. During the year '76 and
24 still to some extent here in '77 I have done continuing
25 work for them due to my familiarity with a number of

1 projects.

2 Q Are you familiar with the Fresh Water Pollution
3 Control Act amendment of 1972, Federal legislation commonly
4 known as PL-92-500?

5 A I don't recall if I am with that number or not.
6 I would have to go back to my records and see which acts
7 we worked under. I cannot answer that.

8 Q Are you familiar with Section 208, Planning on
9 an area-wide basis under the jurisdiction of the EPA
10 or Section 303 Basin Planning?

11 A I can't honestly say if I am again by number. I
12 get involved in many of these projects without --

13 Q Look, I am not, I don't mean to --

14 A I don't know if I am or not.

15 Q I don't mean to suggest that you should be,
16 but with respect to those projects.

17 A What I am answering is, I don't know if I am because
18 I would not be aware of it strictly by the numbers, although
19 the numbers themselves are frequently bantered.

20 Q By who?

21 A In, just generally in municipal planning meetings
22 and general discussions about zoning and planning and
23 subdivision construction in municipalities.

24 So I really can't honestly say in what context I am
25 aware of which.

1 Q Did you familiarize yourself with the regulations
2 if any, of the DEP with respect to spray irrigation?

3 A Yes, I did.

4 Q When did you first do that?

5 A I first, I would say as far as any regulations on it
6 would have been in 1973 and more completely in '75.

7 Q Can you tell us if there are any regulations?

8 A At that time, there were no formal regulations.

9 Q Are there now?

10 A To the best of my knowledge, I have not checked within
11 the last, I would say six months. At that time, there were
12 no really formal standards. They were recommended standards
13 most of them with ones that they had recorded or typed.
14 They were not something that were distributed to any of the
15 design engineers.

16 The standards that were set forth were designs or
17 preliminary designs basically in accord with what they
18 merely referred to as the Penn State Study.

19 Q Did you ever see the draft of regulations?

20 A Pardon me?

21 Q Did you ever see something called the draft
22 regulations?

23 A I believe, to the best of my knowledge, during one of
24 my trips to the DEP to review the application made for
25 conceptual approval that the representative of the DEP

1 at that time had shown me some draft regulations upon which
2 they basically reviewed the applications.

3 I don't know if it is what you refer to as the
4 draft regulation.

5 Q Did you ever get a copy of it?

6 A To the best of my knowledge, I don't believe we did.
7 I believe, that we had to go down and take down the
8 information that we would like included, the standard that
9 we would like to see and as minimums and primarily it was
10 to try and use this Penn State Study as guidelines for all
11 submissions.

12 Q What Penn State Study are you referring to?

13 A This is --

14 Q D-1 for identification at your deposition,
15 I think, or D-2?

16 A It was the recycling of treated municipal waste
17 water and sludge through forests and crop land edited by
18 Scopper & Cardos.

19 Q Just one correct. It is Sopper, I believe.

20 A Sorry.

21 Q S-o-p-p-e-r.

22 A I said it with a C, excuse me.

23 MR. FERGUSON: D-7 for identification on
24 April 7, 1976.

25 Q Aside from the publication date, 1973 for the

1 record, aside from this book, would you tell us what
2 literature you consulted in about which you testified
3 earlier on your qualifications in response to a question
4 from Mr. Lindeman?

5 MR. LINDEMAN: Excuse me. On spray irrigation,
6 is that what you are referring to?

7 MR. FERGUSON: Yes, on spray irrigation or
8 anything which you think ought to be consulted in
9 connection with whatever investigations you did on
10 Mr. Caputo's property for spray irrigation?

11 A Yes, I have a list of the references used in the
12 preparation of the environmental statement. A number of
13 these were used.

14 I cannot specifically tell you which ones unless I
15 was to review each one individually and see what information
16 was drawn from which.

17 Q They are listed in the back of the environment
18 impact statement?

19 A Yes, they are, with the footnotes to direct them to the
20 different sections of the statement. They were used for a
21 number of different purposes.

22 They were used for the question of erosion, types of
23 crops that should be planted in disturbed areas, effects
24 on the wild life. All the related subjects and they were
25 drawn from different sources.

1 Q Correct me if I am wrong, do I understand
2 that the DEP and yourself insofar as you have done any
3 investigation rely on the Penn State Study as a major
4 source of generally accepted information on spray systems?
5

6 A From the best of my knowledge, yes, through at least
7 the preliminary designs stage and conceptual design stage.
8 Past that, I am not involved. At that point, it would go
9 to sanitary engineers whose specialty is the design of
10 sewage treatment plants.

11 Mine is more of an approach to how a particular
12 area can be practically handled.

13 Q As far as you know, are there specialists
14 among sanitary engineers who specialize in spray systems?

15 A I know of a particular sanitary engineer that does
16 do a great deal of work in spray irrigation.

17 Q Who is that?

18 A I would say that there are some who would lean more
19 heavily on this than others depending on the areas in
20 which they work to a great extent.

21 MR. FERGUSON: That is all the questions I
22 have on qualifications, your Honor.

23 I would like to prevent this trial, if possible,
24 becoming a site plan review. I have based that upon
25 what Mr. Lindeman's statement included that this witness
would testify to and knowing as I do some of the

1 documents that will be produced, I am hesitant to
2 let in without objection testimony which really doesn't
3 amount to a site plan review by this Court of a
4 proposed project.

5 I perceive, however, a problem; my having to
6 object to some of the testimony as really being too
7 particular for the issues to be relevant to the issues
8 in this case, which is really the suitability of
9 the land in general and the reasonableness of the
10 zoning of the plaintiffs' land under the Master Plan
11 and Municipal Land Use Law, et cetera. I don't
12 want to foreclose the plaintiff from presenting
13 proof which might be relevant by that objection.

14 I mention it at this time to alert the Court
15 to what I perceive to be a problem with this
16 witness' testimony.

17 THE COURT: Okay. All right.

18 MR. LINDEMAN: Your Honor please, I would first
19 like to have marked for identification and
20 environmental impact statement to which some
21 reference has been made.

22 THE COURT: P-31 for identification.

23 (The document referred to was marked P-31
24 for identification.)

25 MR. LINDEMAN: Now, if the Court please, as

1 Mr. Ferguson suggested, we will be offering testimony
2 from fairly complex and detailed documents from which,
3 but not directly, will the witness be testifying.
4 He will be testifying generally from the environmental
5 impact studies and certain other reports which we
6 have, I believe, subject to the approval of the Court
7 and the position taken by the defendant that it would
8 aid the Court to have this document in front of it
9 with the full understanding on our part that if counsel
10 should object to any part of the testimony, or should
11 any part of the testimony not really include what is
12 contained in the report, it would not be deemed to be
13 part of the record.

14 But I do think that for the purpose of
15 convenience, clarity and even speed, which I think
16 all of us would like to nurture, it would be useful
17 for the Court to look at this document as the
18 testimony progresses.

19 THE COURT: Mr. Ferguson?

20 MR. FERGUSON: I have no objection to the Court
21 looking at it, even though it is marked for identi-
22 fication. I would object and I will object to it
23 going in evidence on the basis that I previously
24 articulated. That is, it is not relevant to the
25 issues before this Court insofar as it is a very, very

1 particularized environmental impact study which
2 indeed is called for by the zoning ordinance, but
3 the zoning ordinance calls for it to go to the
4 town. And I don't think this Court is the proper
5 forum for the detailed examination of the type of
6 environmental impact statement that has been provided.

7 We do have a separate defense. The fact that
8 the plaintiff has not exhausted administrative
9 remedies. Now, I realize that he has a constitutional
10 right to challenge the ordinance on Mount Laurel
11 grounds, but I don't perceive that constitutional
12 right to extend to by passing all municipal adminis-
13 trative functions, one of which is to review this
14 kind of document.

15 THE COURT: All right. Recognizing that,
16 I have written down your objection in the use
17 it's going to be put. It will be helpful, I am sure.

18 MR. FERGUSON: Yes, and the context of this
19 trial, particularly the Court sitting without a jury,
20 I think it is very helpful to the Court to have the
21 document in front of it when the testimony is coming
22 in about it.

23 I think it is, I have no objection on that
24 score at all.

25 THE COURT: Okay.

1 DIRECT EXAMINATION BY MR. LINDEMAN: (CONTINUED)

2 Q Now, Mr. Smith, as counsel just indicated,
3 there is reference, of course, in the current zoning
4 ordinance to an environmental impact statement. But even
5 though that is a fact, would you tell us, please, what
6 an environmental impact statement is and what it purports to
7 do?

8 A Well, the environmental impact statement in broad
9 terms sets forth the existing conditions both on the
10 project site and the surrounding area. It provides a
11 description of the proposed project and, thirdly, discusses
12 the impacts and methods of handling what might be adverse
13 impacts of a proposed project on the immediate and surrounding
14 areas.

15 Q And did you prepare such a statement for this
16 project?

17 A Yes, I did prepare one.

18 Q Is that the same statement which has now been
19 marked P-31 for identification?

20 A Yes, sir.

21 Q The statement was prepared for what purpose
22 in this proceeding?

23 A The environmental statement?

24 Q Yes.

25 A It was prepared in order to determine the feasibility

End of
Tape 3

Smith - Direct

1 of such a project on this particular parcel of land.

2 It was done in order to also display to any parties
3 that were interested, or had interest in this, that it was
4 suitable, or if it was suitable and it was, its purpose was
5 in addition to that, to assist in any questions that may
6 come up on it in the future.

7 Q Now, when you refer to this project, you are
8 referring to P-1 in evidence, which is on this easel right
9 next to me, is that correct?

10 A Yes, that is the development plan for the Caputo
11 property in Chester Township.

12 Q All right. Now, the statement P-31 is divided
13 into, essentially into three parts. Would you tell us,
14 please, briefly what those parts are?

15 A Well, yes. Actually it is divided into five sections.
16 There are really three major parts. The first, as I had
17 mentioned before, is a development of existing conditions
18 both on the property and off-site conditions that I would
19 consider the first section of it which was first two parts
20 of the report.

21 The third -- the second section would be, the second
22 part would actually be the third section of the report,
23 which is a description of the project. And the third part
24 would be the fourth and fifth sections of the report where
25 it deals with impact on the environment, both natural and

1 social and what steps could be taken to minimize these
2 effects on the environment, if there were adverse effects.

3 Q Right.

4 Now, with regard to your introduction which is
5 Page 1. I am not going to ask you to read it, Mr. Smith.
6 On January 1, 1970, the Federal Government adopted an
7 act relating to the general subject of the environment.

8 Would you tell us what it is and what there is about
9 the statement such as this that requires the preparation
10 of such a statement?

11 A Yes. Basically, the act was set forth to set up
12 standards for the presentation of the environmental statement
13 and primarily had to do with projects not of this scope,
14 but it was considered those that having more of an impact
15 on, more of a governmental project or a major project.
16 The standards set forth in it have since filtered down into
17 the local level where the standards are adopted in this
18 are used in a number of local zoning ordinances to set
19 up standards for the presentation of an environmental
20 statement.

21 Q Now, the name of that act, the common name is
22 what, that Federal Act?

23 A The National Environmental Policy Act.

24 Q Now --

25 MR. FERGUSON: Your Honor, I think I should at

1
2 this point object to any testimony, any further
3 questions and answers on the ground that I already
4 articulated that I don't think this is the proper
5 forum to present that kind of evidence. The basis
6 of the objection really is that it is not relevant
7 to the issues before this Court which are the
8 reasonableness of the zoning ordinance, to reasonable-
9 ness of the zoning ordinance as it applied to the
10 plaintiff's property.

11 This is the particularized evidence which
12 would come in before any major development on any
13 property in the township which would, is properly
14 to be presented to either the Planning Board or
15 probably the Planning Board or the Municipal Land
16 Use Law.

17 I think, if we are going to go through this,
18 we should have a ruling from the Court now as to
19 admissibility of this kind of evidence and then if
20 it is adverse, I will sit down and be quiet. If not,
21 we will have to go through it.

22 MR. LINDEMAN: Your Honor please, it is somewhat
23 kind of an unusual procedure. But I would point
24 first, point out first this to the Court: Mr. Caputo
25 will testify later as to the undertakings that he
made to the municipality respecting his application

1 to develop his property for multi-family dwellings.
2 They commenced at least three years ago. He will
3 testify that, of course, the applications were not
4 in conformity with the then existing governing law
5 in the municipality, that is to say, that there was
6 no allowance for multi-family dwellings.

7 Not only were his applications ignored, but
8 they were treated with contempt and he will so testify.
9 There is clearly, this is the kind of a situation in
10 effect that is analagous to the Swiss case where there
11 is no purpose in challenging, there was no purpose
12 in challenging the tax law before the County Board of
13 Taxation. And then to the State Division of Tax
14 Appeals because the law was not followed as it was
15 and there was no administrative remedy really
16 available to the applicant.

17 Just so in this case. There is no administrative
18 remedy available to Mr. Caputo that really made any
19 sense. After the first two applications were made,
20 as he will testify, a third scheme was developed
21 and that was the one that was presented.

22 THE COURT: Were these formal site plan
23 applications?

24 MR. LINDEMAN: They were not formal site plan
25 applications.

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THE COURT: Okay.

MR. LINDEMAN: Since that you really observed the requirements of the ordinance --

THE COURT: Hold it a second. I got an emergent phone call from one of the judges in the courthouse. I will be right back.

(A short recess was taken.)

THE COURT: Well, you know, gentlemen, I could see this coming.

MR. LINDEMAN: I have further argument unless your Honor is satisfied.

THE COURT: All right, go ahead.

MR. FERGUSON: I have one too.

THE COURT: Yes.

MR. LINDEMAN: Mr. Caputo will also testify that as far as, back as 1974, formal, or as formal an application as possible could have been prepared was presented to the Planning Board and to the Municipal Fathers of Chester Township. And he will further testify that at one or more of the meetings he was told by either Mr. Connors or Mr. Hardin or both of them that they would hear from him. He would hear from them. He never did.

There was never any formal acknowledgment from receipt nor of rejection of the first two projects

1 that were ever presented. This third plan, which is
2 presently before the Court, was presented to the
3 municipality just as formal or if not more formally
4 as the first two, but was presented in this litigation.
5 So that the Planning Board and the defendant at large
6 had the, at least knew what it was. But essentially,
7 in terms of its character goes really, it is not
8 different from the first one or the second one in
9 the respect that this calls for multi-family dwellings.

10 Now, whether it will come into the record or
11 not through competent testimony would remain to be
12 seen. But Mr. Caputo is also prepared to testify as
13 to the newspaper reports and other reports that came
14 from the mouths of certain of the town fathers where
15 they felt, where they indicated their view of the
16 rulings in Mount Laurel. Certainly Mount Laurel,
17 if not Oakwood at Madison Township that they were
18 a lot of hot air.

19 In light of the treatment of Mr. Caputo by the
20 Planning Board and the other municipal officials
21 with regard to preliminary or initial applications,
22 and in light of the town's reaction to Mount Laurel,
23 and then further the extraordinary, if not outrageous
24 conduct the municipality in 1976 in adopting a zoning
25 ordinance which made it even more difficult for multi-

1 family, for more dwellings to be built in the
2 Township of Chester, made it clearly absurd for him
3 to have pursued any administrative remedy which
4 didn't exist in the first place.

5 I mean, there was none. He did what he could
6 do, but there wasn't anything available as it was.

7 Now, the township at the time that I am talking
8 about, changed his 270 acres plus or minus from all
9 two-acre zoning to a combination of two and five.
10 Now, maybe that wasn't done with malice. I have
11 my own personal views about it, but that is neither
12 here nor there. The fact is they did what they did
13 and they demonstrated their reaction toward the
14 Caputos. There is no administrative remedy, we submit,
15 that was available to them and it is perfectly
16 appropriate for the plaintiff at this time to present
17 to the Court not only the testimony and evidence as to
18 why the zoning ordinance is invalid, but what can be
19 done, particularly with regard to their own property
20 to create a situation which this township, we respectfully
21 submit, is not likely otherwise to bring about.

22 We may be wrong on that, but certainly there
23 hasn't been any demonstration of it so far.

24 In Oakwood at Madison Township, which we have
25 spoken about before in this proceeding, the Court did

1 say that a building permit should be given to the
2 Burn Company, whatever the name of that co-plaintiff
3 was. I have forgotten it, for the construction of the
4 multi-family dwellings that it had requested.

5 We submit that the same thing should be
6 available to us in this proceeding.

7 THE COURT: He didn't say it that way.

8 MR. LINDEMAN: Not quite that way.

9 THE COURT: Yes, it said building permits should
10 be issued for the proposed use provided, and then
11 there were provisos which respect to some review by
12 municipal officials as to, in effect, site plan
13 review. That's what, the way I read it. So it was
14 going to go back to the municipal officials.

15 MR. LINDEMAN: Oh, sure. I would not expect
16 that this Court would really become an administrative
17 agency and do all of the things that the municipality
18 is otherwise required to do. But this Court is in
19 a position, we submit, to make a preliminary finding
20 that, first, the zoning ordinance is invalid, and
21 secondly, that this property is not only appropriate,
22 but it is ready, willing and able in effect to do the
23 right thing for the municipality and then subject to
24 these technical things the building permit should be
25 issued.

1 THE COURT: Let me say this: As I understand
2 this, those applications that were made for, to the
3 Planning Board, whatever the nature of them was,
4 was for a use that was not permissible on the site.

5 MR. LINDEMAN: Correct.

6 THE COURT: All right. Now, my understanding of
7 the law is that if you're proposing a use which is
8 not permitted on a site, you must first get a variance
9 for that. You don't go directly to the Planning Board
10 and ask it unless you're asking for a re-zoning
11 and that's something else again.

12 This is not, in my opinion, this case a site
13 plan review case. Not when there were prescribed
14 administrative steps to be taken which would have to
15 take, Number 1, to go for a variance. If the variance
16 is turned down, you could have challenged the denial
17 on the variance, on the zoning ordinance.

18 You're suggesting to me, and there are, maybe
19 it, maybe a valid basis, but what I am getting to
20 is this: In this particular instance, I am not going
21 to let the cart go before the horse. I want to see
22 the horse and I want to make the findings with respect
23 to was there a valid application? What were the
24 bases for the application? What was done by the
25 township?

1 I want to hear proofs on that. II won't make
2 findings of fact before I'm going to get into any
3 possibility of any site plan review.
4

5 Now, that's my position on the case. I read
6 Madison Township to be different from the facts that
7 even you have, well, you and the brief have indicated
8 to me.

9 Mr. Caputo has gone before the Planning Board
10 on two occasions. If I read the defendant's brief,
11 these were more or less not formal site plan applica-
12 tions because they couldn't be formal site plan
13 applications. They were sort of a testing the water type
14 of application and the water was cold. And certainly,
15 as a matter of fact, I think I can even say it's
16 iced over.

17 MR. LINDEMAN: That's correct.

18 THE COURT: All right. That being the case,
19 before I get to trying to break the ice and deciding
20 whether I should warm up the water, I have got to
21 be satisfied that the procedure followed is something
22 that was the only way to do it. And that exhaustion
23 of administrative remedies is a bad defense to the
24 particular occurrences that have taken place.

25 In order for me to do that, I am going to have to
hear from Mr. Caputo then. I think I'm going to have

1 to hear from the Township, from their position,
2 and make my finding of fact with respect to that.
3 I am not going to get into a site plan review or
4 even consider a site plan review, or the magnitude
5 of it until I have heard it. That is what I am
6 going to do, is have the horse before the cart, is what
7 I am saying.

8 MR. LINDEMAN: If I may address myself to just
9 a couple of points raised by the Court?

10 First, so far as the variance application is
11 concerned. I am sure the Court, I know that the Court
12 is aware of what criteria for applying for a variance
13 were under the zoning ordinance as it existed at the,
14 well, the then operative zoning law existed.

15 THE COURT: It would be a use variance under
16 40:55-39.

17 MR. LINDEMAN: Right. And we certainly would
18 not have qualified that there are. I mean, an
19 honest view of the property would have been such
20 that there was nothing, no hardship or nothing
21 particular about the configuration of this property
22 that rendered it unavailable for use, at least, in
23 some respects as two-acre zoned set tracts because
24 there were really two parcels here. So the variance
25 was really not, the variance was not a serious one.

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THE COURT: Okay.

MR. LINDEMAN: The other thing, I think, we will show were done and would like to point this out too, your Honor. That while we say this is not a site plan application and we are not expecting the Court to tell us, yes, this property is satisfactory in all respects because we are not asking for all of that engineering approval from the Court. We are simply showing that, that what we are doing is reasonable and that the municipality was unreasonable in the reaction that it demonstrated to us.

Finally, I would like to point this out: It was early in the trial that we took the position that having established a certain plateau of violation of available law, it was then the obligation of the municipality to go forward and that was resisted by the defendant and the Court did take the position that we should go forward and put on our case. So we are now doing it. And, I think, I can only say to the Court, I am sure the Court is aware that the order of our presentation would be very seriously messed up if I had to stop now and go on with a different witness. I realize that is not a legal reason to go forward.

THE COURT: Okay. But I say to you, if I didn't

1 make myself clear before, was I decide the case,
2 you try it.

3 MR. LINDEMAN: Right.

4 THE COURT: Okay. You decide where you're going
5 to stop coming forward with the evidence. Then I
6 will decide whether the burden shifts. And that
7 would be as a result, I am sure, of Motions by
8 Mr. Ferguson.

9 There was no suggestion there, however, and
10 I would not want it to be understood that there ever
11 was, that I was expanding this case and telling you
12 to put out what you feel should be put out and I will
13 accept it all. And so by that, all I meant was
14 you make the decisions where you stop. All right?

15 Now, I still get back to this position. It may
16 seriously, it may create problems with respect to
17 presentation of proofs. However, I am not going to
18 get into the specifics of reviewing this proposal
19 as a proposal that ends it. You're asking me to
20 say to the Township of Chester you should zone it
21 this way. That this is an acceptable proposal be-
22 cause that is in effect the site plan review. And
23 if you're asking me to do that, as I think you are,
24 then I am going to say no, I am not going to do it
25 at this point by virtue of the nature of the proofs

1 that are before me because my position, regardless
2 of whether a variance would not have passed or not,
3 is that there are certain administrative steps that
4 should have been taken and they were not. So that
5 the caution of administrative remedy from the
6 standpoint of what I am reading in your briefs and
7 that is all, giving equal credence to each side
8 is that, yes, there is a procedure that should have
9 been followed in the assertions is that it was not
10 followed. So I am not going to get involved in it
11 until I have decided, okay, it would have been,
12 if I could do that and I am not necessarily saying
13 at this point that I am agreeing that I have the
14 authority to do that.

15 I am just discussing the ramifications of it.

16 MR. LINDEMAN: May I just say one further thing
17 about this testimony, your Honor.

18 THE COURT: Yes.

19 MR. LINDEMAN: That perhaps the Court is under
20 a misapprehension as to what Mr. Smith's testimony
21 will be. And I think, I don't think Mr. Ferguson
22 intended to mislead the Court. This really isn't a
23 site plan application. There will be no testimony
24 to be offered through Mr. Smith as to really even
25 how the roads are going to be constructed, what their

1 width is going to be, where the drain pipes are
2 going to be and what their capacity will be. What
3 any estimates are as to the particular volume of
4 surface water that will be either diverted or how it
5 is going to be discharged, what County roads or what
6 public roads. We don't get as precise as that.
7 There will be general testimony about the facts of
8 surface water and the condition of the ground, but
9 we are not going to go into a site plan application.
10 We have none of that technical data or very little,
11 I might say.

12 THE COURT: My reading of the zoning ordinance
13 in an environmental impact study is something that
14 can be required as part of the site plan approval
15 by the Planning Board and then is required by the
16 Environmental Commission and I have forgotten who
17 else. So it is a very distinct part of a site plan
18 approval. That's what I am saying to you. I am not
19 going to get into the distinct parts of an environmental
20 study which are part of a site plan approval until I
21 am satisfied that if the law permits and that the law
22 permits me that this is something that the municipality
23 should have done and the law requires it to have
24 done it, and, therefore, I have the right to say,
25 okay, I can review it now to determine whether I should

1 direct the municipality to issue the building permit.

2 I read in Oakwood at Madison a problem for
3 trial courts. Those last pages of Oakwood at Madison
4 with respect to the direction. I think every developer
5 who challenges a zoning ordinance and proves, perhaps,
6 what the developer proved in Oakwood is going to
7 seek a change. And if you remember in the decision
8 there was reference to, I believe, it was an opinion,
9 a law review article in Seton Hall Law Review. I
10 don't remember the name of it, but it was written by
11 Matelka. It talks about the reward for setting aside
12 the granting the developer what the developer sought.

13 Now, that is mentioned, but that is not the
14 basis for what Judge Conford says. Judge Conford says
15 well, in light of, and then he goes through the
16 history. I think it is a six or eight-year history.
17 I don't remember the precise -- we are not talking
18 about the same thing. At least from my knowledge that
19 you have given me from your briefs, we are not talking
20 about the same thing. Maybe we will get to that
21 point, I don't know. But, or maybe we will get to
22 the position that maybe Mr. -- I guess it is Mr.
23 and Mrs. Matelka espouses in their Law Review article.
24 I don't know that either. But I am not going to
25 get to the point, and I am not even going to hear

1 proofs on the site plan issues until I have heard
2 all of the other proofs with respect to, as I
3 described it before, perhaps unfortunately, the
4 horse. That is what I am going to have to hear.
5 So what I am telling you now is at this point I am
6 not going to get into the environmental impact study
7 on that site until I am satisfied with, that the
8 appropriate administrative procedures were followed.

9 You have got to lay some foundation there for
10 me to get to this. And you have laid no foundation
11 for it.

12 MR. LINDEMAN: Well, I have done it, I think.
13 I have done it, your Honor please, by my statement to
14 the Court as to what would be offered through Mr.
15 Caputo. But I am not prepared to go forward with him
16 today.

17 THE COURT: He is the only witness you are
18 prepared for today?

19 MR. LINDEMAN: Yes. Yes, I am. But even --
20 excuse me just a second.

21 I just would like really to state again that,
22 I think, there might be some, there is a nice point in
23 I. C. E. as to the purpose of this testimony, which
24 really hasn't been stated.

25 It is not that we are presenting an environmental

1 impact study for the consideration of the Court for
2 it to say, yes, this does comply with all of the
3 requirements for an impact statement. And yes, it is
4 a proper part of an application for site plan approval.

5 What we are really doing is, we are saying to the
6 Court that we have proved that the ordinance is invalid.
7 We have proved that the municipality has conducted
8 itself contrary, in a way which is contrary to the law.
9 And we have proved further that this particular property
10 is one which will meet and solve the principal problem
11 that we are all facing.

12 Now, this impact statement is just part of
13 the testimony to show that this property is not only
14 suitable, but it's peculiarly suitable. There are
15 things that can be done and we are ready to go forward
16 to help solve one of the serious problems of the
17 State of New Jersey.

18 I am not offering this statement so that the
19 Court is going to make a determination that the soil
20 is of a certain character and that it will definitely
21 do thus and such. But generally that this is what
22 this property is and this is what it can do. And
23 then Mr. Caputo will go forward with things I just
24 referred to.

25 THE COURT: Isn't that the purpose of EIS,

1 to convince that this property and the proposed
2 development will not have an adverse effect on the
3 environment?

4 MR. LINDEMAN: Yes. Yes, it is.

5 THE COURT: Okay. So what you are saying to me
6 is, I got to review it from the standpoint of what
7 the requirements are of the township ordinance,
8 site plan approval. That is one of the aspects of
9 site plan approval and what I am saying to you is
10 that I am not going to get into site plan approval
11 at this stage in the proceeding.

12 I don't read anywhere in Oakwood at Madison
13 that they got down to the details. I did not read
14 Judge Furman's first opinion, so I am not quite sure.

15 MR. LINDEMAN: I am not familiar with that
16 either.

17 THE COURT: I don't know of any requirement
18 there that directs me to do this. And I think from the
19 standpoint of the challenge-type ordinance we are
20 dealing with, we say that -- I mean the "Interim
21 zoning ordinance" and put it in quotation marks for
22 what, I think, are obvious reasons.

23 With those factors being present, I am not
24 satisfied that I should or can go into a part of the
25 site plan approval. The environmental impact study

1 being that specific part until I am convinced that
2 maybe the case will be tried in two phases.

3 If I do decide, yes, that we will go ahead on this
4 site. But I have got to know, first I got to be
5 satisfied that, one, I can do it legally. And two,
6 there is a factual basis for doing it. And at this
7 point, I do not feel that is appropriate.

8 MR. LINDEMAN: Then, if I may, your Honor,
9 these things I would like to do and a request I would
10 like to make.

11 I would like to have marked certain of other
12 documents for identification.

13 THE COURT: Yes.

14 MR. LINDEMAN: To which Mr. Smith will testify.
15 We will go on to that part of his testimony having to
16 do with valuation, which is a fairly minor part of it.

17 THE COURT: Okay.

18 MR. LINDEMAN: And then I would ask the Court
19 if we may adjourn. I am not ready to go forward.

20 THE COURT: We have tried this case with,
21 if I may use the term, exigencies of my office
22 interfering with them. And I see no reason why we
23 can't do that. It gives me an opportunity to deal
24 with the problems that I got this afternoon that I
25 didn't know how I was going to deal with in the time

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that is ordinarily given to me.

MR. LINDEMAN: I am sorry. Maybe we can finish this morning, but not in ten minutes. Maybe a little bit longer. I don't know.

THE COURT: You want to break now for lunch? I have no problem.

MR. LINDEMAN: Okay.

THE COURT: If you got -- off the record.

(Discussion had off the record.)

THE COURT: You can step down.

MR. FERGUSON: Let me just suggest that might be helpful to have the witness identify the document.

THE COURT: Okay. You can stay here.

THE WITNESS: This is comfortable.

THE COURT: All right.

BY MR. LINDEMAN:

Q Mr. Smith, I show you an application for conceptual approval in connection with this project and ask you if this was prepared by you?

A Yes, sir, it was.

THE COURT: P-32 for identification.

(The document referred to was marked P-32 for identification.)

MR. FERGUSON: Is there a date?

1 THE WITNESS: Title and date are on the first
2 sheet, if it would help you.

3 MR. LINDEMAN: February 16, 1976.

4 Q The next is a letter from the DEP to Jaman
5 Engineering, photocopy of it, and ask you if you can
6 identify that.

7 A Yes, this is a letter of conceptual approval from
8 the Department of Environmental Protection for the sanitary
9 sewage treatment plant.

10 MR. LINDEMAN: It bears the date of March 22,
11 1976.

12 THE COURT: All right, P-33 for identification.

13 (The document referred to was marked P-33 for
14 identification.)

15 MR. LINDEMAN: Now, next, your Honor, I have
16 an inquiry made on behalf of the municipality which,
17 and a response from the DEP which were furnished to
18 me by counsel for the defendant and I would offer
19 those as well.

20 THE COURT: Together. All right. Make it
21 P-34A, the inquiry by the municipality, and P-34B
22 the response by the DEP.

23 MR. LINDEMAN: Right. The inquiry is dated
24 May 31, 1977, and it is the stationery of Apgar
25 Associates, but it is written by the engineer for

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Chester Township. And the response is dated August 11, 1977.

(The documents referred to were marked P-34A for identification and P-34B for identification.)

MR. LINDEMAN: That is all I have, your Honor.

THE COURT: That's it? Okay. Let's break for lunchtime. Come back at quarter to two. Maybe I will be through by that time. Probably take a half hour. I might be able to hurry it through, if they're back a little early.

(The noon recess was taken.)

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

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4 THE COURT: Resume the stand, Mr. Smith.
5

6 BY MR. LINDEMAN:

7 Q Mr. Smith, you are familiar, are you not,
8 with the layout of the Caputo tract for 87 houses as though
9 the property were still zoned under the 1964 zoning ordinance?

10 A Yes, sir.

11 Q And that was a layout that had first been
12 prepared by Robert Catlin Company, Robert Catlin Associates
13 by Mr. John Rakos?

14 A Yes, sir.

15 Q Did you make an assessment or an appraisal,
16 rather, of the cost of site improvements, including the
17 road and drainage and other related access or improvement
18 elements that were shown by Mr. Rakos?

19 A Yes, I did make such a cost estimate.

20 Q And would you tell us, please, what items
21 you considered and what values, what cost estimates you
22 ascribed to each of the items?

23 A Could you excuse me for just one moment?

24 Q Find it. Go right ahead.

25 A Unfortunately, that was not what I had at the top of the

Nov. 2,
1977

1 pile.

2 All right, yes. I have my information in front of
3 me now.

4 Q Would you tell us, please, what they are?

5 A If I may, what you had asked me is what items were
6 considered in the preparation of cost development for the
7 two-acre zone which are cost estimates at that time?

8 Q Correct.

9 A The items considered in the development cost estimates
10 were pavement, curb, sidewalk, excavation, storm water
11 inlet manholes, head walls, reinforced concrete storm sewer
12 pipe, underground electric and telephone lines, clearing of
13 the site, wells and septic systems, sediment control and
14 construction of the dam.

15 Q All right. Tell us what the values were
16 that you ascribed to each one of those items.

17 A Yes.

18 MR. FERGUSON: Excuse me. I don't have an
19 objection yet, but we do have this in writing,
20 I believe, and marked as an exhibit.

21 MR. LINDEMAN: Yes, they are exhibit P-26A and
22 B for identification that were offered through
23 Mr. Earl.

24 No, 25C, I think is what it was.

25 THE COURT: Yes, 25C was the detailed cost for

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Mr. Smith, yes.

MR. LINDEMAN: Right. I am sorry, your Honor. I was looking through my papers today either because I wasn't expecting to get to that or I can't find that exhibit for identification.

Does your Honor have it?

THE COURT: I think it is in here.

MR. LINDEMAN: It is just for identification. I know that Number 25. Yes, 25 for identification and 25A for identification are the document. I think, though, that the way Mr. Smith will testify is that he will show, one, he will show a whole number of values which are, the sum of which, the sum was testified to by Mr. Earl. And Mr. Earl has one line for streets and utilities and the estimate of value for both the zoning under the R-2 and the combination R-2 and R-5 Zones.

I think that what we can, of course, ask for the final figure from Mr. Smith and let it go with that. Let's go through each item.

THE COURT: What is your suggestion?

MR. FERGUSON: You appear to have P-25C for identification.

MR. LINDEMAN: Yes, that's another one. I am sorry. Thanks.

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MR. FERGUSON: It showed up and is attached to my papers.

MR. LINDEMAN: This is it, then.

THE COURT: May I see it?

THE WITNESS: May I see what you are referring to so I know what it is?

Q I show you P-25C for identification, Mr. Smith.

A Yes, sir.

Q Is that what you were about to testify from?

A Well, this is partially, this is Page 5 out of a six-page cost analysis that I had prepared.

Q Well, suffice it to say that P-25C before you contains all the figures, just the dollar amounts?

A That's correct. As prepared by me.

Q All right. And it is that to which you would testify, then?

A Yes, it is.

MR. LINDEMAN: Well, I offer it in evidence, your Honor, without going through each line to be followed by Exhibit P-25A.

A Could you tell me which exhibit it is on mine so I know what we are referring to?

THE COURT: P-25C.

THE WITNESS: Thank you.

Q This is a cost estimate, assuming that Mr. Rakos'

1 layout of 86 lots, 87 lots is the one you're estimating
2 these are based upon Mr. Rakos' layout?

3 A Yes, these are based upon the 86 lot layout that was,
4 87 lot layout, I am sorry, 87 lot layout, I believe it was,
5 that was prepared by John Rakos, of Mr. Catlin's office,
6 that I assisted in.

7 Q The requirements which you used in estimating
8 the quantities of material and work that would have to be
9 done came from where?

10 In other words, where did you get the specifics that
11 you had to comply with in order to come up with these cost
12 figures?

13 A You're asking me quantities or cost or items or which?

14 Q Well --

15 A Or all?

16 Q How do you know that you had to have 552,320
17 square yards of pavement?

18 In other words, how did you go about ascertaining,
19 what would you have to design to?

20 A Okay.

21 Q From the zoning ordinance, the building code,
22 site plan ordinance, street ordinance, whatever?

23 A The number of linear, to start with, the first item --

24 Q I am not interested in any particular item.

25 A Such a thing as number of square yards of pavement

1 have nothing to do with a particular ordinance.
2 They are the design road layout. And the total length
3 multiplied by the width comes up with a number of square
4 yards. That type of item is a linear measurement.

5 Q Right. I notice from D-4 for identification
6 at your deposition which is your six-page report that you
7 have 30-foot wide road?

8 A All right. If you ask that question, this was how
9 I determined it was a 30-foot wide road. This was an
10 ordinance requirement.

11 Q Which one?

12 A Subdivision ordinance.

13 Q Okay.

14 MR. FERGUSON: That has not, as far as I know,
15 been marked in evidence.

16 MR. LINDEMAN: No.

17 MR. FERGUSON: What about the curbs and side-
18 walks?

19 THE WITNESS: Curbs and sidewalks, I believe,
20 were subdivision ordinance standards and they were
21 taken by measuring the, again linear feet road design
22 and this design was based on the design of Mr. Catlin.
23 I mean Mr. Rakos did with recommendations from my
24 office as to feasible designs.

25 MR. FERGUSON: I notice that in Mr. Rakos'

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testimony there were some figures given for, with sidewalks and without sidewalks.

THE WITNESS: I don't know what he would have --

MR. FERGUSON: All right.

P-25A does not have those figures on it. But Mr. Earl, I guess, testified --

THE WITNESS: I don't know what that is, so I am sorry.

MR. FERGUSON: He testified without sidewalks and curbs you would have \$290,600.00 less cost, based upon your figures.

THE WITNESS: I think they would add up to that when I look here.

MR. FERGUSON: That's my notes and I believe that was the testimony.

My question to you, is that consistent with your figures?

THE WITNESS: You mean, if you reduce my estimate by the cost of curbs and sidewalks from this, the cost of ~~sidb~~ and sidewalks would add up to roughly \$290,000? Yes.

MR. FERGUSON: And without sidewalks it would decrease your costs \$163,800.00?

THE WITNESS: The, one of the estimated costs I assigned to sidewalks was \$163,800.00 estimate

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cost. I assigned to curbs, was \$126,800.00.

MR. FERGUSON: You add those together, you get 290, I guess?

THE WITNESS: \$290,600.00, something like that.

MR. FERGUSON: Okay. What did you make, I should say did you make any preliminary judgment as to sidewalks and curbs would be required or would not be required?

Why did we have the breakdown?

THE WITNESS: By items?

MR. FERGUSON: Yes.

MR. LINDEMAN: Hold it. Hold it, Mr. Smith. Just one minute, please.

If counsel is asking a question of why Mr. Earl omitted it, I think that this witness clearly is not competent to testify about that.

THE COURT: Well, it seems to me -- I don't know. Mr. Ferguson, you can correct me. You're asking why he included it?

MR. FERGUSON: No, why there was a two-step procedure made. If this witness knows. He may not know. If he doesn't --

THE COURT: Oh, all right.

THE WITNESS: I know.

MR. FERGUSON: Go ahead.

End of
Tape 5

1 THE WITNESS: Yes. I did it because when I
2 prepared my cost estimate, the only way I know of
3 presenting any sort of accurate cost estimate is
4 taking each component of the improvements that are
5 required and assessing a price to each component of
6 it.

7 MR. FERGUSON: What I am trying to get at, did
8 you have any information about whether the requirements
9 for the sidewalks or curbs were going to be changed?

10 THE WITNESS: I had no information, to the
11 best of my knowledge, curbs and sidewalks were
12 required as a part of the subdivision ordinance in
13 effect at that time, to the best of my recollection.

14 MR. FERGUSON: Okay. I think that is accurate.
15 I think that there may be testimony about that being
16 changed.

17 THE WITNESS: Possibly.

18 MR. FERGUSON: Okay.

19 Who is the person, you or Mr. Rakos, who put
20 in the requirement for the dam? Were you given that
21 or did you say that you needed it?

22 THE WITNESS: The requirement for the dam
23 was a design consideration for a logical development
24 of this tract in accordance with the standards
25 established by our client as to the tenor of the

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type of development he would like to have on his property.

MR. FERGUSON: Were you given the requirement to design for a dam?

THE WITNESS: For design, to design for a lake?

MR. FERGUSON: Yes.

THE WITNESS: Yes.

MR. FERGUSON: Were you, was it your decision -- it was not your decision, was it, to include the lake?

THE WITNESS: To include the --

MR. FERGUSON: Let me withdraw it.

THE WITNESS: You're not making it clear, I am sorry.

MR. FERGUSON: Is the dam necessary to -- withdraw that.

Looking at P-25C, are all these items made necessary by a statutory requirement of the municipality, and if not, tell us which ones are not?

THE WITNESS: To the best of my knowledge, there are certain ones that are not mandatory by Statutory requirement.

Some of them are by sound practice, but some of the Statutory requirements, I believe, to the best of my knowledge, there is no Statutory requirement

1 that there would be wells and septic systems.
2 It is a means of supplying water and just getting rid
3 of the sanitary waste by a means that is practical
4 to the piece of property.

5 MR. FERGUSON: You would have to do that one
6 way or the other, whether it is by sewer or public --

7 THE WITNESS: Yes, some way. Yes, and there was
8 a, for the number of homes that would fit on it,
9 it was a practical way of doing it.

10 The second one is sediment control. To the
11 best of my knowledge, at the time of this ordinance
12 there was no municipal ordinance requiring sediment
13 control. There was no State requirement for sediment
14 control. It was right at this time that the State was
15 discussing and very shortly after enacted ordinances
16 requiring it.

17 It was sound engineering to provide for it,
18 we therefore did.

19 MR. FERGUSON: Okay.

20 THE WITNESS: As far as the dam is concerned,
21 this was under a couple of different considerations.
22 The dam in and of itself was not necessary. The dam
23 there would have been an alternate thing that would
24 have been required for sound design, had we not had
25 a dam.

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MR. FERGUSON: What would they have been?

THE WITNESS: It was somewhat of a value judgment. It's in sound design there should have been storm water management on this tract.

The Township of Chester did not, I don't know if they presently have in their ordinance a requirement for storm water management. This is sound engineering which should be provided. Most, many towns now are requiring it. Other towns are requesting it, that you do it.

Some of them are requesting it to the point that even though it isn't required, you can't get approvals without it.

This is being handled under the storm water management and also serves another purpose which concerns a beautification of the tract as an attempt to enhance the value of the property by giving a recreational facility, and so forth, along with these lots.

MR. FERGUSON: Do you have any figure as to what the cost of storm water management, consistent with sound engineering practice, would be, if you didn't use the dam and the lake for storm water management purposes?

THE WITNESS: I haven't. I haven't any idea.

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Haven't worked it out for this venture.

MR. FERGUSON: Except for the categories we have already talked about just now, is there any item on P-25C which is not either required by sound engineering principles and management or by ordinance, municipality or State?

THE WITNESS: I would say the only one is the possibility of a portion of the dam itself.

MR. FERGUSON: I think P-25C can go into evidence and I suppose P-25A, for the sole purpose of putting an estimated value of development cost on Mr. Rakos' 87 lot layout as it is drawn.

I note that there has been no testimony that it is the best layout. It is the layout designed to produce the least development costs. Also with this witness' qualifications as to the categories he discussed, storm water management in particular, the \$286,000 dam serves that purpose as well as being an amenity as one witness described it, as not necessarily a required cost.

I don't think that any foundation has yet been laid for P-25B since that's the R-2 plus R-5 residential zoning under the 76-12.

THE COURT: He hasn't offered that yet.

MR. LINDEMAN: Not yet.

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THE COURT: Let's deal with 25B and C. A and C can be marked in evidence.

MR. FERGUSON: Subject to what I said.

THE COURT: Trying to get it slipped by. Couldn't do it.

Subject to what you have candidly, in all deference to your position, if it comes into evidence, it comes into evidence for the purpose for which it was offered and any weaknesses that you have established or attempted to establish through the testimony are noted. But it is in evidence and it is a list of costs, okay?

I am not putting it in at this time with any conditions imposed upon it.

MR. FERGUSON: That's fair enough.

THE COURT: All right. Off the record.

(Discussion had off the record.)

(The documents referred to were marked P-25A and P-25C in evidence.)

BY MR. LINDEMAN:

Q All right. Now, moving along as they say, Mr. Smith. I hold before you a document which has been admitted in evidence as Exhibit P-9.

You have seen this document before, have you not?

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A I don't know.

Q Well, I show you this as having been the --

THE COURT: Could you hang it up in front of him?

MR. LINDEMAN: I don't think we have to go to the trouble.

THE WITNESS: Tell me what it is first.

Q This is the 50 lot unit, 50 lot layout prepared by Mr. Rakos.

A No, I haven't seen it.

Q Assuming the property, you have not seen it?

A No.

Q All right.

A This was described to me by Mr. Rakos over the telephone. This schedule was never given to me.

Q The difference in the road frontage, or rather the amount of roads that would have been required for a, for this 50 acre development as opposed to the 87, 50 lot development as opposed to the 87 lot development to which you just testified?

A In order that I could prepare some revised cost estimating, Mr. Rakos described to me that the road frontage would be reduced by 2,200 linear feet and based on this, I made amendments to the cost estimate prepared for the 87 lots to come up with an approximate cost estimate for the

1 50 lots.

2 Q And did you, therefore, just deduct a figure
3 from the 87 lot estimate?

4 A No, it wasn't really as simple as all that. It was
5 a little bit more complex than really saying that since there
6 is a certain percent less front footage, the road that,
7 the cost estimate would be reduced by that percentage because
8 in fact that isn't what happens.

9 There are certain fixed items in the cost estimate that
10 remained the same. If it would not reduce on a per foot
11 basis, are affected by the number of lots, such as wells,
12 and septic systems, underground electric connections,
13 underground telephone lines from the street to the houses.

14 Those are functions --

15 Q Excuse me, Mr. Smith.

16 A Yes.

17 Q Tell us just then as briefly as you think is
18 possible what items had to be reduced, if any?

19 A Well, basically the changes came about in the
20 curbs, such items as pavements, curbs, sidewalks, excavation
21 were reduced by a percentage of the length and also under-
22 ground -- excuse me -- and also underground electric and
23 telephone as far as that could be put in the streets was
24 a straight percentage reduction on the percentage of road
25 footage it was reduced.

1 Such items as wells, and septic and house connections
2 were reduced on proportion value as to the number of lots
3 that were reduced. And based on this, I came up with a
4 revised cost estimate for the 50 lot development over the
5 87 lot development.

6 Q What was that reduction?

7 A The cost was reduced by approximately \$234,000.

8 Q And would you tell us what the percentage figure
9 was that you used for the reduction of the payment and other
10 costs that were associated with the length of the road?

11 A Well, those I can't tell you the percentage figure
12 because those, what I actually did was took the square yards
13 of road and linear foot curbs, sidewalks, and so forth,
14 multiplied them out and reduced it. It basically, I can't
15 tell you what it is offhand. It is less than 20 percent.

16 Q But you had the length of both roads?

17 A Yes, this is what was furnished to us and this is how
18 we made our correction.

19 Q And you multiplied the quantities out for the
20 50 lot development just as you did for the 87 lots?

21 A Just for reductions and subtract them, from the over-all
22 cost that we came up with a reduction in the amount of
23 \$233,800.00. Subtract that from the previous estimated cost.

24 Q So the costs that were reduced for the, arising
25 out of the fewer number of lots, and particularly those costs

1 such as utilities that you referred to, how did you arrive
2 at -- did you not say that was utilities, septic tanks,
3 drainage?

4 A Strictly on the basis of the number of lots.

5 Q Right.

6 A And those, we, by reducing the number of lots by
7 37, we took the 37 times the cost for producing one house
8 and said it was reduced that much over. Reduced the over-all
9 cost.

10 MR. LINDEMAN: I now offer P-- well, let me just
11 show you this.

12 Q From P-25 for identification, Mr. Smith, you
13 will see that streets and utility adjustments of \$1,456,500.

14 A Since these weren't something that I prepared directly,
15 I have just, I have to subtract and see if it is the same
16 thing. I have another form from my notes.

17 MR. LINDEMAN: May I ask the indulgence of the
18 Court to permit the witness to do that?

19 Q Would you do that, please, Mr. Smith?
20 Just one figure.

21 A Yes. I don't agree exactly with this. It is close,
22 but not exactly, and I notice the figures I get when I
23 subtract had been penned on the side of it.

24 The first line where it says "streets and utilities"
25 submit adjustment, \$1,456,500, I get \$1,425,700. And I

1 notice that was marked in here, crossed out for some
2 reason.

3 MR. LINDEMAN: I think that is the figure, if
4 the Court please, to which Mr. Earl actually testified.

5 THE COURT: Well --

6 THE WITNESS: It is a minor difference.

7 THE COURT: With the modification it should be
8 \$1,425,700.00?

9 THE WITNESS: It is very minor.

10 THE COURT: I will let Mr. Ferguson ask questions
11 about it.

12 MR. LINDEMAN: Offer the document -- excuse me.

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15 CROSS-EXAMINATION BY MR. FERGUSON:

16 Q How is the drainage in the R-2 and R-5 layout
17 handled, and if so, how does it differ from the R-2 layout?

18 A There was certain assumptions made on this and because
19 of the fact we were not furnished with the revised plans
20 at the time, it appeared that the basic over-all area
21 to be developed as described by Mr. Rakos would be the same
22 general area. Just be a minor reduction in roads and
23 reduction in roads was relatively minor.

24 It was felt that basically the storm drainage would
25 remain the same and we made no change in storm drainage at

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all.

Q Including the dam?

A No, the lake was to remain the same. We had made no anticipated change in the lake.

MR. FERGUSON: Subject to all the same qualifications. I tried to impose this time, I tried to impose them on this one, I understand that it is going into evidence only, however, as this witness' projection of the cost of Mr. Rakos' layout.

THE COURT: All right.

MR. LINDEMAN: Yes, that's correct.

MR. FERGUSON: Okay. I would ask that the figure \$1,425,700.00 be written on the document.

THE COURT: I have got it noted. I think that is sufficient. I think it is clear. It is qualified that way.

MR. FERGUSON: All right.

THE COURT: All right, mark it.

(The document referred to was marked P-25 in evidence.)

MR. LINDEMAN: I ask now that Mr. Smith be excused, your Honor, subject to being called later in this trial. At least my direct examination is finished.

MR. FERGUSON: I have a few questions.

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MR. LINDEMAN: I am sorry.

BY MR. FERGUSON:

Q Mr. Smith, with respect to these exhibits, P-25A and B --

MR. FERGUSON: May I have that marked for identification, D-18?

(The document referred to was marked D-18 for identification.)

MR. FERGUSON: A cost estimate for development improvement, major subdivision, Old Chester-Gladstone Road.

Q I think I had the sentence hanging in mid-air there, that was with respect to those exhibits which we just had marked into evidence. Would you look at that and tell me if that document was the report which you prepared as a basis for those figures which are contained in P-25A, B, and C?

A All right. This is the document that I prepared, that has now been marked in evidence as P-25C. And I have to go back to the other because you say A and B. And since I don't have, again, a copy of A and B in front of me. I believe the one was something I prepared and just some numbers I used.

Q 25-A was the R-2 layout.

1 THE COURT: 25B was R-2 plus R-5. And you're
2 quite correct. You only did --

3 THE WITNESS: One little section. I did the
4 R-2 layout. Just so I can explain it maybe simpler and
5 I supplied the numbers used in the R-2 and 5
6 combinations that were included in somebody else's
7 letter. And all that was mine was the part on the
8 costs of putting the improvements in there. Not the
9 costs of values and so forth that are on that exhibit.

10 THE COURT: This was done for the two-acre
11 layout?

12 THE WITNESS: The initial, this report was done
13 for the two-acre layout, period.

14 Q And then it was modified for the two and five-
15 acre layout as you have testified this morning?

16 A Correct.

17 Q Does this report give your brief summary of
18 your basic design criteria? Explain it for us in your
19 own words? This report sets it forth pretty much your
20 figures?

21 A It sets forth the requirements of the zoning and
22 subdivision, and what items I used in the preparation of
23 my estimates.

24 The retention ponds that were considered and the
25 lake that was considered and the improvements in general.

1 Q Does it, is P-25C in fact Page 5 of this report
2 D-18 for identification?

3 A It is.

4 MR. FERGUSON: Do you want it?

5 THE COURT: B and C?

6 MR. FERGUSON: There is no 25 alone.

7 THE COURT: All right. It is what it is. We
8 started out marking it P-25, period. And then we
9 got relating to those other things. So I broke it
10 down into the A, B, C category.

11 Q In your capacity as a municipal engineer,
12 have you had occasion to design a subdivision layout to
13 conform with zoning ordinances?

14 A No, in my capacity as a municipal engineer, I have
15 reviewed them, and in my capacity as a private consultant,
16 I have designed them.

17 Q Okay. If I were to ask you about how to design,
18 re-design Mr. Rakos' layout to take advantage of the
19 clustering and flag lot provision of the municipality --
20 strike that -- take advantage of Chester Township's zoning
21 ordinance, could you re-design the layout to minimize the
22 development costs?

23 A You're asking me if I design it according to the
24 clustering provisions of the present zoning ordinance,
25 if I could reduce the improvement cost?

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Q The cluster provision and the flag lot provision.

A You'll have to show me the flag lot provision. I am not quite as familiar with that as I am with the cluster provision.

Q The flag lot provision is section 13.100.

A Yes, I could design such a subdivision taking into account the standards of flag lots. And I must qualify to say to the extent that it would be allowed in accordance with sound planning and the consideration for cluster zoning.

Q My question is, could you design it to decrease development costs?

A Absolutely.

Q Are you capable now without doing any detailed work of estimating the magnitude of decrease work?

A Oh, you're asking a question that I can give a general answer to, but not that I can give a detailed answer to.

Q What would your general answer be?

A My generalization answer would be that you could more than likely decrease the over-all improvement costs by possibly ten, fifteen percent.

THE COURT: 15 percent?

THE WITNESS: 10, 15 percent maximum, yes. That would be an offhand number. I would say a generous

1 amount that I might be able to be reduced.

2 Q Would it not depend upon the particular road
3 layout, the number of feet of road?

4 A Yes, it would depend on a number of things.

5 Q Could you enumerate the various factors for us?

6 A If you like. It would depend upon to a significant
7 point is, first of all, without -- I must qualify one
8 thing -- without going into detailed study of the proposed
9 ordinance.

10 I believe, that the flag lot provision is primarily
11 there in the case that where you do not select the cluster
12 zoning provision of the ordinance. I don't believe, and
13 I would take a little more examination that the ordinance,
14 the intent of the ordinance does permit both.

15 Secondly, what would be basically considered is
16 that under the provision of the ordinance from the, if we
17 are talking about the five-acre zone you may reduce your
18 lot frontage by approximately one-third or 33 percent and
19 the five-acre zone you may reduce your lot frontage by
20 approximately 25 percent under ideal conditions.

21 When I say under ideal conditions, this is taking the
22 assumption that because your clustering, that you will put
23 all your construction in one little area and there would
24 be no spaces between areas before you get to the next
25 developed area, wherein actuality normally when you do

1 cluster, you don't just put every building in one little
2 corner of the property and leave the remainder of the
3 property totally vacant.

4 You have connector roads so that your development
5 is still somewhat logically dispersed throughout the area.

6 So this is why I say under a maximum reduction you
7 might anticipate a road reduction of from 30, 25 to 30 percent.
8 But in actuality, you would not get a reduction anywhere
9 in this magnitude.

10 Q Secondly, this -- I am sorry.

11 Just right there. What is the percentage, that
12 cluster percentage if that is an accurate term in the
13 Chester Ordinance?

14 A I don't understand what you mean.

15 Q Is the 50 percent figure used in the Chester
16 Ordinance?

17 A I don't understand what 50 percent. I don't believe
18 so. I believe what the provision of Chester Ordinance is
19 that in 5-acre zoning you may develop under the standards
20 of the two-acre zone. And under the two-acre zone, you
21 may develop under the standards of one-acre zone.

22 The standards of two-acre zone, although the area
23 may greatly decrease, the road frontage is decreased from,
24 I believe, it is 300 feet to 200 feet which is a one-third
25 reduction.

1 And from the two-acre to one-acre zone is decreased
2 from 200 to 150 feet, which is a 25 percent reduction.

3 And as I say, this is only, this is what the maximum could
4 be if everything was ideal.

5 In actuality, under these conditions I would say the
6 reduction in the amount of road may come somewhere in the
7 magnitude of 20 percent. There are other fixed items which
8 don't have anything to do with the length of road.

9 Q The fixed items would be, some of the fixed
10 items would depend on the number of units?

11 A Strictly on the number of lots.

12 Q Because you would have two items for each unit?

13 A That's right. That's why the over-all cost, the
14 over-all reduction in cost of the improvements would
15 not be reduced, proportionate reduced length of road.
16 It would reduce at something less than the reduced length
17 of the road.

18 Q With respect to the Caputo property, do you
19 think it would be possible to put flag lots on the property
20 east of the Peapack Brook and cluster on the west side
21 of the Peapack Brook?

22 MR. LINDEMAN: Your Honor please, I object.

23 I object for this reason: I think it is not in-
24 appropriate necessarily for counsel to ask the witness
25 if he knows what the flag lot section is. But then to

1 ask for any views as to development under the flag
2 lot section is improper because the flag lot section,
3 I submit, operates somewhat in the form of a variance
4 and calls only for speculation on the part of this
5 witness, or for any other witness.

6 The reason for saying that is this: The section
7 starts out, I am referring to 13.100, subject to
8 subdivision approval by the Planning Board based on
9 compatability with the present and future development
10 of adjacent lands, individual lots with less than the
11 required width are permitted for one-family residential
12 use in the R-2, R-3, and H-2 Zone subject to the
13 following minimum requirements. And then it cites
14 them.

15 Now, flag lots are those lots with less than
16 the required frontage. And if we are starting afresh
17 in any kind of a development, I submit that it's,
18 it would be fanciful to suggest that any developer
19 would be permitted to set up either a number 1 or
20 more flag lots.

21 I just don't think you could do it. There
22 wouldn't be any reason to do it. And, therefore,
23 any testimony on the flag lot section has to call for
24 speculation.

25 MR. FERGUSON: Not a planner, your Honor.

1 I sometimes wish I could lay out flag lots
2 on the northern part of that property. And I am
3 asking this witness if it is possible to do so.

4 THE COURT: Let me ask first of all, where was
5 this covered in his direct testimony?

6 MR. FERGUSON: Not specifically, indirectly,
7 and directly.

8 THE COURT: How indirectly was it covered?

9 MR. FERGUSON: Because the cost, when you
10 couple this witness' testimony as a foundation for
11 Earl's testimony, it's being offered to show that the
12 land can't be developed reasonably under the present
13 ordinance.

14 THE COURT: Okay.

15 MR. FERGUSON: I am trying to show that there
16 is a way which none of the plaintiffs' witnesses
17 have come up with a way of decreasing the development
18 cost significantly.

19 THE COURT: All right. You brought up the
20 point. Now you're going into detail and I am not
21 too sure from the indirect way that it was brought
22 out that it justifies going into the detail you're
23 going.

24 One, he is not prepared. He hasn't studied
25 this. Admittedly he hasn't studied it. He had to read

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from the flag lot first.

MR. FERGUSON: All right. I will stop this line of questioning. I think I have gone about --

THE COURT: It is a difficult area to put a man in. He, granted he is an expert, but I read that flag lot provision section over three or four times the other night. When I got into this circumference of the circle, I was drawing circles on a piece of paper. It's a clever problem and I think to ask this man to start trying to figure out proposed costs without giving him an opportunity to put his expertise to work and trying to make some design, I think is unfair of an expert, putting him so the combined facts of being indirectly brought up.

Yes, I'll agree and the extent that it was indirectly brought up, I think you have satisfied that and you're limited to that area you have gone into.

On the record, I should explain to you the circumference of the circle I am referring to is in reference to the flag lot section, Section --

MR. LINDEMAN: 13.105.

THE COURT: 13.105 is it? Yes, where it talks about every flag lot must be of such a size and shape that either there can be inscribed within the lot lines a circle having an area of, and then it goes

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MR. FERGUSON: I don't know how long that requirement is going to stay thirty feet.

THE COURT: How long it is going to stand?

MR. FERGUSON: Stay 30 feet.

THE COURT: Well, let's deal with what we have, not with what we prospectively may have.

MR. FERGUSON: I have to present evidence, but there has been much discussion in the Township that the requirement, the full requirement for thirty-foot roads, and for instance, in the R-5 is too big --

THE COURT: Yes, but I think it's fair to say that what I have to deal is with what the ordinance says, not what it may say.

MR. FERGUSON: Of course, it is not in the zoning ordinance.

THE COURT: Well, it is in the subdivision ordinance.

MR. FERGUSON: It is in the development regulation under the Municipal Land Use Law.

THE COURT: Right. Now, we are dealing with Ordinance 17-76-12.

Q Getting back to storm water management. Can you tell us what purpose the lake and retention basin which you have included in your cost figures are all about? What purpose do they fulfill?

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on.

Q Referring to Paragraph 1 on Page 2 of D-18 for identification, would --

A Which paragraph?

Q Paragraph 1 on Page 2.

A Yes.

Q Wherein you state that the internal roads are to be 30 feet in width with granite block curbs. Of what magnitude of change -- I better start that over.

If the roads were to be 20 feet wide, what magnitude of change in your figures would that change produce?

MR. LINDEMAN: Your Honor please, I object.

I am not going to ask that counsel testify, but I assume that the purpose of the question is to lay some kind of foundation in the event of future testimony that the road requirements of the municipality is 20 feet.

If it is not that, if counsel can't make that representation, I object to the question as being irrelevant.

THE COURT: Okay, Mr. Ferguson. Can you make that representation?

MR. FERGUSON: No. The, as far as I know, the requirement is 30 feet.

THE COURT: What's the relevancy?

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A What purpose does the storm water, water management portion of the lake?

Q Yes. Tell us how the lake fits into the management of storm water runoff.

A May I refer to my notes, your Honor?

Q Oh, yes, please do.

A Because it is all, this has been worked out in detail in my environmental statement and I would have to refer to that to give you specifics.

Q Well, not specifics, just referring to P-18 for identification.

A Is that the one we are working on now?

Q Yes.

MR. LINDEMAN: Your Honor please, I object.

I think that counsel is not in a position to determine the words that the witness is going to use in his answer.

A question has been asked and if it is a case of merely interpreting something that has been written, that would be one thing. But I think the question is simply what does the lake or the retention basin have to do with storm water management. And the witness ought to be able, ought to be permitted to answer it fully.

MR. FERGUSON: Well, I was referring to

1 Paragraph 2 and 3 of Page 3 of D-18.

2 Q Perhaps I should limit my question that way,
3 do they tell?

4 A Page which, please?

5 Q Paragraph 2 and 3 of Page 3 of D-18.

6 A 2 and 3, okay. Storm water drainage retention basin,
7 those are the two paragraphs?

8 Q Yes, right. Do those paragraphs give a brief
9 statement of the storm water management and the lake
10 acting as a retention basin?

11 I am confining my remarks to the --

12 A Could you excuse me for one moment while I just
13 refer to some more notes? I want to make sure I am not
14 giving any erroneous information.

15 Okay. I am afraid I possibly may have given a false
16 impression and I would like to correct it, if I may.

17 I believe I had indicated that the cost in here with,
18 for the construction of a 16-acre lake as was proposed
19 on the plan that's hanging underneath the one that you've
20 up there, the 16-acre lake was the lake planned for
21 attached single-family development.

22 The lake size plan for the other development, I
23 believe, was five acres, not 16 acres, which is much
24 smaller in magnitude. And I believe I had erroneously
25 said that we had planned a 16-acre lake, which would, there-

1 fore, reflect that my cost in the estimate was much lower
2 for the lake for the individual homes than it was for
3 the one which I proposed for the over-all development of
4 the attached single-family houses.

5 So that this, if we go back, I realize that in
6 looking at this paragraph 3 that you referred to, the
7 Paragraph 3, retention basin, was a five-acre lake, was a
8 proposed five-acre lake to be constructed with the
9 construction of an earth dam and spillway across the
10 Feapack Brook.

11 The purpose of this was to construct a retention basin
12 of sufficient size to control the rate of runoff from the
13 property in order that it not add to the impact on the
14 area, from the project.

15 This was, this would have been required for this
16 project and proper storm water management without aesthetic
17 requirements of the larger lake. So, in other words,
18 this, although it would be an aesthetic requirement to the
19 whole property, was put in the size and at the cost that was
20 anticipated for the larger project where it was to be
21 additionally and one of the more prime purposes to add
22 to the aesthetics of the property.

23 Q Sir, is it -- do I understand your testimony
24 to be, then, that the five-acre lake and dam and the
25 \$286,000 costs are required for storm water management?

1 A This was the proposal for the storm, a lake large
2 enough to provide that storm water management.

3 Q Do you need a five-acre lake?

4 A There is the possibility we could have handled it
5 in another manner that would not have created a facility
6 that would provide additional services at the same time.
7 When I say by additional services, the lake, even though
8 considerably smaller than what we had proposed for the other
9 project, being a five-acre lake, would not only serve
10 for storm water management, but also provide an aesthetic
11 enhancement. It would help provide for recharging of the
12 ground water aquifers in the area.

13 It would serve as storage so that in times of
14 extremely dry weather and extended drought, that the
15 water could be released to help keep a continuous flow
16 in the Peapack Brook where under present conditions the
17 sewage treatment plant downstream from our site has
18 difficulty because the dilution rate provided by the
19 stream drops so low.

20 So there was, there are other values gained from this
21 five-acre lake to generally improve the characteristics
22 of the area and the offsite area.

23 Q You mentioned briefly what the other management
24 techniques, you mentioned that there were other ways
25 to make it?

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A That's correct.

Q Could you tell us generally what those might be?

A Yes. It could be done by constructing a retention basin, not on the, not on the stream itself. It could be an off-stream retention basin. Such a retention basin is in most cases unattractive. Serves no purpose other than to control the rate from which water is discharged from the property. It does not store it to be released at any particular time. It merely takes any drainage that you funnel into this retention basin, or detention basin, as you would call it, and retard the rate at which it runs off. So that it can be released from the property at a rate no greater than the rate that water would have left the property had there been no improvements.

So in a normal storm of some magnitude, fifteen or twenty years intensity storm, rather than the peak coming, peak flow coming off the property in a one to two-hour period, that peak would be flattened out so it might be discharged over a twelve to twenty-four-hour period.

But it would serve no function as far as spreading, retaining it so that it could be used for release at times of low flow in the brook when it needs help, or it would not serve for recharging the underground aquifers where we may have a tendency to reduce them by putting in sufficient wells for a development of any magnitude in that area.

End Tape
7

1 Q Such a retention basin is indicated on P-1
2 in evidence?

3 A That type of retention basin is indicated on P-1
4 in evidence. It was put --

5 Q That's to serve the lower portion of the
6 project below the dam?

7 A It was put there for primarily a different purpose,
8 though.

9 Q All right. Well, we are not -- okay. Some
10 other purpose other than storm water management?

11 A It was put there and it will assist in storm water
12 management. It was not needed for storm water management
13 purposes per se, because the design of the sixteen-acre
14 lake provided sufficient storm water, water management
15 for not only the site, but approximately fifteen percent of
16 the whole Township of Chester.

17 The purpose of the retention or detention basin in
18 conjunction with that lake was so that all water that would
19 be collected off roads, parking areas and driveways in that
20 development would go through some control feature before it
21 went into, back into the brook in order that we might
22 remove, in order other than just controlling the rate of
23 runoff as done in storm water management, we may also
24 include such additional features as all removal from all
25 storm water before it re-enters the Peapack Brook by

1 installing of skimmers.

2 Q By skimmers --

3 A And you need some body of water in which to put it in
4 as was the other report I submitted.

5 MR. FERGUSON: I see. Thank you very much.

6 No further questions.

7 MR. LINDEMAN: I have no questions.

8 THE COURT: Okay. Step down, Mr. Smith.

9 THE WITNESS: Thank you.

10 MR. LINDEMAN: I renew my request for adjourn-
11 ment.

12 THE COURT: Next Wednesday morning at nine
13 o'clock. Tuesday is Election Day. Okay, thank you.
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C E R T I F I C A T E

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

Earl C. Carlson

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