

Stenographic Transcript of Proceedings: Direct and
Cross-examination of Joseph Caputo

pg. 167

ML0006938

A-813-78
no by
A 150 SEP 1979

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

A-0813-78
REC'D.
APPELLATE DIVISION
FEB 7 1979

JOSEPH CAPUTO and ALDO CAPUTO,

Plaintiffs,

-vs-

FILED

STENOGRAPHIC TRANSCRIPT

OF

CHESTER TOWNSHIP,

JAN 14 1980

PROCEEDINGS

Defendant,

Stephen W. Townsend

CLERK

FILED
APPELLATE DIVISION
FEB 6 1979

Morris County Courthouse
Morristown, New Jersey

Wednesday,
November 9, 1977.

BEFORE:

Robert Muir, Jr.
CM
SMB

ROBERT MUIR, JR., Assignment Judge, Superior Court.

APPEARANCES:

MESSRS. HELLRING, LINDEMAN, LANDAU & SIEGAL,
BY: PHILIP LINDEMAN, II, ESQ.
For the Defendant.

MESSRS. MC CARTER & ENGLISH
BY: ALFRED L. FERGUSON
For the Defendant

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

Earl C. Carlson, CSR
Official Court Reporter
Morris County Courthouse
Morristown, New Jersey
285-6249 07960

EC

Transmittal Form For Use By Reporters Filing Copies Of Transcripts
In The Appellate Division

REC'D.
APPELLATE DIVISION

FEB 6 1979

TO: Clerk, Appellate Division
Superior Court of New Jersey
Room 316, State House Annex
Trenton, New Jersey 08625

FROM: EARL C. CARLSON (Reporter's name) RM
RE: JOSEPH & ALDO CAPUTO v. CHESTER TOWNSHIP *Philip Lindeman*

Lower Court Docket No. (Ind./Acc./Compl. No.) L-42857-74 P.W.

County and Court MORRIS/SUPERIOR

Appellate Docket No. A- 0813-78

Transcript request dated 11/20/78

Received from Philip Lindeman, Esq. (Party requesting transcript)

Name of court reporting agency from which transcript ordered (if applicable)

Date(s) For Which Transcripts Requested	Number of Transcript Copies Filed Herewith	Reason Copy or Copies Not Filed (e.g., date was a court holiday) (if applicable)*
1. <u>10/18/77</u>	1 (132 pages)	
2. <u>11/9/77</u>	1 (164 pages)	
3. <u>11/2/77</u>	1 (114 pages)	
4. <u>10/4/78</u>	1 (112 pages)	
5. _____		

(If above space proves inadequate continue listing in appropriate place on another Transmittal Form and attach said Form hereto)

Date: February 5, 1979 Submitted by: *Earl C. Carlson* (Reporter's signature)

cc: Administrative Office of the Courts
Attn: Chief, Reporting Services

Earl C. Carlson (Reporter's supervisor)

Philip Lindeman, II, Esq. (Attorneys and pro se parties, if known)
~~Alfred L. Ferguson, Esq.~~

* If the reason why the reporter is not filing a transcript copy(ies) for a particular date is that the attorney or pro se party requesting that transcript advised the reporter in writing that he would rely on a transcript copy(ies) filed under a different Appellate Docket Number the reporter must indicate that Appellate Docket Number and the party to whom that number was assigned on this Transmittal Form and must attach a copy of that writing hereto.

Caputo memo
of the 88 facts & posed history of case
case is so long - what will others
add up to - 500 pp of facts & procedure?
What is a short form & a long form memo?

Since Schulder remedy almost sole issue
concentrate on that:

compare
and

- 1) Precisely what did Caputo do
- 2) What was/this happened w/ reports
- 3) Each issue arising on autobility (19)

Explain how all other stuff arguably
related to Schulder remedy.

Do these issues a legal issue?

Can a great deal be eliminated since
Sulder rem only issue?

03-30
@

I N D E X

WITNESS

DIRECT

CROSS

JOSEPH CAPUTO

2

E X H I B I T S

FOR
IDENT.

IN
EVID.

P-35	Letter of 3/19/72 from Caputo to Mayor and Township Council,	22	
P-36	Letter of 4/1/74 from Caputo to Planning Board --		25
P-37	Letter of 8/27/74 from Villoresi.		29
P-38	Letter of 10/10/74 from Planning Board to Villoresi.		30
P-39	Letter of 10/15/74 to Villoresi.		31
P-40	Letter of 1/24/75 to newspaper with photocopy of press release.		39
P-41	Letter of 5/5/75 from Mr. Monica to Chester Planning Board.		41
P-42	Copy of minutes of Town Council of 1/5/76.		49
P-43	Copy of minutes of Town Council of 8/2/76.		54
P-44	Letter of 4/11/77 from McCarter & English to Planning Board.		81
P- 43	Minutes of Township Committee of 11/2/77.	162	

1 JOSEPH CAPUTO,

sworn.

JK:mm
1/22/79

2 DIRECT EXAMINATION

3 BY MR. LINDEMAN:

4 Q What is your address, please, Mr. Caputo?

5 A Old Chester Road, Chester, New Jersey.

6 Q And you are, of course, one of the two
7 plaintiffs in this case, are you not?

8 A I am.

9 Q With your brother Aldo, correct?

10 A Correct.

11 Q Mr. Caputo, please state for the Court your
12 business experience commencing with the year 1942.

13 A Well, about 35 years ago my brother and I started
14 a sewing manufacturing business.

15 Q How old were you at that time?

16 A I was 18 years old.

17 Q Where was this?

18 A Was in Brooklyn.

19 Q What kind of sewing operation did you
20 commence?

21 A We commenced in the doll dresses. We bought one
22 machine. In fact, we had no money to pay for the machine.
23 I borrowed \$5 from my aunt and paid for the machine \$5
24 down and \$5 a month, before the machine was paid for.

25 Q And did you stay in business with one

1 machine?

2 A No. A few months later we opened the first plant
3 with eight machines and gradually we kept opening new
4 plants in Brooklyn, Puerto Rico and Elizabeth, New Jersey.

5 Q And business was still in the clothing
6 manufactuuring?

7 A We manufactured in the sportswear line. We manu-
8 factured ladies' dresses, children's dresses, doll dresses,
9 bathing suits, blouses, skirts and anything that we could
10 get our hands on. Even brassieres.

11 Q Are you still in those businesses today?

12 A We have one factory left in Brooklyn.

13 Q Did the businesses support themselves?

14 A They were very successful. We made a very, very
15 good living.

16 Q So far as the operation of the machines in
17 the clothing business, what experience, if any, do you
18 personally have about that?

19 A Well, I, my brother could get a machine and so we
20 teach our operators to sew. We repair machines, our own
21 machines. I used to make my own payroll at the time that
22 we could not afford to hire a bookkeeper and anything that
23 had to do with sewing. Used to be my own outside man too.

24 Q Right. During this time that you were in
25 the clothing business, clothing manufacturing business,

1 did you also commence another form of business?

2 A Yes, in 1961.

3 Q Right.

4 A My brother and myself and two others. We bought
5 the first tract of 1,000 acres in the Poconos.

6 Q Now, just hold it there for a moment, please,
7 Mr. Caputo.

8 Would you tell us please who those people
9 were?

10 A I said my brother Aldo, myself and two others which
11 I don't even remember their names.

12 Q Unrelated to you?

13 A No, they aren't related. That's correct.

14 Q Okay. And how much in area?

15 A There was a 1,000-acre tract which was partially
16 started.

17 Q Partially started. What for, development?

18 A For development. There was, they had a subdivision.
19 They had some lots already subdivided. A few roads and
20 they sold some lots.

21 Q Where was that land?

22 A Old Bridesville, Pennsylvania.

23 Q Old Bridesville, Pennsylvania?

24 A Pennsylvania.

25 Q And was it a financial successful operation

1 at the time?

2 A Well, when we bought it, yes, there were. We were
3 selling lots, but when we went in and, of course, com-
4 pleted the subdivision. We built many, many roads. We
5 put in a new lake; recreational area, clubhouse. And
6 during that time I also bought another 1,000-acre tract
7 within six miles from that first one.

8 Q Before getting to the parcel, the second
9 parcel that you purchased, did you sell off lots just as
10 developed or did you build on them or what?

11 A We did both. We sold lots. We also built houses
12 and sold houses either on their own lots or we sold the
13 complete package.

14 Q What kind of houses were they? That is
15 to say, were they all weather houses, just summer houses?

16 A Most of them were all year round homes, but people
17 bought there, first started using them as summer homes
18 and then later on some of them retired, some of them
19 moved there for year round living.

20 Q Do you recall if there was a sewer system
21 in Old Bridesville at that time?

22 A My engineers recommended ceptic systems and that's
23 what we installed.

24 Q That's what you installed in that place.
25 Now, that was your first tract at

1 Old Bridesville. You say that while you were developing
2 that one you went to another unit?

3 A Correct.

4 Q Where was that, please?

5 A That was within six miles from this one. I think
6 Sterling. I don't remember for sure, the name of the town.
7 And my brother and I only bought this tract. In fact, we
8 also bought out the other two partners within a short while
9 after we got into the first tract.

10 Q Now, in this second tract, well, how many
11 acres approximately?

12 A One thousand.

13 Q One thousand. And the second tract, did you
14 do any other construction work?

15 A We did the same thing. We subdivided. Of course,
16 we hired the engineers. We subdivided. Built roads and
17 started selling.

18 Q Tell us please who was involved with the
19 computations of costs and the determination of prices of
20 things to pay and to buy?

21 A Well, I was the one to determine that. I was the
22 head of each company. I had my experts, you know, check
23 to see what was to be done and what was the best way to be
24 done and the most proper way. I was also very particular
25 to see that we would do a very good job so that we would

1 have no problems with the customers, future customers, and
2 we also strived to give them very good values so they would
3 be easy to sell and good relations with our business.

4 Q What, if anything, did you do with regard to
5 determining the best and least expensive sources of supply?

6 A Well, I would check after my managers. I had two
7 managers there and others advised me. Well, this would
8 be the cost, get the name of the suppliers. I would check
9 myself.

10 Then in addition too we called other suppliers to
11 doublecheck the prices.

12 Q Now, on this second tract of approximately
13 a thousand acres, was that fully laid out in a subdivision
14 when you acquired it?

15 A No, the second tract, no, it was not. It was
16 completely raw land, virgin land. I started from scratch
17 there.

18 Q So you, did you arrange for the subdivision
19 of that section?

20 A Yes, I got my engineers to survey the land and check
21 everything. Lay out the roads and lots and so on. In
22 fact, both tracts were sold out within, by 1968.

23 Q About--

24 A 1968 and there were approximately 3,500, 4,000 lots.

25 Q That second tract, did you build any, do any

1 of the building?

2 A No, I sold too fast. I didn't even get a chance
3 to get into buildings there.

4 Q Now, after that second tract had been acquired,
5 was there another tract?

6 A Yes.

7 Q Another acquired by you?

8 A Yes, the end, about October of 1968, 1967 I bought
9 another 2,000-acre tract in Newfoundland, Pennsylvania.

10 Q Did that third tract have a, some kind of a
11 name that you gave to it or did that already have one?

12 A Well, it had a name. I think it was Pocono Peak,
13 but I changed that to Pocono Springs Estates because the
14 original name was very unsuccessful.

15 There were in all three different owners for 30
16 years that tried to make it go on this particular tract,
17 but they failed.

18 Q Now, in the acquisition of this, what we will
19 now refer to as the Pocono Spring Estates parcel, tell us
20 please who the persons were who acquired the interest and
21 became the owners?

22 A My brother, myself and our children.

23 Q And who ran the operation?

24 A I did.

25 Q Now, on this third tract at Pocono Springs

1 had roads, were roads already laid out?

2 A Well, when I purchased it, there was some very
3 badly, bad shaped roads. Mostly near the lake.

4 Q Excuse me. Near a what?

5 A The lake. That was there, a 133-acre lake.

6 Q Right.

7 A And the previous developers tried to sell some
8 lots around the lake, near the water so that they could
9 get enough money to build some roads. But apparently
10 they didn't do a good job.

11 First of all, the lots were too small. Fifty by
12 100. Some of them, yes, by 100. Too small to build on,
13 have a ceptic system on. So as a result most of the
14 people could not build on it. So when I, after I
15 purchased the land, I contacted all the owners of the
16 small lots and a lot of lawyers, incidentally, I purchased
17 as many as I could so that I could subdivide, make it,
18 you know, good size lots and make proper subdivisions.

19 Q You purchased back lots that had been
20 bought?

21 A Some I gave them their money back, what they paid.
22 I purchased most of the lots back. In fact, I offered
23 them, if they wished to buy another lot from me, I would
24 give them 30 percent off.

25 Q Now, you say that these lots were mostly

1 originally around the lake area. Tell us please what,
2 whether that lake was a natural lake?

3 A No, a dam. The dam was in very bad shape. In fact,
4 it was going to collapse any day. So as soon as I got
5 into, as soon as we bought it, I drained the lake and
6 rebuilt the dam.

7 Q Now, did you take personal charge of the
8 actual construction of the dam?

9 A Well, as I said, I was always head of the companies
10 and I had to make also the final decisions. But I always
11 employed the proper people that were qualified to do the
12 right work, you know, the particular work.

13 Q Now, can you tell us please what the reason
14 was that you decided to retain the lake and have the dam
15 repaired instead of letting it go, the water flow out?

16 A A lake is a very valuable asset to any piece of
17 land because of the, first of all, it is a very good
18 selling point.

19 Second, for recreation purposes, you know, fishing,
20 boating, swimming, et cetera.

21 Q What, if anything, did you learn from the
22 purchasers about the importance of the existence of that
23 lake?

24 A Well, without the lake there wouldn't be any, many
25 sales. The prices would be very, very--it would have been

1 very low and mainly we wouldn't sell any land without the
2 lake in the Poconos because people buy there mostly for
3 recreation purposes.

4 Q Can you tell us, Mr. Caputo, what the length
5 of time was that this tract had previously been under
6 development?

7 A About 30 years. And I understand about three or
8 four different people went bankrupt in this land.

9 In fact, this place was for sale for two years and
10 a salesman there, Alexander Summers, that is a real estate
11 firm, well, I knew him and he came, kept coming after me.
12 He tried to make me buy this tract of land because he told
13 me that, told me, "Joe, you're the only guy that can make
14 a gold mine out of this piece of land."

15 I didn't want to be bothered with it because the
16 word was it was messed up because they sold lots in the
17 wrong places. Would have been a lot of headaches to do
18 something about this piece of land.

19 Well, one day, him and the owner which were going
20 to lose the land in two weeks to the mortgage. He says,
21 "Can I come over and talk to you?"

22 So I said, "Come over to my home with the principals."

23 And he convinced me to buy the land for \$200,000.
24 Gave them \$40,000. They have \$160,000 mortgage which was
25 due in two weeks and you can have the land.

1 So I called the lawyers that had the mortgage.

2 Asked him would he extend the mortgage.

3 Well, he said, "Well, I don't know. Come see me.
4 See what we can do."

5 I decided to buy, pay them off. So I paid the
6 mortgage off.

7 Q Now, are you still in that tract, by the
8 way?

9 A No, that tract was sold by 1975. Completely sold,
10 you know, a few odds and ends and there were 4,000 lots
11 there. And there was a very, very successful operation.

12 Q What other tracts of land do you and
13 perhaps your brother Aldo own at this time?

14 A Well, in 1960, the fall of, well, the summer of
15 1960 I bought 176-acre tract in Chester Township.

16 Q That's the subject matter of this lawsuit?

17 A That's correct.

18 Q One of the subject matters of this lawsuit?

19 A Yes. My brother bought approximately 100 acres
20 next to my land, oh, a few months later.

21 Q Those two parcels are fully contiguous to
22 one another?

23 A Completely, yes.

24 THE COURT: What was the year of that
25 purchase?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q About 1960?

A I believe it was the summer of 1960. I moved to New Jersey in January 1960.

Q That was the first time that you moved?

A The first time I moved to New Jersey, yes.

Q Is there anything built on Mr. Aldo's land?

A Well, there is a house there, old house. It is rented and some old barns which they are worthless really.

Q When you purchased your land, were there any buildings on it?

A Yes, there was a barn and some old buildings near Old Chester Road.

Q What, if anything, did you commence to construct?

A Well, the place was really a jungle. So I got in there and built my home. I started building my home and in October and I moved in by April, 1961.

Q Did you have a general contractor?

A No, I was the general contractor.

Q Okay. And that is to say, did you retain all of the subcontractors?

A Correct. Did a lot of the work on that piece of land. In fact, I carved an apple orchard out of a jungle. Cedars and worthless trees.

Q Now, was there any part of that original

1 tract which you purchased that you sold off to any other
2 party?

3 A Yes, I sold a two-acre lot to my daughter.

4 Q And does your daughter and her family live
5 in that house?

6 A Yes, my son-in-law built a house about three or
7 four years ago and they live there now.

8 Q Would you tell us, what, if any, participa-
9 tion you had in the construction of that house?

10 A Well, my son-in-law, I recommended him the same
11 architect that designed my house. And I looked at the
12 plans and I recommended what size it should have been,
13 et cetera. And I supervised, more or less my supervision
14 of the whole operation. He was a builder consultant with
15 me, what size house, and et cetera.

16 Q Does your daughter have any children?

17 A Two.

18 Q How old are they?

19 A Four and two.

20 Q Do you know what intention, if any, she has
21 of staying in that house or moving away from there?

22 A Well, originally she wanted to move away. In fact,
23 even though the house is fully paid, my son-in-law could
24 not afford to live in Chester because the taxes have been
25 so high even though he makes about, between 20, \$25,000 a

1 year. He felt that the taxes were too high for him to live
2 there.

3 Q Now, do you own any other tracts, either of
4 improved or unimproved land?

5 A Yes, I own a 20 percent myself and my brother owns
6 20 percent interest in a 69-acre tract in Randolph--
7 Mount--Randolph Township.

8 Q What is on that property, if anything?

9 A Well, it is--well, when we first purchased was
10 nothing on it. Since then we built a 25,000 square feet
11 industrial center, industrial park, which my brother,
12 myself and his children own it now.

13 Q Did you have any participation in the con-
14 struction of those buildings?

15 A Yes, we had Goldblatt & Farinella, they actually
16 did the physical work. They did the building. We gave
17 them 10 percent above cost, but I supervised it, the whole
18 thing with them because we have to pay part of the bills.

19 Q Now, with regard to Washington Township in
20 Warren County, do you own any property there?

21 A Yes, we have approximately a 10-acre tract in
22 Washington. No, no.

23 Q Hackettstown?

24 A Hackettstown. We have a 10-acre tract which is
25 also a--

1 Q Has improvements on it?

2 A Yes, there were improvements on it but very bad
3 repaired so we repaired them and rent them out. It is
4 industrial buildings, approximately 25,000 square feet
5 there.

6 Q What kind of sewage--no, I am sorry, with-
7 draw that.

8 Getting back to Washington Township. Is
9 that a farm--

10 A Yes, we--

11 Q --that you have there?

12 A Oh, about seven or eight years ago we purchased a
13 160-acre farm at that time. One hundred eighty-four acres.

14 Q A hundred eighty-four--

15 A Acres, but two or three years ago I donated 25 acres
16 to the Sisters, have some kind of convent. They wanted
17 to build a convent there and they asked me if I would
18 donate land and they need about 20 acres. So I did give
19 them approximately 25 acres as a donation.

20 The land that is left now is 160 acres.

21 Q Is that land developed at all?

22 A No, it is farmland. In fact, it is leased as a
23 farm.

24 Q Now, going back to that Hackettstown 10-acre
25 site where you have, where there are some buildings. Can

1 you tell us what kind of sewage system exists there?

2 A Originally I believe there was a ceptic system.

3 But since then there has been sewage installed. I am not

4 positive, but I believe sewage was installed or City

5 sewers and we connected to that.

6 Q When you first built the buildings there,

7 what, if anything, did you have to do with it?

8 A Which one you talking about now, Hackettstown?

9 Q I beg your pardon. Let's go to Randolph

10 Township property.

11 A Okay.

12 Q Was there a sewer system there?

13 A No, we have a ceptic system there.

14 Q What, if anything, did you have to do with

15 the installation of those systems?

16 A Well, myself really nothing other than engineers

17 designed the system and we just see that the prices are

18 right. That's about it.

19 Q Now, whenever you build any of the buildings

20 that you have referred to, and I am including now the

21 homes in your first site, Pennsylvania, going on from

22 the second to the third, even though on the second you

23 just sold out the lots, to the industrial buildings that

24 you built in New Jersey, did you ever have occasion your-

25 self to make the selection personally of the form of the

1 sewer system to be installed?

2 A Well, as I said, in the Poconos we were recommended
3 to use ceptic systems and we built a few houses at
4 Holiday Poconos, the first development.

5 Q Right.

6 A In fact, I was in charge. I lived there. I built
7 my own house there. And I lived there. I didn't even
8 come home to New Jersey because my presence was needed
9 as I wanted to be successful. And I was learning the
10 operation because that was the first venture into real
11 estate. So I worked pretty hard to learn, which
12 incidentally for the first seven years we made no profits
13 at the Holiday Poconos. So all the money I was making
14 in the sewing industry was going to the Poconos. And
15 there was reasons why we had to buy the other partners
16 out because they had no money to contribute their share
17 into the company. So we had to buy them out in order to
18 be successful. So, because was all our money we were
19 putting in. But after seven years we made a lot of money.
20 We made up all the money we lost plus very large profits.

21 Q What, if anything, did you do about the,
22 either the construction or the supervision of the sewer
23 systems?

24 A Well, my supervision was that one of the engineers
25 come in with a recommendation as to what system to use,

1 what to do. I would go, I would look into details with
2 them. You know, ask all kinds of questions. I wanted
3 to make sure there would be no problem later on. And also
4 for pricing, you know, to see that we get the best
5 available and, but I was mainly concerned as to the
6 quality of the systems.

7 Q Now, there has been some testimony, although
8 we have not gotten, permitted yet to go into it deeply
9 in the development, that you requesting be permitted to
10 you in Chester of a sewage system?

11 A That spray that was recommended to me, a spray
12 irrigation system.

13 Q That was recommended to you?

14 A Yes.

15 Q All right. Tell us, Mr. Caputo, if your
16 property in Chester is encumbered by any mortgage?

17 A No, it is free and clear.

18 Q What about your brother's?

19 A My brother has a very small balance left on his
20 mortgage.

21 Q Now, would you tell us, please, Mr. Caputo,
22 what contact, if any, you had with the municipality in
23 the last seven years with regard to the condition of the
24 roads or any one of the roads around your property?

25 A Well, I got into contact with the Mayor,

1 Mr. O'Connor, since the day, oh, since at least the first
2 year that I moved into Chester and kept complaining about
3 the conditions of Fox Chase Road, which is a dirt road.

4 Q Did you write the mayor?

5 A I wrote him. Well, first I kept calling him. Kept
6 telling us they will repair them next week. Well, he
7 promised he would make a hard top out of it even though
8 they maintained the road, every time we have a heavy
9 rain, well, the road was in bad shape again. Hardly go
10 through.

11 So on account of complaints to him, "Look, you're
12 wasting a lot of money on this road and we haven't got
13 a road." Like for seven years kept promising me. Never
14 did anything about it. Then sometime later I wrote him
15 a letter.

16 Q All right. I show you what purports to be
17 a letter dated March 19, 1972, and ask you if that is a
18 copy of a letter that you wrote to the Mayor and Township
19 Council about your road?

20 A It is.

21 MR. LINDEMAN: All right. I offer this
22 document into evidence, your Honor.

23 You have a copy of it.

24 MR. FERGUSON: I don't know. I don't see
25 how it is relevant to the issues in this case,

1 frankly. But I have no objection--

2 THE COURT: What is the relevancy?

3 MR. FERGUSON: --to the letter itself.

4 MR. LINDEMAN: Your Honor please, there
5 has been testimony here in this case about the
6 condition of the road, Old Chester and Fox Chase
7 Road. We know from pretrial discovery that there
8 will be questions raised as to whether the roads
9 around the area are suitable for any kind of
10 residential development, such as the kind that we
11 are offering in the case.

12 This testimony that Mr. Caputo has just
13 offered is, first, that he has made a request for
14 the improvement and the correction of the problem
15 and that he has indeed been promised it. And the
16 testimony, of course, will be forthcoming after
17 that, that it just hasn't happened. But that
18 nevertheless the Township is aware of it and has
19 promised it.

20 THE COURT: Well, if you are tying it up
21 to the, what is going to come, that's properly
22 rebuttal.

23 MR. LINDEMAN: Well, that's true. That's
24 true, your Honor.

25 THE COURT: It doesn't belong in the case

1 now. I will allow it to be marked for identifica-
2 tion, but I don't see the relevancy it has at this
3 juncture.

4 (The document referred to was marked
5 P-35 for identification.)

6 Q Now, Mr. Caputo, tell us please what the
7 first contact, the time of the first contact that you had
8 with the municipality regarding the zoning, or the chang-
9 ing of the zoning of your property?

10 A It was April 1, 1974.

11 Q Would you tell us please what, if anything,
12 you did at that time?

13 A Well, I wrote a letter to the officials of the
14 Township complaining as to the size of the lots.

15 Q I show you what purports to be a copy of
16 a letter of April 1, 1974. Is that the letter that you
17 are referring to?

18 A Yes, this is the letter that I wrote to Chester
19 Township Planning Board, Township Hall, and so on.

20 MR. LINDEMAN: I offer this letter into
21 evidence, your Honor.

22 MR. FERGUSON: Mr. Caputo, this is your
23 file copy of the letter?

24 THE WITNESS: This is my copy. Well, I
25 believe it is an exact copy or a copy of the copy.

1 MR. FERGUSON: All right. Do your initials
2 occur in the lower left-hand corner, JC?

3 THE WITNESS: My initials, Joseph Caputo,
4 yes.

5 MR. FERGUSON: Who is MC?

6 THE WITNESS: M--

7 MR. LINDEMAN: Hold it just one moment,
8 please. I am sorry.

9 THE WITNESS: Who is MC--

10 MR. FERGUSON: The lower left-hand corner.

11 THE WITNESS: MC/KN?

12 MR. FERGUSON: Yes.

13 THE WITNESS: I don't know. I know I wrote
14 this letter. I had my office write the letter
15 and I signed it and send it in. No attorneys
16 involved in writing this letter.

17 MR. FERGUSON: Where was your office at that
18 time?

19 THE WITNESS: Well, I have one in New York.
20 The office in the Poconos wrote this letter. And
21 one in Newfoundland, Pennsylvania.

22 MR. FERGUSON: And MC/KN were employed by
23 you?

24 THE WITNESS: Could be some of my employees.
25 No, this is Michael Caputo, my son, because I had

1 my son write the letter for me.

2 MR. FERGUSON: I see. Was your son employed
3 by you at that time?

4 THE WITNESS: Yes, he is an officer of the
5 corporation.

6 MR. FERGUSON: Was this letter written with
7 respect to the present zoning or the proposed
8 zoning under the new Master Plan which was then
9 being, I believe, considered?

10 THE WITNESS: Yes, it was on the new proposed
11 zoning.

12 MR. LINDEMAN: At that time?

13 THE WITNESS: At that time, of course.

14 MR. FERGUSON: Well, once again I am not
15 sure what relevance this communication has to any
16 issue in this lawsuit. I don't. The testimony of
17 the witness is that he sent it. I haven't ascer-
18 tained whether in fact it was received.

19 MR. LINDEMAN: Your Honor please, at this
20 point we are going to be getting into a whole series
21 of events where the witness has, the plaintiff has
22 contacted the municipality, has made efforts to
23 make changes. Has applied to it for changes. And
24 we will show the nature and quality of the responses
25 that have been received from it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: I will allow it to be marked
in evidence, P-36.

(The document referred to was marked P-36
in evidence.)

BY MR. LINDEMAN:

Q Now, what, if anything, did you do,
Mr. Caputo, after that with regard to retaining lawyers
in connection with your zoning requests of the municipality?

A Well, a few months later I retained the firm of
Villoresi, Thomas, Villoresi & Flanagan. And Mr. Villoresi
was my attorney.

Q Now, did you receive any response so far
as you know from the Township as to your letter of
April 1, 1974, P-36 in evidence?

A No, I didn't.

May I see what it is, please?

Q Yes. Would you tell us please for what
purpose you retained Mr. Villoresi?

A Well, it was the purpose to get the town to allow
us to build multi-family dwellings on our property and
too, I needed legal advice to do what was necessary for
the proper presentation.

Q What, if anything, did you do by way of
retaining experts in that connection?

A At that time I was advised by my attorney to

1 retain a planner which I retained John Rakos.

2 Q Do you know what company he is from?

3 A He is from Catlin Associates.

4 Q Right.

5 A I retained Norman Smith. He is with Jaman
6 Associates. He is an engineer. And David Mendelson,
7 a traffic expert.

8 Q What, if any, consultation did you have with
9 those experts regarding your development?

10 A We met many times and gone over our plans. And I
11 wanted to know whether my property would be suitable for
12 this kind of development before I spent any money on it.
13 I wanted to make sure. Especially environmentally, which
14 is that the property would qualify because all the state-
15 ments the Township was making, they were concerned about
16 the water, pollution. They were concerned about the
17 environment.

18 So I didn't want to spend any money on this
19 until I was, it would be necessary to make some research
20 and physical tests on my property to see that it would
21 qualify before I go ahead, you know, spending real money
22 on this plan. So I instructed Mr. Rakos to come up with
23 the plans to submit to the Board.

24 In the meantime I had Mr. Mendelson check,
25 investigate on the traffic and Norman Smith went to work

1 as to the engineering.

2 Q What, if anything, what participation did
3 you have in the including of a lake into the development?

4 A I suggested a lake because we have a perfect
5 natural spot there to build a dam which by installing
6 the lake would be a very, not just for beauty, but also
7 for future water needs as a reservoir or for runoff water,
8 you know, storm runoff, storm, heavy rains, et cetera.
9 And it is a very, very good asset for selling point also.

10 Q What about recreational facilities?

11 A I also recommended any kind of development must
12 have swimming pools, club houses, tennis courts, all kind
13 of recreations in order to sell.

14 Q Now, do you know, Mr. Caputo, if this first
15 plan that was worked out by your experts had been
16 presented to the municipality in any written form?

17 A Yes, they were. Mr. Villoresi informed the Town-
18 ship officials of our plans.

19 Q All right. I show you what purports to be
20 a copy of a letter dated April 27, 1974, from Alfred J.
21 Villoresi, the Mayor, Township Committee, and to the
22 Chester Township Planning Board written jointly to both
23 of you and ask you if you can identify that letter?

24 A Yes, this is the letter that Mr. Villoresi wrote to
25 the Mayor and Township Committee.

1 MR. LINDEMAN: I offer this letter into
2 evidence, your Honor.

3 MR. FERGUSON: Mr. Caputo, was this
4 communication by which Mr. Villoresi informed the
5 town of your plans, is this what you just meant
6 when you said Mr. Villoresi informed the town of
7 the plans?

8 THE WITNESS: Yes, this was the first
9 approach, or the first communication that my
10 attorney had with the Township unless he called
11 them on the phone followed by the letter.
12 I don't know this. What I know he sent him a
13 letter requesting a meeting, et cetera. In this
14 letter he outlined what we had in mind, also, of
15 course.

16 THE COURT: What is the date of that letter?

17 MR. LINDEMAN: August 27, 1974.

18 MR. FERGUSON: Well, once again I object to
19 the relevancy. I don't think it is relevant to
20 any issue in the lawsuit.

21 MR. LINDEMAN: This is expressly the thing
22 that we were talking about before.

23 THE COURT: Let me see the letter, please.

24 I will allow it to be marked in evidence.

25 P-37.

1 (The document referred to was marked P-37
2 in evidence.)

3 Q Mr. Caputo, how many units were provided
4 for in that first presentation?

5 MR. FERGUSON: Objection, your Honor.
6 We don't know what presentation we are talking
7 about.

8 MR. LINDEMAN: This is the presentation
9 of August 27, 1974, where the letter describes in
10 some detail a proposed tract.

11 MR. FERGUSON: Well, the letter speaks for
12 itself. If we are asking the witness to interpret
13 the letter, I don't think that is proper.

14 MR. LINDEMAN: Well, I am not asking--
15 maybe I ought to put the question a little bit
16 differently.

17 Q Were there plans, was there a layout pre-
18 pared for this tract?

19 A Well, the Township did acknowledge the letter.

20 Q We will get to that, but was there first
21 a layout?

22 A Yes, there was a layout. The plans lay out 1,018
23 units of attached single-family houses.

24 Q Before getting to what contact you had
25 directly with the municipality about it, did you receive

1 a response from the municipality, and particularly the
2 Planning Board to that August 27, 1974 letter?

3 A Yes. Mr. Villoresi received a reply, October,
4 a letter from the Chester Township Planning Board was
5 dated October 10, 1974.

6 MR. LINDEMAN: I offer this letter into
7 evidence, Your Honor.

8 THE COURT: Read that answer back to me,
9 please.

10 (Last answer read by the reporter.)

11 MR. FERGUSON: Better mark it P-38.

12 THE COURT: You have no objection to it?

13 MR. FERGUSON: Well, this is a typed,
14 appears to be a retyped copy. Just a couple of
15 questions about it.

16 MR. LINDEMAN: I have a photocopy.

17 MR. FERGUSON: It does follow in the chain
18 of correspondence, your Honor.

19 THE COURT: All right. In evidence.

20 (The document referred to was marked P-38
21 in evidence.)

22 Q Next, Mr. Caputo, do you know whether the
23 Township itself responded to your letter?

24 A Yes, they did.

25 MR. LINDEMAN: We have a letter dated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

October 15, 1974, also addressed to Alfred Villaresi.

All right, I offer a copy of this letter.

MR. FERGUSON: Yes, this is a copy as well,
your Honor.

THE COURT: In evidence, P-39.

(The document referred to was marked P-39
in evidence.)

MR. LINDEMAN: Your Honor, please, for the
purpose of the record I request that I be permitted
to read both of these into, evidence into the
record to show the fixing of the date for a meeting
unless I can just refer to it.

THE COURT: Which?

MR. LINDEMAN: The letter of P-39.

THE COURT: Yes.

MR. LINDEMAN: I think it recommends that
the parties--

THE COURT: Hold a meeting on October 29th?

MR. LINDEMAN: Right.

THE COURT: Yes.

MR. LINDEMAN: October 29, 1974. I just
wanted to state that for the record instead--

THE COURT: All right, go ahead.

MR. LINDEMAN: On the document.

MR. FERGUSON: How does that fix the date?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LINDEMAN: Was it not October 29, 1974?

THE COURT: You want to refer to October 24--
29, 1974, the date the Planning Board invited
Mr. Caputo in P-38 or Mr. Villoresi to make the
presentation on behalf of his client, if he so
chooses, and do notify him whether he would or not.

MR. LINDEMAN: All right.

MR. FERGUSON: I may be premature. There
has been no testimony yet there was in fact a
presentation.

MR. LINDEMAN: All right. That is the next
thing.

MR. FERGUSON: Fix the date.

Q Mr. Caputo, did you in fact appear before
the defendant Planning Board on October 29, 1974?

A Yes, we did.

Q Could you tell us please who on behalf of
yourself was present?

A It was Mr. Villoresi, an attorney, Mr. Rakos, of
Catlin Associates, the planner. Mr. David Mendelson,
our traffic expert.

Q And you?

A And myself.

Q Were present?

A Yes.

1 Q Do you recall now who was present on behalf
2 of the Planning Board?

3 A Well, I remember there were maybe a half a dozen
4 or seven including the Mayor, Mr. Conover and Mr. Hardin
5 was the chairman of the Planning Board.

6 Q I'm sorry--

7 A And others.

8 Q All right. Tell us, please, what, if any-
9 thing, was presented to the meeting by your representa-
10 tives?

11 A Yes, Mr. Rakos explained in detail as to our plan.
12 And in fact, he gave them each a copy of the plan and
13 other information they had prepared.

14 Q Do you recall if Mr. Hardin, the chairman
15 of the Planning Board, was there?

16 A Yes, definitely he was there.

17 Q Right.

18 A And also Mr. Mendelson also explained the traffic
19 situation. In fact, they had a map to show them as to,
20 you know, what was, he was explaining as to traffic.

21 Q What, if anything, was done by way of
22 distributing copies of any plans or documents?

23 A Yes, they were. Each member of the Board received
24 a copy of the plan and other documents. A copy of each,
25 whatever we had. There was quite a bit there.

1 Q Did the Mayor or Mr. Hardin or any of them have
2 any comment?

3 A Well, after the presentation the Mayor, in fact,
4 he commented that was the best plan he had seen to date.
5 It was well presented.

6 Q Now, after that meeting, tell us please
7 within the next two or three weeks what kind of a response,
8 if any, you received.

9 A The meeting, in fact, I tried to inquire by the
10 Mayor. I spoke with Mr. Mayor, Mr. Hardin, afterwards
11 to try to get a feeling about that. The only thing they
12 could tell me, "We're going to look into it and let you
13 know."

14 So I could not get really no satisfactory
15 response. And they needed time to study the plan.

16 Well, about, oh, maybe two or three weeks, four
17 weeks went by and I got no response. I called
18 Mr. Hardin on the telephone at his office inquiring as
19 to whether anything was done about my plans.

20 Well, he said, "No. Don't worry, we will look into
21 it. We will get back to you."

22 Q Now, was there anything in the newspapers
23 about this plan, to your recollection?

24 A Yes. Well, every time we first made the presenta-
25 tion there was in the newspapers about the presentation,

1 I believe it was.

2 But that wasn't the only call I made to
3 Mr. Hardin. I made additional calls after that. At
4 least one or two more inquiring about whether they did
5 look into my plans.

6 Q All right. Now, do you recall if by
7 January of 1975 you had received any response, one way
8 or the other, from any of the municipal officials?

9 A No, I did not receive any response at all, even
10 though I called Mr. Hardin a few times. The only thing
11 I was getting, I felt, it was they were ignoring me.
12 Saying, "Okay, Joe, we will get to you." But they had
13 no intention of getting to me because, the statements,
14 the official statement was that they would never allow
15 any such development in Chester Township.

16 MR. FERGUSON: Your Honor, I object to this.

17 THE COURT: Sustained.

18 MR. LINDEMAN: If your Honor please, so
19 far as those officials are concerned, they are
20 parties in this action and I think that they are--

21 THE COURT: You better lay a foundation for
22 how he learned those statements were made before
23 that.

24 What I am sustaining it on, on the basis of
25 official statement was. How does he know it?

1 Lay a foundation for how he knows it.

2 Q How?

3 A I read the newspapers.

4 THE COURT: Sustained.

5 MR. LINDEMAN: All right.

6 Q Now, Mr. Caputo, I show you a copy of a
7 letter of January 24, 1975, for the purpose of calling
8 your attention to action, a certain kind of action that
9 you took about that time. Tell us what you did.

10 A By January 24th--

11 Q Excuse me. This is 1975?

12 A 1975.

13 Q Correct.

14 A I received no reply from Mr. Hardin or anybody
15 else on the Planning Board. And I finally got quite,
16 you know, frustrated that I could not get anywhere and
17 trying very hard to get a meeting and discuss this matter.
18 There was nothing.

19 Now, I called Mr. Hardin. I said, "Look, I'm
20 going to have a press release informing the people of the
21 Township as to what has been going on with you people
22 here." And what is my intention in the future, what I
23 intended to do. I said, "I will send a copy to you and
24 each member of the Board officials of the Township."

25 I said I would send a copy of it to Mr. O'Connor

1 before it appeared in the newspaper. And on January 24th
2 I did mail a copy to Mr. Hardin. This is the letter
3 copy here I sent.

4 Q Now, there is attached to that letter a
5 document. Tell us please what that is.

6 A This is a press release I give to the newspapers,
7 to the Observer Tribune.

8 Q And also that is the same copy that you
9 had sent directly to Mr.--

10 A Hardin and the rest, and the other Township
11 officials or members of the Board. I don't remember how
12 many people got them, but many got them.

13 Q Do you remember if any such publication was
14 in the newspaper?

15 A It was.

16 MR. LINDEMAN: All right. I offer this
17 document along with the letter of January 24, 1975,
18 and the photocopy of the press release attached to
19 it in evidence.

20 MR. FERGUSON: Did you prepare the press
21 release?

22 THE WITNESS: I had my press release was
23 prepared by my office. I instructed my son,
24 told him that I wanted to send a letter and put it
25 together in the office in the Poconos, Spring

1 Estates in the Poconos.

2 MR. FERGUSON: Was it referred to your
3 attorney for clearance before you issued it?

4 MR. LINDEMAN: Hold it. Hold it, Mr. Caputo.
5 I want to object. If there is any, if there should
6 be any suggestion that, by the witness' answering
7 that we will have waived any attorney-client
8 privilege, I certainly don't have any objection
9 to the fact coming out, but I don't want to get
10 into any consultations that the witness may have
11 had with his attorney.

12 THE COURT: Well, he answered it, that
13 question. He did say he did. I heard him.

14 THE WITNESS: No, I did not.

15 MR. LINDEMAN: I beg your pardon.

16 THE WITNESS: No, I say I believe in fact,
17 I am positive I did not show this to any attorney.
18 But I won't say it 100 percent for sure.

19 MR. FERGUSON: Your Honor, I have no
20 particular objection if it is only offered for the
21 purpose of showing what he in fact said to the
22 newspaper. Of course, I would object strenuously
23 for it being offered to show any of the truth of
24 the facts contained in the two or three-page
25 press release.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LINDEMAN: Well, we do, of course, maintain that it is true, but that isn't the initial purpose.

THE COURT: For the purpose to show that it was mailed, I will allow it.

MR. LINDEMAN: Right.

MR. FERGUSON: Thank you.

MR. LINDEMAN: We do not concede that the facts are not true, however.

MR. FERGUSON: I don't concede any probative, to any extent whatsoever the truth of any facts.

THE COURT: For the purpose for what I said, Gentlemen. P-40.

(The document referred to was marked P-40 in evidence.)

Q Now, with respect to communications between you and members either of the Planning Board or the Mayor and Council, between--well, in the month of January or February of 1975, will you tell us what did happen?

A Nothing.

Q Now, do you recall if at or about this time of year, there was any determination by the New Jersey Supreme Court that caused you to take a different, slightly different approach?

A Yes. I believe it was in March that the Supreme

1 Court had the decision in regard to low and moderate income
2 housing. I called my attorneys. We discussed the matter
3 and I decided to submit a newer plan, another plan with
4 lower price housing houses.

5 I felt we had a better chance to get this through.
6 So we met with our experts. We eliminated the golf course.
7 We eliminated the lake. Well, the lake was a big question
8 mark. But with the housing that we wanted, we wanted to
9 come up with 25, \$30,000 house sales price, therefore,
10 we could not afford to install a golf course and maybe
11 even the lake. And I had Mr. Rakos make a new plan.

12 Q How many units were provided for in that
13 plan?

14 A 1,452. Something like that.

15 Q Now, was that plan actually drawn up?

16 A Yes.

17 Q Now, do you recall whether or not it was
18 presented to the municipality in any written form?

19 A Yes, it was.

20 Q I show you, Mr. Caputo, a copy of a letter
21 which purports to be a copy letter dated May 5th from
22 Mr. Monica to the Chester Township Planning Board and ask
23 you if you can identify this.

24 A Yes, this is the letter that Mr. Monica wrote to
25 the Planning Board.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Now, Mr. Monica is who at this time?

A He was our attorney at that time. Monica & Ambrose.

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

MR. FERGUSON: Well, once again it is just a letter from Mr. Monica dated May 5, 1975.

MR. LINDEMAN: If your Honor please, I don't mean to interrupt.

MR. FERGUSON: It talks about plans to be forwarded in the future. I don't think it is probative of anything.

MR. LINDEMAN: This we offer for the purpose of the entire chain of events. The events reached to date which, of course, I would like to have read into the record, if the document comes in which we assume it will.

THE COURT: I will allow it in evidence for the purpose of being part of the chain.

(The document referred to was marked P-41 in evidence.)

MR. LINDEMAN: If your Honor please, if I may read the next to the last full paragraph of the letter?

THE COURT: I don't think it is necessary.

1 It refers to a requested Hearing date of May 26th.

2 MR. LINDEMAN: Right.

3 Q Now, as just stated, Mr. Caputo--well, let
4 me withdraw that please for the moment.

5 This second prepared document was the subject
6 of a presentation to the municipality or the Planning
7 Board, was it not?

8 A Yes.

9 MR. FERGUSON: Objection. What documents
10 are we talking about?

11 Q Was there a document actually prepared, a
12 layout plan?

13 A Yes, there was.

14 Q That document is the one I am referring to
15 and that you say was actually submitted to the Planning
16 Board?

17 A Yes.

18 Q It called for how many units?

19 MR. FERGUSON: Objection, your Honor.

20 Q Approximately.

21 MR. FERGUSON: The document should speak
22 for itself. We have it in front of us. We can
23 look at it and see. Plus, I don't know how this
24 witness knows it was submitted to the Planning
25 Board.

1 MR. LINDEMAN: Well then, we will have to
2 go backward on it. I will do it that way.

3 Q Was there a meeting of the Planning Board?

4 A Yes.

5 Q At which this document was presented?

6 A Correct.

7 Q And were you present?

8 A Yes.

9 Q And would you tell us who else on your behalf
10 was present?

11 A Mr. Monica, my attorney.

12 Q Were there any other persons?

13 A Not at that meeting.

14 Q All right. Now--

15 A He presented it to the Planning Board which the
16 Mayor was Mr. Conover and Mr. Hardin were present in
17 addition to other members of the Board. They also
18 received a copy of each document. Each member.

19 MR. FERGUSON: I object. I don't know what
20 he is talking about.

21 A A copy of the plan.

22 MR. FERGUSON: What plan? We have two now.

23 THE WITNESS: The second plan, 1,452 units.

24 THE COURT: Let Mr. Lindeman lay a foundation
25 for these questions, would you, please?

1 Q Now, there was a plan that had been prepared,
2 a fully--well, a plan showing the property and a layout
3 on it, was there not?

4 A Yes.

5 Q And that was prepared by whom?

6 A Mr. Rakos of Catlin Associates.

7 Q And what did it show on the property?

8 A Well, it showed the whole piece, the two pieces
9 of land, 270 acres, and the layout of the units, the
10 roads, the recreation area, retention basin, et cetera.

11 Q Now, was there any discussion at the
12 Planning Board meeting regarding the prospective price
13 at which these houses would be sold?

14 A Yes.

15 Q And what was that? What did you tell them?

16 MR. FERGUSON: Objection, your Honor. I
17 don't know what this is offered for and I would
18 ask Mr. Lindeman to make a statement as to what
19 this testimony is offered to show.

20 If it is offered to show the reasonableness
21 of a particular selling price, or what a unit
22 would sell for by Mr. Caputo on Mr. Caputo's
23 property, of course, I object.

24 T-4 I take it it is being offered only to show
25 the entire course of dealings between the Planning

1 Board and Mr. Caputo now through his agents.

2 THE COURT: Mr. Lindenman?

3 MR. LINDEMAN: Well, it is not--first, of
4 course, it is not done just through his agents.
5 It is done through him and his agent. He was
6 present personally and there was communication
7 between him and the Planning Board directly. He
8 just so testified.

9 The purpose is not just to show that he
10 presented something, that he presented something
11 reasonable. That it was detailed. That it was in
12 conformity with the then existing law. That it
13 was in sufficient detail that consideration could
14 or should have been given to it by the Planning
15 Board for the purpose of--

16 THE COURT: We are dealing just with the
17 price of the dwellings, the proposed price of the
18 dwellings. You're offering it to show that's
19 what was told to the Planning Board?

20 MR. LINDEMAN: Yes.

21 THE COURT: That's it?

22 MR. LINDEMAN: Right.

23 THE COURT: All right. I will allow it for
24 that purpose.

25 MR. LINDEMAN: Yes, your Honor.

1 Q What price did you tell the Planning Board?

2 A Of Plan No. 2?

3 Q Yes.

4 A That the, those dwellings were going to be sold
5 for between 25 to \$30,000 each.

6 Q Now, did you tell them how many bedrooms
7 would be in the units?

8 A Two and three bedrooms. Fifty percent each.

9 Q Do you recall whether copies of the plans
10 were distributed to members of the committee?

11 A Yes, they were.

12 Q Now, can you tell us please what, if any,
13 response was received to that plan?

14 A None.

15 Q What, if anything, did you--let me withdraw
16 that for the moment.

17 I will ask it another way.

18 What, if anything, did you authorize your
19 attorneys to do in or about July 1975?

20 A Well, when I couldn't get no response of any kind,
21 and like I say, it was pretty clear that the Township
22 officials had no intention of doing anything for me, I
23 allowed, authorized them to start a suit.

24 Q And was the complaint filed at or about that
25 time?

1 A It was.

2 Q Now, do you know what, if anything, the
3 municipality had been doing at or about that time with
4 regard to the, to permitting construction of new buildings
5 in the municipality?

6 MR. FERGUSON: Objection, unless we ascertain
7 how he knows.

8 A I don't understand the question.

9 Q Do you know if there was any limitation of
10 any kind that had been imposed by the municipality for
11 the construction of new buildings, homes?

12 A Oh, yes. There was a moritorium in existence for a
13 long time.

14 Q How do you know that?

15 A Well, I know because there was one out. It was
16 very clear, but it was not secret about it. It was a
17 moritorium, I believe, since 1972 existed.

18 Q And did you ever see anything like that in
19 the newspapers?

20 A Probably, but I know there was no question about it
21 because my attorney advised me also.

22 MR. FERGUSON: Your Honor, I object.

23 No question about a moritorium that was in
24 existence. I object to this witness testifying about
25 it because it is obvious he doesn't have any first-

1 hand knowledge.

2 MR. LINDEMAN: Well, if your Honor please,
3 at this point I would like to offer into evidence
4 copies of certain minutes, not all of them, that
5 would be relevant, but certain of the minutes of
6 the Town Council at which reference is made to the
7 moratorium. And these minutes show that the
8 moratorium has continued from time to time and that
9 it is continued at the time in question.

10 THE COURT: May I ask a question?

11 How was the moratorium posed, by ordinance?

12 MR. LINDEMAN: It's hard to say, your Honor.

13 I have the document itself at which it is
14 at least as of early 1976 the moratorium is
15 continued. If I may read it?

16 MR. FERGUSON: I object to it being read
17 unless he wants to put the minutes in, he can put
18 the minutes in. If it is an official record, it is
19 an official record. But until I have a chance to
20 take a look at it--

21 MR. LINDEMAN: I will offer, if your Honor
22 please, a copy of the minutes of the municipality,
23 of the Town Council dated January 5, 1976. At
24 the last page of which, no, next to the last page--
25 no, I am sorry.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

It is five pages. Reference is made to the building moritorium. Bottom of the fifth page.

MR. FERGUSON: I have reason to believe these aren't a copy of the minutes, although I note they're not under seal and certified to be a true copy.

THE COURT: We can always bring the Township Clerk in, if you want to.

MR. FERGUSON: I know. Frankly, that is unnecessary. I think these Xerox c pies do refer to the building moritorium. Whatever probative value, it might have.

THE COURT: Okay. P-42 in evidence as to Page 5, the paragraph referring to the building moritorium only.

(The document referred to was marked P-42 in evidence.)

THE COURT: Could I find out when it began for some continuity?

MR. LINDEMAN: Your Honor, I do not have copies of the minutes going far enough back. Mr. Caputo, of course, has just testified that he recalls it went back at least as far as 1972. May have been--

THE WITNESS: Everybody talked about this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

moritorium.

THE COURT: Hold it a second. You know, what people talk about town is not relevant. All right.

When did it end, do we know that?

MR. LINDEMAN: The record that I have here indicates that it did not end at any time relevant in this lawsuit, your Honor. That it was continued.

THE COURT: Okay. I am just putting you on notice to be of any significance and for me to evaluate it properly I got to know when it began and when it ended. All right.

MR. LINDEMAN: I have all the minutes here. For some reason--I will present them, your Honor.

THE COURT: Okay.

Q Now, Mr. Caputo, tell us please when the plan which is directly referred to in the present complaint was first presented to the municipality, if at all?

MR. FERGUSON: I object unless we ascertain what plan we are talking about. That's so vague.

Q I refer, of course, to the plan which has been sometimes referred to as the 856-unit plan. The current one.

A That was presented--

MR. FERGUSON: Excuse me, I have another

1 objection. Are we talking about a document or
2 about a concept?

3 I think the word "plan" by itself is
4 ambiguous.

5 MR. LINDEMAN: We are talking about a
6 document, an actual layout plan prepared by
7 engineers and a planner.

8 MR. FERGUSON: The original marked in
9 evidence in this proceeding?

10 MR. LINDEMAN: Yes.

11 THE COURT: Why don't we show it to him.

12 MR. LINDEMAN: P-1.

13 THE COURT: Then he can tell us what was
14 done with that plan as it is identified.

15 MR. LINDEMAN: Right, P-1 in evidence.

16 Q I am holding this up for you right now,
17 Mr. Caputo. This is the one I am referring to.

18 A That was presented on my deposition in January
19 1976.

20 THE COURT: I'm sorry, with all the papers
21 rustling.

22 Were presented to the governing body?

23 THE WITNESS: During my deposition.

24 THE COURT: Oh.

25 MR. FERGUSON: Can I make a statement for

1 the record, your Honor? His deposition was taken
2 on January 8, 1976.

3 MR. LINDEMAN: Right.

4 MR. FERGUSON: The persons present, if that
5 is deemed to be a presentation, were Mr. Ambrose,
6 myself, Mr. Caputo, the court reporter. I can
7 get that from the transcript. It is cited in the
8 transcript.

9 Q Now, Mr. Caputo, do you know if the
10 municipality ever decided that it was going to allow
11 300 multi-family dwellings in the municipality?

12 MR. FERGUSON: Objection. I don't see how
13 this witness--there has been no foundation laid
14 that this witness can tell anything about what
15 the municipality decided.

16 Official records as to resolutions or orders,
17 I have no objection to. I think it is becoming
18 obvious that we are trying to ask this witness his
19 understanding from sources which are not admissible,
20 such as newspapers or what people are talking about.

21 Q Mr. Caputo, I call your attention to copies
22 of the minutes of a closed session of the Township dated
23 August 2, 1976.

24 THE COURT: What was the kind of session?

25 Q Closed session and ask if you have ever

1 seen this document before.

2 MR. FERGUSON: May I see a copy?

3 MR. LINDEMAN: I am sorry.

4 THE COURT: Excuse my ignorance. I think
5 I know what closed means. I didn't know we had
6 closed sessions of governing bodies under the
7 Sunshine Law.

8 MR. LINDEMAN: I can only say that is what
9 the document says. I don't know whether it actually
10 was or not. But it is entitled "Closed Session,
11 August 1976."

12 MR. FERGUSON: Excuse me. The minutes to
13 be released after introduction of the zoning
14 ordinance. That's what it says.

15 MR. LINDEMAN: Your Honor, please, the
16 purpose of this document, even without regard to
17 the witness identifying it and I really don't
18 have to present it to the witness for the purpose
19 of his identifying it, there is a critical clause
20 in this document relating to the number of units
21 which the municipality has provided for in its
22 current zoning ordinance and what information it
23 may have received from its planner as to what it
24 should be doing.

25 Now, this is a document which we can, of

1 course, have Mrs. Dews identify. It is one which
2 certainly will be called upon when they present
3 their part of the case, which I dare say, they
4 will be required to do until the burden which is
5 imposed upon them under Mount Laurel.

6 I will not disclose to the Court what this
7 document says except that I will represent to the
8 Court that it is of crucial importance in the case.

9 THE COURT: Mr. Ferguson, do you contend
10 that it is not an official minute of the Township?

11 MR. FERGUSON: I can't concede anything
12 unless I have made a phone call and made inquiry.

13 THE COURT: Well, let's mark it for
14 identification.

15 MR. FERGUSON: I will state it appears to
16 have Pat Dews' signature on it. It appears to be
17 a minute of the Chester Township Council.

18 THE COURT: Okay. What's the date on it?

19 MR. FERGUSON: August 2, '76.

20 THE COURT: All right. Let's do this.
21 Mark it for identification, P-43.

22 (The document referred to was marked P-43
23 for identification.)

24 THE COURT: You can verify it, Mr. Ferguson,
25 whether it is necessary to call the Township Clerk

1 to establish that is an official minute.

2 MR. FERGUSON: I will.

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

5 (A discussion had at side bar.)

6 THE COURT: All right, we will take a short
7 recess.

8 (A short recess was taken.)

9 BY MR. LINDEMAN:

10 Q Mr. Caputo, can you tell us what, if anything,
11 your lawyer advised you around November of 1977 respecting
12 the form of the ordinance, of the zoning ordinance,
13 or change in the ordinance in Chester Township?

14 MR. FERGUSON: Objection, your Honor. I
15 don't see what this has to do with anything.

16 THE COURT: You don't see what it has to do
17 with anything?

18 MR. FERGUSON: With any issue in this law-
19 suit. Has a lot to do with what Mr. Lindeman
20 advised Mr. Caputo in November of 1977.

21 MR. LINDEMAN: '76. I am sorry, '76. This
22 was before the complaint.

23 Well, it is fairly clear as to what happened
24 at that time.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FERGUSON: Let's not ask this witness an improper question to find out.

THE COURT: I don't know if it is improper. I don't know what it is getting at. What you said, what, if anything, your lawyer advised you in reference to the change in the Chester Township Zoning Ordinance.

Now, you're setting it in the framework of when, in 1976?

MR. LINDEMAN: November of 1976 there was an event that took place at that time, your Honor. Actually--

THE COURT: I don't know specifically how legal advice is relevant, but I will allow it.

MR. FERGUSON: Also hearsay.

THE COURT: Some background.

MR. FERGUSON: Also hearsay.

THE WITNESS: All right?

MR. LINDEMAN: Answer it, your Honor?

THE COURT: For the sake of the statement being made, I will allow it. Go ahead.

A My lawyers were informed and they informed me of the amendment of the Township Ordinance and after I saw the document, which was worse than the first one, I authorized my attorneys to amend our complaint.

1 Q Was that done?

2 A Yes.

3 Q Now, tell us please, Mr. Caputo, what, if
4 anything, you did by way of retaining experts for the
5 pursuit of this lawsuit?

6 A I did.

7 MR. FERGUSON: Excuse me.

8 A I did retain--

9 MR. FERGUSON: Excuse me.

10 THE COURT: Go ahead.

11 MR. FERGUSON: Could we have a time? I
12 mean, what is this being offered to show? I
13 would object as too vague a question. What did
14 you do with respect to this?

15 MR. LINDEMAN: What expert did he retain by
16 name? I would ask for the name of the expert and
17 the area of expertise.

18 THE COURT: Well, now what expert did he
19 retain after November 1976?

20 MR. LINDEMAN: No, no. For the pursuit of
21 the lawsuit even before.

22 THE COURT: All right. Are you objecting
23 to that, Mr. Ferguson?

24 MR. FERGUSON: Yes. I don't see how it is
25 relevant to any issue before the Court.

1 MR. LINDEMAN: It is relevant.

2 THE COURT: I will allow it.

3 A Well, I have retained the following experts in this
4 case. Mr. Clifford Earl, a real estate expert taking
5 over from Daniel Klarnet. Mr. Leo Hobaugh, planner.

6 Q Hobaugh?

7 A Yes, Lee Hobaugh, a planner who has particular
8 expertise in the area of Morris County.

9 MR. FERGUSON: I object to this witness
10 giving the qualifications of the experts he
11 retained.

12 THE COURT: Just give us the names, if you
13 will.

14 MR. LINDEMAN: I am satisfied, yes.

15 Mr. Hobaugh has already testified. He has been
16 identified.

17 A Okay. Then David Mendelson of Jaman Associates,
18 highway study. John Rakos of Robert Catlin Associates,
19 he was a planner. He is a planner. Gary Salzman of
20 Joseph S. Ward, Inc. for geological testimony.
21 Norman Smith of Jaman Associates, engineering.
22 David Zimmerman, who has particular expertise as a planner
23 and analyst for the requirements of the Master Plan.

24 MR. FERGUSON: I object.

25 THE COURT: Just strike all that except that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

he was a planner.

MR. LINDEMAN: All right.

Q Mr. Caputo, do you know if in the course of the trial, or the preparation for trial of this case if depositions were taken of representatives of the defendant township?

A Yes, there were. Defendant, my experts.

Q And do you know how many or approximately how many?

A Many, many. Maybe altogether, I don't know, 15 or 20.

MR. FERGUSON: Objection to the guessing of this witness.

THE COURT: Sustained.

MR. FERGUSON: As to what happened in this lawsuit when it is a matter of record.

MR. LINDEMAN: Well, I don't think it is a matter of record yet as to the discovery taken of the defendant's representatives.

THE COURT: Well, if he knows. But I don't want any speculation that is not evidential.

Q Now, Mr. Caputo, so far as the spring of 1977 is concerned, I call your attention to the time around March and April. Would you tell us please what, if anything, your lawyer did by way of preparation for

1 the trial in this case?

2 A Well--

3 MR. FERGUSON: Objection, your Honor.

4 Q In your presence at which you have personal
5 knowledge.

6 MR. FERGUSON: I really don't see how this
7 is getting at anything which can be probative here.
8 I just think it is wasting the Court's time and
9 all counsels' time in going over the preparation
10 for trial.

11 MR. LINDEMAN: Your Honor, please, we have
12 no intention of offering for the purpose of showing
13 what in detail was done in order to prepare the
14 case, but to show the expense and effort that this
15 man went to. This man and his brother, the
16 plaintiffs, went to in the course of this agony
17 and it is for that purpose only. I think that
18 we have a right to present that testimony under
19 the holding in Madison Township and in other
20 authorities.

21 THE COURT: Whereabouts under Madison
22 Township? I have read that Madison Township case
23 and I looked at the Trial Court's decision trying
24 to determine other than what was enunciated by
25 Judge Conford as to what transpired. And I don't

1 see any mention in any of those decisions about the
2 preparation by the plaintiff in that case, for
3 that case in particular, or for any phase of the
4 Oakwood at Madison case.

5 MR. LINDEMAN: Your Honor, each case, of
6 course, has to be judged on its own facts. Madison
7 Township was a case where much of the evidence had
8 to do with trying the case a number of times at the
9 Trial Court level and then going up to the Supreme
10 Court and getting a ruling. We submit that's not
11 the only thing that constitute effort and zeal and
12 attention to the business interests of the municipi-
13 pality and of the litigant. There can be many other
14 things. The number of Courts, the number of times
15 that the Supreme Court has to hear a case is one
16 aspect of it.

T-5 17 We are offering this testimony for the
18 purpose of showing what these plaintiffs have done
19 since 1974 and in some respects even since 1972
20 with regard to their property. But particularly
21 1974 how they started doing certain things with
22 the municipality, making complicated and expensive
23 preparations and receiving no response, the shrugging
24 of the shoulders of the municipality, then starting
25 a lawsuit. Being compelled to expend large sums

1 of money, not only in the obtaining of their own
2 witnesses to show that which is, will be seen was
3 immanently obvious to everybody, but also examining
4 and finding out from the representatives of the
5 defendant itself what they did and why they arrived
6 at whatever conclusions they arrived at.

7 This is a long and arduous process which is
8 not exemplified solely in the 40 or 50 exhibits
9 which have been received in evidence so far. It
10 has to do with all that examination that I have
11 referred to and the offers and the presentations
12 made and the rebuffs received from the Township.

13 The preparation for trial in April and March
14 and April 1977. The fact and circumstances of
15 what happened after that which rendered much of
16 what they did a waste of time and which should
17 never have happened at all, but for the conduct of
18 the Township.

19 Now, these things are different from that
20 which took place in Madison Township, but they are
21 nevertheless relevant.

22 THE COURT: Well, are you telling me that
23 the layout or the preparation of every lawsuit
24 is something that's relevant now to every zoning
25 case because of the language in Oakwood at Madison?

1 MR. LINDEMAN: No, no.

2 THE COURT: Then what are you telling me?
3 That's what I am trying to get at.

4 MR. LINDEMAN: What I am saying, your Honor,
5 and what I press very seriously and as ardently
6 as I can, that when a private citizen, whether he
7 is seeking his own private gain or not, that labors
8 as the Caputos did in this case and solely and
9 single-handedly brings about the result for the
10 benefit of the common good that he is entitled to
11 special consideration and I cite not only the
12 ruling of Madison Township, but the circumstances
13 that I examined in many other laws as well.

14 If I may point out this, if I may make an
15 example which I think it is separate from the issue
16 of zoning, is nevertheless relevant. The Court
17 may be aware that in the area of securities laws
18 there are certain statutes that provide for an
19 obligation on the part of a corporate officer who
20 is an insider to pay back to his company whatever
21 profit he may have earned on short swing sales and
22 purchase of securities.

23 I won't go into all of the details of what
24 the requirement of the laws are. But I will cite
25 authority to the Court that when that kind of thing

1 is done and when a private lawyer brings to the
2 attention of the corporation and the officers that
3 such an infraction took place and is successful,
4 he may then apply to the corporation for a fee.
5 And there is no statutory basis for this at all.
6 But the Court allows a fee for the reason that, for
7 this kind of reasoning. They say and they have
8 stated it openly, that unless there is going to be
9 an incentive to the private citizen who has been
10 seeking gain on his own to enforce this kind of
11 law, the law is not going to be enforced because
12 there is no other machinery to bring it about.

13 Now, similarly, in the Caputo case we have
14 demonstrated in this case thusfar, and I think
15 the balance of the testimony will bear it out.
16 That had it not been for them in bringing this
17 action way far back as 1974 when they first made
18 application, and then started their lawsuit in
19 July of 1975, the municipality would not have done
20 even as little as it has done.

21 Now, I dare say that statement can be made
22 without fear of any real and serious contradiction.
23 Mount Laurel came about because a very vigorous
24 and perhaps well-heeled civic organization carried
25 the labor in the first instance, but that wasn't

1 the situation in Madison Township.

2 There were private citizens that had an
3 ax to grind and I would not characterize the
4 Caputos that way. They have had the interest of
5 this municipality at heart. They are the sole ones
6 who have carried the laboring, or the Court will
7 see the enormous outpouring of the effort and cash
8 that these people have expended and as a consequence
9 of that they are entitled to special consideration.

10 I think that's what Judge Conford was driving
11 at in Oakwood at Madison Township. I know that's
12 what the Courts say and mean in the security cases.
13 And I know that the Courts have said the same thing
14 in certain high Court opinions in Pennsylvania
15 where a private party has brought an action against
16 a municipality to have the zoning changed and has
17 been successful and has been the beneficiary of
18 special consideration. That is what we are seeking
19 here.

20 So in that context, we are saying that the
21 fact that this bevy, if you will, of experts had
22 to be retained and the representatives of the
23 defendant had to be examined and preparation had
24 been, had for trial and then the trial didn't take
25 place because of events which were not the fault of

1 the plaintiffs, but rather the fault of the town,
2 we should not be required to pay for that kind of
3 thing. We should be, we should be rewarded for
4 taking the part of the public in bringing about
5 that which is in the best interests of the public.

6 THE COURT: But you said that each case is
7 to be based on its own facts. Now, in this case,
8 in this Township you have five, four or five other
9 parties who have challenged the zoning ordinance.

10 MR. LINDEMAN: Your Honor, please--

11 THE COURT: Where do I fit them into the
12 just rewards theory? And I am not going--that's
13 a question I am asking you.

14 MR. LINDEMAN: It is a perfectly proper
15 question if I may just respond quickly, your Honor,
16 without intending to give the whole answer.

17 I have in my hand right now a copy of the
18 complaint of Harvey against the Township. It is
19 a three or four-page document which I submit on its
20 face is a pretty simple document.

21 Now, the record will show, and we all know
22 that the plaintiff, in this case, and their counsel
23 have really done nothing. They filed their com-
24 plaint and that action along with the other five
25 have been stayed. So they are not entitled to

1 anything because they haven't been called upon to
2 do anything.

3 THE COURT: Well, okay. But I am going to
4 ask this not rhetorically, but for you to respond
5 in the form of a memorandum.

6 Are you saying that because A files a
7 complaint first and B is told by the Court, well,
8 you filed your complaint or let's say B, C, D and
9 E have filed their complaints and they're told by
10 the Court, well, since we have this one under
11 attack and you're too late to be consolidated in it,
12 that only the guy who fortuitously gets the jump
13 on the attack is going to be rewarded and the others
14 cannot be?

15 I ask that question because it is a unique
16 case. I will let you answer to me in a memorandum
17 of law that I would like to have by next Wednesday
18 and then Mr. Ferguson can respond to it.

19 It is^a matter that bothers me. There is no
20 question about it. It is a matter of great concern
21 to the Courts and I am not suggesting that it is
22 not there. I am just trying to get an idea of how
23 you seem to take the position that Oakwood at
24 Madison says this. And I don't agree that Oakwood
25 at Madison says this.

1 Oakwood at Madison said, and Judge Conford
2 said on the facts of this case the following has
3 occurred. We don't have anything comparable to
4 the facts at Oakwood at Madison.

5 Now, you're saying the logical conclusion
6 is to carry it to the Caputo case and to have
7 Mr. Caputo testify to all the preparation involved
8 in this case.

9 Again, I ask you because the question popped
10 into my mind and I am not disposed to the answer.
11 What does it mean? Every case, in every zoning
12 case from now on the plaintiff has the right to
13 have as relevant issues the cost of all his experts,
14 the time he spent in preparation, et cetera? And
15 that the Court must consider this in determining
16 the relief that is sought by the plaintiff?

17 Because, again I see zoning by the Court.
18 If I have 20 plaintiffs, and they have 20 separate
19 parcels of land and they all get together and pay
20 for the cost of challenging the zoning ordinance
21 and they all want their land changed to a specific
22 use, must they all be rewarded under your theory?
23 They must be. And these are the things that I am
24 concerned about. And I am not saying disposed to
25 an answer. I am just asking questions.

1 I got other problems for Mr. Ferguson.
2 This is what I am saying. I don't know. I don't
3 read Oakwood at Madison says that is relevant.

4 MR. LINDEMAN: I think, your Honor has put
5 your finger right on the question and I agree. I
6 agree that Oakwood stands for what it stands for.
7 But like all other Court opinions, they, each adds
8 just a little bit more in the overall mosaic.

9 THE COURT: Okay. From my standpoint the
10 better, although it may prolong Mr. Ferguson. I
11 think the better position is to allow that evidence
12 to be presented. I may or may not be disposed to
13 award the, toward the position given on the proofs
14 I have and I haven't heard everything. I think
15 the record should have it there. I don't know
16 whether I necessarily agree that it is a logical
17 extension of Oakwood. I definitely feel that
18 Oakwood does not say this. But maybe that's where
19 the law is going and I am willing to hear the proofs
20 with respect to that and I will allow consideration
21 of the direction that we are going to go.

22 I am going to say this though, all right?
23 I don't want someone testifying to what he was told
24 someone else did. I want someone testifying to what
25 he knows was done.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LINDEMAN: That's correct.

THE COURT: In other words, what he knows what the attorney did and he was there and talked and it is not hearsay. I saw it happen, fine. But I am not going to get into a client talking to his attorney and the attorney saying well, this is what we have done. This is what we have done. Obviously, the deposition, if you want to refer to the deposition, I can collectively take notice of the fact that there are X number of pages. But I want it done on a first-hand basis.

Excuse me, off the record.

(A short recess was taken.)

Q Now, Mr. Caputo, with regard to the preparation for trial, would you tell us please what contact, if any, you personally had with your expert witnesses and the extent of it with respect only to preparation in or about the month of April 1977?

THE COURT: Okay. Before we left, I had stated to Mr. Ferguson that he would be allowed to indicate his position.

MR. LINDEMAN: I beg your pardon, your Honor. I am sorry.

THE COURT: I thought by the fact that he was sitting there that he had given up so I didn't-

1 MR. LINDEMAN: I am sorry.

2 THE COURT: I didn't bother to bring anything
3 to his attention. Go ahead.

4 He is now standing up, for the record.

5 MR. FERGUSON: I would be remiss if I didn't
6 say a few words about the argument that Mr. Lindeman
7 presented.

8 One, that the security laws under the
9 34 and 33 Act have absolutely nothing to do with
10 this. There you have a corporate recovery against
11 an insider of the company trading in securities.
12 There is no possibility of the shareholders recover-
13 ing enough money to make it worth their while so
14 sue. The recovery goes back to the preparation.
15 There are millions of shares outstanding and the
16 value to any individual shareholder may be one or
17 two cents.

18 Second, that Federal Security Law and
19 expressly given in the statute or the regulation,
20 I would cite the Aliueyuska case in the Supreme
21 Court, I believe, in the spring or summer of 1977
22 for the proposition that the attorney, private
23 attorney's general theory is not specifically
24 disapproved of and not allowed under the National
25 Environmental Protection Act where the Aliueyuska

1 plaintiffs were successful in making the Government
2 mind their P's and Q's, do the right thing about
3 the pipeline in Alaska. The Supreme Court said
4 it is not in the statute, not in the common law
5 unless the statute gives you a right to a legal
6 fee, you're not going to get it. As far as I am
7 concerned, that's the law of the land.

8 THE COURT: Well, he is not seeking legal
9 fees, as I understand it, his theory. He is
10 seeking to show--

11 MR. FERGUSON: Seeking a great deal more.

12 THE COURT: Yes, right.

13 MR. FERGUSON: He makes the analogy between
14 legal fees and a building permit.

15 THE COURT: I understand that.

16 MR. FERGUSON: That is very interesting. They
17 don't even allow a legal fee to Aleuyuska plaintiffs,
18 for instance. But if you give a building permit,
19 and if you assume 856 units at \$50,000 market price,
20 you get \$42,800,000. That is one heck of a payoff
21 for getting in line first, hiring a lot of experts,
22 making them go through their motions and being the
23 first one to win.

24 THE COURT: Okay, let me just say this:

25 All I was saying was I was going to allow the proof

1 because I remained silent when the argument or
2 correlation is made to another area of law does
3 not mean that old silence is an acceptance theory.
4 My silence, I will say, to both of you never means
5 that I am accepting what you're saying.

6 MR. FERGUSON: I understand that.

7 THE COURT: Okay. I just want you to know
8 that.

9 MR. FERGUSON: I do.

10 THE COURT: All right. You have the right
11 to make a point. I am just going to ask
12 Mr. Lindeman to give me a memo and answer the
13 questions that I raised, and legitimately, then
14 you can submit to me a memo raising any other
15 questions that you see in the lack of analogy
16 between the cases. I think Matelka is an article
17 in the Seton Hall Law Review. If my memory serves
18 me correctly, he makes some analogies to other
19 case situations where there is a benefit conferred
20 upon the successful plaintiff. But I don't
21 remember them all.

22 MR. FERGUSON: You know, applying that
23 argument to the facts of this case, we have to go
24 in to see what was necessary to win the Mount Laurel
25 aspect of the case and what was necessary, if it can

1 be done at all, to show that the land is suitable
2 for this kind of development. And the issues are
3 really two different ones entirely.

4 THE COURT: That's one thing I forgot.

5 MR. FERGUSON: Because this case could be won
6 or lost without any Mr. Smith or Mr. Rakos or
7 anybody.

8 THE COURT: Yes, that is one thing that I
9 forgot to say before and I had written it down and
10 forgot to mention it. That's if you're going to
11 associate costs, please associate them, one, to the
12 challenge to the ordinance, and two, to the
13 preparation of the plan for the site as it is now
14 developed. Okay?

15 I don't know whether this is a proper
16 dichotomy to consider, but I don't want an expert
17 who is testifying with respect to the zoning
18 ordinance fees and with respect to the particular
19 utilization of this property for 800 some odd
20 multiple family units. His fees to be mixed
21 together, but, I think, they're two different
22 theories. And I think there is two different sets
23 of facts that I would like set down.

24 Do you understand what I mean?

25 MR. LINDEMAN: I understand fully what you

1 mean, your Honor. And I must say candidly that it
2 is not something which I did not anticipate. I
3 did. But I know that the witness is not ready for
4 that.

5 THE COURT: Well, if he can do it, fine.
6 If he can't, then...

7 MR. LINDEMAN: Well, maybe he is, but I
8 rather think he is not.

9 THE COURT: Okay. If he can't do it, let
10 him go back and review it so that he can break it
11 out.

12 I think there are two phases to it and the
13 weight to be given to the attack on the zoning
14 ordinance as to, opposed to the weight given to the
15 other, I think right now the way I look at it, it
16 should be considered in those two phases.

17 MR. LINDEMAN: I think, if I may, your Honor,
18 that there are certain of them that are in somewhat
19 of a grey area because much--

20 THE COURT: Yes.

21 MR. LINDEMAN: Much of what has happened
22 beforehand, you know--

23 THE COURT: I realize that. Okay.

24 BY MR. LINDEMAN:

25 Q All right. Mr. Caputo, would you tell us

1 please what your personal involvement was or describe
2 your personal involvement, what you know particularly
3 about the preparing of the expert witnesses for trial
4 in or about April, March or April of 1977?

5 A Mr. Ambrose called me on the telephone and we dis-
6 cussed the things, the trial coming up on May the 9th.
7 And I have to prepare my case and I have to interview
8 each and every witness to prepare the case, you know,
9 for trial

10 Q Now, what, if any, contact did you have
11 with the witnesses themselves about the testimony for
12 which they were preparing? Go ahead.

13 A Each witness has been instructed by me to, not to
14 do any work, only on the suggestion of my attorneys
15 because I felt I was paying the bills and therefore I
16 would have to authorize every move for at least anything
17 that was going to take time have to be authorized by me.
18 Otherwise they weren't to do anything. So each witness
19 would be instructed to go ahead and do whatever
20 Mr. Ambrose would ask them to prepare for trial.

21 MR. FERGUSON: Your Honor, I object unless
22 it is made clear whether this witness gave the
23 instructions or Mr. Ambrose gave the instructions.
24 I think in the previous answer it was indicated
25 that he instructed and then the witness would be

1 instructed. And I don't know which it is.

2 THE COURT: Yes, would you clear that up?

3 THE WITNESS: Mr. Ambrose called me and he
4 advised me that he will need to go over each witness
5 to prepare for trial.

6 Q Then did you discuss the facts that the
7 witnesses were to testify with the witnesses themselves?

8 A Yes, as I mentioned before, the witnesses were not to
9 put in anytime, that first consulted with me because if
10 they did, I would not pay the bill.

11 THE COURT: Did you tell them when you hired
12 them that before they did any work you personally
13 had to authorize them to do that work?

14 THE WITNESS: Correct.

15 THE COURT: Okay. And then what you are
16 telling us is Mr. Ambrose called you and said,
17 "I got to talk to these witnesses now." So then
18 you called these witnesses and said okay Mr. Ambrose
19 wants to talk to you to prepare the case, you talk
20 to him.

21 THE WITNESS: Well, actually the other way
22 around. He would call, Mr. Ambrose called me. "I
23 have to meet with them. It is okay with you?"

24 "Go ahead." That was the case.

25 THE COURT: Okay.

1 Q All right. Now, calling your attention to
2 the time of about April, late April of 1977, there came
3 a time, did there not, when the trial was adjourned, was
4 it not?

5 A Well--

6 Q Just yes or no, Mr. Caputo?

7 A The trial was adjourned, yes.

8 MR. LINDEMAN: Right. Your Honor, may we
9 approach the bench for a moment?

10 (A side bar discussion was had.)

11 Q Mr. Caputo, did you receive a separate bill
12 covering the services for the preparation for trial?

13 A Yes, each expert submitted me a bill. Submitted me
14 a bill of the time spent in preparation for trial.

15 Q And how about your lawyer?

16 A Of course, the lawyer too.

17 Q You don't happen to recall what that amount
18 was at this time, do you?

19 THE COURT: Which amount?

20 Q For just the preparation of trial alone.

21 A No, I don't.

22 MR. FERGUSON: Objection.

23 A I don't remember.

24 Q All right.

25 A I have records, checks. It was in the thousands

1 of dollars, I know that.

2 Q Do you recall what, if anything, happened
3 regarding the trial taking place on May 9, 1977?

4 A Will you repeat the question?

5 Q Did the trial take place on May 9, 1977?

6 A No, it didn't.

7 MR. LINDEMAN: If your Honor please, I offer
8 into the record now at this time a communication
9 between counsel and the plaintiffs and the Court.
10 It is a letter of May 3, 1977, together with a
11 copy of another letter to which that letter refers
12 and the letter that is referred to in counsel's
13 letter is one of, from McCarter & English to the
14 Mayor and Township Council and the Planning Board
15 dated April 11, 1977.

16 THE COURT: Just for the sole purpose of
17 showing that the letter was sent and returned and
18 the adjournment of the case?

19 MR. LINDEMAN: That's correct. For that sole
20 purpose, your Honor.

21 THE COURT: All right, P-44.

22 MR. LINDEMAN: A and B, do you think, your
23 Honor? There are--

24 THE COURT: No, put them together. Came as
25 one document to me so why you just put them together

1 and let it be P-44.

2 (The documents referred to were marked P-44
3 in evidence.)

4 Q Of course you had not seen, you hadn't seen
5 the letter of McCarter & English prior to your preparation
6 for trial, had you?

7 A Definitely not.

8 Q Now, did you have to pay for attorneys and
9 your experts when you met with the municipal officers
10 at the various meetings prior to your institution of suit?

11 A Yes.

12 Q Can you tell us approximately overall how
13 much money you have paid for your experts, including
14 your lawyers in connection with this litigation? That
15 includes everything, the environment impact statement,
16 all of the expenses of Jaman Engineering and the others
17 just in connection with this zoning problem and the
18 lawsuit.

19 MR. FERGUSON: Objection, your Honor. I
20 do believe it is improper to lump everything
21 together because we have the problem of Mount Laurel
22 issues and the experts' services and the attorneys'
23 services with respect to that. And then we have
24 the preparation of the detailed environmental
25 impact statement. The engineering that went into

1 seeing whether Mr. Caputo's site was proper, or
2 could be considered to be proper for any kind of
3 high density development.

4 MR. LINDEMAN: I think I can satisfy that,
5 your Honor.

6 THE COURT: Pardon me?

7 MR. LINDEMAN: I think I can satisfy that
8 problem. I can ask the witness if he knows what
9 the cost of the environmental impact statement and
10 application for conceptual approval alone were.

11 MR. FERGUSON: Well--

12 MR. LINDEMAN: He knows what they are.

13 THE COURT: I think that--well, let's put it
14 this way: I will allow the question to be answered
15 provided at some later time you break out and
16 differentiate the costs related to the development
17 of the site, proposed development of the site and
18 the costs related to the attack on the zoning
19 ordinance. And I know there are some grey areas.
20 We will deal with those grey areas when we come to
21 them.

22 Q Preliminarily, however, Mr. Caputo, do you
23 know the cost of the environmental impact study and
24 application for conceptual approval prepared by Jaman
25 Engineering?

1 A Yes, it was approximately \$8,000.

2 Q And did you purchase an aerial photograph
3 for making up of a topographical study of your property?

4 A Yes.

5 Q And in connection with your applications and
6 the litigation to which we have referred?

7 A Yes.

8 Q And how much was that?

9 A Approximately \$6,000.

10 Q Now, overall what have you paid for the,
11 your experts and counsel thusfar?

12 MR. FERGUSON: I object to that one unless
13 the representation is made that a breakdown will
14 be made.

15 MR. LINDEMAN: I will make that representa-
16 tion.

17 THE COURT: All right.

18 A To date, approximately \$150,000.

19 MR. FERGUSON: Was that experts and lawyers
20 or experts?

21 MR. LINDEMAN: Yes, experts and lawyers.

22 A This includes bills not paid yet.

23 Q Now, Mr. Caputo, to the best of your know-
24 ledge, did you follow the Township's instructions making
25 whatever applications were made to it for zoning of your

1 property?

2 MR. FERGUSON: Objection. There is no
3 testimony or no foundation that there ever were
4 any instructions.

5 THE COURT: Sustained.

6 MR. LINDEMAN: Your Honor, please, given,
7 acknowledging the Court's ruling, the instructions
8 are those that are contained in the letters of
9 the Township Planning Board and the section in
10 which the plaintiffs were told to do this and such
11 about their plans and those instructions.

12 THE COURT: Let me refer to those
13 specifically. But the form of the question, it's
14 objectionable.

15 Q Mr. Caputo, can you tell us if as of 1974,
16 any time in 1974, you knew then anything about your
17 property, your property alone, that is your property
18 and Mr. Aldo Caputo's property that required that it
19 alone must be zoned for multi-family dwellings, must have
20 been zoned for multi-family dwellings?

21 MR. FERGUSON: Objection as to what this
22 witness knew in 1974. I think that is not a
23 question designed to elicit any competent evidence.

24 MR. LINDEMAN: Well, I am, of course, asking
25 the question for the purposes of Mocco versus Job

1 and Fobe Associates versus the Mayor and Council
2 of Demarest.

3 There is language in Mocco versus Job which,
4 I think, requires that this kind of a question be
5 asked.

6 THE COURT: What he knew?

7 MR. LINDEMAN: Well, what was--yes, yes.
8 What conditions existed that required, that his
9 property over all of the other properties--

10 THE COURT: Okay, that's different.

11 MR. LINDEMAN: Yes, it is.

12 THE COURT: I think it is different. Ask
13 the--as to the form of the question is objectiona-
14 ble--I ask you to rephrase the question.

15 MR. LINDEMAN: I will do that, your Honor.

16 Q What circumstances existed as of 1974 that
17 required that your property over all of the other
18 properties in the Township be zoned for multi-family
19 dwellings? Bear in mind this is as of 1974 before you
20 brought your lawsuit.

21 MR. FERGUSON: I object on the ground that
22 it is a question which calls for really expert
23 testimony by a planner or land use expert and this
24 witness hasn't been qualified.

25 MR. LINDEMAN: Well--

1 THE COURT: I will allow him to say what
2 he says were the circumstances.

3 Q Do you know if there was anything that
4 existed as of that time that required your property over
5 all others must have been zoned for multi-family dwellings?

6 A Well, the only thing that I could say on this is
7 that due to the fact it was needed housing for lower
8 income and moderate income people, my property is suitable
9 for this kind of development. And because the houses
10 are needed and I am willing and ready to do it. So you're
11 talking about 1974?

12 Q Right. Those were the circumstances that
13 existed as of then?

14 A Well, that is after the Mount Laurel decision.
15 There was a decision that would require moderate income
16 housing. So I felt that my property would qualify for
17 that.

18 MR. LINDEMAN: All right. I have no further
19 questions, your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. FERGUSON:

23 Q Mr. Caputo, when you, did you buy your
24 acreage in Chester Township?

25 A In the summer of 1960.

1 Q You and your brother bought his acreage
2 shortly thereafter?

3 A That's correct.

4 Q Do you know the purchase price of your
5 brother's property?

6 MR. LINDEMAN: I object, your Honor. It is
7 irrelevant.

8 MR. FERGUSON: I think it is relevant, your
9 Honor, if we are talking about profitable use of the
10 plaintiffs' land and about confiscation.

11 MR. LINDEMAN: I am not so sure about
12 confiscation, but so far as profitability of land
13 is concerned.

14 THE COURT: I have a little trouble with it,
15 Mr. Ferguson, because you're asking a question that
16 seems to me ignores appreciation in values.

17 What difference does it make what he paid
18 for it, if it was, if he acquired it by devise?
19 If someone gave it to him. What difference does that
20 make if the market value of that land at a certain
21 time is a certain amount of money.

22 I am going to sustain the objection.

23 MR. FERGUSON: I think it is relevant when
24 this Court must consider the evidence that the
25 land is undevelopable, according to Mr. Rakos'

1 sketch and according to the zoning ordinance that
2 appears to be the thrust of what Mr. Rakos was
3 trying to say. That you develop it to the maximum
4 density under two and five acre zoning, you can't
5 do it because nobody will buy it. It is too
6 expensive.

7 THE COURT: No, I can't agree. That is an
8 irrelevant question. I will sustain the objection.

9 MR. FERGUSON: All right.

10 Q Would you tell us the current assessed value
11 of your property and your brother's property today?

12 THE COURT: Assessed for real estate tax
13 purposes?

14 MR. FERGUSON: For real estate tax purposes.

15 A Well, they have different assessments because they
16 have a farm assessment. They have been talking about
17 the house or land itself?

18 Q Both.

19 A I think the buildings are assessed, my building
20 is assessed for \$125,000 and the land I am not--I don't
21 know, I don't remember the land itself. I don't remember.

22 Q Well, you don't remember the assessment for
23 the other 160 acres that you own?

24 A No, I don't. They have two assessments, as you
25 know, for farmland is one assessment. They give you a

1 privilege because it is supposed to be a farm and the
2 assessment is different for tax purposes, for real estate
3 tax purposes.

4 It is assessed differently than it would be if it
5 was not classified as a farm.

6 Q Do you have a farmland assessment for your
7 acreage?

8 A Yes.

9 Q What about your brother?

10 A Yes, also.

11 Q What is the basis of that farmland assess-
12 ment? What crops are grown?

13 A Well, originally when I first bought it I was
14 raising pheasants.

15 Q Pheasants?

16 A Yes, I had a couple of men working for me then
17 raising pheasants. Spent a lot of money on pheasants
18 so I got out of the pheasants business and I planted
19 Christmas trees and some alfalfa and I harvested timber.
20 That gives me the right to be assessed as a farm.

21 Q Are you growing Christmas trees there now?

22 A I have one field planted with Christmas trees, but
23 they're not going anywhere. They're not growing.

24 Q When I say "you," I am really talking about
25 you and your brother.-

1 A Yes, we both have Christmas trees, but as I say,
2 they're not doing so well.

3 Q What about alfalfa? Do you grow any
4 of that?

5 A I only have approximately 20 acres of alfalfa.
6 Leased that out \$500 per year.

7 Q \$100 per acre or--

8 A The whole thing \$500 per year. The whole 20 acres.
9 They do me a favor by cutting it.

10 Q What about the orchard?

11 A The orchard originally we used to prune it. We
12 used to spray it. I have all the spray equipment, and
13 so on. But we had a beautiful crop one year and called
14 different firms to sell the apples. Well, they offered
15 me one penny per pound and I had to pick the apples.

16 Q When was this, Mr. Caputo?

17 A Oh, this goes back maybe 10, 12 years ago.

18 Q Am I correct in saying that you haven't
19 sold any apples for the last 15 years?

20 A Well, I say no because what I did I even put an
21 ad in the paper for people to come up and pick up apples.
22 I believe they charge a dollar a bag, something like
23 that to pick up their own apples. But we don't spray
24 them anymore because the cost of spraying and the labor
25 was much greater than the return I would get on the apples.

1 Q So is it correct to say that as of the
2 present time you aren't growing and selling apples?

3 A No, I am not.

4 Q Would you tell us what improvements you
5 made on the property since you bought it in 1961?

6 A Well, as I said before, there was a jungle there.
7 I took out all the cedars, useless trees among the
8 apple orchard because I wanted to have an apple orchard
9 because at that time I was under the impression it might
10 be a change of selling some apples.

11 Then I built my home. I built smaller, you know--

12 Q For the record, just describe your house
13 very briefly. Is it a single-family residence?

14 A It is a single-family ranch type house.

15 Q With attached garage?

16 A Yes, two-car garage.

17 Q Approximately how many rooms does it have?

18 A I think it is nine rooms.

19 Q Have you made any improvements to the,
20 your property, on the east side of the Peapack Brook?

21 A I built a pond in the brook, yes. A small pond.

22 Q Is that directly on the brook or is it off
23 to one side?

24 A It is off to the side of the brook.

25 Q Is there a logging road going up the east

1 side of it?

2 A There is four or five logging roads which they were
3 there. When they logged the timber, take out the timber.

4 Q What vehicles would use those logging roads?

5 A Tractors. Well, I believe it was tractors and
6 machines to pull out the timber.

7 Q When is the last time you took timber off
8 that property?

9 A 1975, '76, or '76, '77. I'm not so sure. I think
10 it was '76, '77.

11 Q All right. Mr. Caputo, earlier on direct
12 examination you said at one point that you wanted to know
13 if your property was suitable for your development and
14 that the town was making a great deal about water
15 pollution.

16 Would you tell us how you knew what the
17 town was talking about in terms of water pollution? How
18 did that information come to you?

19 A Well, through at public meetings and a lot was
20 written through newspapers.

21 Q All right. Tell us what you heard at
22 public meetings about--can you give us--don't tell us
23 what you heard, but first give us a date, if you can,
24 and tell us which body was meeting.

25 A The only thing I know about public meetings, what

1 I was reading in the newspapers. I never did go to the
2 public meetings other than my own when I made my own
3 presentation.

4 Q All right. You recall the names of any
5 persons who may have been reported as testifying at any
6 of those public meetings you didn't go to?

7 MR. LINDEMAN: I object, that is irrelevant.

8 MR. FERGUSON: All right. Withdraw it.

9 Q Did you ask any of your experts to look into
10 the environmental data or testimony that had been
11 presented at any public meetings in Chester Township?

12 A I might have, but I don't recall.

13 When you say testimony, by whom?

14 Q By any of the people who you may have read
15 about in the papers or you may have been informed were
16 speaking to the environmental problems in Chester
17 Township?

18 A No.

19 Q I'm sorry.

20 A I don't think there was much, you know, before the
21 Board, before these meetings that anybody would come in
22 with any such information at all. I think almost all
23 of this came out from my starting, you know, inquiring
24 for my piece of land to use for multiple family use.

25 Q Okay. Am I correct then that you did not

1 attend any public meetings yourself other than the one
2 you were present at?

3 A That's correct. Other than the ones that had to
4 do with me, with my development.

5 Q Okay. Were you aware of the public meetings
6 in 1974 with respect to the proposed Master Plan?

7 A As to what?

8 Q As to the adoption of the Master Plan?

9 A Yes, I was informed. In fact, I have copies home
10 of that because my attorneys secured copies for me and
11 I did request through my attorney to receive a copy. I
12 did read them.

13 Q Well, when did you get copies of those
14 documents?

15 A I can't recall the exact date. Each time there
16 was some news that came out with something new or adopted
17 a new zoning plan, whatever it was, I received a copy
18 and I have them home.

19 Q Did you instruct your attorneys or any
20 representative to attend any of the public meetings lead-
21 ing up to the adoption of the Master Plan?

22 A We did attend. Now I remember I was at one of the
23 meetings with Mr. Villoresi. Yes, I was at one of the
24 meetings which had nothing to do with us, but just went
25 to the meeting.

1 Q Did you present any presentation, testimony
2 or evidence at any of those hearings prior to the 1974
3 meeting that you told us about?

4 A You mean that I presented the first plan? That
5 was the first time I appeared before the Board.

6 Q That was the first time you appeared?

7 A Correct.

8 Q You had not appeared prior to September '74?

9 A Not that I remember.

10 MR. FERGUSON: Your Honor, I don't think I
11 have many more questions.

12 I would suggest that we come back after
13 the lunch break. I would like to consult my notes
14 and see if we have anything else.

15 THE COURT: Sure. Step down, Mr. Caputo.
16 Thank you.

17 (The noon recess was taken.)

18 MR. FERGUSON: A few more questions.

19 THE COURT: Okay, go ahead.

20 Q Mr. Caputo, you were giving some of the
21 details of your developments in the Poconos. With
22 respect to the first one you had approximately 1,000 acres.
23 How many lots came out of that?

24 A Between 1,500 and 2,000. I don't remember the
25 exact amount.

1 Q What was the average lot size?

2 A There was some--originally when we started we had
3 half-acre lots. Then they weren't selling too good.
4 Then I kind of checked why the people didn't like those
5 lots. Kind of felt they should be smaller because they
6 felt they were going weekends in the country and didn't
7 want to do too much work, upkeep of the lots.

8 Q Primarily recreational homes, summer homes
9 or winter homes?

10 A Originally, yes, but a lot of people moved in
11 all-year round living.

12 Q What was the average selling price per lot?

13 A When we first started, 1960, '61, they were selling
14 for as little as 795, 895. Gradually they went up on
15 price.

16 Q \$795?

17 A Correct. The same lots now four or \$5,000 or more.

18 Q On the second parcel in the Poconos, how
19 many acres were in that?

20 A Also approximately 1,000 acres.

21 Q How big were the lots in that development?

22 A We came to the conclusion that one-third of an
23 acre was the best selling size lot and that's what we
24 make all our lots. Eighty by 150. Most of the lots.

25 Q What were, what was the type of that

1 development? Was that primarily recreational at the
2 time?

3 A Yes, we started as recreation, yes.

4 Q What was the average selling price of the
5 lots in that development?

6 A Well, when I first bought the land, I bought it for
7 a very low price, which was 70, 80 per acre and after
8 roads and everything I was able to sell lots for as little
9 as three, \$400 a piece first.

10 Q Later?

11 A I sold a few, we might have sold between 100, 200
12 lots at less than \$400.

13 Q And what were you selling them at later on?

14 A Later on went up as much as \$4,000.

15 Q Now, the Development No. 3 with the 133-
16 acre lake. You bought that and it was already partly
17 developed?

18 A Yes.

19 Q What were the sizes of the lots in that one?

20 A Well, the sizes of the lots, they had subdivided.
21 They were 50 by 100., But I washed it out. It was started
22 completely new.

23 Q You reacquired some properties?

24 A I had to, yes, because the lots were too small.

25 Werenot suitable for ceptic systems, especially near the

1 lake. And at that time there wasn't much zoning in the
2 area that really people wanted to build a house near the
3 lake. So they were going to be able to get away with
4 the septic systems, even though it might pollute the
5 water. I wanted to preserve the pollution of the water
6 and worked very hard to purchase most of the lots.

7 Q What size did you end up selling in that
8 development?

9 A What size lots?

10 Q Yes.

11 A One-third of an acre.

12 Some of them half an acre. But the majority
13 were one-third of an acre.

14 Q What was the average selling price, range
15 of selling prices?

16 A When we first opened for sale in 1968 we started
17 with a minimum price of \$1,995.

18 Q 1,995?

19 A \$1,995 per lot up to \$12,000.

20 Q Selling lots that went for \$12,000?

21 A On the lakefront were as much as \$12,000.

22 Q I see. How big were the lots in the lake-
23 front?

24 A They maybe were the same size, 80 by 150 or even by
25 200. Some were to be larger. The engineers really where

1 I requested my engineers that if there was a grey area
2 where the lot had to be larger because of the ceptic
3 system, they did have a larger area because of percolation
4 maybe, you know, for the percolation wasn't as good.

5 But it was very good, then you don't need a big
6 area for a ceptic system. For percolation not too good,
7 then you need a larger area.

8 Q All right. The 133-acre lake was there when
9 you bought that project?

10 A Yes.

11 Q I think you say you rebuilt the dam?

12 A Well, the dam was falling apart. If we did not
13 repair it, it would have broken up and the previous
14 owners did not have any money enough to rebuild the
15 dam. And there was danger of collapsing and would have
16 been a lot of damage down below.

17 Q Okay. Turning now to your 160-acre farm in
18 Washington Township. Have you submitted any development
19 requests to that Township?

20 A Yes, we did.

21 Q Were they successful?

22 A We did not follow through. In other words, it was
23 submitted to the plans. We even filed a complaint, but
24 we stopped because we wanted to see the result of this
25 case first.

1 Q The complaint you are referring to is the
2 one with you as plaintiff?

3 A Correct.

4 Q Against Washington Township--

5 A Correct.

6 Q -- as defendant? What relief did you seek
7 in that complaint?

8 A To build originally was to build also townhouses.
9 Then the Township indicated that they wanted to talk.
10 And they requested that we submit additional plans for
11 less density because we were asking for, I believe, seven
12 units per acre. And also they asked whether I was
13 interested in smaller size lots.

14 Q All right. Were these conversations before
15 or after you filed the complaint?

16 A After filing the complaint.

17 Q Are you continuing those discussions with
18 the officials in Washington Township?

19 A No, that complaint was filed about the same time
20 that this one was filed.

21 Q Right.

22 A And they just followed this one through and kind of
23 let up on the other one.

24 Q Has the other complaint been dismissed?

25 A No, no.

1 Q As far as you know, it is still pending.

2 A Still pending.

3 Q And the--am I correct, am I not, in stating
4 that the grounds of that complaint are more or less the
5 same as the grounds asserted in this complaint?

6 MR. LINDEMAN: I object, your Honor. I
7 think the answer calls for a legal conclusion which
8 this witness is not competent to give.

9 MR. FERGUSON: To the best of the witness'
10 knowledge.

11 THE COURT: I will allow it.

12 A Will you repeat the question, please?

13 Q Were the grounds of that complaint more or
14 less the same as far as you know as the grounds stated
15 in this complaint?

16 A Well, might be because also the acres, they have
17 3 acre zoning. Then we felt it was too high.

18 Q Too high for the use you wanted to make of
19 that land in Washington Township?

20 A Yes.

21 Q Mr. Caputo, when you bought your land in
22 1961 in Chester Township, were you aware of the zoning
23 restrictions in effect at that time?

24 A I was only aware there was two-acre zoning.

25 Q You were aware that there was a zoning
ordinance?

1 A Well, I was very, very green at that time. I didn't
2 know much about real estate. All I know is I bought
3 the land. I was told, and I didn't go through any pains
4 to investigate. I was told two-acre zoning.

5 Q You were told by your attorneys or whoever
6 advised you?

7 A Maybe real estate. I don't remember who. All I
8 know that I was not interested in particularly what
9 zoning was really.

10 Q But you were informed it was two-acre zoning?

11 A Yes, I was.

12 Q Now, I just want to go over the sequence of
13 the preparation of the development plans to the Chester
14 Township Planning Board. And at any time I am not doing
15 it right, you correct me and tell me if I am wrong.

16 I would like to ask you whether this is
17 Plan No. 1 which you testified about and which you
18 presented to the Planning Board at the oral presentation,
19 I think, on September 2, 1974.

20 A October.

21 MR. LINDEMAN: Excuse me. I think counsel
22 is referring to D-2 in evidence.

23 MR. FERGUSON: I am referring to the plan
24 that has been marked D-2 in evidence.

25 MR. LINDEMAN: Right.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FERGUSON: And is P-3 for identification at the deposition of April 7, '76.

Q Is the the first plan that was presented at that meeting, to the Chester Township Planning Board?

A Yes.

Q And this calls for a hundred--I am sorry--

A One Thousand Eighteen.

Q One Thousand Eighteen units, has the lake, it has a golf course, tennis courts, swimming pool, club-houses?

A Correct.

Q Can you recall what you told or anyone on your behalf told the Planning Board about sewage disposal with respect to this plan?

A I don't think there were any questions in regard to sewage disposal because this was the first plan.

What we wanted really was the reaction of the Planning Board, or the governing body of Chester to see what suggestions they would have to make.

Now, we didn't go through any, we didn't want to go through any high expense. We were working on those, you know, on those reports that we submitted this plan to try to get the ideas and there might be any suggestions.

I might have made changes because we know that if we submitted this plan, probably be a lot of suggesting

1 of the Township will have. So we follow their more or
2 less instructions as to the request.

3 Q Okay. Now, this Plan No. 1, the plan which
4 your attorney, Mr. Villoresi, was referring to in his
5 letter of August 27, '74, P-37 in evidence?

6 A Yes.

7 Q And the meeting was, I believe, held on
8 October 29, 1974. I already said September. It should
9 be of October 29th.

10 A Right.

11 Q The next, not receiving any response or
12 satisfaction to you, I believe you said that you prepared
13 another plan which we call Plan 2 and I would ask you
14 whether this was Plan 2.

15 MR. LINDEMAN: I object to that part of the
16 question that refers that he stated, "satisfactory
17 to you," I think that that was not the testimony
18 of the witness insofar as that would be assumed
19 in the question.

20 THE COURT: He was editorializing.

21 Q Without the editorial comment, is that
22 Plan 2 which is the next plan you sent to the Planning
23 Board of Chester Township?

24 A It wasn't submitted to the--if your Honor please,
25 I just mentioned because I never received any response,

1 this was submitted because between the Plan 1 and this
2 one there was a Supreme Court decision on the Mount
3 Laurel case.

4 The purpose of this plan was to--

5 Q Okay.

6 A The purpose of this plan was to be able to build
7 lower price houses.

8 Q Okay. When was this plan sent to the, or
9 shown to the Planning Board?

10 A The summer of '75? Yes, must have been the summer
11 of '75 or the spring.

12 MR. FERGUSON: The record shows this is
13 D-3 in evidence, which is the same as Exhibit P-4
14 at the deposition April 7, '76. That would have
15 been at the meeting of the Planning Board on
16 May 26th, subsequently adjourned to May 27, 1975.

17 Q My notes aren't clear.

18 When did this go to the Planning Board?

19 A I just said either it could have been, it was after
20 the Mount Laurel decision by the Supreme Court. It was
21 the beginning of the summer--I don't have the exact date.

22 You have the date there somewhere?

23 THE COURT: Would it refresh your recollection
24 that Mr. Malcolm Kasler of the Chester Planning
25 Board of May 5th asked that this matter be scheduled

1 for discussion at the May 26th Public Hearing?

2 THE WITNESS: That's correct.

3 THE COURT: Okay. That's when it was?

4 THE WITNESS: Yes.

5 MR. FERGUSON: All right. I thank you. I
6 recall something about it being adjourned until
7 May 27th. I couldn't find that document.

8 THE COURT: It is about that time?

9 THE WITNESS: Yes, it is about that time.

10 MR. FERGUSON: Okay.

11 Q Did you attend that meeting?

12 A Yes, I did.

13 Q And you were there, Mr. Monica was there?

14 A Yes.

15 Q None of your experts were there?

16 A No.

17 Q Is this the plan that you showed them at that
18 meeting?

19 A Correct.

20 Q What, if anything, did you tell them about
21 ceptic or sewer disposal?

22 A Mr. Monica explained this plan himself. In fact,
23 I asked him whether he would need any experts to go up
24 there. He said they already know what it is all about.
25 Just wanted to explain the new plan and I don't recall of

1 any explaining about the sewage. I don't think so. I
2 don't recall anything like that.

3 Q All right. And this is for 1,452 units,
4 attached single-family dwellings?

5 A Yes.

6 Q The next plan that we have in evidence is--
7 by the way, did you ever execute any application, formal
8 application, informal application, any document on the
9 letterhead of your organization to the Planning Board,
10 which they called an application? Did you ever execute
11 and submit to the Planning Board any kind of application
12 for a zoning change or a variance permit, whatever?

13 A I did not. Not that I know of. If anything, my
14 attorney submitted them without--I don't know. I did not.
15 I did not submit any application for a variance. That's
16 for sure.

17 THE COURT: Did you ever sign an application?

18 MR. FERGUSON: I will state for the record
19 we have no knowledge of it.

20 A I do believe--I don't remember. I signed some
21 things. Pretty hard for me. I don't think I did. I
22 know there was, we did not apply for a variance. I know
23 that.

24 MR. FERGUSON: I will state for the record
25 we looked at our files for any such application.

1 We haven't found it. I just want the record to be
2 clear that the witness agrees with that.

3 Q If there is anything that he can consider
4 to be an application?

5 A Not that I know of.

6 Q Would you like to clarify that?

7 THE COURT: You say not that you know of?

8 THE WITNESS: That's correct.

9 Q Plan No. 3, which has been marked P-1 in
10 evidence, prepared by Mr. Catlin, I believe you said was
11 submitted at your deposition held on January 6, 1976?

12 A Right.

13 Q Is that the first time it was ever shown to
14 anyone representing Chester Township?

15 A Correct.

16 Q That was some seven months or so after the
17 complaint was filed?

18 A Yes, if you say so, yes.

19 MR. FERGUSON: I have no further questions.

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

22 THE COURT: Okay. You testified that under
23 this third plan--well, strike that.

24 I believe it was under the first plan you
25 estimated--well, maybe I should go back.

1 You used the price 25 to 30,000 for two to
2 three bedrooms. And I believe it was the second
3 plan?

4 THE WITNESS: Correct.

5 THE COURT: Okay. Now, how did you arrive
6 at that pricing?

7 THE WITNESS: Well, I investigated with some
8 of the builders that built this kind of construc-
9 tion, townhouses and apartment houses, condominiums
10 to arrive as to what was the cost per foot. And
11 I come up with figures anywhere from \$15 to \$30 a
12 foot. And it depends what kind of quality or
13 luxury you want in the apartment.

14 So you could build a comfortable apartment
15 for as little as 750 feet because I have one in
16 my place, the cottage on my land is 750 square feet,
17 which is rented for \$300 a month and two people
18 live there comfortably. So I come to the conclusion
19 that if it was necessary, we could build homes and
20 sold for as little as \$25,000.

21 THE COURT: What were the square footages
22 of the proposed two and three-bedroom units?

23 THE WITNESS: It could be anywhere, I
24 figure, I think it started from something like
25 eight or 900 feet and up.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: How high up?

THE WITNESS: This would be two floors.

The footage?

THE COURT: Yes.

THE WITNESS: The footage go up to--if I am not mistaken, 1,500 square feet and maybe 2,000.

All depends on the prices of units.

In this particular, you talking about Plan No. 27

THE COURT: Plan No. 2, correct.

THE WITNESS: All right. They are all going between 25 and \$30,000. And they will be an average of eight, 900 square feet.

THE COURT: But you say they could range from eight to 900 up to 15, maybe 2,000 square feet?

THE WITNESS: Not for that price.

THE COURT: Yes. Okay.

Are you proposing that you would have these--

THE WITNESS: Yes.

THE COURT: Same possible units, new plan?

THE WITNESS: The new plan, yes.

THE COURT: Up to 2,000 square feet?

THE WITNESS: Yes, correct. I have in fact figures here, if you want me to--

THE COURT: No, I just wanted to ask you a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

question about that.

Okay. That is all I have. Anything else?

MR. LINDEMAN: I have nothing else of this witness, your Honor.

I would like now to read into the record excerpts.

THE COURT: All right. You can step down, Mr. Caputo.

I am going to have my transcripts.

MR. LINDEMAN: Just of Mr. Charles Hardin, Jr. I think two documents, your Honor. One is--

THE COURT: Mr. Hardin's deposition? Just in one deposition?

MR. LINDEMAN: April 7, 1976, and January 27, 1977.

THE COURT: All right.

MR. LINDEMAN: Commencing with the examination of Mr. Charles Hardin, Jr. on April 7, 1976, the examination by Mr. Ambrose.

The first extract is Page 60, lines 11 through 20.

THE COURT: Sixty, 11 through 20?

MR. LINDEMAN: Through 20.

THE COURT: All right.

MR. LINDEMAN: "QUESTION Okay. I want to

1 direct your attention now to a map marked P-3,
2 duplicate copy for identification--"

3 THE COURT: Could I parenthetically ask,
4 P-3 is what?

5 MR. FERGUSON: I am just looking in our
6 evidence.

7 MR. LINDEMAN: It is referred to October 10,
8 '74.

9 THE COURT: No. 1, I think.

10 MR. FERGUSON: Plan No. 1, P-3, duplicate,
11 '74.

12 Plan No. 1.

13 THE COURT: Okay.

14 MR. LINDEMAN: "--and ask you if you recall
15 this as being the map which was submitted by
16 Mr. Caputo to the Planning Board in connection with
17 his request for a zone change to that body in
18 October 1974."

19 "ANSWER I don't recall it specifically.
20 It could very well have been. It looks like a
21 number of maps that were submitted."

22 Going next to page 61, line 19 through
23 page 62, line 19 through page 62, line 22.

24 MR. FERGUSON: I'm sorry.

25 MR. LINDEMAN: Page 61, line 20 to page 62,

1 line 23.

2 THE COURT: All right.

3 MR. LINDEMAN: "QUESTION Do you recall any
4 written material being submitted to the Planning
5 Board at this evening's meeting besides the map
6 which I have indicated as the duplicate map?"

7 "ANSWER I am quite sure that written
8 material was submitted to the Board."

9 "QUESTION And do you recall the purpose
10 for which this was submitted?"

11 "ANSWER As a part of the presentation.
12 There were a number of these presentations, you
13 understand, not just Mr. Caputo's. So that there
14 were submissions and the submissions included
15 verbal presentations and also a presentation of
16 material. And I am quite sure there was material
17 submitted by Mr. Caputo as part of the presentation."

18 "QUESTION All right. You say there were a
19 number of presentations. By that statement, do
20 you mean presentations by a number of other different
21 citizens of the Township with respect to rezoning
22 of their particular tracts, or do you mean a
23 number of presentations by Mr. Caputo?"

24 "ANSWER I think both. I think Mr. Caputo
25 made at least two and perhaps more than two

1 appearances before the Planning Board for submission
2 to the Planning Board.

3 "There were other persons who made submissions
4 to the Planning Board in person and by submissions.
5 I mean papers."

6 "QUESTION And can you recall the period of
7 time during which these other submissions took
8 place?"

9 "ANSWER 1973, '74, maybe early '75."

10 The next extract is Page 66, line 6 to
11 Page 67, line 7.

12 THE COURT: All right.

13 MR. LINDEMAN: "QUESTION Do you know
14 whether or not the proposal, and we will use the
15 term proposal as including the maps and the sub-
16 missions of the data and everything else including
17 the request for the zoning change. Do you know
18 if that was submitted and decided by the engineer
19 of the Township, whoever it may have been, at that
20 time?"

21 "ANSWER I would say yes, it was."

22 "QUESTION Was any report, verbal or written,
23 submitted to the Planning Board in connection with
24 that request made by Mr. Caputo?"

25 "ANSWER As I said, I do not recall a formal

1 report on the subject. I believe there was at
2 least a verbal report from the engineer and it
3 might have been somewhat general. It may not have
4 been the same engineering analysis that would
5 result from a site plan application, for instance."

6 "QUESTION Were you there when that oral
7 report, for lack of a better descriptive term,
8 was given?"

9 "ANSWER I know of it, but I don't recall
10 how it was submitted or when."

11 "QUESTION You're in what we might describe
12 as regular attendance at your Planning Board
13 meetings, both executive, what we used to know
14 about the Executive Board meeting and the regular
15 meetings?"

16 "ANSWER Yes."

17 The next one is Page 68, line 21 and then
18 69 and 70 through line 21.

19 No, I am sorry. Line 19 on 70. There is
20 colloquy on 69 which I would read into the record
21 as well.

22 THE COURT: All right.

23 MR. LINDEMAN: "QUESTION Okay. Now, does
24 that bring back any recollection to you with
25 respect to your determination in finding out what

1 reports there may have been, if there were any,
2 with respect to the Caputos' submission in
3 October 1974?"

4 Shall I depart from the text? Shall I
5 read the colloquy, your Honor?

6 THE COURT: I don't think it is necessary,
7 unless-

8 MR. LINDEMAN: Right. I think not.

9 "QUESTION Starting at Page 14, let me put
10 it to you this way, if I may, to see if I can help
11 you. Do you in your capacity as chairman in any
12 way say to yourself, 'Hey, I have to find out what
13 happened to the Caputo application when we referred
14 to so and so'?"

15 "ANSWER It is quite possible that I didn't
16 have to say that to myself because it is quite
17 possible that it was obvious to all members of the
18 Board and to the engineer there, there should be
19 some conclusion reached with respect to this.
20 And I didn't have, I think it is likely I didn't
21 have to tell anybody to do anything. And this is
22 my recollection. The Board said we have this
23 submission, said this to itself. It was a consensus.
24 It may not have been anything that had to be said
25 openly."

1 Then there follows colloquy.

2 "THE WITNESS:" This is at 10--line 10 on
3 page 70. "A consensus of the Board that we should
4 get the engineer's reaction."

5 "QUESTION Okay."

6 "ANSWER Now, it may not have been necessary
7 for the Chairman to pursue the engineer. I think
8 it was not necessary."

9 "QUESTION Was there a reaction?"

10 "ANSWER There was a reaction by the Board.
11 I think there was no formal action, formal action
12 by the Board. I know there was no formal action
13 by the Board."

14 Going now to Page 87, line 23 through Page 79.

15 MR. FERGUSON: Well, your Honor--

16 MR. LINDEMAN: Not 79, 87.

17 MR. FERGUSON: I would ask that Page 71 be
18 read in, in order to make sense of what came before
19 and after.

20 MR. LINDEMAN: If your Honor please, I have
21 no objection to reading it, but I will not, I ask
22 the Court that we not be bound by it so far as the
23 testimony is concerned. I don't know what it is.

24 THE COURT: I don't know how you can do that.
25 I think the rule is that in fairness, if it should

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FERGUSON: Well, goes on the reaction by the Board and then the next, over on Page 71, the next question and answer.

MR. LINDEMAN: I have no objection to that.

MR. FERGUSON: What actions were taken by the Board with respect to this matter and subsequent to the engineer reporting to the Board.

MR. LINDEMAN: I have no objection to this, your Honor.

THE COURT: Okay. You talking about the answer at the top of the page? What was the question, the reaction? And then the end of the question, what actions were taken by the Board in connection with this request subsequent to the engineer reporting to the Board?

This is Page 71, line 15 and then you have the answer.

MR. FERGUSON: That's correct.

THE COURT: There was a discussion, the result of the discussion.

MR. FERGUSON: That's correct.

1 THE COURT: There was no formal action.
2 It was concluded that this was not a particular
3 application that required a particular type of
4 disposition. Submission was retained in the minds
5 of the Board and the files of the Board as a request
6 by a landowner in the Township for zoning treatment
7 of land to be considered along with other requests
8 for other landowners and advice from planners, and
9 so forth, in connection with a possible revision
10 of the zoning ordinance.

11 MR. LINDEMAN: Page 78, line 22 to Page 79
12 to line 17.

13 "QUESTION You have just briefly heretofore
14 stated that the way the citizens, pardon me, of
15 the Township would submit their zone request was
16 an informal action if they wanted or at a public
17 meeting. Are you telling me then the people who
18 submitted applications for change of zoning were
19 just to have those applications heard at a parti-
20 cular time, be they informal or formal and it would
21 go in a file. Was there no disposition of these
22 things to be communicated to these people who had
23 taken the time to submit these requests?"

24 "MR. FERGUSON: Insofar as it implies, as
25 far as any legal obligation to make a response, I

1 will object for the record."

2 "QUESTION Did the Board feel there was no
3 obligation at all to make a response?"

4 "MR. FERGUSON: Do you mean by that, feel
5 a legal obligation?"

6 "QUESTION A legal obligation."

7 "ANSWER Board concluded there was no legal
8 obligation to take affirmative action on the
9 submission."

10 Next is Page 90--

11 MR. FERGUSON: I think belatedly, perhaps
12 insofar as that purports to show that there was
13 or was not a legal obligation at that time, I will
14 object. I don't know what this is offered to show,
15 frankly.

16 MR. LINDEMAN: I am not offering it to show
17 that it is a legal conclusion which may or may not
18 be correct. It was just the impression that
19 Mr. Hardin had as to what his obligations may have
20 been.

21 THE COURT: All right.

22 MR. FERGUSON: I would ask that the next
23 three or four questions be read in also to explain
24 that prior answer.

25 THE COURT: Starting with P-17 on line 107

1 MR. FERGUSON: That's correct. Page, line
2 17, Page 79 through 80, line 12.

3 MR. LINDEMAN: Shall I read it, your Honor?

4 THE COURT: If you wish.

5 MR. LINDEMAN: "QUESTION Did the Board feel
6 any obligation at all of any kind as a representa-
7 tive agency of the municipality that it would not
8 inform the citizens of the disposition of their
9 requests?"

10 THE COURT: Excuse me. I have, "that it
11 should not inform the citizens--"

12 MR. LINDEMAN: I beg your pardon.

13 THE COURT: "--of the disposition of their
14 requests?" You said "would," I think.

15 MR. LINDEMAN: Yes, "that it should not
16 inform the citizens of the disposition of their
17 requests?"

18 "ANSWER I can't speak for the whole Board."

19 "QUESTION Well, you're the chairman."

20 "ANSWER I can speak for myself and I can
21 say that I am quite sure that at least it was the
22 Board's intention that at the time of these sub-
23 missions the people making the submissions were
24 told that this material did not fall within a
25 particular application framework and that the sub-

1 mission would be considered by the Board in its
2 work on the zoning ordinance revision."

3 "QUESTION Well, the zoning ordinance
4 revision, as I understand it, has now been completed
5 in draft form and has been submitted after action
6 by the Planning Board of the Township at the end
7 of last month to the governing board for its
8 consideration and possible introduction, is that
9 correct?"

10 "ANSWER No, it has not been submitted to the
11 governing body."

12 The next extract is Page 90, line 5 to
13 line 21.

14 "QUESTION The Caputo proposal is still
15 being discussed?"

16 "ANSWER Yes."

17 "QUESTION In what way?"

18 "ANSWER Well, we have a submission from
19 Mr. Caputo seeking a much more dense use than is
20 presently allowed."

21 "QUESTION Why is it being discussed, if
22 what you indicated to me before is the fact, namely,
23 that there is an implied declination of that
24 approval through the draft ordinances?"

25 "ANSWER It is still being discussed. We

1 haven't forgotten about Mr. Caputo or any of the
2 other people who filed submissions or made sub-
3 missions."

4 "QUESTION Is this being discussed with the
5 purpose of re-evaluation of the proposal and
6 possible change in the ordinance?"

7 "ANSWER Not particularly, but that's not
8 precluded."

9 MR FERGUSON: I would ask that the next
10 question and answer be read.

11 MR. LINDEMAN: "QUESTION For what purpose
12 would it be discussed?"

13 "ANSWER In the drafting of a zoning
14 ordinance and the revisions of a drafted zoning
15 ordinance existed uses are discussed, express
16 desires for different uses are discussed and
17 considered. The advice of the planner is discussed
18 and considered and the advice of other experts are
19 discussed and considered."

20 The next extract goes to the next volume,
21 which is January 27, 1977.

22 Now, we are at Page 9, line 12 and I think
23 it is fair to say that this is at a time after the
24 present 76-12 ordinance was adopted.

25 MR. FERGUSON: Well, I am not--

1 MR. LINDEMAN: Well, if we can go back to
2 Page 8.

3 THE COURT: Back on Page 8, that refers to
4 the ordinance?

5 MR. LINDEMAN: Right. Line 13.

6 "QUESTION We will get at it this way in
7 contemplation of selection and location of
8 properties for multi-family zone as ultimately
9 shown in Ordinance 76-12. What consideration, if
10 any, was given to the Caputo property in that
11 context?"

12 And then the answer is, "In drafting the
13 zoning ordinance all property in the Township
14 was considered for all uses in the broadest sense
15 of the word."

16 And I submit that we are on the same
17 subject matter when we start now on Page 9, line
18 12.

19 MR. FERGUSON: I would request that the
20 intervening question and answer be read in.

21 THE COURT: All right, go ahead.

22 MR. LINDEMAN: "QUESTION Was that done on a
23 property to property basis?"

24 "ANSWER No, it was not done on a property
25 by property basis, but the whole Township was

1 considered. We were zoning for the whole Township.
2 We were aware of requests that had been submitted
3 by Mr. Caputo and others for particular types of
4 use, including the matter that is before us now
5 and other applications for similar projects in
6 reaching a conclusion and where the RM zone should
7 be that conclusion, that decision was made with
8 knowledge of the existing requests and we felt with
9 knowledge of the characteristics of all of the
10 land in the Township and the appropriateness from
11 a planning point of view, the advice of a planner
12 of particular areas or sections of the Township
13 or locations within the Township without regard
14 to specific property lines where this type of use
15 would be appropriate."

16 "QUESTION Was there any specific considera-
17 tion of the Caputo property at this time, that is,
18 evaluation of the property itself from the criteria,
19 from the standpoint of the criteria which you
20 mentioned before?"

21 "ANSWER I would suppose the answer to that
22 would have to be yes. And the sense that we knew
23 of Mr. Caputo's request, we knew that the RM zoning
24 that was coming was the sort of thing that he was
25 interested in. We did not make particular

1 engineering studies of his property as distinguished
2 from the property in the vicinity of his property
3 to determine whether or not RM would be appropriate
4 there. The conclusion that RM should be where it
5 ended up in the ordinance was made rather on the
6 appropriateness of the places where it was located
7 rather the appropriateness of another particular
8 spot."

9 MR. FERGUSON: My transcript has, "rather
10 than the."

11 MR. LINDEMAN: I beg your pardon. Yes,
12 I am sorry. "--rather than inappropriateness of
13 another particular spot."

14 The next is Page 12, line 17 to Page 13,
15 line 15.

16 MR. FERGUSON: What page?

17 MR. LINDEMAN: Twelve.

18 THE COURT: Okay.

19 MR. LINDEMAN: "QUESTION In view of the
20 fact that a request was made by Mr. Caputo, were
21 there any discussions among the Board members at
22 or before or during the time the judgment was being
23 exercised by the Planning Board as to where these
24 properties should be located as to the suitability
25 for Mr. Caputo's site to fit in the plan for multi-

1 family housing other than its mere location?"

2 "ANSWER It necessarily follows that the
3 eventual zoning location that the Board decided
4 against the appropriateness of Mr. Caputo's land
5 and other land, lots of other lands in the Township
6 for this particular purpose. The Board in making
7 its decision as to where these sites should be
8 did not focus on Mr. Caputo's land as distinguished
9 from the land, other land in the area.

10 "Undoubtedly in Board discussions when we
11 approached the conclusion working with the planner
12 that these zones should be located where they ended
13 up, ended up being located, somebody must have said
14 it is inconceivable that a small town like this
15 that somebody might have said that this does not
16 include the Caputo land and it does not include
17 some other lands for which there was a request
18 pending. So I am not trying to evade you.

T-9 19 I am sure that the Caputos came out in these
20 discussions, but the zoning was not of Caputos'
21 lands in particular."

22 The next is Page 14. I would start at
23 line 13 because that's where the question really
24 starts and ends at Page 14, line 19.

25 "What specifically were the reasons assigned

1 to the Caputo property for its non-inclusion in the
2 RM Zone. That is all I am looking for."

3 "QUESTION What were the reasons?"

4 "ANSWER As far as I know, no specific
5 reasons were assigned to the Caputo property for
6 its non-inclusion in the RM Zone."

7 MR. FERGUSON: Wait a minute. Could I just
8 have a minute, your Honor? I missed that question.

9 What do you want now?

10 MR. LINDEMAN: That is all.

11 If your Honor please, I renew at this time
12 our application for offering the testimony of
13 Mr. Norman Smith of Jaman Engineering Associates
14 on the question of the suitability of the Caputo
15 tract from the point of view of its impact on the
16 environment and further to buttress and support
17 that testimony by reference to the application for
18 conceptual approval which we indicated would be
19 part of his testimony. Now, I present that
20 question now in the light of the objection of
21 counsel that we had no right to make any such offer
22 barring any showing that we had exhausted whatever
23 administrative remedy might have been available to
24 the plaintiffs.

25 I submit that in a case of this kind we have

1 exhausted every available remedy that could
2 conceivably have existed for the applicant because
3 this was merely a case of requesting there be a
4 change in the zoning and under no circumstances
5 could it have been an application for a variance.

6 Now, the Court very properly pointed out
7 at the last hearing that the, that Section 39 of
8 the old statute dealing with variances was D,
9 was subparagraph D which had to do with special
10 reasons. I think that the issue that has been
11 raised by counsel raised before this Court has
12 fully been put to rest by Mocco versus Job, which
13 I referred to earlier. That is an opinion of the
14 Appellate Division at 56 New Jersey Superior,
15 Page 468.

16 It was a case in which an issue had arisen
17 as to the right of an owner of property to continue
18 a non-conforming use and then to really have his
19 property rezoned for certain tavern or dancing
20 purposes in his tavern. In that case the issue
21 had arisen as to whether or not a special reason
22 existed which could have given rise to the
23 plaintiffs applying for a variance under sub-
24 paragraph D. And the Court said there at Page 477,
25 and I quote, I think if I may be indulged a quote

1 here, is an extremely important thing to bring to
2 the Court. It says, "The facts relied upon present
3 no justification for the conclusion that the
4 particular site in this residential district must
5 be the location for the variance here sought in
6 order to promote the 'general welfare'. Attention
7 is sharply focused on the inquiry as to what phase
8 of 'general welfare' will be promoted by permitting
9 dancing and music at this particular site."

10 Now, that statement in Mocco versus Job
11 is amplified in Fobe Associates versus the Mayor
12 and Council of the Board of Adjustment of the
13 Borough of Demarest which is an opinion by
14 Judge Conford temporarily assigned, sitting for the
15 Supreme Court, an opinion that was of the
16 September Term, 1975, argued May 25, 1976.

17 I apologize to the Court for not knowing
18 what the citation is.

19 THE COURT: I don't believe it has a
20 citation.

21 MR. LINDEMAN: Maybe it doesn't.

22 THE COURT: It has if you're reading from a
23 slip sheet. The Court's slip sheet.

24 MR. LINDEMAN: Right.

25 THE COURT: I don't believe it has a citation.

1 If it does, it is very recent.

2 MR. LINDEMAN: I think it does not, but
3 that is a case which, as I stated, goes farther
4 and points out that there really should be a show-
5 ing that in order to apply for a variance, in order
6 to be in a position to apply for ^avariance under
7 subparagraph D you got to show that your property
8 must be used for the particular purpose to the
9 exclusion of all other properties, either in the
10 neighborhood or that there are no other properties
11 in the immediate environs that could be used for
12 that purpose.

13 THE COURT: In the Fair Lawn Dairy case.

14 MR. LINDEMAN: Yes, that's right.

15 THE COURT: But the Fair Lawn Dairy case
16 held specifically, the Supreme Court where they
17 wanted to add to non-conforming dairy business,
18 and the Supreme Court said you haven't proved,
19 you know, milk, production of milk is certainly to
20 the benefit of the general public. You can't
21 prove, you didn't prove and you must prove that the
22 site in question is particularly exclusionary of
23 all other sites suitable for the production of
24 milk. And I think it doesn't follow the site,
25 somebody versus the Borough of Fair Lawn.

1
2 MR. LINDEMAN: Oh, sure, yes, it does,
3 your Honor. I am looking at Page 18 of, well,
4 at 18 of the slip opinion, reference is made to
5 Cole versus The Mayor and Council of the Borough
6 of Fair Lawn.

7 THE COURT: That's it.

8 MR. LINDEMAN: I am referring to Page 19
9 which, of course, immediately follows that and Cole
10 referring again to Mocco versus Job and cites it
11 with approval stating that for a valid D variance
12 it must be shown and found, "particularly the site
13 must be the location for the variance sought in
14 order to promote the general welfare." And it
15 goes on to say, "thus in Cole the Court said that
16 there was no showing that the promotion of the
17 general welfare could be accomplished only by an
18 expansion of the milk processing plant at its
19 present location."

20 Now, when Mr. Caputo and his counsel made the
21 first presentation in or about October of 1974,
22 Mr. Caputo very candidly and correctly testified
23 that he was applying for purposes of his own
24 property, but it could not be shown that there was
25 anything peculiar about it as opposed to surround-

1 ing property that rendered it necessarily the only
2 piece that must be used for multi-family dwellings.

3 He did say that the reasons that militated
4 in favor of him were the facts that he was in fact
5 ready, willing and able and he was the first one
6 to come forward with a completely developed plan
7 which, by the way, had apparently met the initial
8 satisfaction and good favor of the town fathers.
9 But there being that situation confronting him
10 as well as his lawyer, it would have been an
11 improper requirement of any Court, I respectfully
12 submit to say that, well, you should have gone for
13 a variance anyway. Mr. Caputo was very correctly
14 and intelligently advised at that time that you
15 can't apply for a variance because you haven't got
16 any basis upon which to do it. You're in a township
17 where for all purposes multi-family dwellings are
18 not allowed.

19 The Law Division has arrived at a determina-
20 tion in Mount Laurel which says that there should
21 be multi-family dwellings, or at least low cost
22 housing in such a municipality such as this, but
23 the Supreme Court hasn't spoken yet. You have a
24 right to apply for a zoning change and that is all
25 you can do.

1 I think that there is, it can safely be
2 said that there is no application that existed at
3 that time and certainly did not exist now where a
4 party makes some kind of a formal showing in writing
5 to ask that his particular property be zoned for
6 a purpose not then existing. He did present some-
7 thing in writing. In fact, it was much more formal
8 and complete than, I think, any ordinary applicant
9 might be expected to make. But he did make the
10 application. And it is what happens after that
11 which I think is not only of significance to this
12 Court from a strictly legal, but also somewhat
13 from an equitable point of view too.

14 He makes the presentation in or about
15 October of 1974 and he kept calling Mr. Hardin
16 and others to find out what is happening. And he
17 has met with no response. It is about March of
18 1975 that the Supreme Court speaks in Mount Laurel,
19 Burlington NAACP, it is about that time that he
20 makes his second submission. He makes that to the
21 Board and again there is no response except for
22 them to say, "We are thinking about this thing.
23 We will consider it."

24 We now have the corroboration of Mr. Hardin
25 in which he states himself that the application was

1 made to him and to the Board and that some kind of
2 an engineering report was or may have been made.
3 Was probably done orally, but he is not really
4 sure. But in any event, no conclusions are trans-
5 mitted to Mr. Caputo.

6 In or about May of 1970--summer of 1976.
7 Well, let me backtrack just a moment.

8 In the summer of 1976--strike that--the
9 summer of 1975 after the second offer is made,
10 no response is heard from Mr. Hardin or anybody
11 else at the Board or from the Township Council
12 or otherwise and he then goes to suit.

13 It is at this time, July of 1975, when the
14 Mount Laurel decision has been handed down when
15 Mr. Caputo has made two separate complicated
16 presentations to the municipality. Nothing has
17 been heard from it and he is forced to go to suit.

18 He does that and a couple of months later,
19 well, it is more than a couple of months later.
20 In any event, after suit goes on for a period of
21 time, the ordinance is changed and in November of
22 1976 after the final amendment is made to the
23 76-12 ordinance, he files his amended complaint
24 which he has to do because obviously the defendant
25 shifted its ground during the course of the

1 litigation. He had to shift his ground as well.
2 And it was at that point that there were certain
3 things about his second submission which may not
4 have been entirely appropriate and so he revises
5 it again. And this time the presentation of the
6 plan is made to the municipal fathers just as
7 formally as it ever was before only this time it
8 is made to a far more competent recipient, namely,
9 their council, their present council.

10 MR. FERGUSON: How can I object to that?

11 MR. LINDEMAN: Right. They had, they had
12 these plans as fully and as completely in January
13 of 1976. They did in May of 1975 and as they did
14 previously in October 1974. And we submit that
15 what Mr. Caputo did was the only thing he could have
16 done under any relevant law and that for any
17 suggestion to be made that all and every admini-
18 strative remedy was not exhausted is simply not
19 correct. Simply not correct.

20 THE COURT: Mr. Ferguson, before you start,
21 let's stop. I have the Grand Jury coming in at
22 3 o'clock and rather than interrupt you, maybe it
23 would be better if we stopped and have the Grand
24 Jury. Then you can make your argument. Why don't
25 you take 15 minutes.

1 (A recess was taken.)

2 THE COURT: Mr. Ferguson?

3 MR. LINDEMAN: If your Honor please, I just
4 want to mention that I forgot to say, to mention
5 the fact which was the moritorium that was an
6 impediment to doing immediate construction and
7 interfered with the reasonableness of the applying
8 for a variance.

9 THE COURT: All right.

10 MR. FERGUSON: I appreciate the eloquence
11 and the fervor with with Mr. Lindeman has argued
12 to the Court. I must confess I don't totally
13 understand it.

14 The basis of my objection is not that
15 Mr. Caputo was required to exhaust his administra-
16 tive remedies in 1974. Indeed, I take the position
17 that he submitted no application at all in 1974
18 and, therefore, no technical procedures existed
19 for him to exhaust. I think all he had in 1974
20 was a formal request for a zoning change. And as
21 far as I know there are no administrative remedies
22 which you have to exhaust before that should be
23 considered by a Planning Board and so far as it
24 should be considered at all.

25 What I do say is that the detailed evidence

1 of Mr. Smith is in the nature of a site plan
2 review and this Court is not the proper forum for
3 that determination. The forum for that is in fact
4 the Planning Board of the Township and only if the
5 plaintiffs' property is rezoned. That could come,
6 for instance, if this Court were to decree that
7 all of Chester Township should be placed in the
8 RM Zone. At this point Mr. Caputo along with any
9 other property owner could come in with a site
10 plan application and then you begin to look at the
11 very specific items which must be examined in great
12 detail and go into and discussed by the Planning
13 Board and its consultants, including, of course,
14 the engineer.

15 So, you know, that's basically any objection,
16 that's what I understood the Court to agree with
17 the last time.

18 Insofar as Mr. Lindeman directs himself
19 to the proposition there was nothing more Mr. Caputo
20 to exhaust in 1974, I think I agree.

21 Now, I must say that the Court cannot, plus
22 the argument that the Court cannot lose sight of the
23 basic dates in this entire lawsuit. One, the
24 revision of Candeb-Fleissig in 1972 to the planners.
25 The other planning processes, the reference basis

1 of February 1974 produced by Candeb-Fleissig is
2 in evidence. The Master Plan of August 1974 is
3 in evidence. The planning process was going on
4 during that period of time. After the Master Plan,
5 and by the way, there was little testimony about
6 partition of planning from anyone else in that
7 planning process so far.

8 After the Master Plan of August 1974, then
9 you have Mr. Caputo's meeting in October of 1974
10 with Plan 1. Then you have the Mount Laurel
11 decision in March of 1975. Then you have Plan 2,
12 which is designed to take advantage of Mount Laurel
13 coupled with price list. If you don't give me what
14 I want, I will sue. Then you have the complaint
15 being filed.

16 Then you have the final site plan which this
17 Court is being asked to now let specific experts'
18 testimony on being presented for the first time
19 in the lawsuit.

20 Now, I don't think those facts justify this
21 Court acting as the first line review of what is
22 in effect a site plan application.

23 MR. LINDEMAN: May I respond, your Honor?

24 THE COURT: Sure.

25 MR. LINDEMAN: If per chance the Court is

1 operating under the same assumption that
2 Mr. Ferguson is, perhaps I have not made myself
3 entirely clear. I know that the Court did raise
4 the question once about its power to order the
5 issuance of a building permit.

6 We take the position now in this case that
7 notwithstanding what may appear in our pleadings,
8 and even in the brief, we do not conceive it
9 possible, nor proper that the Court direct that a
10 building permit be issued. The sole purpose of
11 the testimony to be offered by Mr. Smith of
12 Jaman is to show that if we are entitled to relief,
13 which we are, namely, the zoning of our property
14 for multi-family dwellings, the Court would be
15 justified in doing it or making that recommendation
16 in the form of a, pretty much of a direction to the
17 Township. It would be justified in doing that after
18 it will have heard that our property is suitable
19 for that. That it is not only suitable, but it is
20 peculiarly suitable for it. And I think that the
21 Court is entitled to hear that we are reasonably
22 far advanced. We know a lot about our property.
23 Our client is ready and able. That it has gone to
24 the lengths that it has to investigate the whole
25 process of the spray irrigation.

1 The reason why that is important, I think,
2 and I submit it to the Court, is that if we were
3 to leave the case where it is without that testimony
4 and expect the Court to say to the Planning Board
5 and the town fathers of Chester that they should
6 zone the Caputo property for multi-family dwellings,
7 it could embarrass, or we could all have wasted
8 time later. Definitely that is just not good in
9 any respect.

10 I don't think we will be wasting the Court's
11 time. I think that the presentation will be crisp
12 and it will not be unduly lengthy. But I think
13 that the Court should hear it because it would be
14 very meaningful in respect of the overall relief
15 which we are seeking.

16 MR. FERGUSON: Well, I think it will consume
17 a great deal of time. It is very detailed. It is
18 very technical. The reports themselves are thick.
19 The environmental impact statement, their applica-
20 tion for conceptual approval itself, and the lake
21 and dam, the lake feasibility study and a great deal
22 of oral testimony to go along with it. But the
23 main objection, of course, is that this Court in the
24 Mount Laurel case, is not the appropriate forum.

25 It has been delegated by statute to the

1 town engineer and Planning Board who are authorized
2 by statute now to do the detailed site plan
3 approval. Many of the problems which I perceived
4 in the plan, for instance, can be met by
5 Mr. Caputo saying, "You don't like it, Ferguson,
6 tell me what you like and I will change it."

7 Well, this is a peculiar kind of process
8 which goes on all the time in municipalities.
9 What we perceive to be an objective in the site
10 plan may not be that important to the developer
11 and may be able to be accomplished a different way
12 which we have no objection to.

13 This is what you ought to have when the
14 engineer and the Planning Board and developer and
T-10 15 his engineer sit down and say, "These are our
16 objections to the site plan. How can we achieve
17 our objective by another way."

18 This adversary process of this Mount Laurel
19 suit is not the right forum for that. And I think
20 inappropriate to call upon this Court to make the
21 base line decision of whether this project is going
22 to fly on that land.

23 THE COURT: The plaintiff here is requesting
24 this Court to take evidence on the question of an
25 environmental impact study prepared by his engineer

1 as that study relates to the proposal for some
2 800 plus building units on the plaintiffs' land
3 as reflected in P-1 in evidence.

4 Now, at the outset I should note that the
5 zoning ordinance is under a challenge here, No. 76-12
6 makes reference to the environmental impact state-
7 ment. It makes reference to it under that section
8 relating to the Planning Board's responsibility
9 as they relate to site plan and building lot
10 development plan. Specifically it falls under
11 the 15.100, et cetera section, site plan review
12 and Environmental Impact Article 15 of the Zoning
13 Ordinance. It is referred specifically at 15.600
14 through 605-10. Its purpose is stated in 15.601
15 which says the purpose of an environmental impact
16 statement is to provide the Planning Board with
17 adequate information to assess the impact of a
18 proposed land use on the environment.

19 It goes on to state that no site plan shall
20 be approved unless satisfied the environmental
21 impact statement has been submitted to the Board.
22 Talks about the scope of it. Talks about reference
23 of the Planning Board site, Plan Committee, the
24 environmental impression and the Township engineer.
25 Talks about the contents of the environmental impact

1 study as they relate to the proposed project. The
2 description of the construction, the inventory of
3 the existing environmental conditions, assessment
4 of environmental impact. List of all unavoidable
5 adverse environmental impact steps to minimize
6 and mitigate environmental damage, water supply,
7 sewage facilities, drainage.

8 It imposes or reposes rather on the Planning
9 Board a significant amount of responsibility as
10 it relates to the effects that the proposed site
11 plan would have on the environment of the particular
12 municipality.

13 Now, here the facts that I have before me
14 indicate that Mr. Caputo, plaintiffs, have made
15 no formal application for a site plan approval.
16 They have made no formal application for a zoning
17 change.

18 What was done was in 1974 there was a
19 submission, the first proposal laying out a
20 specific number of attached, not detached, but
21 attached dwellings. It has a certain number of
22 units, I believe it was 1,081.

23 MR. LINDEMAN: One thousand eighteen.

24 THE COURT: One thousand eighteen. And it
25 proposed multi-family dwellings.

1 Now, that proposal was made prior to Mount
2 Laurel with the--and I should say this: That it
3 was submitted to the Planning Board. The Planning
4 Board made no response to it. Clearly Mr. Caputo
5 expected a response, but he did not get one.

6 The testimony of Mr. Hardin by deposition
7 indicates that there was reference of the matter
8 to the Township engineer, but there was no response
9 given to Mr. Caputo.

10 My conclusion is that he, that the Planning
11 Board concluded it was not something that had to be
12 responded to because there was no formal written
13 application and Mr. Caputo apparently agrees that
14 there was no formal written application.

15 The second application was a change in the
16 proposal developed as a result of the Mount Laurel
17 case. It approached the multiple family dwelling
18 proposal, a greater number, greater in number, but
19 approached it from a lower cost type situation.
20 The proposal being one that dropped out a golf
21 course from the initial plan and cut back on some
22 of the costs. Here the suggestion was that the
23 proposed costs would range from 25 to \$30,000 per
24 unit.

25 No detail being given in the size, square

1 footage of the units themselves. But Mr. Caputo
2 testified that they could range anywhere from 800
3 to 900 up to 2,000 square foot per unit with a cost
4 running between \$15 and \$30 per square foot, but
5 saying that in all probability that none of them
6 would reach the 2,000 square foot on the lower cost
7 concept.

8 The second one, the second proposal was
9 based on really a lower cost project being available,
10 lower cost housing project being available for
11 moderate income families.

12 I think the proposed cost of 25 to \$30,000
13 clearly is not going to be something available to
14 a low income family without Federal subsistence
15 or State subsistence and there is no evidence of
16 any exploration of that.

17 Then the proposal that is now, the Court is
18 now being asked to consider was brought out--up at
19 depositions after the institution of this suit in
20 1975. It clearly was developed for the suit. It
21 was not submitted to the Planning Board. Not
22 submitted to the governing body in any formal or
23 informal procedure.

24 Counsel suggests that it was referred to a
25 more able party by the fact that it was referred to

1 the attorney for the Township in this suit. I
2 won't get into a discussion as to the ability of
3 counsel. However, it was clearly not submitted
4 to the Planning Board for the Planning Board's
5 consideration or review.

6 The Township Planning Board Chairman said
7 that he had always considered, or considered the
8 applications to be one for zoning change.

9 Now, given the purpose of the environmental
10 impact study, I am going to refer to it as an
11 E.I.S., it is clear to me that the E.I.S. is part
12 of a site plan approval. There is no site plan
13 approval as respects that. I am satisfied it should
14 exist in this case at this time.

15 The E.I.S. is something of the expertise of
16 the local officials. There are considerations that
17 they have to make.

18 This Court is not and I do not feel should
19 be in the position of evaluating on a tract by tract
20 basis in zoning cases the question of whether or
21 not a particular site is suitable for a proposed
22 use as the facts have been elicited in this case.

23 Now, I refer to Oakwood at Madison. And the
24 Oakwood at Madison case talks about environmental
25 impact, ecological impact. The reference there,

1 however, is as it relates to all the zoning in the
2 Township. The Court having pointed out that the
3 Trial Judge should have allowed into evidence,
4 that evidence relating to environmental considera-
5 tions of the entire ordinance. The Court then
6 went on and because of the circumstances of Oakwood
7 at Madison, which I don't find specifically
8 attendant in this case, the long prolonged battle
9 through the Courts. The first suit going up to the
10 Supreme Court. Then going back down to the trial
11 division. Then going back up to the Supreme Court
12 and the specific findings of that Court, meaning
13 the Supreme Court--lost my train of thought. Would
14 you go back and read that last sentence?

15 (The last sentence read by the court reporter.)

16 THE COURT: That a building permit should
17 issue subject to the lower Courts considering
18 eccological and environmental proofs, to determine
19 whether the plaintiffs' land is environmentally
20 suited to the degree of density and type of develop-
21 ment the plaintiffs propose. But I don't find that
22 Oakwood at Madison says that in every case a Court
23 should sit down, avoid the local planning agencies'
24 expertise and experts that they have available and
25 make the decision in every zoning case where there

1 is a challenge of the zoning ordinance.

2 So at this point and I say at this point
3 because I don't know what further proofs are going
4 to be made available to me. But at this point I
5 have got to say that the site plan approval there-
6 fore, vis-a-vis--well, strike that, strike plan
7 approval, and the environmental impact statements
8 are not part of the case. And I do not think that
9 it is appropriate at this point to allow the
10 environmental impact study to go in because I think
11 this is something more for the Planning Board to
12 consider.

13 There was never any effort made to have the
14 Planning Board consider the most recent plan. And
15 I have not been told where the spray irrigation
16 land, what the extent of it, what considerations
17 the Planning Board has been asked to review as to
18 it. There are so many things here that I think
19 require the submission of the matter to the Planning
20 Board for its expertise, that at this point I am
21 going to say I will not allow it. And just in
22 conclusion, I am satisfied that Oakwood at Madison
23 does not extend to the circumstances of this case
24 as the facts have developed in this case with
25 respect to the proposed use on the land. To

1 require this Court to review a site plan as
2 respects the E.I.S., or the Environmental Impact
3 Study. Gentlemen, it is not there.

4 I don't think, Mr. Lindeman, at this point
5 the proofs from Mr. Caputo, giving you the most
6 favorable inferences to Mr. Caputo's application
7 to the Planning Board, I don't read the cases to
8 require this Court to get involved in the
9 mechanics of site plan approval. I think site
10 plan approval should be left to the expertise of
11 the Planning Board. The Planning Board at first
12 blush and at this point I am not going to hear
13 the Environment Impact Study.

14 MR. LINDEMAN: If your Honor please, if I
15 may just mention a few things about your Honor's
16 conclusions.

17 I assume, although the Court didn't mention
18 it, that the Court does recall that the present
19 plan being presented is one which was developed
20 after the zoning ordinance was amended, which also
21 happened in midstream. That is to say, after the
22 lawsuit started.

23 THE COURT: Okay. But, you know, that's a
24 point I didn't mention it and I did consider it.
25 What you're saying, it seems to me, is that if the

1 zoning ordinance is amended and you made a proposal
2 before the zoning ordinance was amended, and then
3 you make another one after it is amended at pretrial
4 discovery proceedings, that then the Court because
5 that proposal was made must get involved in site
6 plan approval. And what I'm saying to you is, I
7 don't think that this is what a Court should be
8 doing. A Court should not be getting into reviewing
9 site plan approval unless and until it's satisfied
10 that there has been a sufficient amount of frus-
11 trations so that I would be making the plaintiff
12 go through a procedural step by step process where
13 we all would know the results.

14 I can't say that here. I can't say that's
15 the case here. And I don't think that this is, it
16 is proper for the Court to get into an area, some-
17 thing as specific, as clearly as the I.E.S. is
18 when obviously there, and I take the theory that
19 in every administrative agency there is a certain
20 amount of expertise and that expertise should have
21 a chance to evaluate the situation first.

22 You're concluding that I have the responsi-
23 bility, if you challenge the ordinance, to review
24 a site plan for the specific property. And I don't
25 recall, regard my responsibility that way. I think

1 my responsibility can be in the nature of assuming
2 that you prevail on attacking the ordinance, that
3 I can direct what has to happen. But I got to give
4 them some latitude for their professional expertise
5 at the municipal level.

6 In Kramer versus the Board of Education--
7 no, the Board of Adjustment of Sea Girt, I think it
8 is 45 New Jersey Superior, it deals with a Board
9 of Adjustment case and not in point except for one
10 thing. It talks about the local official expertise
11 because of knowledge of the local conditions.
12 And certainly Oakwood at Madison would seem to
13 vitiate that a little, but I think it is still there.
14 I think it is still important and I think the
15 role of the Court in situations like this is not
16 to take away all of that local expertise.

17 There are things that these people could and
18 should know that I can't possibly know. And I
19 don't think it is proper at this stage to get,
20 digging deep into something that I think the
21 Township should have a chance to do.

22 I think I can control, if I decide it should
23 correct in setting aside, I think I can give
24 direction, what they should and should not do. I
25 don't think it is proper for me to say, review the

1 site plan approval at this stage. I just can't.
2 I can't agree with it. I don't read Oakwood at
3 Madison making me do that.

4 MR. LINDEMAN: Judge, many of the things
5 that you have said I hasten to say, I couldn't
6 agree with you more. I absolutely share the
7 Court's view that this Court, all Courts, not you
8 in particular, but too often Courts usurp the
9 function of the, of those bodies that have been
10 created by the legislature which are designed to
11 do particular things, and that I say is wrong.

12 I think in some respects the United States
13 Supreme Court does take that kind of thing, which
14 I personally disagree with. And I share the Court's
15 view as to what it says, as to its power to require
16 that it approve of some kind of a site plan
17 application.

18 I just hope that we are getting across to
19 the Court that we are not making an application for
20 a site plan approval. Maybe my distinction is one
21 that is too elusive to catch. But what I am trying
22 to say is that by the E.I.S., we are trying to show
23 that not only after the zoning ordinance is approved
24 to be invalid, that the Township must do a lot more
25 about zoning of its confines for multi-family

1 dwellings, but it should do it for us. And that
2 the E.I.S. is just an aid. It is really just a,
3 that is all it is.

4 We request, not ask the Court to say yes,
5 Mr. Caputo, you have satisfied that you got a piece
6 of property upon which these particular things
7 should be built. But it's really merely to show
8 that it is appropriate. It is proper and if I do
9 find, if I, as the Court find that the zoning
10 ordinance is invalid and that the plaintiffs are
11 entitled to some special relief, I will not be
12 doing a vain thing by recommending to the municipality
13 that it zone the plaintiffs' lands or come pretty
14 close to doing that, that it do something for the
15 plaintiffs' land to enable them to build multi-
16 family dwellings.

17 THE COURT: Well, let me say this, I said
18 at this point before in conclusion that I was not
19 going to review it. As I understand your proposal,
20 you're suggesting to me that this particular piece
21 of property will not as developed have an adverse
22 impact on the environment.

23 MR. LINDEMAN: Correct.

24 THE COURT: Now, I can only conclude that
25 while you're producing that is to induce me to come

1 to that conclusion and incorporate that conclusion
2 in my findings, if you're successful in your
3 attack on the zoning ordinance and relate that back
4 to the Township in some form of, well, I have
5 concluded that it is, vis-a-vis you must conclude
6 that it is. And that's where I am saying I won't
7 go.

8 I had another thought that just popped out
9 of my head.

10 MR. LINDEMAN: May I just go on?

11 THE COURT: Yes, go ahead.

12 MR. LINDEMAN: It is really going on really
13 repeating what I think I said before. That I don't
14 think that the step that the Court is being requested
15 to take is it approve the property and that I find it
16 necessarily environmentally sound for any particular
17 purpose, but rather that at least it doesn't have
18 the negative, doesn't have negative aspects to it.
19 Maybe it is more that.

20 THE COURT: All right. What I wanted to say
21 was this: Certainly if you're successful, I am
22 going to retain jurisdiction. All right?

23 Now, and if you're successful as I envision
24 my responsibility, there are certain parameters that
25 I am going to lay down to the Township as Oakwood

1 at Madison.

2 All right, giving that, there is a serious
3 question as to the extent of meeting those
4 parameters, i.e., I say you must have X number of
5 multiple family parcels, or X number of parcels
6 zoned for multi-family use in keeping with the
7 language of Judge Conford where he talks about
8 overzoning, I think the expression he used, you
9 got to overzone because there is always going to be
10 one guy who doesn't want to do it. Who owns
11 something. That has been running around in my head
12 because I know what properties were zoned, at least
13 two of the tracts were owned by Mr. Mennon?

14 MR. FERUGSON: Correct.

15 THE COURT: Which creates an interesting
16 question. He will want to have his property
17 rezoned, if he is using it for a farm or for
18 running his horses. Okay? But who has the first
19 choice? Do I make the choice? Do I get down into
20 the nitty gritty, and I am not necessarily
21 criticizing, but I use as a reference point, do I
22 get into the nitty gritty of drawing the busline
23 routes to desegregate the area through busing?
24 Do I draw where they are going to say what
25 specifically, what school or do I first give the

1 Township of Chester the right to decide, okay,
2 he has put these parameters down. We will decide
3 where these properties are to be zoned.

4 These are questions that I think have, to
5 my mind, be answered. And so I am not ready at
6 this time to go into an environmental impact study
7 which means a site plan approval.

8 But I tell you, I am retaining, I am going
9 to retain jurisdiction if you're successful and that
10 does not necessarily mean that your environmental
11 impact study is out of question. It is just at
12 this point, and that's why I phrase it at this
13 point, I am not going to do it.

14 MR. LINDEMAN: I think we understand, your
15 Honor.

16 THE COURT: That in all candor, that's a
17 flag to Mr. Ferguson.

18 MR. LINDEMAN: Right.

19 THE COURT: Now, I am just telling him this
20 is the way I am going to treat it, if that's what
21 happened.

22 MR. LINDEMAN: Right. So far as the balance
23 of the case is concerned, your Honor, I state to
24 the Court that except for the admission into
25 evidence of certain documents, such as the number of

1 minutes of the Planning Board, of the Township
2 Council that have to do with the moritorium, and
3 I think I am correct that the August 2 closed
4 session document is in evidence.

5 MR. FERGUSON: Yes, I think it is.

6 THE COURT: No.

7 MR. LINDEMAN: It is not.

8 THE COURT: Mr. Ferguson was going to call
9 and find out whether it is disputed. It is a
10 minute of the official minutes. If he disputes
11 it, then we have to get the Township Clerk in here
12 and find out what is a closed session.

13 MR. LINDEMAN: I also request the leave of
14 the Court to produce whatever documents are available
15 regarding this moritorium and its inception. I
16 really don't know what that is.

17 THE COURT: Sure. I think that probably
18 if I am familiar with the moritorium, in the cases
19 that we have had it should be implemented at one
20 point by an ordinance of some sort. I think it is
21 required magnitude of an ordinance, but then maybe
22 some attorney felt it could have been done on the
23 basis of a resolution. There is now a case on the
24 books that distinguished the two. It took some
25 time getting there, but anyway, whatever it is, you

1 can produce the proof or the beginning of it, be it
2 by minutes, ordinance, or what have you, and you
3 can produce whatever proofs you need to show how
4 long it continued.

5 I don't know if it was done by ordinance, if
6 it expired of its own term or not.

7 Do you know offhand?

8 MR. FERGUSON: Informally, I think it extended
9 from 1974 to '76.

10 THE COURT: How was it done?

11 MR. FERGUSON: That I am not sure.

12 MR. LINDEMAN: Maybe you can get the file.

13 THE COURT: All right. Smile, I smile
14 because it is a law.

15 MR. FERGUSON: I think it was an ordinance,
16 Judge.

17 THE COURT: Okay. I think it should have to
18 be. I think I know the Township attorney, Edward Orr.
19 Isn't it Mr. Orr? I think it was adopted by
20 ordinance.

21 MR. FERGUSON: The file is in the office. It
22 didn't come out with me today. Obviously I could
23 tell you. I know I asked that fairly early and I
24 got an answer but I think it is there.

25 THE COURT: Couldn't help him go out of his

1 way to go to the Township and find out from the
2 Township Clerk and have her dig it out when it was
3 given. Your last official documents shows when
4 it continues to, if it is not still in effect.

5 MR. FERGUSON: Oh, it is still not in effect.
6 The municipal land use law says they're illegal.

7 THE COURT: Well, if it affects, so far as
8 the Township of Chester is concerned.

9 MR. FERGUSON: I'm almost positive it went
10 off with the adoption of 76-12.

11 THE COURT: Okay. All right, let's find out
12 how long because that certainly is germane.

13 MR. FERGUSON: That was the purpose of the
14 moratorium, was when the Master Plan Study was
15 going on and the Master Plan was adopted.

16 THE COURT: Let me make it clear to both
17 of you by my saying that the Environmental Impact
18 Study is not going to be considered at this point.
19 I am not saying that I am not going to give to
20 the Caputos some relief that they seek with
21 respect to the rezoning of their property. If I
22 do overturn the ordinance, and we get beyond that
23 stage, I don't want either of you to be misled by
24 my ruling on this. I am just taking it on the
25 basis of the proofs that I have at this juncture.

1 What I think is the role of the Court at this
2 junction and only at this junction. I am not talk-
3 ing about something in the future.

4 If I do decide to set aside 76-12 and put
5 down some basic parameters and some guidelines as
6 to when this should be completed, I would retain
7 jurisdiction under those circumstances. So don't
8 be misled by it, by that stand.

9 MR. LINDEMAN: I think we both understand
10 it.

11 THE COURT: Okay. I don't like to leave,
12 sometimes I am not the most articulate person, but
13 I don't like to leave anything to inference and
14 will just as soon repeat myself 10 times until
15 everybody understands it.

16 Okay. All right, then we have it next
17 Tuesday. Is next Wednesday the day you are talking
18 about going to Bermuda?

19 MR. FERGUSON: I am not going.

20 MR. LINDEMAN: I object.

21 MR. FERGUSON: Until Thursday.

22 THE COURT: Until Thursday. But you want to
23 quit a little early on Wednesday?

24 MR. FERGUSON: Tuesday afternoon.

25 THE COURT: Let the record show that

1 Mr. Ferguson has represented that.

2 MR. LINDEMAN: This is November 2, 1977

3 THE COURT: P-43 for identification is an
4 official minute of the Township Committee and,
5 therefore, I see no reason why it cannot be marked
6 into evidence.

7 MR. FERGUSON: It is relevancy, immaterial.

8 THE COURT: Well, I am going to allow it in
9 for the purpose that it was offered.

10 I will have to go back and refresh my
11 recollection of the Sunshine Law just out of
12 curiosity. I don't remember that it being an excep-
13 tion to it. I could be mistaken.

14 MR. FERGUSON: The top of it says, "Minutes
15 from closing session were proposed. New zoning
16 ordinance was discussed with possible implication
17 of Caputo lawsuit. Minutes to be released after
18 introduction of zoning ordinance."

19 THE COURT: Okay.

20 MR. FERGUSON: Makes no statement about that
21 just there.

22 THE COURT: Yes, I don't recall all the
23 exceptions. I know there are certain exceptions,
24 but I don't recall all of them. I don't recall
25 that is one of them.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Were you present?

MR. FERGUSON: Oh, no.

THE COURT: No. I like the shocked look.

The record should note that.

MR. FERGUSON: Mr. Orr was not present
either. The minutes refer to--

THE COURT: Well, it may be. Probably not
germane. Nobody is raising it. It is there for
the purpose of my consideration.

Okay then. I will see you next Tuesday at
9 o'clock and we will consider it just Tuesday
next week.

(The document referred to was marked P-43
in evidence.)

C E R T I F I C A T E

I, EARL C. CARLSON, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes of the within proceedings, to the best of my ability.

Earl Carlson

 EARL C. CARLSON

2-8-79

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25