

CA - Caputo v. Chester

Jan. 31, 1978

Stenographic Transcript of ~~posed~~ Hearing:
Examination of Charles R. Hardin Jr +
Robert H. Fox.

ppp. 86

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

no 10
FILED

APPELLATE DIVISION

JAN 14 1980

JAN 16 1979

JOSEPH CAPUTO and
ALDO CAPUTO,

Stephen W. Leonard
CLERK
Plaintiffs.

Civil Action

Edna M. Kelly
Clerk

FILED
APPELLATE DIVISION
STENOGRAPHIC TRANSCRIPT

-vs-

TOWNSHIP OF CHESTER,
et al.,

JAN 16 1979
OF

Defendants.

HEARING
CM
Aljabe M. Langley
Clerk

Place: Morris County Courthouse
Date: January 31, 1978

BEFORE :

HONORABLE ROBERT MUIR, JR., J.S.C.

APPEARANCES :

PHILIP LINDEMAN, II, ESQ.,
Attorney for the Plaintiffs.

MCCARTER & ENGLISH,
BY: ALBERT L. FERGUSON, ESQ.,
Attorneys for the Defendants.

FRANK E. NOLAN,
Official Court Reporter.

Frank E. Nolan

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
CHARLES R. HARDIN, JR., BY: Mr. Ferguson	2		55	
Mr. Lindeman		19		57
ROBERT H. FOX BY: Mr. Ferguson	58		76	
Mr. Lindeman		74		

E X H I B I T S

<u>Evidence</u>	<u>Description</u>	<u>Page</u>
D-8	Resume of Mr. Robert H. Fox	59

1 C H A R L E S R. H A R D I N, J R., sworn.

2
3 DIRECT EXAMINATION BY MR. FERGUSON:

4 Q Mr. Hardin, where do you live?

5 A Old Gladstone Road, Chester Township, New Jersey.

6 Q And would you tell us your profession, please?

7 A I am a lawyer.

8 Q Are you employed as a lawyer in New Jersey?

9 A Yes.

10 Q Do you hold any offices in Chester Township?

11 A Chairman of the Planning Board.

12 Q How long have you been Chairman of the Planning
13 Board?

14 A Eight years. I was one month out.

15 Q Were you the Chairman of the Planning Board
16 during the preparation of and adoption of the master plan
17 of August, 1974? A Yes.

18 Q And in connection with the preparation of that
19 master plan did the Planning Board have an employee-consul-
20 tant to help them prepare that master plan?

21 A Yes.

22 Q Would you please tell us the name of the firm the
23 Planning Board employed and the people with whom the Plan-
24 ning Board worked?

25 A The Planning Board was Cand^{eub}leissig Associates.

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Q And the individuals with whom the Board worked with, particularly?

A Tore Hultgren and Kastler.

Q Mr. Hardin, would you tell the Court the reasons why the Planning Board and Township of Chester decided when they did in approximately 1971 to 1972 to adopt the new master plan?

A There was beginning to be evidence of pressure developments on the Township and there were beginning to be indications from the courts that master plans should be revised and reviewed and updated and the Board felt that if it did not take the initiative, as the Township felt because it had concurrence of the governing body, of course, and the Board certainly felt that the sensible thing to do was to review the existing master plan, revise it, if necessary, and in particular consider the question of multi-family dwellings and in the light of, I believe the first Mount Laurel case, which I believe the handwriting was on the wall anyhow.

Q In connection with the deliberations of the Planning Board on the new master plan, was there consideration given for a regional responsibility?

A Yes.

Q And would you for the benefit of the Court tell us what that consideration was and what the Planning Board

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did with it?

A Well, I think that the indication from the Court's decision at the time were that a regional responsibility certainly extended to housing needs. However, the Chester Township Planning Board's consideration was with regional responsibilities and included not only housing but, also, other aspects which we deemed to be of regional significance, particularly water quality and supply and open space.

Q Mr. Hardin, would you tell us in your own words the procedure which the Planning Board went through with its planner in discussing and implementing the regional concerns which you just articulated?

A Well, we asked the planner to try to define for us what the region was toward which we had a responsibility and what quantification, if any, could be put on housing and what kind of numbers of units we might be talking about, and we asked our planner to consider the environmental factors, particularly those affecting water quality and in the light of the lack of sewers in the Township and in the light of the soil conditions which planners might determine to exist and matters, also, in terms of open space and in overlaps in the water situation to some extent and develop details, which I guess the conclusion was that approximately twenty-four percent of the land in the Township, or twenty-three percent, perhaps, was already an open space ownership

1 of one sort or the other, the Greenacre State Park, the
2 County Parks, and Municipal Parks.

3 So, the planners worked up this information and dis-
4 cussed it with the Board.

5 Q Did the Board give a hearing to any specific
6 environmental groups who wished their wishes to be made
7 known?

8 A The Upper Raritan Water Shed Association, particularly
9 in the person of Peter Larson, who was then Executive
10 Director, appeared before the Board on several occasions
11 and presented that Association's position with respect to
12 zoning in Chester Township, as related to water quality
13 particularly.

14 Q Could you give us any idea, or did Mr. Larson
15 make any recommendations as to what the course of develop-
16 ment ought to be, or what the lot sizes ought to be in
17 Chester Township?

18 A Mr. Larson had ideas of his own from his particular
19 point of view, which included the absence of development
20 at all, I believe.

21 MR. LINDEMAN: I object, Your Honor, to any
22 testimony by this witness as to what Mr. Larson may
23 actually have said by recommendation or otherwise.

24 MR. FERGUSON: We are not offering it for the
25 truth of what Mr. Larson said. We are offering it

1 for the fact that Mr. Larson said it as a background
2 for the planning process and I think it will be evi-
3 dent from the testimony that the Planning Board did
4 not rely on what Mr. Larson said entirely. I think
5 the point is that they discussed it, which is a
6 material thing and which has been established and
7 this Court may not be prejudiced.

8 THE COURT: What relevancy does it have, if you
9 are not offering it for the truth you can rely on?

10 MR. FERGUSON: I read the opinion in the Bernards
11 Township case, dated January 23, 1978, and there were
12 several paragraphs in that opinion, which seem to
13 indicate that the responsibilities of public officials
14 as to comments from the public and from interested
15 citizens, which might in some way be relevant, and I
16 want to establish that this Planning Board heard every-
17 body and listened to everybody and that as a result of
18 conversations they did not follow what he suggested.

19 I also want to establish that this Township did
20 not go overboard in adopting environmental defenses
21 except where backed up by specific approvable and
22 worthwhile considerations. I think it is relevant
23 to get the background.

24 THE COURT: All right. That could have been
25 said in a few words. Please. I will allow it.

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THE WITNESS: Mr. Larson did have some specific ideas and proposals, which were considered by the Board but which were not followed by the Board in their entirety.

CONTINUED DIRECT EXAMINATION BY MR. FERGUSON:

Q Can you very briefly just tell us what those kinds of proposals were?

A One kind of proposal was zoning for lots of at least 10 acres in size and other proposals were for prohibiting all developments in certain areas.

Q Can you categorize for us the process which the Planning Board went through in terms of deciding which way it did decide the future of planning and development in the Township should go?

A Well, we heard those who wanted to be heard, such as Mr. Larson and others. We consulted with our experts and we tried to work out a plan and an ordinance, which was consistent with the advice the experts were giving us.

Q Can you without going into great detail describe for us the extent of Mr. Hultgren's presentation to the Planning Board about the environmental factors and aesthetic planning in Chester Township?

A Well, he met with the Board on many many occasions and he presented to us tables and maps and publications dealing with the considerations relating to the planning

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2 process and, well, I can only say he worked with the Board
3 in resolving these considerations into the shape of a
4 master plan.

5 Q Did that include such things as soil maps of the
6 soil conservation service?

7 A Yes, soil engineering maps and geological maps and
8 water shed maps.

9 Q Now, Mr. Hardin, you mentioned just a minute ago
10 that you had various presentations. Did this include
11 presentations from landowners or potential developers?

12 MR. LINDEMAN: If Your Honor please, I am
13 interested in speeding up the case, too, but I object
14 because of the leading questions. I think at some
15 point we ought not to have so many of them, but I
16 realize its speed is important.

17 THE COURT: I do not find it in any way creating
18 problems. Go ahead.

19 Answer the question.

20 THE WITNESS: We had a number of presentations
21 by particular landowners.

22 Q Can you recall the name of some of them?

23 A Continental-Centennial Homes, Grey Top Associates,
24 the Harvey Guerin property. Grey Top Associates is the
25 corporate name and, of course, the Messrs. Caputo, and
there may have been another with respect to property owned

1 by Nixon.

2 Q Would you tell the Court the process that the
3 Planning Board went through in inviting and holding these
4 informal presentations by landowners?

5 A Well, these were presentations at a time when we had
6 no site plan approval ordinances. I believe that we may
7 have heard one presentation by one landowner and one
8 development at a special meeting where we would meet
9 informally, which they themselves are referred to, and
10 they thought they were making an application. There was
11 no application as far as the Planning Board was concerned
12 in the sense that anything was being presented to the
13 Planning Board which the Planning Board could act on. We
14 had no site plan ordinance and subdivisions were not
15 involved and variances could not be dealt with by the Plan-
16 ning Board then.

17 Therefore, as I said, if they wanted to make a presen-
18 tation we would hear them out because we were in the process
19 of planning and zoning and if they had something to contri-
20 bute to that process, we would be interested in hearing it
21 and we did hear them, several of these, three or four at
22 regular meetings of the Planning Board. We would make time
23 available. Some were more elaborate than others and the
24 Caputo presentation was one of the more elaborate ones.

25 Q Did the Board have a policy or kind of response

1 that it would make to these landowners who made the presen-
2 tations and, if so, tell us what?

3 A Yes. The Board did have a policy and the policy was
4 that we were not acting as a redevelopment agency. We
5 were not acting on site plan review and the only response
6 would be that whatever the outcome which resulted from
7 this planning and zoning, it was for no particular property.
8 We were not attempting or telling the person appearing
9 before the Board that we approve your plan or we disapprove
10 your plan.

11 Q Did you follow that procedure with respect to the
12 Caputo presentation, as far as you know?

13 A Yes.

14 Q Did you follow that procedure with respect to the
15 other presentations? A Yes.

16 Q As far as you know, was there any differences
17 made in the response to the other landowners who made a
18 presentation than there was to Mr. Caputo?

19 A No.

20 Q I would ask you this, Mr. Hardin: in the delib-
21 erations of the Planning Board as to the selection of the
22 sites for possible multi-family housing zones, would you
23 describe to the Court the process which the Planning Board
24 used with its consultants in selecting those sites.

25 A The Board had reached the conclusion that some pro-

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visions should be made for multi-family housing. The Board
received from its consultants the estimates of the numbers
which the consultants felt might be the appropriate numbers
of units, which might be appropriate insofar as regional
responsibilities were concerned.

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My recollection is that this was raised and there
were many different numbers talked about there. They ran
all the way from 200 or 300 to 600 as between planning and
zoning processes, but the Board also consulted with its
own Engineer and the consideration, of course, were from
a planning point of view as to what was the most appropriate
locations for multi-family, or potential multi-family
development.

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The conclusion was, as appears in the ordinance, I
believe, of 300 units and I think three sites.

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Q Would you give us from the Board's point of view
and discuss it very briefly, if you would, the factor which
the Board considered as being significant in siting the
multi-family housing.

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A There was no single determining factor. Environmental
considerations entered into this. We had no sewers and it
would appear likely that if the sewers were to be built
that they would most likely be built up near the Borough.
The Township has no downtown area. It is the Borough which
is the hole in the doughnut and the business center of the

1 Township, really, is the Borough and it would seem that
2 multi-family would be more appropriately from a planning
3 point of view located near shops and services. The Town-
4 ship road system is now two main highways and, then, the
5 scattering of secondary or tertiary roads, and it was felt
6 from a traffic point of view that multi-family should more
7 appropriately be located on or close to main roads. These
8 were the types of considerations that I think the Board
9 considered.

10 Q Did the Planning Board consider requiring a full
11 public sewer system before any multi-family housing could
12 be built?

13 A Well, in connection with the new zoning ordinance,
14 the Planning Board felt definitely that anything that was
15 built would have to meet appropriate standards of water
16 supply and sewage disposal. I am not certain but I do not
17 think that we felt that the multi-family or any multi-family
18 development would necessarily be preceded by the installa-
19 tion of a public sewer system, although our answer to that
20 as to whatever the system is that it has got to take care
21 of the development.

22 Q But you did not specify in a plan or ordinance
23 that there had to be any kind of a system or a tie in to
24 a regional trunk sewer?

25 A I think not.

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Q Mr. Hardin, has the Township of Chester engaged other consultants other than the ones you mentioned to continue to plan for it and revise the master plan?

A Yes.

Q Would you tell us who it is and why he was retained?

A It is the firm of Gershen and Coppola Associates in Trenton. They were selected after this litigation had been commenced and they were selected after the Municipal Land Use Law had been passed and I think I am correct in both of these, and they were selected after further development of law, including the Madison Township case.

It was felt that the prior experts had done a job that we were satisfied with and pleased with under the then State of the Law and that they would be the expert witnesses in the litigation. We felt that basically, also, the former master plan had no land use elements in it that could be identified as such and the new Municipal Land Use, which required land use elements in the master plan. So, we knew we had to do something with the master plan, in any event, just to comply with the Land Use Law.

We felt that as to Gershen and Coppola/^{they}were in their own private practice and I knew they were experts in housing, including low cost housing, and they came well recommended as having the capabilities to reproduce maps and all

1 the rest that goes with planning and we did not want the
2 experts who were involved with this ongoing work to be the
3 same experts as the ones that were the expert witnesses in
4 the litigation with respect to the existing zoning.

5 Q Has a contract been signed with Gershen and
6 Coppola Associates?

7 A Oh, yes, some time ago.

8 Q What is the scope of that contract, if you
9 recall?

10 A The scope of the contract is to prepare a master plan
11 with land use elements, in any event, which I gather
12 probably will be a whole master plan and we would hope to
13 merely revise slightly our existing master plan, but in
14 the nature of professional work that is not easy to do.

15 The scope of the contract is to provide us with a
16 master plan that will include a land use element and, also,
17 to advise us with respect to any changes that might be
18 appropriate for the zoning ordinance.

19 Q Can you tell the Court what the state of this
20 planning is in now and what the time schedule is in the
21 future, if you know?

22 A I don't remember the dates of the contract. I know
23 that the signing of it was delayed because they had to get
24 around with capital, or not get around, but find out
25 whether it applied and I think it had to be on compensation

1 granted to counsel by Trenton to the Town in order to
2 enter into this contract.

3 On November 21 we had, I guess, our second meeting
4 with Mr. Coppola, or the third meeting, and at that meeting
5 he indicated that in five or six weeks he would have for
6 us the Planning Board material on the basis of which we
7 could make decisions as to the final format of the master
8 plan.

9 I have spoken with Mr. Coppola in his office several
10 times since and this material has not yet arrived and I
11 know he has been sick. I think both he has been ill and
12 we have had snow storms and holidays. As soon as we have
13 the material, the Board will have special meetings and we
14 will move forward.

15 Q Mr. Hardin, just one more question:

16 During the master plan preparation, which you drew in
17 1972 through 1974, would you tell us what the policy of
18 the Board was as to whether it wanted to investigate and
19 find out from any particular landowner what his or her
20 plans were for this land? In other words, what were the
21 possibilities for the development of any particular piece?

22 A We would hear any applicant or person who wanted to
23 address the Board with a particular plan. However, it was
24 the Board's particular policy as an established policy
25 that the zoning process was to be In Rem and not In

1 Personam, and we did not ask any particular landowner what
2 he wanted his land zoned for. In fact, we avoided that
3 question assiduously, in fact, and also I believe while
4 we are going in there with indictments pending in Mount
5 Olive for Planning Board members who had gotten the In
6 Personam approach for zoning.

7 MR. FERGUSON: No further questions.

8 THE COURT: On that line, did you state that you
9 selected for multi-family use in light of the possi-
10 bilities that a landowner might or might not want to
11 offer that land for sale? In other words, I under-
12 stand that one of the tracts is owned by Mr. Mennen,
13 which is a personal estate, and I assume it is Mr.
14 Mennen of the Mennen Company.

15 Did you consider the liklihood that he would put
16 that tract up for sale? Am I correct in the assump-
17 tion that it is the same Mennen?

18 THE WITNESS: It is the same Mennen. I think
19 two of the sights may have been owned by Mennen. One
20 is just a farm lot and this is just generally local
21 knowledge, and the other is a property, which I guess
22 is called an estate.

23 THE COURT: It was described by one of the
24 planners as an estate?

25 THE WITNESS: Yes, it has got the main house and

1 a second house and, also, it has got a helicopter pad
2 and I do not believe that is Mr. Mennen's, the present
3 Mr. Mennen's main residence, but I am not certain.
4 I know his father lived there and I have no idea what
5 his plans are for it. At one time, I believe, and
6 this goes back to a number of years ago, perhaps
7 right shortly after the father died, having heard
8 some concern that it not be zoned 5 acre residential,
9 maybe there were some other plans for it, but that is
10 not in connection with this zoning.

11 THE COURT: Well, did you take into consideration
12 the possibility when you were considering the need
13 for multi-family units the possibility that the land
14 that you zoned might not be available for the proposed
15 development?

16 THE WITNESS: I understand the question, Your
17 Honor, and I would have to say that we were conscious
18 of the fact that any particular piece of property,
19 whether Mennen's or anybody else's, might not be sold
20 or might not be put on the market. We felt that the
21 proper approach was the In Rem approach and one of
22 proper sites and that if we zoned the proper sites
23 that what happened after that was up to the decision
24 of the owners and whatever developers might come
25 along.

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THE COURT: All right.

MR. FERGUSON: Your Honor, I would like to ask one more question along the same line.

CONTINUED DIRECT EXAMINATION BY MR. FERGUSON:

Q Did you have a presentation from Grey Top? I think the answer to that is, yes, since you have already testified to it? A Yes.

Q Briefly tell the Court what that presentation was for and what property.

A Well, it was for an R.M. type development. I am not sure of the complete composition. There were town houses and I believe multi-family, but I am not sure whether you consider town houses as multi-family, but it was a presentation for a more of an R.M. type of use and it involved property, I guess, in the middle of the R.M. sites, the one abutting the Borough south side, the south side of the Borough and in the central portion of the Borough.

Q In other words, Mr. Guerin and his corporation owned land in the center of the R.M. site?

A Yes.

Q And that was the subject of one of the presentations prior to the development of the master plan?

A Yes.

MR. FERGUSON: Thank you.

CROSS-EXAMINATION BY MR. LINDEMAN:

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2 Q Mr. Hardin, what is the name of the Mr. Mennen
3 who owns one or possibly two of those sites? What is his
4 full name?

5 A I honestly do not know.

6 Q You don't know what his first name is?

7 A I suspect it is William, but I am not sure.

8 Q Is he actually a resident of Chester Township?

9 A I think not. I am not certain.

10 Q Do you know where he does live?

11 A No. I don't know.

12 Q If not, do you know if he is personally represen-
13 ted by any law firm in New Jersey?

14 A He must be.

15 Q You don't know who it is?

16 A I don't know.

17 Q Do you know if he has any business interests
18 that are represented by any law firm in New Jersey?

19 A I assume he is connected with the Mennen Company.

20 Q Whether it is the Mennen Company or any other
21 business interests?

22 A I don't know anything about the representations.

23 Q And do you know him, or have you ever seen him
24 by the way? A Yes.

25 Q Have you seen him socially?

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A No.

Q Never?

A I have seen him in public meetings, one or two public meetings.

Q Those are the only circumstances under which you have seen him?

A Yes.

Q Is he an older, that is to say, over fifty or sixty?

A Sixty let us say. I would guess he is fifty-five or sixty, somewhere in there.

Q Does he have any family that is being raised in there?

A Oh, no.

Q And you don't know if he lives actually in that house where the helicopter pad is in Chester Township?

A I don't know.

Q When any presentations were made before the Planning Board or any other governmental agency or subdivision of Chester, were you ever present at any one that he may have made?

A Mennen? I assume I must have because I think that he has appeared either at the public hearings on the master plan that the Planning Board conducted, and he was there at some other meeting of the Planning Board where he requested that the zoning ordinance include a provision

1 for the helipad, but that request I think was word of
2 mouth, not through me but through the Mayor or somebody
3 else.

4 Q The helicopter pad was not a use over which the
5 Planning Board had jurisdiction, is that correct?

6 A In drafting the zoning ordinance the request was that
7 there be included a provision in the zoning ordinance
8 permitting a helipad.

9 Q And it is your recollection, vague or otherwise,
10 that he appeared at some meetings at which such a request
11 was made?

12 A I don't think that particular request was made at a
13 meeting.

14 Q But you do recall that he had appeared at some
15 meetings?

16 A I have seen him at public meetings in Chester Township
17 somewhere. That is all I can tell you. I don't know what
18 meetings or when.

19 Q Do you recall if at any time during any open
20 hearings any expression was ever made by Mr. Mennen or
21 anybody on his behalf, counsel or otherwise, as to his
22 views as to the development of a municipality in terms of
23 multi-family dwellings?

24 A I really don't recall anything about that.

25 Q Do you know if at any of these public hearings

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any stenographic record was made?

A Which public hearing?

Q Any of them at which comments were heard about the master plan and the zoning ordinance in question, that is, the 1974 plan?

A They were tape recorded but whether there may have been a stenographer present, one or more of them, I don't recall.

Q Are these tape recordings available?

A I would assume so. I don't know.

Q Do you know who would have the names of the persons in charge of those tape recordings, or whatever records there may have been of those meetings?

A Either the Township Clerk or the Secretary of the Planning Board would have whatever is available, I would think.

Q Was any writing ever distributed by way of a questionnaire or inquiry of any kind to the citizens of the Township as to their views and desires about the nature and composition of the Township in terms of zoning?

A No questionnaire was circulated, but it was announced regularly at the Planning Board meetings that we would hear the peoples' concern on the subject of the new zoning ordinance and people were invited to submit comments and somewhere there's a whole file full of letters from

1 different people on different subjects and under the
2 Statute the Planning Board was required to hold a hearing
3 on the master plan, which we did, and of course under the
4 Statute when the proposed zoning ordinance came up for
5 adoption the Council had to refer to the Planning Board
6 and there were hearings both before the Council and cer-
7 tainly before the Planning Board on the new zoning ordin-
8 ance.

9 Q Do you know if the file of letters are something
10 which actually exist today, Mr. Hardin? Do you know?

11 A I would assume so.

12 Q Would that be under the jurisdiction and custody
13 of Mrs. Dews, the Township Clerk?

14 A Probably the Secretary of the Planning Board.

15 Q Who is that?

16 A Loretta Stapperfenne.

17 Q Where does she live?

18 A Chester Township.

19 Q You do not know her address any more than that?

20 A I am not certain of the street. I think it is Brook
21 Drive, but her office is in the Municipal Building. She
22 is also, I believe, the Deputy Township Clerk at the
23 moment. So, she is there most of the time.

24 Q If there is such a file presently in existence,
25 would it be in the Township offices?

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A Yes.

MR. LINDEMAN: May I ask the Court to state to the witness that if counsel for the plaintiffs want to look at that that Mrs. Stapperfenne be instructed to furnish it?

THE COURT: It is a public record, isn't it?

MR. LINDEMAN: It is just that maybe later this afternoon I would like to do that. I did not know about it.

THE COURT: What the relevancy of it is, I don't know?

MR. FERGUSON: Your Honor, I've not objected to the questioning since it is relatively harmless, but I would take the position on two grounds that it is irrelevant at this point in time.

MR. LINDEMAN: The relevance of it is to ascertain what if any communications may have been had from Mr. Mennen or Mr. Guerin and, perhaps, others.

MR. FERGUSON: Mr. Guerin has a lawsuit against the Township right now.

THE COURT: I am aware of that. It is one of those cases that is waiting on this one.

MR. LINEMAN: Whatever public documents are available are, in fact, available.

THE COURT: What are you asking me to do?

1 MR. LINDEMAN: I would just want to see them and
2 would like to ask if the witness will inform Mrs.
3 and
4 Stapperfenne/will make them available for me later
5 today, if necessary. I think this trial may be over
6 early today because I don't see how this testimony
7 can go very long and it would be convenient for me.

8 THE WITNESS: I don't know what time the Chester
9 Township offices close.

10 MR. FERGUSON: If it is open.

11 What is available we will make available.

12 THE COURT: Can you arrange it?

13 MR. FERGUSON: I will give Mrs. Dews a call.

14 MR. LINDEMAN: All right. Thank you.

15 MR. FERGUSON: Mrs. Stapperfenne is not there
16 full-time. She is part-time.

17 THE COURT: And Mrs. Dews is the Clerk?

18 MR. FERGUSON: She is the Township Clerk.

19 THE COURT: Is that the woman who came in that
20 day with the books?

21 MR. FERGUSON: Yes. I am making arrangements.

22 I will tell counsel that I had in my brief case
23 some of the Planning Board files containing some of
24 those letters, I think, in preparing this case and I
25 recently sent them back to the Township and I think
that letter went out of our office within the last

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ten days.

I do not think it is a great big thick folder that Mr. Hardin is referring to, but I had some of them and I will advise counsel that I was advised by Mrs. Stapperfenne and Mrs. Dews that there had been a reorganization of the Planning Board files. I think they are contained in two filing cabinets. What is there, Mr. Lindeman, and what are public records, Mr. Lindeman is free to look at.

I cannot make any representation that the material that Mr. Hardin referred to is, in fact, in any particular place.

CONTINUED CROSS-EXAMINATION BY MR. LINDEMAN:

Q Mr. Hardin, when the presentations for the 1974 master plan were made by Candub-Fleissig, was there any formal technical data actually presented to the Planning Board regarding environmental considerations? By that I mean maps and soil maps and things of that kind?

A Yes.

Q And actually maps were present?

A Yes, soil maps and water shed maps and existing land use maps.

Q Now, did both Messrs. Hultgren and Kassler appear from time to time before the Planning Board?

A Yes. Mr. Hultgren more than Mr. Kassler.

1 Q Do you know what the divisions of functions was
2 between them, or do you remember if there were any?

3 A I don't know that it was a terribly precise division
4 of function, but the practical result was that Hultgren
5 did most of the planning in the substantive aspects of
6 zoning. I think Kassler came in primarily on housing and
7 he expected to come in on the drafting of the ordinance,
8 although the last function ended up being done mostly by
9 the Board itself with the Board counsel.

10 Q Now, was any of the master plan work based upon
11 public comments or applications by citizens for develop-
12 ments, or did that process take place only after the Plan-
13 ning Board development and the zoning ordinance was being
14 considered?

15 A As to the development of the master plan, the public
16 knew this was going on. The public was writing letters
17 to the Township. The public would appear at regular Plan-
18 ning Board meetings and express itself verbally and usually
19 followed by a request from the Board to drop us a line.

20 I think there is a file of probably twenty or thirty
21 letters that we are talking about, not hundreds, and there
22 was a public hearing held by the Planning Board under the
23 Statute, I think, sitting as the zoning commission, perhaps,
24 at which there was a good turn out of the public.

25 Q We are still talking about the master plan?

1 A Yes. We are talking about the master plan. There is
2 not built into the master plan an accommodation to any
3 particular individual application for particular treatment.

4 Q Now, you recall, do you not, Mr. Hardin, that in
5 that master plan the number of units recommended or
6 suggested for multi-family dwellings was 650? Take my
7 word for it.

8 A There were so many different numbers. They varied
9 in different stages of the drafting process.

10 Q Those were the numbers that actually appear in
11 the 1974 zoning ordinance master plan, and it was just that
12 the master plan as it was finally adopted?

13 A 650, or 600, whatever the record is.

14 Q All right. Now, do you recall off the top of
15 your head, and I realize you have no notes before you, what
16 period of time that was intended to cover and provide for?

17 A I do recall that it was expected to be a limited, a
18 relatively limited period of time, not forever, but I do
19 not recall whether it was ten years or fifteen years or
20 eight.

21 Q You do know, of course, since you already have
22 testified to it that the zoning ordinance provided for a
23 maximum of 300 units? You remember that?

24 A Yes.

25 Q And limited to 150 for any one tract?

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A Yes.

Q What conclusions, if any, were arrived at by the Board as to when the zoning ordinance would be changed again to accommodate the full 650 units?

A Well, I think the answer to that question is that the Board did not know when or whether it would ever be changed to 650 necessarily, but that 300 number was a forecast, if you will, or a provision for a shorter period of time than the master plan prediction.

Q The zoning ordinance was prepared by Mr. Boorman, is that correct? At least, he was the consultant?

A He was a consultant on the zoning ordinance.

Q And as you stated, however, much of the zoning ordinance was actually the product of the members of the Planning Board?

A That is correct.

Q Now, the firm of Candub-F₁ assig was technically and professionally qualified to do a zoning ordinance, was it not, at the time that they prepared the master plan?

A At the time they prepared the master plan, I believe they were technically qualified, also, to do the zoning ordinance.

Q Isn't it a fact that they did not do the zoning ordinance because of some dissatisfaction with either the presentation or attitude or even with the work that they did?

1 A I don't know. I am not prepared to describe it as
2 dissatisfaction. There were problems that developed. I
3 don't know if there were any internal problems. I believe
4 with Candub-Fleissig that Hultgren left them between the
5 time of the commencing of the master plan and the time for
6 adoption of the zoning ordinance.

7 Q Is it not a fact that one of the difficulties
8 or one of the things that came up between the Planning
9 Board and that firm was financial and having to do with
10 the amount of money that the experts were charging?

11 A I don't recall that being a problem.

12 Q Now, is one of the factors with Mr. Hultgren's
13 leaving Candub-Fleissig, done for whatever reasons that
14 they were, that he was not retained to do zoning ordinances
15 even if he were separated from that company?

16 A Well, I don't think he actually moved to Florida. I
17 think he sold his house in New Jersey with the idea to go
18 to Florida and getting another job. Either that fell
19 through, or we lost touch with him. I am not sure that he
20 was available.

21 Q Do you know what if any consultations were had
22 among Messrs. Boorman and Candub-Fleissig and the Planning
23 Board just as a group, in connection with the preparation
24 of the zoning ordinance?

25 MR. FERGUSON: I object to the form of the

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question. I don't know if it is a group altogether, or a shifting group? I think it is unclear.

MR. LINDEMAN: Yes. I mean all because if there were any joint consultations, it would have to be among all three there.

THE COURT: Something that he witnesses? In other words, when he had been present with the members of the Board and Candub-Fleissig and Boorman?

MR. LINDEMAN: Yes, Your Honor.

THE WITNESS: If there were such a meeting, I would have attended it and there was no such meeting.

Q Do you know of your own knowledge whether Mr. Boorman did have any personal contacts with the files of Candub-Freissig in connection with the preparation of the zoning ordinance?

A I am told that he did and he must have in order to give us the input that he did with the zoning ordinance.

Q Now, with respect to the zoning ordinance and the master plan prior to 1974, environmental considerations did not play a significant role in their preparation and adoption, is that not so, Mr. Hardin?

A Prior to when?

Q Prior to the 1974 master plan, whatever governing statutes may have existed?

A Well, the preceding master plan was 1961.

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Q Before your time?

A I was not on the Board then and I have no idea what went into it.

Q You have no knowledge?

A None at all.

Q Do you know whether there were any records that were in the offices of the Planning Board or its Clerk, respecting environmental considerations?

A I have no idea what was involved.

Q Is it not a fact that that Planning Board, if not a majority of it, was very profoundly concerned that multi-families not be developed in the Township of Chester because of their desire that the Township retain its rural and open space character?

THE COURT: When are you talking about?

MR. LINDEMAN: During the time of the adoption of the 1974 master plan and zoning ordinance.

THE WITNESS: Nothing could be further from the truth.

Q The zoning ordinance does provide that there is this limitation of 150 units per tract? You did make reference to the fact that Mr. Guerin had made some sort of presentation to the Planning Board? Do you have any recollection at all as to the number of units that he was concerned about?

1 A I don't have any recollection of the numbers, but my
2 recollection is that whatever Mr. Guerin was proposing
3 would not specifically be accommodated by this provision.

4 Q That is a fair assumption, of course. Otherwise,
5 he would not be involved in the litigation, I guess, but
6 it is a fact, then, that you do not know of any, or you
7 do not recall what that number was that he was seeking?

8 A No, but my guess would be that it was over 150. I
9 don't know.

10 Q Do you recall if at any time during the course
11 of his presentation any indication or communication had
12 been made by him as to the cost of his property and the
13 necessity for development of, perhaps, more than 150 units
14 on it in order to make it economical?

15 A I honestly do not remember the details of his presen-
16 tation. The presentation covered more land, I think, than
17 even he owned at the time.

18 And certainly it covered more than what is in
19 the R.M. now, I believe? I don't remember what mixture of
20 types of units were, or how many.

21 Q If you do not remember the facts, do you have
22 any recollection as to whether or not that subject came up
23 at all?

24 A Which subject?

25 Q The subject of the value and the cost of his land

1 and the necessity to have a certain number of units of
2 multi-family units on it in order to make such a develop-
3 ment economical?

4 A Well, that is a standard part of a presentation for
5 anything of this nature and I do not recall. It must have,
6 though, I cannot imagine the subject being discussed with-
7 out that dollar concept being put out on the table, too.

8 Q You do not recall that one of the things that he
9 had presented regarding his development was the construction
10 and operation of some kind of a waste disposal system?

11 A Yes.

12 Q Who was there? Mr. Guerin?

13 A Yes, Guerin.

14 Q It is not your specific recollection whether the
15 cost of any such installation was discussed, or if it was
16 you don't remember?

17 A I don't remember discussing costs.

18 Q Now, in considering the environmental factors and
19 the absence of sewers in Chester and the placing of the
20 multi-family unit areas where they are, the conclusion was
21 made or a speculation was had that if there were to be any
22 sewer system it would probably be started first in the so-
23 called doughnut, is that right, in the Borough?

24 A In the hole of the doughnut.

25 Q I am sorry. In the hole of the doughnut?

1 A Right.

2 Q Now, what were the actual facts and figures and
3 what were some of the fundamental facts on which the con-
4 clusion was based that any sewer system, in fact, would
5 start in the hole of the doughnut in the Borough of Chester?

6 A Well, the Borough of Chester is already built up and
7 it has sewer problems and drainage problems now, and
8 presumably, if the Borough were accommodated or if the
9 sewers were installed it would be to accommodate a more
10 built-up area such as the Borough has. I do not think it
11 was ever concluded that the sewers would necessarily only
12 be in the Borough or near the Borough. I do not think it
13 was ever concluded that every multi-family development
14 would necessarily involve connections to a conventional
15 sewer system.

16 Q When you speak about the drainage and similar
17 problems in the Borough, what is the basis of your know-
18 ledge of that?

19 A Water coming out on the street and sewage coming out
20 on the street and they have now installed some sort of
21 sewer piping up there.

22 Q Have there been any meetings of any kind which
23 you have attended between the official body of the Township
24 and the Borough regarding these drainage problems to your
25 knowledge?

1 A I have attended joint meetings of the Borough and
2 Township Planning Boards at which this subject has been
3 touched upon, but I don't know what else there's been, if
4 anything.

5 Q There is no questions but that if any multi-
6 family dwellings were erected in any one of the three sites
7 that were ultimately selected that some kind of a sewerage
8 treatment facility would have to be built as to each one
9 of them, isn't that so?

10 A Yes.

11 Q Has there been any study or commencement of study
12 of any kind that you know of in the Township of Chester
13 with regard to the ultimate construction of a sewer system,
14 a sanitary sewer system?

15 A Not that I am aware of.

16 Q It is correct, is it not, that when the Caputos
17 made their first presentation to the Planning Board there
18 was no requirement for the preparation and approval of an
19 environmental impact statement, isn't that so?

20 A That is true.

21 Q Do you know what the process was for the approval
22 of the development of a site prior to 1974 or 1976 in light
23 of the fact that there was no site plan ordinance?

24 A There was no site plan ordinance.

25 Q Did applications for developments of sites not

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come before the Planning Board?

A No. The only exceptions were in the relatively small industrial zone.

Q And all others simply were the subject of applications for building permits and were either issued or not?

A Whatever the subdivision might be involved, or variance applications to the Board of Adjustment, but no site plan.

THE COURT: You did not have zones in those days for multi-family or commercially large areas? You didn't have a shopping center zone or any area comparable to that?

THE WITNESS: No.

THE COURT: I am trying to get the idea? This is not untypical of Morris County because lots of towns just did not zone for the uses that require site plans.

I am trying to get the idea how cogent and how significant that question is.

What kind of zoning are you talking about, the 1964 ordinance?

MR. LINDEMAN: It would have to be, yes, Your Honor.

THE COURT: All right. Okay.

CONTINUED CROSS-EXAMINATION BY MR. LINDEMAN:

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Q Did the Township Planning Board have anything to do with the planning of the construction of either new roads or the improvements of old roads that were at least Municipal roads?

A Well, in case of a major subdivision, yes.

Q Well, all right. Then, with regard to the existing Municipal roads and their widening and development and improvements, isn't that a subject which had been brought before the Planning Board for its determination in any respect prior to 1974?

MR. FERGUSON: Objection, Your Honor. I do not know that the Planning Board has any jurisdiction over that kind of thing.

THE COURT: I don't know where you are going statutorily. The Princeton Township case tells us they do not have the right to require improvements outside of the boundaries of the subdivision.

MR. LINDEMAN: I am not asking for jurisdictional authority, but for the advice. I am asking if the Planning Board ever participated in the studies or if it ever made recommendations regarding the widening and repair or improvements of roads that were Municipal roads.

THE COURT: You mean of a non-jurisdictional? You mean if you just came across a minor subdivision

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on a road and found it was too narrow, did they write to the governing body and say: we think you should widen that road?

MR. LINDEMAN: I would go beyond that.

THE COURT: There are Municipal records that are almost arterial within the Municipalities and they connected for long distances. Is your question: what would be their view that the road is inadequate or that it is too much and, therefore, make recommendations?

I do not know where you are going with it because, certainly, the old statutory design was to show a master plan and to show certain types of roads or to show roads, but I do not know of any statutory authority or responsibility on behalf of the Planning Board to go around and say that this road should be widened, or this should not be, unless the master plan made some provision for it and, then, they have made their statement once and that is it that a certain type of road is a certain width and if it is an arterial street it is supposed to be so wide, or if it is a connector street it is supposed to be so wide, or if it is a secondary street, or if it is a cul-de-sac, but I don't know why it is relevant here.

MR. LINDEMAN: I will go on a different tact then,

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Your Honor.

THE COURT: I don't know where you are going.

MR. LINDEMAN: Although I am not going to leave the subject.

CONTINUED CROSS-EXAMINATION BY MR. LINDEMAN:

Q You stated, Mr. Hardin, that one of the considerations in the location of the multi-family zone where they are was traffic considerations and the existence of public roads, isn't that correct?

A Yes.

Q And the road that services all three of them, or the principal road, is Route 24, isn't it?

A Two are served by 24 and the other would be served by the other access. It would be from the Borough and through the streets of the Borough.

Q Now, with regard to Route 24--

A Or 206. I am sorry.

Q With regard to 206, is it not a fact that the traffic that is noted on that road at the time that the zoning ordinance was adopted was that there was already too much in the minds of the members of the Planning Board and to the point that it either required widening or replacement?

A Well, Route 24 is one of the more heavily traveled roads. I suppose 206 carries more traffic. I do not know

1 that the Planning Board is in a position to judge whether
2 it needs widening or not. Route 24 is a County road, not-
3 withstanding the State number.

4 Q Now, what counts or traffic studies were had
5 with regard to Route 24 in connection with the placement
6 of these multi-family parcels?

7 A I doubt if any counts were made.

8 Q Do you know if there was any testimony that was
9 presented to the Board as to the traffic conditions regard-
10 ing and relative to any road that would have serviced
11 these parcels?

12 MR. FERGUSON: As a general matter I would object
13 to the asking of this whole series of questions, the
14 implication of which is that if you did not do it, it
15 should have been done. In other words, I have no
16 objection to ascertaining what was done.

17 THE COURT: Are you suggesting that he is going to
18 influence by asking a series of questions because it
19 wasn't done?

20 MR. FERGUSON: I think the inquiry on the Court
21 would be carried out by the questions as to what was
22 done and not done.

23 MR. LINDEMAN: If the implication was suggested,
24 I want to hasten to say that I do not intend it that
25 way. That is not the effect of it.

1 CONTINUED CROSS-EXAMINATION BY MR. LINDEMAN:

2 Q Well, then, there were no traffic studies as
3 such that were presented to the Planning Board in connection
4 with the location of three multi-family parcels, isn't that
5 so?

6 A That is correct. It is just common knowledge that
7 this was a planned road and we relied on that at or about
8 this time.

9 Q Was there not knowledge at least in your posses-
10 sion as to the plans for the development by way of widening
11 or otherwise of 206?

12 A Well, I have been talking about that. That has been
13 on the State's master plan for highways for ten or fifteen
14 years at least. They are slightly less along than in the
15 planning stage than the plans for improving and changing
16 Route 24. I think that has been on the books for twenty
17 years, but these are things that we hear about, but there
18 is no evidence of anything really being done, except that
19 recently there is now current talk of improving the inter-
20 section of 24 and 206 in the center of the Borough.

21 THE COURT: Is it called the Peapack-Gladstone
22 Road? Is that what it is called?

23 THE WITNESS: The old Chester-Gladstone road
24 that runs past Caputo road. That is the County road
25 from 206 south to Somerset County line and it was

1 formerly a County road but the County turned it back
2 to the Township from 206 to where it hits 206 again.
3 I am not aware of any County plans with respect to
4 the portion below 206.

5 Q Do you know if any recommendation had ever been
6 made by your Planning Board for any improvements of that
7 road?

8 A Not since I have been on the Board. I am on it only
9 nine years.

10 Q Now, I think you stated on direct examination
11 that the various numbers for multi-family units range just
12 anywhere from approximately 200 to approximately 600 and
13 that only the number 300 was selected in the zoning ordi-
14 nance? What was the reason for that figure, if you
15 remember?

16 A We had to pick a number and why was 300 rather than
17 250 or 350 or 500, I just do not recall.

18 Q Do you recall that there was a closed session,
19 a meeting of the Planning Board in the early part of August
20 of 1976 at which consideration was given to raising that
21 figure from 300 in the zoning ordinance to 500?

22 MR. FERGUSON: I would ask that I be permitted
23 to show the witness P-43 in Evidence, which is the
24 Township Minutes of that meeting.

25 MR. LINDEMAN: Yes. I think that is fair.

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Q If you will look at the bottom of that ordinance?

A The question related to the closed meeting of the Planning Board and I just do not recall any particular date or meeting. P-43 is an exerpt from the closed session of the Council.

MR. LINDEMAN: May I interrupt you for just one minute?

If Your Honor please, in P-43, which I looked at before and I think that the Court has, that is kind of blurred at the top. It did say August 2, 1976 and I know that when we first offered it that that date was on it, but I must say that it would not appear from the record. I wonder if there is any way that we could establish that at least for record purposes. It is my recollection, and I think that maybe there were other copies that were available.

THE COURT: Is the specific date of any moment?

MR. LINDEMAN: No. It is not.

THE COURT: We agree that it was August of 1976.

MR. LINDEMAN: That is okay. I just did not want it to be any other.

THE COURT: It is a Council meeting and not a Planning Board meeting.

MR. LINDEMAN: All right.

THE COURT: You recall that it is a closed

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session of the Planning Board?

MR. LINDEMAN: Yes, and the witness was correct. I thought it was the Planning Board.

THE WITNESS: I am looking at the paragraph dealing with the R.M. zones on P-43 and I do not recall a particular memo from the planner, although this refers to that. I do recall at one point in our discussion, in the Planning Board discussions, a discussion considering not only the different number of units of multi-family but, also, the possibility of putting in a provision of a certain number of units, plus an additional permitted number of units if they were for low cost housing.

Now, I think this was before the Madison Township case and low cost housing became a term to be dealt with and we on the Planning Board felt that this difference in treatment would not be necessary because the implication was, first of all, that the initial provision was not for low cost housing, which was not our intent. So, we did not in the final version of the ordinance have a number, which was one number, plus additionally for low cost housing and I think that is what this is dealing with.

CONTINUED CROSS-EXAMINATION BY MR. LINDEMAN:

Q As to these Council Minutes, P-43, you say, Mr.

1
2 Hardin, that it was not the intention of the Planning
3 Board that the particular number of multi-family dwellings
4 that was selected was necessarily for low cost housing?

5 A No. I said to the contrary. We did not want there
6 to be any implication that any of the provisions for multi-
7 family dwellings was not for low cost housing.

8 Q What consideration, if any, was given to the fact
9 that 150 units on any one of the tracts that were selected
10 could be developed economically for any low cost housing?

11 MR. FERGUSON: Could I have that question read
12 back?

13 MR. LINDEMAN: Let me restate it. I think it
14 was a little awkward.

15 Q Was there any discussion that you can recall,
16 publicly or otherwise, in the Planning Board, that as few
17 as 150, or that a limited number of 150 units would
18 economically be built for low cost housing or for any low
19 cost housing in one of the three parcels selected for multi-
20 family dwellings?

21 A Well, without regard to particular parcels or pecu-
22 liarities that might affect the cost of construction, there
23 was consideration given to this basic fundamental concept
24 of not providing for all 300 on any one site, and in
25 deciding to require a division or maximum number of one
site, we did consider whether the maximum of 150--or as it

1 turned out it was actually 50 or it says 50 percent, I
2 believe in the record?

3 Q It may very well.

4 A But the other number changed and we put 50 percent
5 there so that it could ride without being changed every
6 time the other number was changed because it wasn't 150
7 that was significant. It was 50 percent of whatever the
8 total was that ended up with 300. We did consider whether
9 using 300 as a total and to change 150 to 50 percent was
10 realistic from an economic point of view, and our planners
11 made some inquiries and concluded that this was not unreal,
12 or unrealistic economically.

13 Q Was there any purpose in limiting the overall
14 number to a 50 percent percentage and that no one property
15 owner should be favored with the right to build, if you
16 will, multi-family dwellings?

17 A No. I think we were under the impression at the time,
18 as a matter of fact, that two of the tracts were owned by
19 Mennen, so that the whole 300 could be built by Mennen.

20 I am not sure that this is a good example, but if you
21 drive north on 206 to Mount Olive Township, you will see
22 a large scale development both of apartments and houses
23 on small lots, and we felt that to bring in Chester Township,
24 if we did, of 300, well, we did not want them all in one
25 place. It would just be inappropriate for a number of

1 different reasons.

2 Q By the way, do you know if any part of the area
3 of Mount Olive where the multi-family dwellings exist, is
4 in the Upper Raritan watershed?

5 A I am inclined to doubt it, but I do not know for sure.

6 Q You stated on direct examination that one of the
7 other considerations in selecting a different firm of
8 experts to the Planning Board to prepare the master plan
9 and zoning ordinance under the new law, as opposed to
10 those experts who worked for you previously, is the fact
11 that many of those previous experts or some of those
12 previous experts would have to testify in this case, is
13 that the fact? A Yes.

14 Q I wonder if you could explain to the Court why
15 that fact bears upon the efficacy of any work they might
16 do in preparation of the new ordinance? Why would the
17 fact their testifying in a case like this have any effect?

18 A Well, one of the elements that has occurred to us was
19 just the plain demands on their time. These are not big
20 organizations. These are one and two man organizations
21 and the demand on their time were to be considered and,
22 secondly, the master plan revision that we are doing now
23 and whatever, if any, changes in the zoning ordinance,
24 the substance of the zoning ordinance, admittedly, there
25 will have to be procedural changes that are being brought

1 about because of the change in the law and the development
2 of the case law and it seemed to us that we wanted the
3 experts testifying in litigation not to be in a position
4 of having to straddle a position taken by one state of the
5 law with the position being taken in another state of the
6 law and, also, we wanted the experts working on the new
7 law not to be hampered by any position that might have to
8 be taken with respect to the decision made under the prior
9 law.

10 Q Now, you were aware, were you not, Mr. Hardin,
11 that in or about the end of April or May of last year,
12 1977, that the trial in this case was probably not going
13 to be held at one point and that was thought to be the case
14 and the Municipality would furnish its master plan or
15 public acceptance sometime in October of 1977 and the zoning
16 ordinance about a month after that? Does that recall that
17 fact to you?

18 MR. FERGUSON: Objection, Your Honor. That was
19 proposed, but it never came down to finality.

20 MR. LINDEMAN: Right.

21 MR. FERGUSON: Well, I do not see the relevance
22 of where he is going. I would raise that objection
23 as number one. Number two, I would object as to the
24 form of the question.

25 THE COURT: I think that somehow you had got to

1 that once before, Mr. Lindeman, maybe it was through
2 another witness, obviously, and my recollection was
3 that I said that I did not think it was relevant.

4 MR. LINDEMAN: I remember the Court ruling on
5 that. Of course, I do submit that it is relevant and
6 I think the conduct of the Municipality is relevant
7 in their moving along on this thing.

8 MR. FERGUSON: I can say as to what I advised
9 the Municipality as the result of the Court ruling,
10 but I do not think that is proper.

11 THE COURT: Not from the table. If you want to
12 get on the stand?

13 MR. FERGUSON: That is my point. When we get
14 to what advice is being given and what the Municipality
15 does as a result of any specific Court ruling, in
16 order to relate back to the ordinance or master plan?

17 THE COURT: You asked this witness what is going
18 on now?

19 MR. LINDEMAN: That is really why I am getting
20 into it, Your Honor.

21 THE COURT: Of something that did not exist
22 before, and I kept sitting here wondering why you
23 were asking those questions, but I think by the fact
24 that you asked those questions you have now sort of
25 put a crack in that door that I had closed on Mr.

1 Lindeman previously.

2 I do not know where it is going to go. In my
3 opinion, it is not relevant, but both of you sit here
4 silently as gentlemen and do not object to some of
5 the questions the other man asks and I am not
6 aggressive enough to come down on you and say that
7 is not relevant and get on to something else. So,
8 okay. The door has been opened.

9 MR. LINDEMAN: I do not think it is because we
10 are gentlemen. I think it is really that some time
11 that time is.

12 THE COURT: I think that is part of it, not
13 totally, but part of it.

14
15 CONTINUED CROSS-EXAMINATION BY MR. LINDEMAN:

16 Q Mr. Hardin, there was testimony that the contract
17 was arrived at, if not signed with Coppola in and about
18 November of 1977, is that correct?

19 A I said that I didn't know the date of the contract.

20 Q It was sometime around then, wasn't it?

21 A It was before November. I had our second meeting,
22 and I believe I testified, that our second meeting with
23 Mr. Coppola was on November 21.

24 Q This had to be a dispensation with respect to
25 time?

1 A When the CAP dispensation finally issued from Trenton.

2 Q Do you know whether or not the knowledge of that
3 problem did not exist as of April or early May of 1977?

4 A The knowledge of the CAP problem existed, but I am
5 not sure that knowledge of a way to get the dispensation
6 existed all along from the outside.

7 Q Is it fair to say that from the time the Planning
8 Board knew that this trial was going to be on that no
9 action was taken until sometime just prior to November of
10 1977 with regard to solving that problem and the hiring of
11 a new firm of planners?

12 A No. That is not fair to say.

13 Q What was done?

14 A I don't remember when we first talked with or inter-
15 viewed Mr. Coppola. I don't know what record would show
16 that, but it was long before November. I cannot say it
17 was in April. It may have been in May or June.

18 Q I am talking about when the Planning Board inter-
19 viewed Coppola and considered his recommendation?

20 A Well, it considered the firm and the qualifications
21 of the firm and interviewed Mr. Coppola and a form of
22 contract for planning services was prepared and submitted
23 by Gershen and Coppola and I don't remember the dollar
24 amount. I really was not privy to all of this when the
25 Town was considering the CAP or dollars involved and what

1 was proposed, and the contracts seemed to be of a broader
2 scope than we really needed and, particularly, with respect
3 to drawing up a zoning ordinance from scratch because we
4 felt that it was not necessary.

5 There was a revision in the contract of Gershen and
6 Coppola and it came back and I think at this point somebody
7 had discovered that there was a mechanism for getting the
8 CAP released for at least this type of thing, but that it
9 involved not only the Council action but application to
10 Trenton and somebody taking action down there. This was
11 all going on.

12 As soon as the CAP question was resolved, the contract
13 with Gershen and Coppola was signed and we had one meeting
14 with them and, then, another meeting. The second meeting
15 was on November 21. That is my recollection.

16 Q And it was stated that at about that time they
17 would make efforts to produce the master plan or what the
18 material for the master plan would be in about five or six
19 weeks from then? A Yes.

20 Q That has not happened?

21 A The material has not been received by the Planning
22 Board.

23 Q And when the material is received, then, you will
24 go through the process of sifting through it and analyzing
25 it, is that so?

1 A Well, again, the Board has tried to make clear to
2 Mr. Coppola that while we understand, the different Board
3 members understand it in different ways, but I have to go
4 by the analogy that it is like someone coming into a
5 lawyers office and saying they want a change of their will.
6 It is almost impossible for a lawyer not to do a whole new
7 will. To just change one paragraph is not easy to do and
8 it doesn't fit together and this is the nature of the
9 problem that Gershen and Coppola had.

10 We have tried to say that in our present master plan
11 that we put land use elements in it and that is all we
12 needed. So, it complies with the land use law, and this
13 is not easy to do because the whole present master plan
14 does not lend itself to having a paragraph put in the
15 middle and thereby resulting in compliance with the new
16 Municipal land use law requirements.

17 Q Is there a written direction given to them as
18 to what the desires of the Planning Board are?

19 A In what way?

20 THE COURT: In what they were to do?

21 THE WITNESS: What work they wanted done? In
22 general, it says only the specific changes they want.

23 Q Well, the thrust of my question is: did the
24 Planning Board tell this firm to prepare a master plan
25 which complies with the new Act and the law as it now

1 exists, or merely to revise the present master plan?

2 A We had discussed the two approaches and out of the
3 discussion came the conclusion that, basically, it is going
4 to have to be a new master plan. There is no written
5 direction. There is the contract with Gershen and Coppola,
6 which is, I think, three pages long, or two or three pages
7 long, which speaks in terms of preparing a master plan.

8 Q Is that the contract of the Municipality as well?

9 A Yes. It must be. It is a Municipal contract. It is
10 not a Planning Board contract. It is a contract.

11 MR. LINDEMAN: I have no further questions.

12
13 REDIRECT EXAMINATION BY MR. FERGUSON:

14 Q What was the attitude of the Planning Board to
15 multi-family housing when the master plan was adopted?

16 MR. LINDEMAN: Do you mean the present one?

17 MR. FERGUSON: No. In 1974?

18 THE WITNESS: In 1974 the Planning Board felt
19 that the law was becoming quite clear that some
20 provision and some consideration would have to be
21 given to providing for multi-family housing and,
22 probably, some provision would have to be made in
23 the ordinance for some unspecified or unknown
24 quantity of multi-family housing. I guess it was
25 from the first Mount Laurel recommendation at the

1 public meetings and regular meetings of the Planning
2 Board. At the public portion of the meetings when
3 we would invite comments from the public, the
4 question every month would come up: why are you
5 talking about multi-family dwellings? They said:
6 we understand you are considering multi-family dwell-
7 ings, or are you considering multi-family dwellings?

8 We said: yes, we are considering it.

9 Then, it was asked: why are you considering
10 them?

11 We actually had a small two or three person
12 section of the public who said you should not even
13 be mentioning that word in public and I would say
14 that the Planning Board over a period of four or
15 five months or six months, actually, I felt was
16 educating the public of Chester Township as to the
17 legal requirements and that we talk about it and
18 consider multi-family and, possibly, even include
19 some.

20 It was the Planning Board that was taking the
21 initiative in trying to explain to the public why
22 this had to be talked about because, as I say, there
23 were people in the public who said: don't even
24 mention it, don't even consider it, and it was sort
25 of an exercise and that was the position of the

1 Planning Board, and not only did we not reject the
2 idea, but we affirmatively had to put the idea across
3 for the comprehension for some portion of the public.

4 MR. FERGUSON: Thank you. No further questions.

5 THE COURT: Mr. Lindeman?

6
7 RECCROSS-EXAMINATION BY MR. LINDEMAN:

8 Q Was the reason that the Caputo tract would not
9 be selected for multi-family dwellings was because to do
10 so would have constituted spot zoning?

11 A I am not sure that I understand the question. We do
12 not believe in spot zoning.

13 Q I am sure of that. It is a dirty word, anyway,
14 but was one of the considerations in the refusal or the
15 non-selection of the Caputo tract as a multi-family dwelling
16 zone is that it would have constituted spot zoning?

17 A To answer that question I'd have to say that it was
18 not a matter of non-selection of the Caputo site, first.
19 Secondly, we never got to the point of it being spot zoning
20 or not. It was not a question of non-selection of the
21 Caputo site.

22 MR. LINDEMAN: No further questions.

23 THE COURT: Step down. Thank you.

24 Let us take ten minutes.

25 (After a recess, the following occurred.)

1 THE COURT: Call your next witness.

2
3 R O B E R T H. F O X, sworn.

4
5 DIRECT EXAMINATION BY MR. FERGUSON:

6 Q Where do you live?

7 A State Park Road, Chester, New Jersey.

8 Q And is that in Chester Township?

9 A That's correct.

10 Q And by whom are you employed?

11 A Apgar Associates, consulting engineers and land
12 surveyors.

13 Q Are you a licensed engineer?

14 A Yes. I am.

15 Q And do you have your resume with you?

16 A Yes. I do.

17 Q Can I have a copy of it, please?

18 Would you tell very briefly to the Court your educa-
19 tional background?

20 THE COURT: Can't we use it? We've been going
21 through this for a long time. We will mark it and
22 if Mr. Lindeman has no objection, we will accept Mr.
23 Fox as a licensed civil engineer of the State of New
24 Jersey and a duly qualified expert?

25 MR. LINDEMAN: I have no objection.

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THE COURT: All right. It will be marked as D-8 in Evidence.

(Resume of Robert H. Fox is received and marked as D-8 in Evidence.)

CONTINUED DIRECT EXAMINATION BY MR. FERGUSON:

Q Mr. Fox, have you been appointed to any municipal position by Chester Township?

A Yes. I have.

Q Would you tell us what?

A At about 1969 or 1970 I was appointed as Township Engineer and have held that position since that time.

Q Do you hold any positions with respect to Chester Borough?

A Yes. I have served as Borough Engineer there for two years, I believe.

Q Mr. Fox, during the recess just past you told me that you knew the Mennen properties and, perhaps, could shed some light on those properties for the Court.

Would you please tell us what you know about the Mennen property that is R.M. zoned land by Mr. Mennen or any other firm affiliated with him and would you tell us how you know it is and what you do know?

A I am familiar with the Mennen property that is on Route 24 to the west of Chester Borough to a greater degree than I am with the Mennen land on Route 24 to the east of

1 Chester Borough.

2 On that property to the west of the Borough there are
3 two residences. There is a large residence. The main
4 residence is on the farm itself, which is a large farm,
5 and I don't recall the acreage. They raise beef cattle
6 there and Mr. Mennen does not reside there. I believe he
7 comes there occasionally.

8 The large house is occupied by the farm manager and
9 there is a small house on the farm that Mr. Mennen stays
10 in when he visits the farm. The farm manager has been
11 there quite a number of years and the larger one burned
12 down just a few years ago. There was quite a fire there and
13 as to the size of the herd, I believe they cut back con-
14 siderably on it after that.

15 The farm manager at the present time is in poor health.
16 He is very seriously ill. However, he does continue to
17 manage the farm. I do not know the frequency of the visit,
18 but Mr. Mennen does visit. I believe in the wintertime his
19 residence is really in Florida, as I understand it, and I
20 am not sure but he did come there occasionally, at least
21 in the summer months.

22 That is really about all I know.

23 Q Did you tell me that you had seen surveying work
24 on the property?

25 A Yes. Approximately a year ago, there was quite a bit

1 of surveying activity going on on his property and I know
2 that some people raised the question of--

3 MR. LINDEMAN: Objection.

4 THE COURT: Sustained.

5 Q Mr. Fox, at my request did you review various
6 documents with respect to this litigation and, if so, tell
7 us what they were and the extent of your review of them.

8 A Approximately a year ago I reviewed a plan. Excuse
9 me? May I ask a question? You are referring to documents
10 that you gave me to review for this litigation?

11 Q Yes, that is correct.

12 A I reviewed a plan that was prepared, I believe, by
13 Robert Catlin Associates for the development of the Caputo
14 property.

15 I believe there were two plans looked at, although it
16 has been a long time ago and one consisted of two-acre
17 lots and the other consisted of a multi-family-type of
18 development and, then, I believe there was a third plan
19 in which it was more or less like a sketch over the two-
20 acre plan, which showed revisions that would provide for
21 five-acre lots on the eastern part of Mr. Caputo's property.

22 I also reviewed the environmental assessments. I
23 reviewed a report concerning spray irrigation, sewage
24 disposal, and I reviewed another report and I believe that
25 first one, the one I just referred to, was prepared by an

19 residence is really in Florida, as I understand it, and I

1 engineer that Mr. Caputo employed.

2 I reviewed a report from another engineer and I don't
3 remember his name. I believe he was located in Philadelphia
4 or somewhere in Pennsylvania also, on the entire spray
5 irrigation, there was the disposal.

6 I don't recall any other specific documents that I
7 reviewed, but there may have been some.

8 Q Are you familiar with the master plan and zoning
9 ordinance of '76-12 of Chester Township?

10 A Yes. I am.

11 Q And did you play any part in the preparation of
12 that master plan in terms of consulting with the Township
13 planners or the Planning Board itself?

14 A Well, I consulted both with the Township planners and
15 with the Planning Board.

16 Q Would you tell the Court the extent of your
17 participation in as few words as possible and describe, if
18 you would, the kind of things you did for the Planning
19 Board and the kind of advice you gave.

20 A It has been a long time. I believe it has been five
21 years or so ago. So, I can only recall it in a rather
22 general way, but I did discuss the topographic maps and a
23 series of soil maps that had been prepared by the soil
24 conservation service for the Township and I recall I had
25 discussions with Peter Larson of the Upper Raritan Watershed

1 Association and numerous meetings with the Planning Board
2 and several with Planning Board consultants.

3 Q Did you give your opinion to the consultants and/
4 or the Planning Board about various aspects of the master
5 plan and, if so, would you tell us what?

6 A I don't recall the details of the opinions given.
7 The basic plan was developed by the planning consultants
8 and I did not do any work in the actual preparation of the
9 writing and so forth of the plan.

10 Q Did you advise the Planning Board and consultants
11 with respect to the problem of sewage disposal in Chester
12 Township and, specifically, the kinds of problems to be
13 expected from possible multi-family housing?

14 A I do not recall any specific discussions along those
15 lines. We did discuss the possibility of providing sewage
16 facilities for multi-family dwellings and we discussed the
17 possibility of providing this in conjunction with a sewer
18 system for the Borough, which I felt was inevitable, and
19 recent developments are certainly leading definitely in
20 that direction.

21 I believe our discussions were in a general nature,
22 rather than any detailed nature regarding sewage systems.

23 Q When the master plan was being prepared from
24 1972 to 1974, did you advise the planners and Planning
25 Board your opinion as to where a sewer system was most

1 likely to be built in or near Chester Township?

2 THE COURT: You mean a public sewer system?

3 MR. FERGUSON: A public sewer system.

4 THE WITNESS: I do not recall any detailed advice
5 that I gave the Board, although we did have definitely,
6 as part of our general considerations, that a sewer
7 system for the Borough of Chester was inevitable.
8 There was a very definite need for one. One had been
9 proposed in early 1972. I couldn't tell you exactly
10 when it was. One had been proposed by a developer
11 there of the Harvey Guerin property. It may have been
12 the Harvey Guerin property. I know I met her one
13 time in Chester with a representative from what is
14 now the Department of Environmental Protection. I
15 don't know if it was called that at that time, to
16 consider a site for a sewerage treatment plant which
17 was to be right at the Chester Township-Chester
18 Borough boundary and that it was discussed that this
19 plant could serve not only the development that would
20 possibly occur on Harvey Guerin's property, but also
21 one that would serve the Borough of Chester. I am
22 not sure it is the Harvey Guerin property, whether it
23 was the Harvey Guerin property or the property
24 immediately adjacent to the Harvey Guerin property.
25 At that time, and I am inclined to think as I think

1 about it a little more and as I am talking, that it was the
2 property immediately adjacent to the Harvey Guerin property
3 and that there was an interest in constructing a sewerage
4 treatment plant for a development.

5 Q Was that development both in Chester Borough and
6 Chester Township, that proposed development?

7 A No. That property was entirely in Chester Borough.

8 Q You mentioned that recent developments have
9 occurred with respect to the sewage problems in Chester
10 Borough. I am asking you what recent developments have
11 occurred in this general area?

12 A Well, first of all, the southwestern portion of Chester
13 Borough and a more specific area lying to the south of Main
14 Street to the east of Route 206 and to the west of Grove
15 Street has a very, very poor soil. It is probably some of
16 the most porous soil we have in the area. It is also one
17 of the oldest sections of the Borough in the form of develop-
18 ment and has very small lots and homes in the area which
19 were built, I don't know, about fifty to one hundred years
20 ago, or whatever, with septic systems which have mal-
21 functioned in that area for many, many years. I am told
22 that for probably fifty years or more they had serious
23 flow in ditches there and it has been a problem.

24 A little over five years ago the Borough of Chester
25 received a grant from the Economic Development Administration

1 for the construction of a storm sewer project in that
2 portion of the Town, as well as in the adjoining portions.
3 During the course of our working there it became more
4 evident than ever that the soil throughout a large part of
5 that area was extremely poor for the purpose of absorption
6 of effluent from septic systems.

7 We also during the excavation process encountered
8 many pipelines through which there was evidence of sewage
9 flowing. As a result of that observation, the Board of
10 Health has initiated a study to determine, first of all,
11 the sources of pollution and then, basically, what can be
12 done to resolve this.

13 I would consider this to be the first stage of what
14 is in my opinion going to lead to a sewerage collection
15 system in Chester Borough. The lots are very small and
16 the soils are very poor and I do not think that a septic
17 system can be really made to function properly in that area.

18 So, this is really the stage that Chester Borough is
19 at right now.

20 This year they signed a contract with the Borough of
21 Madison Health Department to furnish Chester Borough, as
22 Madison serves as more or less of a regional agency and
23 they were conducting the initial study as being undertaken
24 right now.

25 Q What implications do those facts/^{mean} to you as the

1 Borough Engineer of Chester Township in terms of possible
2 sewerage facilities for Chester Township.

3 MR. LINDEMAN: Objection. I do not think impli-
4 cations are really relevant. We are not in the
5 expertise field. We are in the fact field and I think
6 implications that this witness made are not appropriate.

7 MR. FERGUSON: I will withdraw it.

8 Q Did you advise the Planning Board during the
9 master plan process as to your opinion as to the appropri-
10 ateness or inappropriateness of any sites for multi-family
11 housing?

12 A Yes. I did.

13 Q And would you tell us what discussions you had
14 with them and what advice you gave them?

15 A There were numerous sites being considered for multi-
16 family dwellings and the Planning Board and, I believe,
17 specifically, Mr. Hardin, gave me some maps and asked me
18 to review them and to advise them of my thoughts and of any
19 particular problems, particularly, that I saw with construc-
20 ting multi-family dwellings and developments for multi-
21 family use of these areas. I did that and I met with the
22 Planning Board on two or three occasions and discussed my
23 thoughts on this and I made certain recommendations to them
24 with respect to changes from what they had proposed and
25 the changes were primarily in the delineation of the line

1 between multi-family use and single family, residential
2 use. I believe the Planning Board favored following the
3 property lines as they thought it was easier to handle
4 this and I didn't fully agree with that. I thought it was
5 better to follow the lines of the natural barriers or
6 natural changes in the size and slopes and so forth.

7 However, the basic areas that were shown on the master
8 plan and later included in the zoning ordinance were very much
9 the areas which I represented for multi-family dwellings.

10 Q Can you give us the reasons behind those recom-
11 mendations and why did you recommend those areas?

12 A First of all, the topography was moderate, gentle.
13 There was moderate topography on all of the sites, as I
14 recall, and the soils were generally good and I foresaw no
15 great problems with rock excavations. The soil maps
16 indicated that the rock was at a reasonable depth through-
17 out most of the areas.

18 Geographically, it was next to the Borough and it was
19 located on the two best roads in the community and at least
20 one area was the Harvey Guerin property and was located
21 immediately adjacent to that part of the Borough where
22 sewers had been considered just a few years before and in
23 the area that was just mentioned here now.

24 I do not recall any other specific reasons. It has
25 been a few years now, but that was the general form of my

1 study and my recommendation.

2 Q Can you recall any discussions of possible spray
3 irrigation as a method of disposal of sewage effluent?

4 MR. LINDEMAN: Objection in light of the denial
5 of any testimony in that regard for the plaintiffs.

6 MR. FERGUSON: Mr. Hultgren testified that one
7 of the considerations was, in fact, that the site
8 might be appropriate for spray irrigation in terms
9 of soils and topography. The witness has testified
10 that he recommended these sites because of the topo-
11 graphy and the soil conditions and the rock formation.

12 THE COURT: He is objecting more as to the
13 leading nature?

14 MR. LINDEMAN: Yes. I am.

15 THE COURT: Those are the only things he can
16 recall? I think it is significant enough to sustain
17 the objection.

18 MR. FERGUSON: All right.

19 Your Honor, I only have a few more questions of
20 Mr. Fox. I do want to show him two Exhibits and I
21 have not had a chance to do that before today.

22 THE COURT: Do you want to ask a few questions
23 before or after you show him those Exhibits?

24 MR. LINDEMAN: I was going to suggest, based
25 upon what I can see of this direct examination that

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1 if we could stay until 1 o'clock that we might be able
2 to finish with him, even on cross-examination, although
3 I have a few questions.

4 THE COURT: All right. We will take five minutes.
5 You may talk to him or show him the Exhibits.

6 (After a recess, the following occurred.)

7 CONTINUED DIRECT EXAMINATION BY MR. FERGUSON:

8 Q Did you review the site plans prepared by Mr.
9 Rakos and marked in Evidence for the two-acre and five-acre
10 zone configurations?

11 I show you P-8 and P-9 in Evidence and ask you if at
12 my request you reviewed copies of those site plans?

13 A Yes. I reviewed P-8 and briefly review P-9.

14 Q Would you for the record just tell us what P-8
15 and P-9 are?

16 A Well, P-8 is a development plan of the Caputo property,
17 which shows the property being developed into two-acre lots,
18 and with clustering provisions of zoning ordinance 76-12
19 used.

20 MR. LINDEMAN: Excuse me, Mr. Ferguson. I have
21 got a problem. My P-8 is a subdivision layout of the
22 1974 ordinance and P-9 is a subdivision layout of the
23 76-12 ordinance. I just think you may be referring
24 to the wrong numbers.

25 THE COURT: P-8, then, would be the two-acre,

1 which was zoned for and P-9 would be the way it was
2 zoned under the 1974 ordinance, which would be five
3 and two.

4 MR. FERGUSON: That is quite correct. I withdraw
5 my question as to P-8. I am mistaken.

6 Q P-9 is what?

7 A P-9 is a plan of the Caputo property, which shows I
8 believe two-acre lots on the western portion of the land
9 and five-acre lots on the eastern portion of the property.
10 I believe it was the intent to develop a plan in accord-
11 ance with the current zoning ordinance.

12 Q On P-9 are the clustering provisions of the
13 ordinance 76-12 utilized?

14 A No. They are not.

15 Q Do you have an opinion as Township Engineer as
16 to whether cost savings could be recognized if the cluster-
17 ing provisions of the ordinance were utilized in drawing up
18 a site plan?

19 A Well, yes. I couldn't tell you how much, but one
20 primary purpose of the clustering provision is to provide
21 for a lower cost construction of the facilities, the
22 streets and sewers and storm sewers and so forth.

23 Q Is there sufficient information there for you to
24 give us any order of the magnitude of the kind of cost
25 savings we are talking about?

1 A I would only be guessing and would not want to do
2 that.

3 MR. FERGUSON: All right. Thank you.

4 Q Has there been any changes as far as you know
5 in the requirements in the Township with respect to side-
6 walks and curbing in the R-2 and R-5 zones?

7 MR. LINDEMAN: May I ask when we are referring
8 to?

9 MR. FERGUSON: If there are changes, I will ask
10 the witness when they were made.

11 THE WITNESS: There have been no changes in the
12 ordinance that I am aware of, except with respect
13 to sidewalks. There was a change in the ordinance
14 with respect to sidewalks just a few months ago,
15 which provided that under certain conditions side-
16 walks would not be required.

17 Q In which zones?

18 A I believe it would be in the R-2 and R-5 zones and
19 I am not sure if any other zones were included in that or
20 not. I have a copy of that ordinance with me, if you
21 would like me to refer to it?

22 Basically, it gave the Planning Board the prerogative
23 of not requiring sidewalks in these zones under certain
24 conditions.

25

1 Q Did you have discussions with a Mr. Richard
2 Ballush about the proposed development in Chester Township?

3 A Yes. I did.

4 Q And did you discuss with him the design of the
5 roads and curbing and efforts to lower his cost of the
6 developments to him?

7 A Yes. I did, and I did this in light of a proposed
8 revision to the road ordinance which I submitted to the
9 Township Council at their request back in December.

10 There would also be a revision to it, or I would
11 propose a revision to the subdivision ordinance, which
12 would also provide for changes in the street width and
13 curb requirements and drainage improvements, particularly
14 in the five-acre zone and, also, in the two-acre zone.
15 That I have not submitted to the Council yet, although the
16 larger ordinance, the road construction ordinance, has
17 been submitted to them.

18 Q Why did you prepare those ordinances?

19 MR. LINDEMAN: I object to any testimony about
20 what they may be.

21 Q Now, as a result of your review of the documents
22 that I submitted to you and I am specifically referring to
23 the Caputo site plan, which has been marked P-1 in Evidence
24 and called for 856 units, do you have a provision as Town-
25 ship Engineer as to what engineering problems would be

1 considered on that site, and I am not asking you for what
2 might be considered a site plan review, but I am asking
3 you for an engineering input in reaching a decision as
4 to whether that site might be appropriate for the kinds
5 of housing proposed for it in terms of utility services
6 and traffic in the Township?

7 A I reviewed that plan perhaps a year or two ago and
8 I did not review it in any great detail, as my instructions
9 were not to review it in any great detail.

10 MR. FERGUSON: I will withdraw the question.

11 I have no further questions.

12
13 CROSS-EXAMINATION BY MR. LINDEMAN:

14 Q Mr. Fox, in discussing the Bellush subdivision,
15 did you have any discussions with him, that is with Mr.
16 Bellush, regarding the quality of the soil on the parcel
17 he was developing?

18 A I believe we did discuss the soil on those tracts and,
19 as I recall, the soil on that tract is Parker-Gladstone
20 soil, one or the other. I am not sure which. I think it
21 is Parker for the most part and I do not recall any details
22 of the discussions. I do not believe I had any detailed
23 discussions with respect to the soil, other than just in
24 general that it was, well, I don't really recall any
25 specific discussions of the soil there.

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Q Do you recall having told him that the soil was good, or anything like that?

A Yes. I think as far as for road construction it is one of the best soils that we have.

Q How about the drainage and for drainage purposes?

A For drainage purposes it is also one of the best soils which we have.

Q Had you made any tests on that soil?

A No. I haven't and I was relying on the soil map information.

MR. LINDEMAN: Your Honor, the only other thing I would like to do would be to have Mr. Fox locate that Bellush parcel in the Township in relation to Burnett Brook where it is and where it abutts and to certain of the soil maps that have been introduced. That is the only thing I want to go into with him and that may take a few minutes to do.

THE COURT: Which map do you want him to look at?

MR. LINDEMAN: The first subdivision map that was marked into Evidence. It is D-50, I believe, and then to refer to some of the soil maps that are in Evidence.

Q This is D-50, which is the Bellush subdivision, and if you will see in the upper left-hand corner there is a reference on it, a detailed map to show where it is

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located.

A That's correct.

Q Now, I would like to have the map here that shows it. It is D-24 in Evidence and I would ask if he could locate that parcel in this map?

I am satisfied not to have it marked on here, if we can state for the record that it embraces almost completely an area that is marked solidly in red in D-4 in Evidence and that designation is severe so far as the soil limitations for buildings with cellars.

THE COURT: Are you saying it is all in red, or are you saying it is also in light brown?

THE WITNESS: Some of it is in light brown and I believe most of it is in red colored crayon.

MR. LINDENMAN: I have no further questions pending to Mr. Fox.

REDIRECT EXAMINATION BY MR. FERGUSON:

Q You were about to give some explanation as to why it is in red? Would you continue with that answer or explanation?

A Well, Parker soil is frequently a soil that has bedrock at a relatively shallow depth, particularly where the slopes are steep and I would surmise that that is why it is shown in red on that map because the bedrock may be

1 found at a relatively shallow depth in that area. There
2 would be no other reason that I could think of why those
3 soils would not be good for buildings, light buildings
4 with basements or something like that.

5 Q There would be a slight limitation for buildings
6 with cellars?

7 A Yes, because soils have excellent bearing capacity
8 and I believe this would be the only reason they would be
9 colored red on that map.

10 Q Can you locate that tract on map P-82 for
11 Identification?

12 A Well--

13 MR. FERGUSON: I had the wrong number on that.

14 It is D-52 in Evidence, rather than the other one.

15 A The area which I am pointing to now is the area that
16 would be occupied by this piece of land that Mr. Bellush
17 has, I believe, under contract.

18 Q That has the color of purple and blue?

19 A Yes. I believe most of it is a purple color.

20 Q And the symbol "PEC" do you know what that refers
21 to?

22 A PE is the Parker soil, which would mean it has a
23 C slope, which I believe varies from eight to sixteen
24 percent.

25 MR. FERGUSON: No further questions.

1 THE WITNESS: The purple color is basically the
2 soil, but on a steeper slope.

3 THE COURT: Okay. That is all. Thank you.

4 MR. FERGUSON: At this point the defendant rests.
5 I would like to review my notes to see if we have any
6 Exhibits which have been marked for Identification,
7 which we ought to move in as part of our case.

8 MR. LINDEMAN: Your Honor, as to D-13 for
9 Identification?

10 THE COURT: I want to see it.

11 MR. LINDEMAN: I have it in Evidence?

12 THE COURT: It did not get into Evidence.

13 MR. LINDEMAN: That is a rough drawing of the
14 market area.

15 MR. FERGUSON: No. That is the same map as D-20,
16 I believe?

17 THE COURT: It was a work map?

18 MR. LINDEMAN: The only Exhibit, Your Honor, is
19 D-78 and that is Professor Keene's vitae and I had
20 moved that into Evidence for the record.

21 THE COURT: If it is not marked into Evidence,
22 it should be.

23 MR. FERGUSON: All right. The defendant rests.

24 MR. LINDEMAN: If Your Honor please, we are at
25 a somewhat difficult spot. Early in this proceeding

1 the Court volunteered or offered to us the right to
2 produce additional evidence if we felt it would be
3 necessary in light particularly of some testimony
4 by the gentleman from Philadelphia.

5 MR. FERGUSON: Mr. Lloyd.

6 MR. LINDEMAN: Mr. Thomas Lloyd, right. And it
7 was our position, then, that we did not expect the
8 witness to testify as he did, especially on the basis
9 of his pretrial discovery. We had no way, really,
10 to know what Mr. Keene would testify to in terms of
11 relating the appropriateness of the development of
12 multi-family dwellings to environmental considerations
13 because nobody had testified to that in pretrial
14 discovery, so far as I can ascertain, and to the
15 extent that there was an examination of any such
16 witness, it was all negative, that is to say, that
17 the witness had nothing to say about that subject.

18 I have not yet decided whether I am going to
19 produce a witness, but I think I am going to have to
20 take a look at it. It is really only at this point
21 now with all of the testimony over that I could see
22 what all of the defendants' testimony would be on that
23 subject.

24 Now, it would be my expectation that any witness
25 that we might produce would not be one who would have

1 made any of study of the actual site in any great
2 detail. He would not make a study to the extent that
3 Mr. Lloyd did, or any other party, because I just do
4 not think it is possible, but I think that if we
5 decided that we wanted to produce such a witness it
6 would be somebody who would look at the maps and take
7 a look at the soil and designations and if he is in
8 a position to render an opinion would do so, and that
9 kind of a review takes more than two weeks, I would
10 think.

11 Now, I am saying that if I can, based upon my
12 success, if any, in finding any such person at this
13 time, although I have a few people in mind, I would
14 think that whoever would give the evidence would be
15 able to arrive at conclusions in a relatively short
16 time.

17 THE COURT: The first decision that has to be
18 made is one that you are going to have to make with
19 reasonable diligence as to whether or not you are
20 going to get anyone at all. I would like to know
21 that by the end of the week.

22 MR. LINDEMAN: I think I can do that.

23 I would only produce two other fact witnesses
24 in rebuttal and, perhaps, they can even be stipulated.
25 I was going to try to subpoena Mr. Mennen, but I see

1 now that that is not likely if he lives in Florida
2 and, also, to subpoena Mr. Guerin only to ascertain
3 what his intentions are as to use of his property.

4 THE COURT: I don't know that his intentions
5 are so important. I had asked the question that was
6 misleading, and I think everybody reacted to it in
7 the wrong way when I first brought it up. I asked:
8 did they talk to the property owner? What I was get-
9 ting at was if they had, I was thinking more of some-
10 thing before the Planning Board not going out and
11 seeking them out. Very frankly, those questions are
12 directed at what Judge Conforth said in the Madison
13 case and the availability of the property and the
14 design, but I do not know that their personal desires
15 are relevant at all. I think this is something that
16 the Planning Board should have contemplated, that is
17 all. Whether they contemplated it or not is the point.

18 What the actual plans are for the property I do
19 not think are relevant because they are speculative
20 today and I might want to build multi-family dwellings
21 for this when my neighbor offers me a fantastic price
22 for it for the remaining vacant land. I may say,
23 fine, here it is, and I will take it for that price.

24 MR. LINDEMAN: The Court is correct and I think
25 that is the proper way to view that aspect of the

1 case. I would have just offered Mr. Guerin or some-
2 body acting for him as an agent or otherwise, who
3 would say that he has offered the property for sale.
4 Now, of course, I would state now that that is not
5 to be a fact, but I do understand that to be the case.
6 However, if it is offered, the Court has indicated--

7 THE COURT: I would expect that the nature of
8 that testimony is not going to be very helpful. You
9 can put him on the stand and ask him questions, but
10 I look through anything in two ways. First of all,
11 we have had testimony of someone as to what Mr.
12 Guerin's proposal was and I don't recall what it was,
13 but it is substantially above even 300 units of the
14 entire Township.

15 We have also got Mr. Guerin's lawsuit against
16 his Township. Now, from that you can conjecture that
17 Mr. Guerin intends to go on with this project but,
18 then, what happens to him.

19 MR. LINDEMAN: All right.

20 THE COURT: It is so speculative that it doesn't
21 make sense, if he decides to move, or if he sells it
22 to somebody who wants to take over the property, or
23 for other reasons? I do not know that this is going
24 to serve any relevant function.

25 MR. LINDEMAN: I accept the Court's view about

1 that.

2 THE COURT: Insofar as your expert, fine. I
3 would like to know by Friday and let Mr. Ferguson
4 know when you do intend to hire that expert. If you
5 do, I would like to know who it is going to be within
6 a week and how long it is going to be before he is
7 going to be ready. If he is talking about six or
8 eight weeks, this case has been going on for a long
9 time. My notes are reasonably comprehensive, but my
10 memory is going to dim a little bit. I would rather
11 not have it dim too much.

12 MR. LINDEMAN: I really would think that it
13 should be a short time now. I am not an expert in the
14 field. So, I cannot really know, but I would think
15 that he would look at what is before the Court.

16 THE COURT: It depends upon how busy he is and
17 what he is doing.

18 MR. LINDEMAN: That is true.

19 THE COURT: Maybe he is going on a vacation to
20 Florida and I know there are so many things that could
21 interfere with it.

22 All right. You let us know by Friday.

23 MR. LINDEMAN: I think I may very well not do it
24 because I am not sure how really important it is.

25 THE COURT: Make a decision by Friday. If you

1 decide not to, then, we will schedule a date for
2 summations. If you do decide to offer him, then, we
3 will try to schedule a date for hearing and continue
4 the hearing and, then, follow-up with that by the
5 summations.

6 MR. LINDEMAN: I would also like the opportunity
7 to visit the Township, which of course the Court will
8 neither support or hinder, but it might be that there
9 will be something coming from that and I did not know
10 about that business until today.

11 THE COURT: In my experience with Municipal
12 attorneys, I have seen lots of letters and they run
13 the gamut of everything from you are good to you are
14 the worst.

15 MR. LINDEMAN: I do not expect any touchdowns.
16 I just feel that I ought to look at it.

17 MR. COURT: Okay. Well, then, I shall hear from
18 you on Friday and we shall continue this matter with-
19 out set date.

20 (At this point the hearing was terminated for
21 this date.)
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C E R T I F I C A T E

I, FRANK E. NOLAN, hereby certify the foregoing.

Frank E. Nolan

FRANK E. NOLAN
Official Court Reporter

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