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Chester

9-March-79

Stenographic Transcript
of Motion to Stay
Certain aspects of Judgment

pgs. 24

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A-813-78
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FILED
APPELLATE DIVISION

REC'D.
APPELLATE DIVISION

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MAR 20 1979

JOSEPH CAPUTO and
ALDO CAPUTO,

Eligible to be Stenographer
GM
Clerk

STENOGRAPHIC TRANSCRIPT OF
Clerk

MOTION

Plaintiffs, :

v. :

Place: Morris County Courthouse,
Morristown, New Jersey

TOWNSHIP OF CHESTER,
et al,

Date: March 9, 1979

Defendants)

FILED

JAN 14 1980

B E F O R E :

Stephen W. Leonard
CLERK

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

TRANSCRIPT ORDERED BY:

ALFRED L. FERGUSON, III, ESQ.

A P P E A R A N C E S :

HELLRING, LINDEMAN, GOLDSTEIN, & SIEGAL, ESQS.,
Attorneys for the Plaintiffs,
BY: PHILIP LINDEMAN, II, ESQ.

MC CARTER & ENGLISH, ESQS.,
Attorneys for the Defendants,
BY: ALFRED L. FERGUSON, III, ESQ.

JUDITH R. MARINKE, C.S.R.,
OFFICIAL STENOGRAPHIC REPORTER

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THE COURT: I take it, gentlemen, having been full of rhetoric in your papers, you do not need to have any further oral argument on that.

MR. LINDEMAN: I think so.

MR. FERGUSON: Only to say that in the event the Court should deny the motion, I would like to give the reasons for the denial to the Appellate Division since we anticipate---

THE COURT: I do not think the Appellate Division nor the Court is going to get too excited about the stay because you are still, even if you do not do anything now, it is just going to continue that way, but come on forward.

I have got some poetry for you. I will not spare you because you made me read your papers. I am going to make you listen to my poetry.

In this action in which a judgment was entered on November 8, 1978, wherein the zoning ordinance of the Township of Chester was invalidated and the Township was directed to adopt a new Master Plan and zoning ordinance by December 30, 1978, the Township moves for a stay of certain aspects of the judgment pursuant to Rule 2:9-5(b).

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

1 The judgment in question retained jurisdiction
2 over the matter. Both parties treated the
3 judgment as a final judgment and filed notices
4 of appeal pursuant to Rule 2:2-3(a).

5 Thereafter plaintiffs sought an order to
6 show cause to institute a challenge to the new
7 Master Plan and zoning ordinance adopted by
8 the Township in December of 1978. I refused
9 to sign an order to show cause and suggested a
10 motion under Rule 1:10-5 and such a motion was
11 filed. Then I decided that I did not have
12 jurisdiction and I notified counsel since the
13 notices of appeal were filed. I considered
14 the 1:10-5 application outside of my juris-
15 diction.

16 Plaintiff then filed a 1:10-5 motion in
17 the Appellate Division seeking, one, a transfer
18 of the case to another county; two, certain
19 discovery; and three, an injunction against the
20 Township from granting any subdivisions, site
21 plan applications, or any actions pursuant to
22 its newly adopted zoning ordinance.

23 Now, the Township seeks a stay of so much
24 of the Court's opinion effectuated by the
25 judgment: One, prohibits the Township from

1 zoning for minimum five-acre lots; two, requiring
2 small-lot zoning and three, requiring the
3 Township to provide its fair share or least-
4 cost housing under Mount Laurel and Oakwood of
5 Madison.

6 The Township contends as a basis for its
7 appeal, there was no evidence to support the
8 five acre minimum zoning declaration of invalidity,
9 that it has met its obligation assuming it is
10 a developing municipality by the zoning ordinance
11 and that in doing so, it provides its least-cost
12 housing.

13 It argues no one had to tell Chester in
14 a manner--in the manner of good planning. "Chester
15 Township did this well before Mount Laurel
16 required them or any town in New Jersey to do it."
17 It argues that it is not a developing municipality
18 and the stay will eliminate confusion and that
19 it is the duty of the Court to preserve the
20 status quo and that an absence of the showing
21 of exceptional hardship stay shall be granted,
22 relying on Humble Oil & Refining Company v.
23 Wojtycha, 48 N.J. 562 1967 and similar cases.

24 Forgive me for the next paragraph,
25 gentlemen. Both counsel have inebriated their

1 papers with some ambulant rhetoric. The Town-
2 ship's cause abounds with some very essence of
3 goodness while Mr. Caputo's cause abounds with
4 the virtue of Saint George after slaying the
5 dragon. As Shakespeare said: "Zounds! I
6 was never so bethump'd with words since I first
7 call'd my brother's father dad." That's from
8 King John, act two.

9 Now, back to the issues at point: Com-
10 pliance with the Court's decision, eradication
11 of the five-acre zone, I do not consider to be
12 dictum. All variety of housing has to be pro-
13 vided including small lot. I do not consider
14 that to be dictum. The status quo has not been
15 preserved here. The Township has adopted a
16 new Master Plan and has adopted a new zoning
17 ordinance. Were it not for the filing of notices
18 of appeal, the review of the newly adopted
19 ordinance would be now within the jurisdiction
20 of this Court and the matter would be proceeding
21 if not have proceeded to trial. It was for
22 that purpose that jurisdiction was retained.
23 To grant a stay at this point to preserve the
24 status quo would be to grant a preservation of
25 the status quo that the Township says should

1 exist, but only after the Township adopted its
2 new zoning ordinance.

3 It is not the status quo that existed
4 after the entry of the zoning ordinance so the
5 cases that were cited to me I do not consider
6 apposite. A municipality was given--that
7 municipality was given as case law and dictates
8 an opportunity to make its zoning ordinance
9 conform with the Court's opinion that invalidated
10 it. Once it was given that opportunity, once
11 having exercised it, and once having claimed
12 the status, I see no justification for granting
13 any stay.

14 It is my fervent hope, gentlemen, although
15 I do not ask for lawsuits, that the Appellate
16 Division recognizes that the reason I retained
17 jurisdiction was simply so that I could then
18 review what I had directed the Township to do
19 and it is my fervent hope that the Appellate
20 Division says, "Judge, the case is coming back
21 to you."

22 Mr. Lindeman, I would be delighted to
23 have some other county share the burden of our
24 zoning cases, particularly the one that I am
25 going to hear in a few moments, but I can't do

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1 that. That is up to the Appellate Division.
2 I make no comment other than that, but I see no
3 justification for granting a stay. The
4 implication by my granting a stay I feel is that
5 the Township's status quo that they now have
6 is worth preserving. I have said that it was
7 not worth preserving. The Township takes issue
8 with that.

9 All right. I retain jurisdiction for
10 the very purpose of reviewing that subsequently.
11 If the Appellate Division can--if you can get to
12 the Appellate Division promptly and get some
13 action taken so that the matter can be resolved
14 by them on Mr. Ferguson's motion---

15 MR. LINDEMAN: ---Mr. Lindeman.

16 THE COURT: ---Mr. Lindeman's motion--
17 excuse me--perhaps we can get to the issue at point.

18 To grant a stay at this point, Mr. Ferguson,
19 I feel would be a superfluous act. Neither I,
20 nor the Appellate Division are going to say that
21 business cannot go on in Chester Township. As
22 I pointed out to you in the first instance, to
23 stay the effect of my decision so that other
24 property owners cannot use their property would
25 be, I think, patently a constitutional denial of

1 their right of due process. I am not going to
2 grant any stays in this case. I am going to
3 allow the matter to proceed.

4 I can very frankly tell you that I am
5 going to call Mrs. McLaughlin at the Appellate
6 Division and ask her to have the matter moved
7 with great dispatch and to have whatever party
8 the case is assigned note that I retain juris-
9 diction and were it not for the notices of
10 appeal, we would be proceeding forthwith with
11 the matter.

12 MR. LINDEMAN: We will appreciate that,
13 your Honor.

14 THE COURT: Okay.

15 MR. FERGUSON: I suggest---

16 THE COURT: Forgive me for my poetry,
17 but I have today been through some inebriation
18 of briefs with ambulant rhetoric in two cases.
19 The other case I have another poem of my own
20 doing that I will read.

21 MR. LINDEMAN: We won't stay around
22 for it, your Honor.

23 THE COURT: You won't?

24 He has to.

25 MR. LINDEMAN: Okay.

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THE COURT: Thank you.

MR. FERGUSON: I just would like to make clear about the five-acre zoning and small lots: Given the circumstances of no sewers in Chester Township, it is exceedingly questionable about whether small lots make any sense at all and it is not--you see, we quarrel with the general concept of planning put forward in Madison Township as applied to a specific environmental problem.

MR. LINDEMAN: That is the subject of the appeal.

THE COURT: The burden shifted--well, I will get to that.

MR. FERGUSON: Yes, it did.

THE COURT: I will get to that at a later time.

Thank you.

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

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JOSEPH CAPUTO and)
ALDO CAPUTO, :

CERTIFICATE

)
)
Plaintiffs, :

) Place: Morris County Courthouse,
) Morristown, New Jersey

v. :

)
)
TOWNSHIP OF CHESTER, :
et al,)

) Date: March 9, 1979

)
)
Plaintiffs.)

I, JUDITH R. MARINKE, an Official Steno-
graphic Reporter of the State of New Jersey, do hereby
certify the foregoing as a true and accurate transcript
of my notes in the above-entitled cause.

Judith R. Marinke
JUDITH R. MARINKE, C.S.R.,
OFFICIAL STENOGRAPHIC REPORTER

March 11, 1979.

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

A-813-78

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REC'D
APPELLATE DIVISION

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

JAN 30 1979
RM 1C
Elizabeth W. Langford
Clerk

JOSEPH CAPUTO and
ALDO CAPUTO,

Plaintiffs,

STENOGRAPHIC TRANSCRIPT
OF
PROCEEDINGS

vs.

JAN 14 1980

CHESTER TOWNSHIP,

Stephen W. Townsend
CLERK

Defendant.

-----x Morris County Courthouse
Morristown, New Jersey
Tuesday, October 11, 1977

B E F O R E :

ROBERT MUIR, JR., Assignment Judge, Superior Court

TRANSCRIPT ORDERED BY:

PHILIP LINDEMAN, II, ESQUIRE

FILED
APPELLATE DIVISION

JAN 30 1979

A P P E A R A N C E S :

CM
Elizabeth W. Langford
Clerk

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

MESSRS. MCCARTER & ENGLISH
BY: NICHOLAS CONOVER ENGLISH, ESQUIRE and
ALFRED L. FERGUSON, ESQUIRE

MESSRS. HILLAS & GOODRUM
BY: JAMES R. HILLAS, ESQUIRE.

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

Earl C. Carlson

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

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THE COURT: All right, Mr. Lindeman, let's proceed. I don't think we will get too far. I have to stop at four o'clock because I have a conference.

MR. LINDEMAN: Does your Honor want to hear an opening statement?

THE COURT: Well, if you want to waive your openings, you can. If you are brief, fine. It is up to you.

The Rules have certain references to openings and closings, but you may, of course, waive them if you wish to do so.

MR. LINDEMAN: Your Honor, I will keep my remarks very brief.

THE COURT: All right.

MR. LINDEMAN: May it please the Court, this is a Prerogative Writ action in which the plaintiffs, Joseph and Aldo Caputo, bring an action against the Township of Chester for a number of Counts, among which are claimed, and I believe that the ordinance which was adopted in the, or about August of 1976 is invalid under the criteria of South Burlington County NAACP vs. Mount Laurel under the Land Use Act recently adopted and effected in the State. In addition to which we will show that the property of the Caputos, which was acquired by them

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1 upwards of fifteen years ago comprising of about
 2 275 acres in the municipality in which Mr. Joseph
 3 Caputo himself is and has for some time been a
 4 resident, is property which is peculiarly suitable
 5 for the kind of development which this municipality
 6 so sorely needs, namely, that of high density,
 7 least cost housing for low, moderate and even some
 8 not so moderate income people.

9 As of this time, the ordinance in the
 10 municipality provided virtually none, or to the extent
 11 that it provides for any multi-family dwellings is
 12 totally inadequate under the criteria that I just
 13 mentioned. In addition to which the properties that
 14 have been set aside for that purpose are nowhere near
 15 or are not as adaptable and appropriate as the
 16 plaintiffs' property.

17 Some of the facts that will come out in this
 18 case are these: That in or about 1974, the Caputos,
 19 Mr. Joseph Caputo in particular, at or about the time
 20 that the lower court's determination was coming down
 21 in Mount Laurel had devised a plan at great expense
 22 and of some complexity and yet eminently simple as
 23 far as the town was concerned for the development of
 24 his property for high density or reasonably high
 25 density purposes and environmentally sound and in

every respect that possibly could apply.

He presented this plan to the municipality which was rejected, of course, because the zoning for the township did not allow it in his location. Indeed, it didn't allow it any place.

The units that he was suggesting were 856 townhouses with tennis courts, a body of water that would serve as a lake and for other purposes, sewage treatment arrangement in such a way as to be, I daresay, we will be able to show aesthetically acceptable, indeed beautiful, and it would accommodate the needs not only of the township, but of the region which will be described during the course of the trial. The township rejected the plan. Subsequently this was, of course, under an ordinance that previously had been adopted in 1964.

Then subsequently in or about 1975, the township adopted a new comprehensive plan and under that a new zoning ordinance. That having been adopted in or about August of 1976, which became final October of 1976.

Under the 1964 ordinance, the properties of the plaintiffs were zoned in a R-2 Zone, which means, of course, that they were able to build two units per acre. An acre unit on a two-acre tract, excuse me.

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1 In the 1976 ordinance, their property was
 2 upgraded so that a substantial portion of it was
 3 raised from R-2 Zone to the R-5 Zone and the
 4 condition, the situation is such now that even fewer
 5 units can be built on it. Whether or not the
 6 municipality operated prudently or not is not something
 7 to which we will address ourselves, but we will show
 8 that over-all, the municipality went from a situation
 9 of an extremely limited number of units as of
 10 1964 to a fewer number of units in 1976.

11 The ordinance, we submit, as will be shown from
 12 the testimony, is invalid under the Mount Laurel
 13 and statutory criteria because it does not provide
 14 for anywhere near high density or even moderate
 15 density housing. That there are three parcels that
 16 have been zoned for multiple family dwellings. The
 17 ordinance provided that a maximum of 300 such units
 18 may be constructed on all three of those parcels
 19 and that only a hundred and fifty, the maximum of
 20 a hundred and fifty units may be constructed on any
 21 one of them. That's the limit in the municipality.

22 We will also show that the ordinance itself
 23 does not even follow the precepts and dictates of its
 24 own Master Plan of the Township of Chester. And among
 25 other things, we will show that Chester is in such a

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1 position now that it cannot accommodate its own
 2 citizens. It surely cannot accommodate those in the
 3 region and it makes no allowance whatever for the
 4 poor people and even the moderately poor people who
 5 live in and about this area and who are inexorably
 6 moving toward it to come into the town, to have
 7 any kind of housing that would be within their
 8 economic reach. So the ordinance is not only
 9 invalid on its face, but the efforts which have been
 10 made by the Caputos to try to get the township to
 11 do that which it should do has been long and arduous.
 12 It has met with nothing but rebuff.

13 The expense which they have gone to and which
 14 we will show in this proceeding has been staggering.
 15 But the Caputos have had the heart to stick with it
 16 and they have come to this point now where we believe
 17 that a judgment will direct the township not only
 18 to zone in accordance with those precepts, but also
 19 will direct that the Caputos' property itself will
 20 be used for the purposes, or should be used for the
 21 purposes for which they have applied.

22 Thank you.

23 THE COURT: Mr. Ferguson.

24 MR. FERGUSON: I will try to be brief, your
 25 Honor.

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1 The Township of Chester will be described by
 2 the witnesses who come before the Court and the
 3 physical characteristics of the Township of Chester
 4 will be described in some detail. Particularly its
 5 characteristics as a watershed area, the geology of
 6 the township, the physical characteristics are a
 7 definite limitation as to the proper planning and
 8 zoning which should occur in the township.

9 The evidence will show that the watershed area
 10 in the township is a peculiarly valuable natural
 11 resource and must be protected. The question, indeed,
 12 is not whether to protect it, but how to protect it
 13 and what means to use.

14 The township itself is primarily rural. Indeed,
 15 if you exclude the Borough of Chester, which is the
 16 hole in the center of the doughnut, there is very
 17 little in the township at all. The question really
 18 has to be raised, is this a developing community at
 19 all?

20 MR. LINDEMAN: We take the position that it is
 21 not.

22 MR. FERGUSON: We also acknowledge the township's
 23 efforts to meet whatever regional responsibilities
 24 may be by zoning for a higher density land use in
 25 those areas around the intersection of Route 24 and

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206 next to the Borough.

So to answer the question in the negative, it is not a developing community, doesn't take us very far except to get rid of this lawsuit.

We, the township, that is, is planning to meet its regional responsibility because if it is not a developing community this year right now, it probably will be in the next five or ten years and Chester Township has always planned ahead looking toward future development.

Your Honor, to be candid, this is one of a growing category of lawsuits which is brought by a developer who says I want my project on my ground and I want it at all costs. And indeed, that seems to be echoed by the opening statement of counsel for the plaintiffs when he tries to make equation between the number of dollars spent in the preparation of the proposal as somehow if it is big enough and you spend enough then we should get our building permit.

If the proposal is for the wrong project at the wrong site in the wrong part of the township on land that is not suitable, there is no reason on this earth why he should get a building permit, no matter how much money he spends, and that is the thrust of our case.

The planning process in Chester Township commenced

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1 in 1960 and there is a comprehensive master plan on
 2 that date and one of the fundamental tenets of that
 3 master plan is that development in the township should
 4 occur near the Borough of Chester. This is the center
 5 of the doughnut. That is where the community
 6 facilities are. That's where your transportation
 7 would hopefully be because indeed there was then
 8 and indeed very little now in the public transportation
 9 in Chester. That is the most logical area for
 10 development. That was followed through in the
 11 comprehensive plan of 1974 prepared by Candeb
 12 Fleissig & Associates and it was followed through
 13 in the new zoning ordinance adopted in October of
 14 1976, which zoned three tracts for a higher density
 15 use denominated MDR or MR Zone.

16 Parenthetically on January 18, 1977, because of
 17 the Municipal Land Use Law, the ordinance which is
 18 called 76-12 was re-adopted as an interim zoning
 19 ordinance pursuant to Section 90 of the Land Use
 20 Law which gives the municipality the right to adopt
 21 a reasonable interim ordinance which is valid for a
 22 period of one year and can only be extended for good
 23 cause shown by another ordinance, passage of an
 24 ordinance for another year.

25 What we have then for this Court to decide

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1 is the reasonableness of the ordinance as an
2 interim ordinance. I must state here that I will
3 state for the record and the Court is well aware of it,
4 that the planning process is going on at this time
5 in Chester Township. A planner who will not be a
6 witness in this lawsuit has been retained to prepare
7 the land use element of a new master plan and to
8 prepare an ordinance where the groundwork for an
9 ordinance after the preparation of the land use
10 element.

11 Now, that procedure is mandated by the
12 Municipal Land Use Law and the process required by
13 Statute. That process is going on now. And as far
14 as I understand it, that process must be completed
15 by January 18, 1976, the date beyond which -- 1978,
16 excuse me, the date beyond which the ordinance ceases
17 to have any effect because it is only an interim
18 ordinance. I think this Court must question whether
19 it is feasible that both parties and this Court
20 try this on the reasonableness of the interim
21 ordinance while the planning process has been going
22 on and will be going on and there have been Motions
23 prior to this and the Court has ruled that the
24 trial should proceed.

25 Now, Mr. Lindeman indicated that the Caputo

1 tract was peculiarly suitable for the proposed
2 development. It is our position that it is exactly
3 the opposite. It is peculiarly unsuitable. The
4 Caputo tract is in the southern part of the township.
5 It is isolated from the borough and the intersection
6 of Route 24 and 206 where most of the infrastructure
7 of Chester are located.

8 There will be expert testimony as to that
9 infrastructure is and services available and the one
10 thing that is absolutely clear, there is nothing,
11 there is nothing in the southern half of the township
12 except for the Peapack Brook and rolling, rugged
13 terrain.

14 There will be testimony that there are no
15 utilities near the Caputo tract. No sewers and no
16 water. The terrain itself is hilly and steep and the
17 soils are not good for on-site septic disposal. And
18 since there are no sewers on-site septic disposal
19 is required.

20 The road system is poor. The Caputo tract
21 is at the corner of Fox Chase Road and Old Chester
22 Road. Fox Chase Road is an unpaved road. Old Chester
23 Road is a minor arterial road. Both of these roads,
24 even the Plaintiffs' expert concedes will have to be
25 significantly improved to handle the traffic.

1 Now, the Caputo proposal as it stands today
2 is 856 units and a total of 270 acres. The only
3 plan that was put forward, indeed, in an informal
4 way, no formal proposal at all, called for in excess
5 of 1,400 units.

6 The only time we heard 856 is during the deposi-
7 tion of John Rakos in this litigation when a site
8 plan had been prepared the week previous to that
9 deposition. And I submit to you that the evidence
10 will show that the Caputos' proposal was prepared
11 during the course of this litigation. Was never
12 presented either informally or formally to the
13 township. It was never presented in such a way that
14 the township could accept it or reject it or accept
15 it in principle or reject it in principle. Indeed,
16 as far as I know, they were never asked to do so.
17 And I do not think much mileage can be gotten by the
18 plaintiffs from the fact that the township didn't
19 fall over backward to say yes, you can do whatever you
20 want on that land, when all they had before them was
21 plan Number 1 for 1,400 units, an incomplete proposal
22 and the plan that this Court is asked to approve is
23 Plan Number 3 for 856 units with a very detailed
24 septic spray irrigation proposal.

25 With respect to the specific proposal before

1 the Court, we believe the expert evidence will show
2 that it is insufficient to meet good planning
3 criteria, and particularly it is deficient in terms
4 of the spray irrigation on the site.

5 I won't go into that now. The evidence will be
6 technical and detailed, but suffice it to say that
7 of all the areas in the township, this may be the
8 worst because the Peapack Brook runs right through the
9 middle of the land. There is a steep ravine on each
10 side. Houses are going to be on the west. The
11 spray field will be on the east and there is a
12 significant danger that the effluent untreated because
13 of the poor soils will slide either underground, on
14 top of the bedrock or on top of the ground frozen
15 in winter or unable to permeate through it for other
16 reasons, right down into the Peapack Brook.

17 The evidence will show according to recognized
18 planning principles, that is, environmental considera-
19 tions, transportation, the road system, these
20 infrastructures, the availability of social services,
21 police, fire, schools, all those principles, the
22 most logical place for future development is not at
23 the Caputo site, but closer to the intersection of
24 206 and Route 24, which is the only development of any
25 significance in the township at all.

1 That is up near the Borough and that's where the
2 1974 Master Plan and ordinance put it and we submit
3 that's where it should go.

4 The evidence will show that the regional planning
5 considerations, that is, those reflections on
6 planning by the Morris County Planning Board, the
7 Somerset County Planning Board, the Tri-State Regional
8 Planning Commission, the Regional Plan Association
9 and indeed, even the New Jersey Department of
10 Community Affairs, target Chester Township as an
11 area of low density development for very specific
12 reasons. It is a critical watershed area that must
13 be protected from overdevelopment.

14 Finally, your Honor, we must raise the question
15 of what relief the plaintiff could receive even if
16 there is some technical deficiency in the ordinance
17 which this Court must examine. We believe that the
18 only relief which can properly be ordered would be
19 to re-plan and come up with a Master Plan pursuant
20 to the Municipal Land Use Law and a new zoning
21 ordinance. That process is going on anyway and it
22 will be done no matter what this Court decides may
23 be deficient in the present ordinance.

24 The thing that differentiates this lawsuit
25 from any others that are going around the State will

1 be the evidence which this Court will receive about
2 the potential for the degradation of the water
3 quality in the Peapack Brook. This takes on added
4 significance when the entire problem of water
5 pollution and water degradation is examined in light
6 of what we call PL 92-500, which is the Fresh Water
7 Pollution Control Act Amendment of 1972 passed by
8 the Federal Congress.

9 Those Statutes require first a basin plan.
10 That is a section 303, basin plan. There is one
11 in preparation for the Raritan Basin of which the
12 Peapack and the Raritan River are a part. That is
13 in draft form. It is scheduled for completion some-
14 time in 1978.

15 After the basin plan is established, then you
16 have an area plan. The area plan focuses this on
17 specific areas in the basin. The over-all goal of
18 92-500 is to have fishable and swimmable water by
19 1983. And the fact of the matter is you can't do it
20 unless you begin to control the kind of land use
21 in your watershed areas and in your areas immediately
22 adjacent to your streams that you must clean up.

23 And the evidence will show that it inevitably
24 follows that the more population you put on the
25 bank of a stream and in a watershed area, the greater

1 potential for pollution.

2 Now, this -- I do want to be brief, your Honor,
3 but I must differentiate between what we call point
4 pollution and non-point pollution. Both are
5 significant. A point source is a pipe discharging
6 into a stream. That is regulated under the Federal
7 Act and is now regulated under Enabling New Jersey
8 Legislation signed by Governor Byrne this past
9 summer.

10 The non-point pollution includes such things
11 as over the land runoff, storm water runoff, which
12 does not go through a point discharge source.

13 Evidence at this trial will show that more than
14 50 percent of your total pollution comes from non-
15 point sources. And the simple fact of the matter is
16 that if you cover the ground with asphalt and have
17 dense development in a watershed area, you increase
18 your non-point pollution significantly. Now, this is
19 not to say that you must stop all development from
20 occurring in a critical region. That is clearly not
21 the case, but it does say that you must be very
22 particular about the sites you select to use for
23 intense development. And we submit that those sites
24 have been appropriately selected in Chester Township.
25 And we also submit that the Caputo site is not

1 appropriate at all. Thank you.

2 THE COURT: It occurs to me that it would be
3 a good idea for me at the outset to see this property.

4 MR. LINDEMAN: I think that is a good idea,
5 your Honor.

6 THE COURT: Right from the outset, you start
7 talking about it. As you may both know, I live in
8 the Mendham area. I don't know this site at all.
9 I have a general idea of the area, but I think I
10 should see the site in particular and get a viewpoint
11 of it so we start talking about north, south, the
12 Peapack Brook and what have you, I will know what
13 you're talking about. Where it is located, I have
14 something in my mind.

15 MR. LINDEMAN: I think that is a good idea.

16 THE COURT: The most appropriate way to do it
17 would be to start out right away and see it. See it
18 and then I will come back and I will put my comments
19 on the record. If there are any divergents, what you
20 feel is any inaccuracy of my observations, and in fact,
21 geographical or what have you, I am talking about
22 geographical, about what I can see. Obviously not
23 what I can't see. Then you can cover that during the
24 course of the trial.

25 Now, having said that, you talk about Fox Chase

1 Road. I know, or I think I know there is a Fox
2 Chase Road that runs off 24 approximately perpendicular
3 to it as it proceeds, I guess it is generally going
4 west. But it is going up a long hill in Chester
5 Township. Is that the Fox Chase Road you are talking
6 about?

7 MR. FERGUSON: Yes, sir.

8 THE COURT: Okay.

9 MR. LINDEMAN: May I interrupt, your Honor?

10 THE COURT: Yes.

11 MR. LINDEMAN: For the moment I think I get the
12 drift of what your Honor's suggestion is.

13 THE COURT: See it right away, in other words.

14 MR. LINDEMAN: But the Court, I know, but the
15 Court would go there without --

16 THE COURT: No, I would go there with you people.

17 MR. LINDEMAN: Oh, because I think that is the
18 best way to do it.

19 THE COURT: I can't go there without you showing
20 me where it is. I was just thinking of the standpoint
21 of the Court Reporter. There are two ways of
22 doing it. One, for me to go out with my court
23 reporter and as I see it, recall it, or for me to
24 write it down on a pad. I think the better way to
25 do it is by writing it down on a pad. There is no

1 benefit to bring the court reporter and having him
2 trying to run after me.

3 MR. LINDEMAN: That is satisfactory.

4 MR. FERGUSON: Yes, sir.

5 THE COURT: Now, I would suggest tomorrow morning.

6 MR. FERGUSON: I will be there.

7 THE COURT: Okay.

8 MR. LINDEMAN: That's fine with me, your Honor.

9 THE COURT: Could I see a map?

10 MR. FERGUSON: Your Honor, may I make a
11 suggestion? Would it be helpful to the Court to
12 supply the Court with the development plan which
13 Mr. Lindeman proposes to put in evidence?

14 MR. LINDEMAN: A good idea.

15 MR. FERGUSON: So that you can get an idea of
16 what it is.

17 THE COURT: That was my next step. Give me what
18 you think you would like to have now so that I
19 can look at it over the evening. And if you've got a
20 map of the property, so I can write down things on
21 a pad of where you are going to put this, where you're
22 going to put that and the correlation with the map
23 of the property. I don't think we are going to get
24 to a witness either today.

25 It is quarter to four now.

1 Off the record.

2 (A discussion had off the record.)

3 MR. FERGUSON: I suspect that all counsel would
4 like the Court to have the benefit of all their
5 expert testimony before you see the property.
6 I expect that you would like to see the property
7 before you hear the expert testimony so you can
8 understand what everybody is talking about.

9 THE COURT: Yes, it is too difficult for me
10 to envision something in the abstract which is what
11 you are asking me to do, when you hear from experts
12 after the fact, or before the fact, rather. I would
13 rather hear them after the fact and go out and see it.
14 And then I can ask questions, it seems to me, if I
15 have any, with respect to the site.

16 But having them testify before I see it, does
17 not help me. I might go out again, mind you. And
18 I think I have that perfect right, if I have questions
19 that have not been answered and cannot be answered
20 satisfactorily. I think I have the perfect right to
21 go back out and do the same thing again and put it
22 on the record.

23 I don't know whether that will be necessary.
24 I would, really would like to see it first.

25 MR. LINDEMAN: I am in favor of it.

1 MR. FERGUSON: May I suggest that Joseph S. Ward's
2 map included in their report and their geological
3 overview should also be given to the Court because
4 that has contour lines?

5 MR. LINDEMAN: Yes, that's good.

6 MR. FERGUSON: Plus the specific designated
7 area for the spray field.

8 THE COURT: Is there any objection to this
9 document being offered in evidence?

10 I would not like to be given some numbering
11 now. I mean, I can't see obviously something that is
12 not going to go into evidence.

13 MR. LINDEMAN: Right. I will certainly offer,
14 I even will offer Mr. Salzman's report, whether or
15 not there will be any objection.

16 THE COURT: I don't need reports now.

17 MR. LINDEMAN: I realize that.

18 MR. FERGUSON: No, there will be no objection
19 to the maps going in evidence. We will, of course,
20 argue on the question of their relevance and admission
21 thereon.

22 THE COURT: Okay. Chronologically, then, I don't
23 know whether it is going to make any difference. Mark
24 the maps that he gives you then, starting with the
25 first one, whatever it is, P-1 in evidence, and then

1 P-2 and you can give me the identification of them.
2 Let's do it now.

3 You got a witness sitting here?

4 MR. LINDEMAN: Yes, I do, your Honor.

5 THE COURT: No way are we going to reach him
6 by four o'clock.

7 MR. LINDEMAN: Goodbye.

8 THE COURT: Let's talk about time. I am
9 normally leaving my house about anywhere between
10 7:30 and eight o'clock and it would take me somewhere,
11 I don't know how precise, take me to get to the
12 corner of Fox Chase Road and Route 24 will take me
13 something under two minutes.

14 What time do you want to get there in the
15 morning? Where are you coming from, Mr. Ferguson?

16 MR. FERGUSON: I will be coming from the
17 shore.

18 THE COURT: That is a good distance.

19 MR. FERGUSON: I can be there any time.

20 MR. LINDEMAN: I come from Essex County.

21 THE COURT: Okay. I will meet you there at
22 eight o'clock at the corner of Fox Chase Road and
23 Route 24 and you can take me to the property. I have
24 a green Mercury.

25 MR. LINDEMAN: Wouldn't it be better to meet at

1 the Caputos' house, your Honor?

2 THE COURT: I don't know where it is.

3 MR. LINDEMAN: Well, it is the main road that
4 leads up to the property.

5 THE COURT: Off the record.

6 (Discussion had off the record.)

7 MR. FERGUSON: Let the record show that this
8 map which has been previously marked P-6A for
9 identification on April 7, 1976, is being furnished
10 to the Court for its use and inspection of the
11 property on October 12th.

12 THE COURT: Okay.

13 MR. LINDEMAN: The Court would like to have
14 that topo map as well?

15 THE COURT: I would like to have what?

16 MR. LINDEMAN: The topographical map.

17 THE COURT: If you've got it, yes.

18 MR. LINDEMAN: Apparently I can't verify whether
19 it is.

20 MR. FERGUSON: No, that is all right.

21 Also a topographical map entitled "Engineering
22 Geology Map prepared by Joseph S. Ward, Incorporated,
23 dated April 6, 1976," also be furnished to the Court.

24 THE COURT: All right. Those will be marked
25 P-1 and P-2 in the order that they were read out.

(The documents referred to were marked P-1
and P-2 in evidence.)

C E R T I F I C A T E

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

Earl C. Carlson

1/26/79

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