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Caputo v. Chester

1/14/80

ML

Transcript of Trial - witnesses:

- Hultgren, Tone
- Lasser, John
- Bellush, Richard
- Boorman, Dean
- Widmer, Kemble

+ index of exhibits

P 587

ML0007015

A-813-78

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

no pay
A 150 SEP 1979
JOSEPH CAPUTO AND
ALDO CAPUTO,

FILED

Plaintiffs, JAN 14 1980

v.

Stephen W. Townsend
STENOGRAPHIC TRANSCRIPT OF
CLERK TRIAL

CHESTER TOWNSHIP,

Defendant.

REC'D. (C)
APPELLATE DIVISION
FEB 6 1979

FILED
APPELLATE DIVISION
FEB 6 1979

Place: Morris County Court House
Morristown, New Jersey 07960

Dates: December 13, 1977,
December 14, 1977,
January 10, 1978,
January 18, 1978,
January 24, 1978.

Elizabeth W. Laughlin
CM
Clerk

AG
Laughlin
Clerk

B E F O R E:

ROBERT MUIR, JR., Assignment Judge, Superior Court

TRANSCRIPT ORDERED BY:

Philip Lindeman II, Esq.

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

Messrs. Hellring, Lindeman, Landau & Siegal,
By: Philip Lindeman, II, Esq., Attorney for the
Plaintiffs.

Messrs. Mc Carter & English
By: Alfred L. Ferguson, Esq., Attorney for the
Defendant.

James Hillas, Esq.
By: Forrest R. Goodrum, Esq.

PLM

Philip A. Fishman
Official Court Reporter

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

MORNING SESSION

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THE COURT: Okay. Where are we?

MR. LINDEMAN: I guess we have to
try this case.

MR. FERGUSON: Your Honor, we have as
a witness this morning, Mr. Tore Hultgren, who
is a professional Planner. He was with the
firm of Candoub, Fleissig and Associates
during the preparation of the Master Plan.

Mr. Hultgren will testify as to his
familiarity with the Chester and the Caputo
property, the history of master planning in
Chester, the efforts of Candoub, Fleissig in
the preparation of the 1974 Comprehensive Plan
and the concerns of the community that went
into it, the implications of the Comprehensive
Plan as to the 1976 Ordinance and constraints
on development.

He will give his views and opinions on
the appropriateness of two and five acre
zoning on the Paspack Brook Water Shed and the
plaintiffs' property in particular and the
relationship of that low density zoning to
the Comprehensive Plan, the qualifications and
characteristics of siting the M.D.R. areas
located in the Comprehensive Plan and in the

1 zoning ordinance and comment generally on
2 the potential of the Caputo site in a
3 general way for higher density residential
4 use.

5 Mr. Hultgren.

6 THE COURT: Before you start I
7 wonder if because he has got so much it would
8 be better if you sat down here and we gave
9 him the table to use instead of this little
10 slot up here?

11 MR. FERGUSON: Good idea.

12 THE COURT: Okay. John, the
13 evidence can perhaps be piled over on the
14 side over there.

15 T O R E H U L T G R E N, sworn.

16 DIRECT EXAMINATION BY MR. FERGUSON:

17 Q Mr. Hultgren, by whom are you employed?

18 A I am a self-employed Planning Consultant.

19 Q Are you a professional Planner?

20 A Yes, I am. I am a licensed Professional
21 Planner in the State of New Jersey.

22 Q When did you get that license?

23 A It's about two and a half years since--now.

24 Q Would you tell us your educational
25 background?

1 A I have a Planner and Architect Degree from
2 Sweden.

3 Q What university in Sweden?

4 A This would be Chalmers University of Technology
5 and my degree basically corresponds to a Masters of
6 Planning in Planning.

7 Q Are you a member of any professional
8 associations or organizations?

9 A I am a member still of the Swedish Institute
10 of Architects and Planners and in the United States
11 I have so far only joined the American Society of
12 Planning Officials.

13 Q Would you tell us your employment
14 from the time you graduated from the University of
15 Chalmers?

16 A I spent the years from 1958, which was my
17 graduation year, to '67 in Sweden, initially working
18 in architectural design and around 1962 attracting
19 more of planning tasks, still as a Consultant and
20 gradually through the years I reached senior positions
21 in Planning in Sweden and the last three years during
22 my stay there up until 1967 I had to get with a
23 partner office. I went on my own.

24 Q After 1967 what did you do?

25 A I immigrated to the United States and took a

Hiltgren - direct

1 position with Candaub and Fleissig and Associates,
2 a significant Planning firm at the time with main
3 offices in Newark, New Jersey. I worked with them
4 up until 1974, about seven years, with responsibilities
5 as Project Manager in Planning tasks and also with
6 special responsibility in the environmental field,
7 basically from 1970.

8 Q From 19--what was your title at
9 Candaub, Fleissig, if there was one?

10 A Yes, there was, excuse me, the expression--a
11 fancy title--Chief of Environmental Analysis, I believe.

12 Q All right.

13 A And but more important I would say Project
14 Director.

15 Q While you were at Candaub, Fleissig,
16 was one of your projects the preparation of the
17 Master Plan for Chester Township?

18 A Yes, that is correct.

19 Q Now, after 1974 what did you do?

20 A I was--I joined the firm of Dames & Moore.

21 Q Who are they?

22 A For further--out of Cranford, New Jersey, and
23 to work with them as a specialist in environmental
24 planning, especially in the land use and transportation
25 sections and after about one year with them the major

1 projects that I was involved in which had to do
2 also with power generation facilities stopped and
3 I decided at that time to go into the consultant
4 business on my own, so I have since 1975 been my
5 own consultant.

6 Q I call your attention to the planning
7 work you did in Sweden and ask you if you would
8 comment, if you would, on that planning work you did
9 there as a predecessor of what you saw when you
10 came to the United States?

11 A Well, there of course were significant
12 differences between the approaches taken in the
13 United States and in Sweden at the time and I
14 brought with me an experience in various housing--in
15 the planing of housing from Sweden as well as also
16 an experience in coping with environmental factors
17 in planning.

18 Q First, with respect to housing,
19 explain for the Court, if you would, the differences
20 between the approach to housing in Sweden and the
21 approach to housing in the United States at or around
22 the early 1960's, the time about which you are talking.

23 A Well, the major differences on the surface
24 were that Sweden at the time had much more multi-family
25 housing, proportionately much more than in single

1 family housing. In the United States we had hardly
2 seen any multi-family housing either for public
3 housing purposes or for the very rich in
4 megalopolis areas, in core areas of megalopolis areas.

5 Q Were there any principal concerns of
6 Planners in Sweden in which you became familiar in
7 relation to the area of multi-family housing?

8 A Well, yes. Politically, Sweden is probably
9 well known and has more social approach to various
10 items in society and that was also true in terms
11 of housing. So that for the plans that we made,
12 Master Plans, for instance, in Sweden it was
13 mandatory to include housing elements and to make sure
14 that we had covered all segments of the population
15 socially, economically in our planning.

16 Q Now, did you find this situation to be
17 true when you came to the United States?

18 A Not necessarily. The approach here, of course,
19 was at that time focused on urban renewal and urban
20 rehabilitation in the late sixties and even though
21 housing was an issue connected with the urban renewal
22 questions, it was not as widely accepted as a
23 necessity at the time. Further back in the American
24 planning there has been, off and on, a concern about
25 the housing issues but during the period I came to this

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country by the end of the sixties the major concern was urban renewal of our central cities.

Q Has that situation changed between the time you came to the United States and the present?

A Yes, definitely so. You find the statistics that we have much more of a--how shall I say it--middle income interest, middle income family interest in other forms than single family housing and we have seen an increase in the multi-family residency among--in the population here in the United States. It varies from State to State, of course. We have also gradually come to pick up the social economic issue of housing for the low and moderate income so that in federal estate legislation it is now directly connected to what you are doing in planning.

Of course, in terms of Master Planning supported by or aided by federal institutions such as the Housing and Urban Development Department, there has always been requirements to look into the housing situation for low moderate income families.

Q I call your attention to the environmental field and ask if you will tell us whether you had any special training or concentration in environmental planning when you were in Sweden?

A Yes.

1 Q Would you tell us what it is?

2 A It was during the late fifties and early
3 sixties, the environmental concern was brought about
4 and into education of Planners. I was to a certain
5 limited extent myself a teacher in Planning and Urban
6 Design at the University of Charms and the
7 environmental concern was basically in the capacities
8 of environmental resources. These resources could
9 then be water resources as well as esthetic resources,
10 open space, the character of an area, etc..

11 This was integrated with our planning and when
12 the United States moved federally on a law, the
13 Environmental Protection Law, by the late sixties, the
14 various criteria included in that legislation work
15 criteria that I had already been actively working with
16 in Sweden and naturally then I was selected by
17 Mr. Candeb to cover these items in our work over the
18 eastern parts of the United States.

19 Q Do I understand your testimony to be
20 that you were selected by Candeb, Fleissig to be an
21 Environmental Planner because of your background?

22 A Yes. That's correct.

23 Q Would you tell us briefly some of the
24 environmental projects on which you have consulted
25 or for which you have done planning?

1 A The first parts or the first types of projects
2 that I got involved with here were related to the power
3 industry and a major power company in Florida hired
4 the firm of Candoub and Fleissig to support other
5 engineers and architects in their efforts to produce
6 environmental impact statements for a nuclear or fuel
7 power plants. This work went on through the years
8 from 1971, I believe, and up until '74 and I actually
9 continued to work within that industry for Dames & Moore
10 through '74, '75.

11 Now, in addition to that, and especially
12 maybe, in Florida where the environment concern was
13 or became very much a high priority in planning, due
14 to the need to protect those resources we have in
15 Florida, I got involved in several Master Plans for
16 counties and communities. One of the counties I can
17 mention would be Levy County in the northwestern
18 sections of Florida.

19 Q All right. Just to save time, would it
20 be accurate to characterize your experience in
21 Environmental Planning as, in your opinion, extensive?

22 MR. LINDEMAN: I object to that.

23 THE COURT: Sustained.

24 MR. FERGUSON: I will withdraw it.

25 Q I show you D-38 for identification and

1 ask you if that is your resume?

2 A Yes. That's a copy of my resume.

3 Q And is there attached to it a list of
4 some of the principal projects you have been engaged
5 in?

6 A Yes. That's correct.

7 MR. FERGUSON: I offer this in evidence.

8 MR. LINDEMAN: The same one you gave
9 me before?

10 MR. FERGUSON: Yes.

11 MR. LINDEMAN: All right. No objection.
12 No objection.

13 THE COURT: D-33 in evidence.

14 MR. FERGUSON: That is all I have on
15 his qualifications.

16 (Resume formerly marked as Exhibit D-33 for
17 identification is received in evidence).

18 MR. LINDEMAN: I have no objection, no
19 questions on qualifications.

20 THE COURT: All right.

21 Q Mr. Hultgren, I believe you told us that
22 you were selected or you worked on the project at
23 Candeur, Flisissig involving Chester Township. Can
24 you tell us what that project was and your first
25 introduction to it?

A Okay. The project was to produce a general

1 plan or comprehensive plan for the Township of Chester
2 and the original contact, I believe, was made in 1972,
3 late 1972, and work then was introduced about that
4 time and during 1973.

5 MR. LINDENMAN: I am sorry. What was
6 that? The work was what?

7 A The actual work--

8 MR. FERGUSON: Introduced.

9 A --was started in 1972 and the bulk of the work
10 in terms of background and so forth was done, I believe,
11 in 1973, and eventually the plan was finalized during
12 1974 and a number of public hearings took place during
13 that time.

14 Now, I was given the responsibility of Project
15 Director for the Master Plan for Chester Township
16 and as a Project Director I could also draw on the
17 resources in the office of Candeb, Fleissig.

18 Q Who did you have working with you from
19 Candeb, Fleissig?

20 A This would be the Chief of General Planning,
21 which was Mr. Alan Dresdner, D-R-E-S-D-N-E-R, and also
22 at the time Regional Director for the State of New
23 Jersey, Mr. Malcolm Kasler, K-A-S-L-E-R.

24 MR. FERGUSON: Excuse me, do you have
25 the document which has been marked at his

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deposition which is the copy of the contract at Candaub, Fleissig?

MR. LINDEMAN: I saw reference to it. I know that it was marked. You do not have it? Is that it?

MR. FERGUSON: No.

MR. LINDEMAN: I will find it.

MR. FERGUSON: All right. I will go on.

Q Would you describe your role and Mr. Kasler's role?

A Mr. Kasler's role was to be informed about anything that happened in the State of New Jersey in terms of planning, especially, of course, in the office of Candaub, Fleissig, and his role was also as we distributed our responsibilities in the case to cover the aspects of zoning as they related to the Master Planning process.

Q Did he have any responsibilities for housing or housing analysis?

MR. LINDEMAN: Your Honor, I object, simply because I think the question is too broad. I do not know what can be embraced--

MR. FERGUSON: I will rephrase it.

Q Would you tell us what Mr. Kasler's job was on the Chester project?

1 A He made a review of the 1960 Master Plan, to try
2 to recollect now exactly what he did, and he also
3 met with the Planning Board a number of times to
4 discuss the implications of the Plan on the Zoning
5 Ordinance and a subdivision regulation. During that
6 path or during that time I believe that he also
7 touched the issue of housing, but I do not have a
8 clear recollection of the items he presented at the
9 time.

10 Q All right. What was your responsibility
11 and would you describe it for us?

12 A My responsibility was to supervise the collection
13 of various data concerning the natural resources, the
14 land use--existing land use--transportation facilities,
15 utilities and once the data was gathered I would make
16 the Plan itself and lead the work with the presentation
17 to the community in the public hearings.

18 Q Now, in that responsibility and role,
19 did you become familiar with the characteristics of
20 Chester Township and specifically with respect to the
21 property owned by Mr. Caputo and which is the subject
22 of this litigation?

23 A Yes. I became quite familiar with the entire
24 Township and I am familiar with the subject site.

25 Q Would you--

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(Short recess)

Q First, with respect to the Chester Township area, would you tell us what you did to become familiar with it in 1972 in your capacity as a Project Supervisor and tell us what you did and what you found?

A Well, I first of all, made a field survey of the entire area. This was also done by other Planners in the office but I always found it necessary to look at things yourself and so I did.

THE COURT: What kind of a survey did you say?

THE WITNESS: I found it--what kind?

MR. LINDEMAN: Field.

THE COURT: Field survey, okay. Okay.

A (cont'd.) So, during that time I travelled every road there is in Chester Township and familiarized myself with the entire area. Then I also conducted a number of interviews with the--with various people of the Township that were available for comments. Naturally, the major source of information of that type would be the Planning Board which was indeed the client but I also interviewed the Township Engineer.

Q Who was that?

A Mr. Fox. And the Township Clerk who is not

1 the Clerk--the present Clerk. I think--his name
2 escapes me at this time and--

3 Q Would you describe for us generally
4 the results of your own survey and investigation of
5 the nature of Chester Township?

6 A Well, in addition--I should probably also say
7 that in addition to the field work and the interviews
8 I also studied the related statistics in terms of
9 population and economy as affected in the United States
10 Census of 1970 and 1960 for comparisons and as a result--
11 to answer your question--of my field work and interviews
12 and study of available literature, I came to certain
13 conclusions in terms about the character of the
14 Township.

15 Q Now, first, before you give us your
16 conclusions at that time, would you tell us specifically
17 what investigations you made about environmental
18 factors and what data bases you consulted?

19 A The major source of information, as it turned out,
20 became the Upper Raritan River Water Shed Association.
21 They were supplying me with data on the natural
22 resources, especially the water resources, but also
23 other natural feeders in the community.

24 The Water Shed Association had received the
25 bulk of their information from publicly available

1 sources such as the United States Geological Survey,
2 The Academy of Natural Sciences in Philadelphia and
3 also a number of authorities in the various fields,
4 some of them from the--from Rutgers University. They
5 had also made limited amounts of research themselves
6 in the Raritan Water Shed Association but, basically,
7 the sources were publicly available and the only
8 thing that the Water Shed Association did is that
9 they developed a sequence of maps over the Water Shed
10 itself and they applied the various resource data to
11 these maps.

12 Q Mr. Hultgren, I am going to show you a
13 bunch of documents which have been marked in evidence
14 and ask you to tell us, if you would, whether you
15 know what these are and if they played a part?

16 A I do.

17 Q In anything you have told us about and,
18 if so, what?

19 A Okay. This is the Soil Survey of Morris
20 County, New Jersey.

21 Q You are referring to D-1 for
22 identification and in evidence?

23 A No. This report was issued in August 1976.
24 The comment I would like to make on this is that the
25 information included here was made available to me in

1 its preliminary form during the Master Planning
2 process. I visited the Soil Conservation Service
3 in Morris County.

4 Q Did you personally visit the Soil
5 Conservation Service in Morris County?

6 A Yes, I did.

7 Q What did you review when you went there?

8 A What did I review? I reviewed the preliminary
9 material especially as it referred to Chester
10 Township in terms of the soil characteristics.

11 Q And what use did you make of that
12 material, just briefly, and--in general?

13 A Okay. I applied that directly to the
14 community, especially considering the character of the
15 community as I had it, I identified it. It was very
16 likely that a large part of the development to occur
17 would depend upon individual sewage disposal systems,
18 septic systems, and I then reviewed the soil
19 conditions, general character of the soil conditions,
20 against the potential to use that particular sewage
21 system, disposal system, the septic system.

22 The soils, in accordance with a special list,
23 in that area came to a various degree and take a
24 disposal of that type.

25 Q Now, I show you some other documents.

1 These are: D-22, 23 and 28 in evidence and ask you
2 if you used those in any of your work? Those are
3 the water quality studies of the Upper Raritan Water
4 Shed Association.

5 A Yes. This would be D-25, Water Quality Survey,
6 Upper--I have a brief memory that I reviewed this at
7 the offices of the Water Shed Association during my
8 observations with Mr. Larson.

9 Q Who is Mr. Larson?

10 A At the time the Director of the Association, and
11 Number D.W.-2--no, D-23, Water Quality Studies of the
12 Upper Raritan Water Shed. That was made by the
13 Academy of Natural Sciences of Philadelphia.

14 Q Did you review that during your
15 preparation for the Master Plan?

16 A Yes, indeed. I believe I even have a copy of it
17 to this date.

18 Q All right. And the final one, D-28?
19 I am sorry. Excuse me. That is D-25.

20 A Should that be the same as this one? No. 23.

21 MR. FERGUSON: My apologies. The
22 previous Report was D-23.

23 THE COURT: What was the first one, the
24 little one?

25 MR. FERGUSON: D-22.

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THE COURT: Okay.

MR. LINDEMAN: Now, we are D-25.

THE COURT: Now, we are D-25.

MR. FERGUSON: Now, we are D-25.

A (Cont'd.) Okay. Upper Karitan Water Shed Water Quality Survey, 1972. Yes, I am also familiar with this one. That is one of the documents I was reviewing.

Q Now, with respect to those three documents that you have in your hand, the Water Quality Surveys or Reports, can you tell us briefly what use you made of those documents and the data contained therein?

THE COURT: Excuse me just a minute.

(Short recess)

THE COURT: Okay.

A Okay. This material on Water Quality came into play for the Master Planning in terms of at least two items.

Q Would you tell us what they were?

A And the first item was the availability of water for future residents in the township.

Q And what was the second item?

A And the other item was the wider picture, which means the availability of water to serve the region as such, region in a general meaning, you know, meaning

1 the area we live in in the county, the southern
2 counties, and specifically whether we could afford
3 to pollute the available water resources in Chester
4 Township.

5 Q Now, I show you a document which
6 has been marked in this case as D-24 in evidence and
7 ask you to look at it. I call your attention to the
8 table in back of you on which are located a number
9 of maps that have also been marked in evidence and
10 ask you to tell us whether you used that document and
11 those maps in the planning process for Chester
12 Township and, if so, how?

13 A Okay. The natural resource inventory
14 of the Upper Raritan Water Shed was also made by
15 the Academy of Natural Sciences of Philadelphia and
16 I am familiar with the document and it was used.

17 I also reviewed the maps as indicated in
18 appendix A, the land use, natural feeders, agricultural
19 suitability, soil limitations for light buildings
20 with cellars, and septic tank suitability.

21 MR. LINDEMAN: That is three, is it?

22 Did you say you used it?

23 THE WITNESS: This was five different
24 types of maps that I reviewed--large size colored maps.

25 MR. FERGUSON: Would you look at those

1 maps in back of you on the table and see
2 if those are the maps--see if the maps you
3 referred to are in that collection?

4 A Yes, I am sure they are. Yes. They are the
5 maps that I was reviewing.

6 Q Now, when you say "review"
7 would you tell us what that review consisted of?

8 A Actually, what I did is I traced some of the
9 major feeders of those maps on overlays of a base
10 map that I was using for the Master Planning. I have
11 not been able to recover those tracings.

12 Q Well, okay. Excuse me. Let me interrupt.
13 Before you get into the preparation of something, a
14 map that you made, would you tell me if you verified
15 any of the information on the natural resource inventory
16 maps? Did you make any attempt to verify that
17 information yourself?

18 A Yes, I did. Some of the information, as I said,
19 was filtered to me through the Upper Raritan Water
20 Shed Association and I did inquire about the base
21 material for the statements as reflected in this subject
22 maps that we are talking about here.

23 Q Can you recall what increase you made
24 where and to whom?

25 A Well, basically, I went directly to the source

1 of information which was the Academy of Sciences in
2 Philadelphia and reviewed the basic documents that
3 they had provided and which then had been the base
4 for the interpretations by the Water Shed Association
5 and Mr. Larson and also in terms--that was basically
6 in terms of the soil characteristics and water
7 resources. In terms of soil characteristics, I also
8 checked--as I think I mentioned--with the Soil
9 Conservation Service, the extension service in Morris
10 County.

11 Q Now, let me interrupt you there. Did you
12 go to their office? A Yes, I did.

13 Q Did you talk to the employees of the
14 Soil Conservation Service? A Yes, I did.

15 Q What did you discuss?

16 A We discussed the various--shall--how shall I
17 express that--warnings in terms of water resources,
18 water availability and pollution that I had received
19 from reading and reviewing the Water Shed documents
20 and talking with Mr. Larson.

21 Q Now, would you tell us what those
22 warnings were as you discussed them with the Soil
23 Conservation Service?

24 A Well, we touched upon the issue then, of course,
25 of water resources and basically the Soil Conservation

1 Service representatives supported the findings by
2 the Water Shed Association and the Academy of
3 Sciences in Philadelphia.

4 Q In what way?

5 A In terms of the general availability of water
6 in the Chester area.

7 Q Which briefly stated was what?

8 A That we had availability of about 100,000 gallons
9 per day and square mile in the county--in the township
10 of Chester and what I got from my review of this
11 particular feeder with the Soil Conservation people
12 was that this was a general figure that you could,
13 of course, find resources or areas which would have
14 larger resources of water than that, especially in the
15 Black River area and within some deposits up in the
16 northern parts of the Township, but in the central
17 and southern parts of the Township it was confirmed
18 that we could not expect to have much more than the
19 figure I mentioned and that Larson had mentioned before.

20 Q Now--

21 THE COURT: Excuse me. Could I just
22 clarify that? It is 100,000 gallons per day per
23 square mile? I was not quite clear.

24 THE WITNESS: That is my recollection.

25 THE COURT: Okay. I am just asking you.

1 I just wanted to clear it up. Okay. Go
2 ahead, Mr. Ferguson.

3 Q I believe you mentioned another warning
4 was the possible pollution of water supplies. Would
5 you comment on what your discussions with the Soil
6 Conservation Service were and what you came away with
7 as a Planner from those discussions?

8 A The Soil Conservation representatives confirmed--

9 MR. LINDEMAN: If your Honor please,
10 I object. I did not object before but it would
11 seem that it would be innocent but a conservation
12 expert confirming orally, I think, is too
13 general an insinuation of expert testimony
14 in this witness' testimony. The fact that he
15 conferred, I would concede, is admissible
16 but when he states that certain particular data
17 were confirmed, I think that is hearsay which
18 is, in this context, inadmissible.

19 MR. FERGUSON: Your Honor, I will
20 rephrase the question. I do not concede the
21 validity of the objection because I think what
22 I am trying to get at is what this witness
23 did in the planning process. It is not offered
24 for the truth of what the Soil Conservation
25 Service people told them, although I would take

1 the position it is true. It is offered to
2 show what the witness did, how he did it, what
3 his sources were in the planning process for
4 developing the Master Plan. I think the
5 word "confirm" might be a little vague and I
6 will just ask the witness to tell us what he
7 was told by the Soil Conservation Service with
8 respect to possible water pollution or
9 contamination.

10 MR. LINDEMAN: I would object.

11 THE COURT: Within that limitation?

12 MR. LINDEMAN: What he was told.

13 THE COURT: What he was told not

14 for the purpose of truth but to show that he did
15 go check these out and was told these things.
16 I will allow it from that standpoint.

17 MR. FERGUSON: The truth of the
18 statements I would rely on the testimony of
19 Mr. Eby. He has already been on the stand.

20 Q Okay. Could you tell us what you were
21 told by the Soil Conservation Service?

22 A In terms of the potential pollution of the
23 water resources?

24 Q Yes.

25 A That is your question, right?

1 Q Yes, it is.

2 A Okay. They told me, yes, these soils that you
3 find characteristically in Chester Township are not
4 suitable for septic tank disposal to a very large
5 extent, and the water, surface water that we have
6 in Chester Township are easily polluted as a result
7 of the characteristics of the soils surrounding it, if
8 you apply heavy development pressure to this land.

9 Q Now, did you--just a brief statement
10 now, if you would, as to the use you made of that
11 information and any other particularized information
12 you got from the Soil Conservation Service.

13 A I think that's basically what I can recall at
14 this time. When we were talking about topographic
15 features and characteristics, I went to the United States
16 Geological Survey Maps which show in sufficient detail
17 the topographical features. They are also explained in
18 the Water Shed Association Maps.

19 Q Is that the Natural Resource Inventory
20 Maps? A Yes.

21 Q For the record, if you refer to the
22 Water Shed Association Maps, we are all going to assume
23 that they are the Natural Resource Inventory Maps unless
24 you tell us to the contrary.

25 A Yes, fine.

1 Q And if you ever refer to anything else,
2 other than those that are in evidence, please tell us.

3 A Will do.

4 Q Now, I believe I interrupted you a few
5 minutes ago when you said, you were about to say or
6 tell us your conclusions as a result of your
7 investigation at the beginning of the project of the
8 character of Chester Township. Would you tell us what
9 those conclusions were?

10 A Well, the conclusions were that the Township
11 is indeed sensitive in terms of development where
12 it occurs and how much and these, of course, came
13 to be of importance in the actual design of the Land
14 Use Plan.

15 Q Now, would you explain what you mean by
16 the word "sensitive"?

17 A "Sensitive" would mean that we have here
18 natural resources, especially the water resources, if
19 we talk about consumption, that were sensitive to and
20 are sensitive to heavy development of urban type.
21 These, of course, are by no means the only considerations
22 that go into the preparation of a Master Plan.

23 Q Do you have other conclusions then
24 besides sensitive in terms of water resources?

25 A Yes. A large proportion of the Township was and

1 is in public ownership. We have large areas of open
2 space set aside and the entire visual character of the
3 Township was and still is that of a very rural
4 largely undeveloped in most areas, largely undeveloped
5 area. The character--esthetic character--if you
6 please, or visual character of the Township, was and
7 is very firmly established. It is wooded. It is
8 open in some areas for agricultural use and the
9 development has occurred and that has occurred may be
10 scattered but it doesn't, by any means, dominate the
11 impression of an area that is basically open space
12 in character.

13 Now, such impressions, such visual impressions,
14 are very sensitive in that respect that even relatively
15 low densities of residential and other development
16 may entirely change the whole picture, may entirely
17 change the image of the community in the sub region.

18 Q Now, let me interrupt you there. Did
19 you have any conclusions with respect to the location
20 of Chester Township with respect to other areas of
21 development in the country or whatever region may be
22 relevant? A Yes, definitely so.

23 Q Would you tell us what they are?

24 A The regional factors--

25 Q Okay. Before you get into that,

1 I would like at this point to go into the history
2 of the planning process in Chester Township. Did you
3 familiarize yourself with that?

4 A Yes, I did. There was at the time a Master
5 Plan in the Township.

6 MR. FERGUSON: Just a minute. I
7 apologize. Our list of exhibits was left
8 in the office and I believe it has been
9 marked in evidence already. It is a 1960
10 Master Plan.

11 MR. LINDEMAN: '60? I have it.
12 I will tell you what number it is.

13 MR. FERGUSON: Yes.

14 Q I show you Exhibit P-15 in evidence
15 and ask you if this is the 1960 Master Plan?

16 A Yes. That is correct.

17 Q Did you review that Master Plan and the
18 Zoning Ordinance in effect in 1972?

19 A Yes, I did. Both of them.

20 Q Did you reach a conclusion about whether
21 the Zoning Ordinance implemented the Master Plan or
22 was consistent with it?

23 MR. LINDEMAN: I object on the ground
24 that it is irrelevant, your Honor.

25 THE COURT: It would seem to be. I will

1 sustain the objection.

2 Q All right. What did your review of
3 the 1960 Master Plan tell you and did it tell you
4 anything of a foundation for your preparation of a
5 new Master Plan? If so, what?

6 A Yes. I can say this-to try to be brief on the
7 subject-that the Master Plan itself actually identified
8 many of the feeders that I had found during my research
9 for the 1974 Plan as it turned out to be. It
10 identified very clearly, I would say, the character
11 of the Township at the time and even though the
12 population increase that had occurred from 1960 to
13 1970 was relatively substantial in terms of
14 percentage, it wasn't very large in terms of the
15 actual numbers, so that I found the community matching
16 the description in the Master Plan pretty well. The
17 Master Plan also identified certain areas that were
18 characteristic. It mentioned the rural character,
19 the rural environmental character, the areas of
20 extremely rugged terrain and the farm areas.

21 Many of the results of the research that was
22 made for the 1960 Plan were still valid in 1973, '74.

23 In terms of the relationship to the zoning, was
24 I or was I not supposed to answer that question?

25 Q Let me rephrase it. Has the 1960 Master

1 Plan be implemented?

2 A The answer is basically no. There were
3 recommendations in the Master Plan to the effect that
4 major development would be contained in a certain
5 location basically surrounding the Borough and this
6 particular recommendation in the Master Plan was not
7 followed in the implementation.

8 Q In what respects was it not followed?

9 A The development occurred in various places
10 maybe with significant concentrations along Route 24
11 easterly from the Borough, but also in many other
12 places over the Township small subdivisions came about
13 and the results were really scattered development, I
14 would say, to a large extent, which the Master Plan
15 of 1960 advised against.

16 Q Now, would you describe for us in your
17 own words the task of Candsub, Fleissig and yourself
18 in the preparation of the 1972-1973 Master Plan?

19 A Well, our test was to aid the Planning Board
20 in developing a comprehensive Plan, a Master Plan, for
21 the community in terms of developing a Plan in terms
22 of land use, transportation and various utilities
23 and facilities and this is basically what we did.

24 Q Did you investigate what the concerns
25 of the community of Chester Township were?

1 A Yes. I think that this was maybe the first
2 time with the Planning Board that had understood that
3 the Township was at the crossroads. The had felt--

4 Q First, would you tell us what you did,
5 when you did it and tell us what happened?

6 A I met, of course, with the Planning Board at an
7 early stage of the program, Planning program, and
8 I discussed their concern why they were now calling
9 upon the consultants to develop a Master Plan and the
10 answer was that the development that had occurred
11 during the sixties was rather significant in the eyes
12 of the residents in the Township. They felt, in
13 other words, a development pressure and, on the other
14 hand, they also felt that with the current pattern
15 of development there were potentials to destroy those
16 very assets that had shaped the community or made the
17 community attractive from the outset, such as the
18 environmental character.

19 MR. LINDENMAN: Excuse me. The what?

20 THE WITNESS: The environmental
21 character. They were also concerned, of course, about
22 the implications of development in terms of costs,
23 public costs that is, and the ability of the community
24 to provide for those services that would be needed as
25 development occurs.

1 Q I believe you said something about a
2 crossroads. Would you tell us what you meant by that?

3 A Well, they felt that there was--they were aware
4 of--several of the Planning Board members were aware
5 of the environmental legislation, the federal one.
6 They had also had the opportunity especially maybe
7 the Chairman of the Planning Board but also other
8 members to review some court cases that had occurred
9 in the country, not necessarily in the State of New
10 Jersey, on the subject of a balance between
11 environmental factors and development pressures.
12 They felt that this was the time when they had to
13 decide about what pattern they actually wanted and
14 when I say "they", of course, the residents of the
15 community decided to have.

16 Now, of course, they were also aware of the
17 fact that it may not be entirely up to the community
18 itself to decide about its development in the future
19 and even though we have seen the implications of
20 court cases, such as the Mount Laurel Case, later than
21 the Planning period here in Chester Township, this
22 concern was there. That if we do not plan ourselves
23 in a reasonable serious way, someone else will plan
24 for us.

25 Q Now, can you recall what court cases the

1 Planning Board told you about, if they did?

2 A No. I would rather try to avoid that question
3 because I wasn't prepared for it, so to speak.

4 Q Well, if you have no recollection--

5 A No. I really have no recollection directly.
6 I may have something in my files but I doubt it.

7 Q If you cannot recall, don't bother.

8 You mentioned Federal Legislation. What did you refer
9 to when you used the term "Federal Legislation"?

10 A The Environmental Protection Law, 1969.

11 Q Did you address with the Planning Board
12 the question of what Chester Township's regional
13 responsibility should be?

14 A Yes. During the Planning period we returned
15 many times to that issue, that we actually--that
16 every community does indeed have a responsibility in
17 various respects and, of course, we discussed the
18 housing question. We discussed employment and we
19 covered other responsibilities that Chester Township
20 may have to assume in terms of, for instance, natural
21 resources and the protection of the public land that is
22 available in the community.

23 Q Now, would you tell us first, did you
24 and the Planning Board discuss and agree on a
25 definition of what region would be relevant to the

1 preparation of the Master Plan?

2 A Yes, we did have discussions about it. We
3 did not arrive at a firm designation of the region.
4 We found that the region varies in terms of the aspects
5 that you are talking about, in terms of employment
6 you may cover a very large area. Residents in Chester
7 Township may work in New York City or in Morristown
8 or in a variety of different places relatively far
9 away from the Township.

10 In terms of housing we found that the region--
11 they have to be looked upon--especially when we talk
12 about housing for low and moderate income families
13 as there is a certain limitation as to how far a
14 person will commute if he is in the low and moderate
15 income bracket.

16 Q Now, did you talk with anybody outside
17 of the Planning Board and, specifically, Morris County
18 officials about the responsibility of the low and
19 moderate income housing? If so, who and when and
20 what happened?

21 A Yes. I visited the Planning Director of the
22 Morris County Planning Board staff, Mr. Dudley
23 Woodbridge, a couple of times during the Planning
24 period and we discussed various items such as the
25 responsibilities in terms of housing and other factors

1 and, as a matter of fact, Mr. Woodbridge did comment
2 on the Preliminary Comprehensive Plan for Chester
3 Township.

4 Q What was the Preliminary Comprehensive
5 Plan?

6 A This--that was before February 1974.

7 Q That is a draft?

8 A That is a draft document.

9 Q That you had prepared?

10 A Yes. That is correct.

11 Q What was his--

12 A Basically, his conclusions were--I will try to
13 find a direct quotation here in this letter--

14 MR. LINDEMAN: I assume the same
15 objection and ruling would apply, would it not,
16 your Honor?

17 THE COURT: Yes, the same ruling. It
18 would just apply not for the truth of it but
19 to show that he did, got a letter.

20 MR. FERGUSON: That is correct.

21 A (Cont'd.) I thought I had it here but it seems to
22 escape. Okay. Basically, from my conversations with
23 Woodbridge I knew that he agreed with my conclusions
24 in the draft Master Plan but I would like to point
25 out here that Mr. Woodbridge also and I quote:

1 "encouraged the Township to investigate
2 ways of providing for the necessary
3 housing in environmentally sound areas"
4 and he was pleased to see that we had identified an
5 area of a planned unit development which he found to be
6 in the right direction when it comes to providing for
7 such housing.

8 Q Now, you are referring to a draft
9 Master Plan and a planned unit development. Was that
10 draft different than the final Comprehensive Plan?

11 A No. It was basically the same.

12 Q Are you referring to the medium density
13 residential zones? A Yes, I am.

14 Q Is this the letter you received from Mr.--
15 A Woodbridge.

16 Q Woodbridge. The record should reflect
17 that this is a letter dated February 23, 1974 from
18 Dudley Woodbridge, Planning Director of Morris County,
19 to Charles Hardin, Chairman, Chester Township Planning
20 Board. I would ask that it be marked.

21 THE COURT: D-39.

22 MR. FERGUSON: And go into evidence,
23 not excluding the two green arrows drawn by
24 somebody other than Mr. Woodbridge.

25 MR. LINDEMAN: I object to it,

1 your honor. I think that the effect of
2 the testimony; namely, the witness or
3 Mr. Gardin or somebody on behalf of the
4 Planning Board consulted with Mr. Woodbridge,
5 it is in evidence already and this can only
6 serve to--however, the Court really may rule
7 on it. I respectfully say it can only serve
8 the evidence for what is contained in it and
9 nothing further.

10 THE COURT: For the purpose of your
11 offering it, is it a representation to prove
12 not the truth but the fact that he did this
13 superfluously?

14 MR. FERGUSON: I am not overly
15 anxious that this letter go in. Frankly, I
16 have not seen it before thirty-five seconds
17 ago.

18 THE COURT: I think I will sustain
19 the objection. It is marked D-39.

20 (The letter referred to is marked as
21 Exhibit D-39 for identification).

22 Q As a result of the Planning process that
23 you engaged in with the Township, what was your
24 conclusion about the appropriateness of Chester
25 Township's responsibility to meet a regional need for

1 low and moderate income housing?

2 MR. LINDEMAN: If your Honor please,
3 I object to what the witness' conclusion was.
4 I think the only relevant thing is what he did
5 and what was implemented. The testimony of
6 his conclusions I think can only tend to
7 confuse the record.

8 THE COURT: Can't he tell his
9 conclusions? Aren't they going to be the
10 advice that he gave the Township with respect
11 to it? Maybe you can rephrase it and make
12 it advice.

13 MR. FERGUSON: I accept the
14 objection which is really the form of the
15 question.

16 Q Would you tell us what you advised the
17 Planning Board with respect to its responsibility to
18 provide zoning for low and moderate income housing
19 in Chester Township?

20 A Okay. In the first place, my review that I have
21 been trying to describe of various related documents
22 and my interviews with some of the regional agencies,
23 as well as review of regional agencies' literature,
24 brought to me a conclusion which was--

25 MR. LINDEMAN: If your Honor please,

1 I think the witness is now answering the
2 first question instead of the revised question.

3 THE COURT: Yes. Just tell us, if you
4 would, what it was that you told the Township
5 Planning Board, what advice you gave them with
6 respect to low and moderate income housing.

7 MR. FERGUSON: And why.

8 THE COURT: And why.

9 A (Cont'd.) I am sorry to start on such a long
10 introduction. I was actually going to reach the point.

11 THE COURT: Okay.

12 A (Cont'd.) The point was that my conclusion was
13 Chester Township doesn't have any major regional
14 responsibility for housing, for low and moderate income
15 families and I base that upon the review I indicated
16 in my introduction.

17 Q Okay. Is this the advice you gave to
18 the Planning Board?

19 A This advice I did indeed give to the Planning
20 Board. I did not say, however, that nothing should
21 be provided of this type. On the contrary, I was
22 involved in serious discussions about how much that
23 Chester Township should actually provide in terms of
24 such housing. My viewpoint and my recommendation was
25 that Chester Township would have to take the

1 responsibility for those that are directly related
2 to the Township in the first place.

3 Q What do you mean by "directly related"?

4 A By that I mean people who are already residents
5 in the Township such as young people, young families
6 like to stay in the area. We also are talking about
7 various employees in the service industry in the
8 Township itself and we are talking about the elderly,
9 more or less, with contacts in the Township either as
10 they have been residents of the Township before or
11 that they have relatives in the Township.

12 There is then a group of people that either
13 work or decide to live in the Township for particular
14 reasons and, naturally, these people would have to be
15 provided for within the context of the Planning and
16 we identified in the Master Plan a certain number
17 based upon demographic considerations of the type I
18 indicated and we located in the Master Plan on my
19 recommendations then an area which will be suitable
20 for housing or provide for and be suitable for housing
21 of slightly higher intensity usage and that would
22 then serve the portion of the population that related
23 to the Township and of low end moderate income status.

24 THE COURT: Could we stop there?

25 Take a break. Just make it eleven o'clock or

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make it five after. I have to make a phone call and I do not know how long it is going to take.

(Short recess)

Q Mr. Hultgren, I believe I was about to ask you whether, in reviewing the responsibility of housing, you consulted with the Morris County Housing Authority?

A Yes, I did.

Q Would you tell us--

A I did visit the Director of the Housing Authority for the County at the time.

Q And what did the two of you discuss?

A We discussed the implications of the countywide housing need on Chester Township. In other words, which responsibilities that Chester could assume in this area.

Q Were you advised by the Director of the Morris County Housing Authority as to what his opinion was?

A Yes, I was advised.

Q Now, excuse me just a minute.

MR. FERGUSON: Your Honor, I would ask this witness what he was advised not for the truth that was told to him but for the purpose of what he was told and what use he made of that in the Planning process solely.

1 THE COURT: All right. Same ruling
2 as we had before.

3 Q What were you advised?

4 A I was advised in the first place that the
5 housing situation in the county is and was severe,
6 especially in terms of low and moderate income housing.
7 I was also advised that the major areas where such
8 needs should and maybe could be met in a rational
9 way were, rather, in and around the more heavily
10 developed communities of the county than in the
11 rural sections.

12 Q Were you told reasons behind that advice?

13 A The reason would be the need for employment
14 not too far away, considering the fact that low and
15 moderate income families have more difficulties to
16 afford transportation, especially of the type where
17 you have to use cars and I was also advised that the
18 service needs, various social services, health, you
19 know, unemployment and so forth, are readily available
20 in certain areas along the major development corridors
21 in the county and that it was desirable to find housing
22 which was not too remote or too remotely located away
23 from those services as well as the employment areas
24 there. Chester then did not fall into the category
25 of areas--

1 Q Now, let me just clarify this. Is this
2 what you were told or is this now your conclusion from
3 what you were told?

4 A To the best of my recollection, this is what
5 I was told by the Director at the time.

6 Q And this in turn, is that what you told
7 to the Planning Board? A Yes. That's correct.

8 Q Okay. Go ahead and tell us now what
9 you were told about Chester Township specifically.

10 A Well, the Director emphasized again the need,
11 overall need, and that basically wherever you can
12 provide housing for low and moderate income families,
13 it is useful. However, the statement I got was that
14 the Housing Authority was primarily looking in other
15 areas than Chester Township. That is really the
16 essence of it or the statement I received there.

17 Q All right. Did you investigate with
18 the Housing Authority on behalf of the Planning Board
19 subsidized housing either by Federal or State sources?

20 A I did not discuss--no, I have to say this:
21 I do not remember if I did discuss that with the
22 Housing Authority Director.

23 Q All right. Do you have a copy of the
24 Master Plan in front of you, the Comprehensive Plan of
25 1974? A Yes, I do.

1 Q I ask you to turn--

2 THE COURT: H-12-A in evidence.

3 MR. FERGUSON: Excuse me?

4 THE COURT: P-12-A in evidence.

5 MR. FERGUSON: Yes, sir.

6 Q You told us--I call your attention to
7 Page 1 and to the title, Regional Context. I would
8 ask you to briefly state for us what regional sources,
9 what the source data was for your investigations as to
10 the regional context in which Chester Township found
11 itself and what use you made of those sources in the
12 Master Plan?

13 A The Regional Plan Association had at about the
14 time when I came to Morris County, 1969, 1970,
15 presented their regional conceptual planning and I was
16 aware of and had reviewed the particular document that
17 was printed by the Regional Planner Association
18 concerning Morris County and the Planning for Morris
19 County.

20 The result of my review was that the Regional
21 Plan Association in its plans did not include Chester
22 Township in any of the potential intensive
23 developments that were projected for the period of
24 1970 to 1985. The Regional Planning Association
25 basically left the Chester-Mendham areas in a largely

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undeveloped pattern.

Q Now, did you consult--

MR. LINDEMAN: If your Honor please, excuse me. I realize this is late but I move that be stricken or something be done about that kind of testimony with regard to the effect that it will be given because it is a direct quote of a conclusion which may or may not be significant in the case but it is, nevertheless, a conclusion and without the document itself to support it, I submit that it is hearsay.

THE COURT: Don't we have that document?

MR. FERGUSON: I do not know.

Q Mr. Haltgren, what document of the Regional Plan Association are you referring to?

A The title of that document was Morris County 1970 to 1985, I believe. I do not have the document in my possession.

MR. FERGUSON: I do not think that is marked.

THE COURT: No, not that document. I thought he was referring to the Regional Plan Association document.

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MR. FERGUSON: There was another document that I believe Mr. Hobaugh furnished us with.

(Short recess)

MR. FERGUSON: As to the objection itself, I take the position that it makes not a bit of difference whether we have that document or not. The point is that, as a matter of fact, that is what the Plan is based upon and I think--I ask this witness a question to qualify that document and it is my position that the Municipal Land Use Law and the Mount Laurel and Madison Township demand by their very terms that you put the Planning of any municipality into a regional context and in order to prove that we did it, I do not think we have to qualify each underlying document.

THE COURT: I think Mr. Lindeman is concerned with the conclusion that was drawn from that more than anything, not the fact that he relied upon it but the conclusion it was drawn. Am I correct, Mr. Lindeman?

MR. LINDEMAN: That is absolutely correct, your Honor.

1 MR. FERGUSON: And it is my position
2 that the conclusion drawn by this witness
3 as expressed in the Master Plan is a matter
4 of fact as to which I can ask him how he
5 got it. He is subject to impeachment as it
6 were if the document he relied upon does not
7 so conclude.

8 THE COURT: The title of it was Morris
9 County 1970 to 1985?

10 THE WITNESS: Yes, as published by the
11 Regional Plan Association 1970.

12 (Short recess)

13 THE COURT: I do not have that one.

14 THE WITNESS: It's a horizontal form
15 of booklet.

16 THE COURT: How can he establish
17 credibility on the point though without having
18 the document itself? I concede that he had
19 the right to rely upon it. This is something
20 that he relied upon it. If you are offering
21 to show it not as limited or as limited as
22 we have in the past not for the truth of it
23 but just to show that he relied on that fact,
24 that is one thing. But, it would seem to me
25 that you are asking me to accept the truth

1 of that statement substantially because he then--

2 MR. FERGUSON: No, I once again limit
3 it to the fact of its having been used in such
4 and such a way in the Planning process, not for
5 the underlying truth of the document. I think
6 the result of all this, what I am tendering
7 is the viability of this Master Plan based upon
8 all the sources which went into preparing it.

9 THE COURT: What happens if your
10 Planning Board Chairman comes in and says to me:
11 Judge, we did it this way because we
12 were told; and your bridge is on a foundation
13 that has no footing?

14 MR. FERGUSON: No.

15 THE COURT: Aren't you?

16 MR. FERGUSON: The foundation is there.
17 I think the foundation is subject to a
18 bulldozer attack by somebody who says your
19 sources are no good, but I think there is--in
20 other words, it is not challenged. I think I
21 can win on that issue that the Master Plan is
22 done by professionals in the field advising the
23 Planning Board based upon available data and
24 sources and I do not think I am under the
25 obligation to qualify each and every source of

1 data or indeed recommendations that a source
2 may make. I do not have to establish the
3 truth of that to show that, as a matter of fact,
4 accepted procedures were followed based upon
5 generally available data in the preparation
6 of the Master Plan.

7 THE COURT: Well, I will agree with the
8 opinion that Judge Conford gave that you have
9 the right to rely on other documents. It is a
10 tenuous--it is a thin line if someone comes
11 along though later on and says well, this is
12 why you did something. If you get that
13 member of the Planning Board that says it, I
14 think then you are seeking to assert the truth
15 of it. As long as you skirt that issue, all
16 right. It is allowable but once you delve
17 into that end it is given as this is the reason
18 why we did it, then that has to be, doesn't it,
19 in there for the truth of it?

20 MR. FERGUSON: I do not believe so.

21 THE COURT: You do not believe so?

22 MR. LINDEMAN: Your Honor, may I
23 interrupt?

24 THE COURT: Yes, Mr. Lindeman.

25 MR. LINDEMAN: I think it really does.

1 I think what Mr. Ferguson is perhaps suggesting
2 and maybe even correctly so, that the Town
3 isn't guilty of bad faith and they are not liable
4 for fraud or something close to that, which
5 really it is out of the case. It is not really
6 seriously an issue. Obviously the witness did
7 something, but when he says he communicated that
8 Chester did not bear any responsibility for
9 intensive--or for--bear the responsibility, yes,
10 for intensive multi-family dwellings from the
11 period 1970 to 1985, it is such a usual issue
12 that I think it ought not be permitted on that
13 kind of a basis.

14 MR. FERGUSON: I do not think the
15 question of admissibility depends on whether it
16 is a usual issue or not so usual issue.

17 MR. LINDEMAN: I mean it is hearsay
18 and this kind of hearsay should be--

19 THE COURT: I think I have to let it in
20 on the premise that he relied on it and from the
21 standpoint this is what he looked at. This is
22 the source that you are entitled to rely on.

23 MR. LINDEMAN: I feel a little bit
24 burdened--

25 THE COURT: Not for the truth of it but

1 to show that he relied on that statement and
2 then drew his own conclusions from that.
3 I think I have to let that happen.

4 MR. FERGUSON: For instance, it is
5 open to Mr. Lindeman to argue that Madison
6 Township and Mount Laurel have overridden what
7 the R.P.A. said in 1970. I am not going to
8 argue at the end, for instance, that the R.P.A.
9 said it in 1970 and it is written there
10 forever and this Court must accept it.

11 THE COURT: I sure would like to have
12 that document... Give--to give Mr. Lindeman
13 an opportunity to check and see the accuracy
14 of the statement. Would it be possible to see
15 if we can try to find that document?

16 MR. FERGUSON: I will try and find it.

17 THE COURT: Okay. I have to let it in,
18 Mr. Lindeman, I think on the basis that we
19 are letting the other in. I have, as a Trial
20 Judge, a very difficult time sometimes
21 distinguishing between admissibility not for
22 the truth of it but to show that something was
23 done. It gets very, very close to a very fine
24 line sometimes for me.

25 MR. LINDEMAN: I share the difficulty

1 that confronts the Court. I would just like, if
2 I may, to state again the difficulty that
3 confronts counsel and that is that we almost
4 bear the burden or the obligation to scrounge
5 around to find that document and prove that it
6 was never stated merely just to impeach the
7 statement and in the light of the ruling in
8 Mount Laurel that the burden of proof, if not
9 going forward with the evidence, rests with the
10 municipality. That is a burden I think we
11 just should not be required to bear. I feel
12 that I have to somehow. I dare say I won't be
13 able to do it.

14 MR. FERGUSON: I think it should be
15 looked at in this light. It is not this
16 witness' testimony which requires the plaintiff
17 and his experts to challenge the Master Plan.
18 It is the existence of the Master Plan itself
19 and this should come as no surprise. This is
20 the document which is being challenged because
21 it is on the Master Plan that the Zoning
22 Ordinance, of course, the answer falls.

23 THE COURT: It certainly reflects, as
24 I listen, certainly reflects that this is the
25 approach that is taken. We took this approach

1 because we felt that--

2 MR. LINDEMAN: Undoubtedly. No
3 question about that.

4 MR. FERGUSON: Indeed, this witness
5 in a few minutes will make the lookup.

6 THE COURT: Well, on the basis that we
7 have been allowing the other in, I have got to
8 allow it in. I sure would like to have that
9 document, though, if it can be at least--at
10 least to give Mr. Lindeman an opportunity to
11 cross examine with respect to it.

12 Q Do you know where you can get a copy
13 of it?

14 A One of the problems is that the original files
15 have been scattered. I think that the libraries--I am
16 pretty sure that a Fairleigh Dickinson Library has a
17 copy. I will check that.

18 THE COURT: In Madison?

19 THE WITNESS: In Madison, yes. I think so.

20 MR. FERGUSON: Mr. Hultgren lives in
21 Madison. Perhaps he can do it.

22 (Short recess)

23 THE COURT: We will try to see if we
24 can locate it. All right. Go ahead.

25 MR. LINDEMAN: Is that being marked?

1 There is nothing being marked. I am sorry.

2 THE COURT: All right.

3 MR. LINDEMAN: For identification.

4 Excuse me.

5 THE COURT: Continue.

6 Q Did you consult the Morris County
7 Master Plan in the context of determining whether
8 Chester Township should meet a larger or lesser
9 responsibility in terms of regional development in
10 housing?

11 MR. LINDEMAN: I hope that the
12 questions will not be leading in the future.

13 MR. FERGUSON: I will withdraw that.

14 Q Did you consult the Morris County
15 Master Plan and, if so, for what purpose and tell us
16 what you found?

17 A I consulted the preliminary land use element
18 of the Morris County Master Plan.

19 Q Preliminary land use element?

20 A Yes, it was preliminary at the time. I have
21 here now the final copy of the Morris County Master
22 Plan, future land use element.

23 Q Is that the same as P-13 in evidence?

24 A That's correct and I saw in the document as
25 presented at the time that no major development was

1 proposed for the Chester-Mendham area and this is
 2 confirmed in the current Master Plan for the County,
 3 Pages 73 and 74. For instance, the section about
 4 Mendham-Chester and Long Valley starts on Page 73 and
 5 states various things that all boil down to the
 6 conclusion that Chester-Mendham should not assume any
 7 major responsibility for urban development. The Plan
 8 suggests that the central areas, the core areas of
 9 Mendham-Chester, Long Valley be developed to provide
 10 services for the surrounding rural areas and that is
 11 explained, expressed in the future land use map
 12 which follows Page 80 in said Report.

13 Q Now, there is a red circle around the
 14 intersection of 24 and 206 on that future land use
 15 Plan for Morris County.

16 A Yes. That is the section of this corridor
 17 that the Morris County Plan suggests for further
 18 development.

19 MR. LINDEMAN: Pardon me. Is this
 20 the exhibit or is this your document?

21 THE WITNESS: That's mine. We have
 22 the exhibit on top there.

23 MR. LINDEMAN: All right, fine.

24 THE COURT: It is the same one.

25 Q Just for the record, did you prepare

1 the Comprehensive Plan of 1974 for Chester Township?

2 A Yes, I did.

3 Q And that has been marked P-12-A, I
4 believe, in evidence. Now, before I ask you any more
5 questions, do you have an opinion based upon your
6 preparation of that Plan and your knowledge of the
7 Morris County Master Plan land use element whether the
8 Comprehensive Plan of Chester Township is consistent
9 with the future land use element of the Morris County
10 Master Plan?

11 A It is my professional opinion that these two
12 documents are consistent.

13 MR. LINDEMAN: I did not hear you.

14 THE WITNESS: The Chester Township
15 Master Plan is consistent with the Morris County Planning
16 as expressed in this document and not only that as
17 expressed in the Preliminary draft Plan which I saw in
18 1973 - '74 and based upon, also, those statements I
19 received from the County Planning Director which the
20 attorneys are debating whether they are admissible or
21 not.

22 Q Now, I call your attention on Page 74 to
23 a paragraph that begins:

24 "Morris County Planning Board is especially
25 aware of the following:..."

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and it goes down to:

"---That highly respected groups, such as the watershed associations in the area, have legitimate concerns for the long-term effects of development of any kind..."

MR. LINDEMAN: Where is this?

THE COURT: What page are you reading from?

MR. FERGUSON: 74. It is the second paragraph up from the bottom.

Q "...legitimate concerns for the long-term effects of development of any kind upon an extremely important aquifer. They are joined in this concern by the Regional Development Guide of the Tri-State Regional Planning Commission, which advocates the preservation of all headwater areas, and by general policies of the Morris County Soil Conservation District."

Did you rely on the Regional Development Guide at all in your consideration of regional context?

A I cannot recall if that particular document, Regional Development Guide, was available to me but I did review Tri-State documents which basically stated

1 the same.

2 Q Do you have a copy of the Regional
3 Development Guide with you today?

4 A No. I can see. No, I do not seem to have that.

5 Q All right. Going back to the Master
6 Plan, I call your attention to the paragraph relating
7 to the description of Routes 206 and 24. Would you
8 tell the Court in your own words the importance of
9 those two roads in the transportation network to
10 Chester Township and the Borough?

11 A Well, Route 24 and Route 206 are the only
12 arterial roads that connect the Township with other
13 sections and parts of the region and the importance, or
14 the statement, is that 206 is recognized in the
15 Tri-State Planning as well as in the State Planning
16 as one road that will be subject to improvements in
17 the future but that had not occurred as of yet and
18 has not occurred today either, neither when it comes
19 to 206 and 24. In terms of 24 the State has gradually
20 implemented a new alignment of Route 24 and the
21 construction of this road has now--as it has been
22 moving westerly reached Chatham and some of the
23 sections from Chatham to Morristown had been
24 constructed or under construction at this time.

25 Q Chatham, for the record, is to the east

1 of Morristown?

2 A Yes. It is to the east of Morristown. These
3 kind of regional highways are basically developed
4 continuously from the point where they are the most
5 needed and continuing further out. There was no
6 indication in the State Plan for transportation that
7 was available to me at the 1973, 1974 Planning stage
8 that Route 24 would be improved in any sections from
9 Morristown towards Mendham and Chester within the
10 five year period of time. That was the implementation
11 date set for those roads listed in that Plan for
12 improvements.

13 In other words, Route 24 was not included
14 among those roads that would be improved by the State
15 within the five year period of time and even if
16 further improvements between Morristown and Mendham-
17 Chester would occur, they would first have to be put
18 into the five year plan which would, in itself, take
19 time and then you would have to go into the process
20 of finding an acceptable alignment, etc., which I
21 now as a professional Planner--which I know as a
22 professional Planner is a very time-consuming affair.

23 The conclusion is that Route 24, even though
24 it's a very major arterial serving the Chester and
25 Mendhams, is limited in terms of its capability and

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there was at the time no indication that it would be improved for the purpose of providing additional capacity.

Q Now, have you had occasion to re-examine that in the five years since 1972?

A The section between Morristown and Chester is, as far as my knowledge goes, not included in the present five year plan either.

Q So, as far as you know, there is nothing that happened since 1972 to change the conclusions which you reached in the Master Plan?

A Well, that was true up until about a week ago when some speculation occurred in the local newspapers to the effect that--

MR. LINDEMAN: I object, your Honor.

Q Okay. If they are speculations in the local newspapers, don't tell us about them.

A Well, I am just saying I am aware of this. Something may still happen.

Q As far as you know, nothing official, and by official I mean at the D.O.T. or in any official office in Morris County has done anything or occurred to make you change your view as reflected in the Master Plan?

A Correct. I have not seen anything like that

1 officially.

2 Q Now, you make the statement on Page 2
3 that "Chester Township's most significant responsibility
4 is to provide regional open space and to help meet the
5 increasing regional demand for water supply and flood
6 control."

7 To focus on "water supply and flood control,"
8 can you tell us what you mean by "regional demand for
9 water supply"?

10 A Various authorities and agencies whose
11 statements I reviewed during the time, indicated that
12 the water resources in this region are scarce and need
13 protection considering the current population, the
14 increase need for water per head and the potential
15 increase in population as well.

16 Q Now, let me digress and ask you a
17 question. You told us earlier about the 100,000
18 gallons per person per day given to you by the Upper
19 Raritan Water Shed Association? A Correct.

20 Q Did you verify that parameter or
21 formula with anybody and, if so, with whom?

22 A Yes. I checked that directly with the source
23 of information by the Academy of Sciences in
24 Philadelphia.

25 Q Did you check with the Borough of--with

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anybody else?

A Yes. I did bring up that question with the soil conservation people in the County, the extension service.

Q Now, what was the result, if any, of that formula in terms of what you did in the Master Plan?

A The result was--

Q Let me rephrase it.

A --is a--yes, please.

Q How was that formula reflected, if it is reflected at all, in the Master Plan?

A Okay. There is some writing in the Master Plan on this subject as to the capacity of the Township to provide for increase in population.

Q All right. Would you tell us where it is?

A Okay. On Page number 9 in the Summary there is a discussion of the capacity--capability of the area considering certain factors.

Q Okay. Are you referring to the last full paragraph on Page 9?

A 9. That's correct.

"The land capabilities...water, air and land resources...water availability and water pollution..."

1 Now, this is where we have the statement in the
2 second paragraph from the bottom that:

3 "The average Township ground water yield is
4 about 100,000 gallons per day per square mile.
5 This may support more than 10,000 inhabitants
6 within the Chester area."

7 It says further--

8 Q Well, instead of reading it to us, tell
9 us in your own words what use you made of that and
10 if you deviated from it or if you did not?

11 A Okay. I would say that there was--

12 MR. LINDEMAN: Your Honor, excuse me.
13 I think I must object even to any conclusion
14 to be drawn from the statement that this amount
15 of water will support 10,000 inhabitants
16 because I think that calls for expertise
17 which is not either within the witness'
18 qualifications as I heard them.

19 THE COURT: That is in the Master Plan.

20 MR. LINDEMAN: But he wrote it. I
21 mean, he may say it but if he is going to
22 testify about that conclusion and to inform
23 the Court how he made it and anything else
24 about it, I think it really is improper and
25 I think its existence even in the Master Plan,

1 based upon his qualifications, is inappropriate.

2 THE COURT: On that particular one,
3 Mr. Lindeman, I think it is more subject of
4 cross examination than it is something that
5 should be excluded. No. I will allow him
6 to testify as to what the Master Plan says
7 on the point.

8 THE WITNESS: Let me try--

9 Q Go ahead.

10 A Let me try to go back on it again. There was
11 a debate to get down to the point here between
12 Mr. Larson and myself on the severity of the water
13 resource situation. Our interpretations of the data
14 that we had reviewed, both of us, that I have spoken
15 about earlier, Mr. Larson stated very firmly that
16 for the increase in population in the Township, the
17 water resource itself may not be sufficient. I
18 personally found when I reviewed the documents and
19 when I continued to discuss with others and read
20 other sources of information that it may be true that
21 100,000 gallons per day per square mile was the
22 average yield, but there were still major resources
23 of water in the Township or in the Township vicinity
24 that, in my mind, did not exclude and as a Planner
25 now, and I think I can speak on this as a professional

1 comprehensive Planner, in my mind, did not rule out
2 the responsibility of an increase in the population
3 assuming that we could get the water from here to
4 there in certain areas of the Township and I believe
5 I touched that briefly sometime ago here, such as the
6 Black River area and the northeastern sections of the
7 Township. We have better yields than 100,000, much
8 better yields as a matter of fact, and that tells us
9 in the first place that at least you can locate
10 residents in those areas around the Black River and
11 the northeastern sections of the Township and there
12 would be enough water for them; and secondly, if you
13 provide public water systems, piping the water from
14 this--these areas to other sections of Chester, the
15 Borough and Township, you do indeed have the water
16 there too.

17 In other words, I did not look upon the actual
18 availability of the water as a seriously limiting
19 factor, only I was perfectly aware of the fact that
20 other locational factors would come into play.

21 I did not suggest to the Planning Board,
22 naturally, to locate people in the immediate vicinity
23 of the Black River Reservation with any higher
24 intensity of development. That would be unacceptable
25 from other standpoints, but let me keep myself in the

1 water resource area. I did not either suggest to the
2 Planning Board that, fine, we have the water. It's
3 just to pipe it because I knew as well as the Planning
4 Board knew that is going to cost money, taxpayers'
5 money, and with the already scattered development
6 in the Township, we had a situation where the Township
7 had to be careful about where and how they would spend
8 public money on extensions or expansions of various
9 facilities.

10 So the conclusion is: There is water for a price.

11 Q Going to the last sentence of that
12 paragraph on Page 9:

13 "...the lack of adequate water resources in
14 other, more urbanized parts of the region,
15 indicates that the Chester Township resources
16 are utilized and needed outside the Township."

17 Could you explain that statement and tell us
18 what you based it on and why?

19 A Now, this is the core of the matter. This is
20 where you have, in my mind, to look seriously at the
21 water resources itself. Regionally, we do not have
22 a sufficient amount of water.

23 I have enough of various sources of information
24 fed into me, in my mind, during the path of this
25 Planning Program and later that tells me that we have

1 to watch our resources and I will be glad to ramble
2 through my files and get some more firm statements.

3 Q No. Is it your opinion as a
4 professional Planner in the State of New Jersey that
5 New Jersey has a water supply problem?

6 A Yes, it is.

7 Q Of what dimensions?

8 MR. LINDEMAN: I object, your Honor.

9 A The dimension--I cannot say.

10 MR. LINDEMAN: Hold it just a minute.

11 A (Cont'd.) That's engineering.

12 MR. LINDEMAN: Hold it. It is too
13 broad.

14 THE COURT: The entire State of
15 New Jersey are we going to discuss?

16 MR. FERGUSON: I will withdraw it.

17 THE COURT: All right.

18 Q All right. Go ahead and tell us what
19 that sentence means then.

20 A I am sorry. I fell into that trap too.
21 Naturally, I mean in the metropolitan area. What I
22 mean with this sentence is that all water resources
23 in the northern sections of the State of New Jersey
24 must be managed and monitored very carefully and even
25 though you may be able to provide water for people

1 in the Township to a certain extent, to a certain
2 volume that exceeds 10,000 new inhabitants, we cannot
3 regionally afford to waste any major resources or
4 water and nor any resources whatsoever in this region
5 and, accordingly, I recommended to the Planning Board
6 to make sure that they live up to their regional
7 responsibilities in terms of water resources so that
8 precautions would be taken to protect the available
9 resources from pollution.

10 Q Now, did you advise the Planning Board
11 what strategies or mechanisms to use to implement
12 that protection? A Yes, I did.

13 Q What were they?

14 A There are quite a few items that we can employ
15 as Planners and within the context of Master Planning
16 and zoning.

17 Q What did you recommend to the Planning
18 Board?

19 A Well, a set of recommendations. One was, of
20 course, to try to stay away from development in the
21 most sensitive areas.

22 Q And would you define "sensitive areas"
23 in this context?

24 A Sensitive areas would be areas where various
25 development would have a potential for more than

1 an average impact in terms of pollution in the wide
2 meaning of the word. Now then, the other--so that one
3 way is to say stay away from those areas that are
4 easily polluted. The other way is to say make sure
5 that the density of the development, wherever it
6 occurs, is in balance with the natural forces for
7 recycling and renewal of the resources.

8 Q Can you be more specific and tell us
9 what those terms mean?

10 A Well, the Academy of Natural Sciences in
11 Philadelphia indicated certain densities that could be
12 assumed to be compatible with particular soil
13 properties. They were saying that based upon
14 experience a particular soil property can take just
15 so much of a residential density assuming septic tank
16 disposal.

17 The philosophy then is that a low density
18 pollutes less or provides less of a pollution intensity
19 and the more susceptible an impact from pollution a
20 soil property is, the lower the density should be.

21 Then, the third item to consider and included
22 in my recommendations was that the inevitability--the
23 inevitable need for somewhat higher intensity would be
24 located--such areas would be located in areas which
25 would, in the first place, be suitable for such

1 development from a variety of viewpoints including
2 transportation facilities and so forth and, on the
3 other hand, in areas where the environmental impact
4 would be as reduced as possible and also when I am
5 talking about the possibility to provide facilities
6 and services, I also mean, of course, utilities and
7 I recommended to the Planning Board to try to limit
8 the somewhat higher intensity developments to an
9 area where at least in the future steps could be taken
10 to provide a sewage treatment facility on a more
11 regional basis and publicly provided in that case and
12 this is one of the reasons why my recommendations
13 included the location of such higher intensity use
14 areas in the vicinity of the Borough where we already
15 had a concentration and where--if problems would occur
16 with the disposal of wastes, it would be easier to
17 provide a technical engineering solution if the
18 development was concentrated rather than scattered.

19 Q Now, does that complete the list of
20 strategies which you recommended to the Planning Board
21 to meet what you call the regional responsibility for
22 water resources?

23 A Yes. I think those were the major points.

24 Q Okay. Now, I call your attention to
25 what you just last eluded to and that is the

1 development in Chester Borough. Did you investigate
2 the development in the Borough as a tool for Planning
3 for Chester Township?

4 A Well, to be honest with you, I would like you
5 to rephrase that slightly so I understand what you
6 mean.

7 Q Rephrase it? All right.

8 Well, I would ask you to explain your last
9 statement that if problems of sewage disposal arose
10 they could be more easily technically solved from an
11 engineering point of view if everything was closer
12 to the Borough.

13 A Okay, yes. What I did is that I met with the
14 Planning Board of the Chester Borough also together
15 with a couple of representatives for the Chester
16 Township. We sat down in a meeting.

17 Q What was the purpose of that meeting?

18 A And the purpose of the meeting was--we had
19 several purposes. There was a discussion about
20 co-operation between the communities in terms of
21 areas' facilities. Maybe even we touched upon briefly
22 the potential merging of the communities, but that is
23 not really what I should get into at this time.

24 The important thing is that we discussed the
25 common concern which among those common concerns was the

1 fact that the Borough, as I was told--

2 MR. LINDEMAN: If your Honor please,
3 excuse me. I am just waiting for this one.
4 Now, we are not talking about experts, your
5 Honor, and I think this is factual testimony
6 that is clearly objectionable, if the witness
7 is going to testify to what he was told by
8 members of the Planning Board of the Borough.

9 THE COURT: I agree. It is
10 objectionable. Hold it just a minute.

11 (Short recess)

12 Q Mr. Hultgren, as the result of your
13 discussions with the Borough officials in conjunction
14 with the Planning Board of the Township, what did you
15 recommend to the Planning Board of the Township?

16 A Well, the recommendations I had made about
17 the location of future higher intensity use areas was
18 left as is or, in other words, we did not change the
19 preliminary allocation of that land or location of that
20 land as a result of the discussions with the Borough.

21 Q Now, when you talk about locations,
22 are you referring to the location of the high intensity
23 use in the illustrative zoning map attached to the
24 Master Plan of August 1974? A Yes.

25 Q I will ask you what you are referring to?

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You tell me.

A Yes. That's correct. I am referring to the Master Plan--the General Plan is the title, Page number 20 in the summary.

Q Okay. That is not the illustrative zoning Plan. That is the General Plan?

A Yes. That's correct. The illustrative zoning map is, of course, implementing the Master Plan but I would like to make reference directly to the document itself.

Q As to the General Plan on Page 20?

A Right.

Q And the locations that you are speaking about now are?

A We are talking about the third category in the legend. The possible medium density residential areas and they are just located immediately south and southwest of the Borough.

Q Okay. Now, just to tie up or finish on the other line of testimony about water resources for the region, is what you have testified here today about the recommendation you made to the Planning Board and is that the basis for that statement in the Master Plan?

A Yes.

Q Now, Mr. Hultgren, I call your attention

1 to Page 2 and to the "Community Characteristics" and
2 I ask you if what follows on Pages 2, 3 and 4
3 represent the Plan as you drafted it and those topics
4 as you and the Planning Board put in the Plan as the
5 result of your investigations during the Planning
6 process with Chester Township?

7 A Well, Pages 2, 3 and 4 are part of the
8 background summary and that provided--that highlights
9 the base for the Plan, the background for the Plan.

10 Q I call your attention to the top--second
11 full paragraph on Page 3 about general soil
12 characteristics. I believe you already testified about
13 them and that is the phrase in the Plan where your
14 evaluation of the soil characteristics is?

15 A That's correct.

16 Q All right.

17 THE WITNESS: That statement on Page
18 number 3--

19 MR. LINDEMAN: I object. There is
20 no question pending.

21 MR. FERGUSON: All right.

22 Q Were you referring to the soil
23 characteristics?

24 A That is the expression of the comprehensive
25 Planner.

1 Q All right. There is no question.

2 Now, turning to the "Socio-Economic Factors"
3 set forth on Page 5, was it your responsibility or
4 Mr. Kasler's responsibility to develop these kinds of
5 data?

6 A It was my responsibility.

7 Q And does this represent the result of
8 your investigation in this area?

9 A Yes, it does.

10 Q Now, I would like you to tell us,
11 Mr. Hultgren, whether you prepared that map that is
12 on the easel? A Yes, I did.

13 Q Would you tell us--

14 THE COURT: Does that map have a
15 designation?

16 MR. FERGUSON: No, sir, it does not.
17 Not yet.

18 THE COURT: Let's mark it for
19 identification as D-40.

20 (The map referred to is marked as
21 Exhibit D-40 for identification).

22 Q When did you prepare D-40 for
23 identification?

24 A That was prepared earlier this year and the
25 map constitutes a recreation of a map that I made

1 during the Master Planning period.

2 Q Let the record show it has also been
3 marked P.T.H.-2, February 15, 1977 at Mr. Hultgren's
4 deposition.

5 Now, you said, Mr. Hultgren, this was a
6 recreation, a recreation of what?

7 A Well, among the overlays that I prepared to
8 analyze the various factors that go into play when you
9 make a Master Plan for a community, were the soil
10 conditions map. The soil condition overlay.

11 Q Now, let me just make it clear. We
12 are talking about a base map?

13 A Well, I have a base map of the community
14 depicting the roads and community boundaries and so
15 forth.

16 Q All right. Now, do I understand correctly
17 during the Planning process you prepared an overlay?

18 A I prepared several different overlays covering
19 several different factors.

20 Q Is this a recreation of one of those
21 overlays?

22 A Yes. That's correct. This is the recreation of
23 the overlay that concerns soil conditions and their
24 limitations on development.

25 Q Why don't we have the original overlay

1 here? A I have not been able to find
2 the files. I had, when this case came up, left
3 Candeb, Fleissig. When I called back Mr. Candeb, he
4 made a search in the office for these files but could
5 not find them.

6 Q Did you look in the Planning Board
7 files of Chester Township?

8 A Yes, I did, and I have not been able to find
9 them.

10 Q Did you, at my request, make this
11 recreation of that overlay?

12 A Yes and as an example and as true as possible
13 to what I had done before, yes.

14 Q Did you follow the same process when you
15 made D-40 as you did when you made the original overlay?

16 A Yes, I did, to the best of my recollection.

17 Q Tell us what that process was and is
18 with respect to D-40?

19 A My base for this overlay was a number of tables
20 and charts prepared by the U.S. Department of
21 Agriculture Soil Conservation Service and the maps, the
22 base map of which we see a copy on that easel at this
23 time. The black lined and the white bottom is a copy
24 of a map that was prepared by the U. S. Department of
25 Soil Conservation Service. Now, each one of those

1 sub-areas on that base map contains a number of
2 figures that explain the soil name, the slopes on
3 that particular area and the--okay. Just a second
4 here. The drainage conditions and the flooding
5 hazards.

6 Q Was that data all taken from the
7 United States Soil Conservation Service?

8 A That's correct.

9 Q Now, what did you do with that data?

10 A I singled out those areas that included severe
11 conditions for development.

12 Q Now, would you--

13 A And colored them in this reddish color.

14 Q All right. Would you read us the caption?

15 A Yes.

16 Q Come up to the map if you need to.

17 A The red areas then show those areas that are
18 subject to severe restrictions. It literally says
19 "severe" in the charts that follow this map, the
20 charts produced by the Soil Conservation Service and,
21 especially, the reddish area is septic effluent
22 disposal.

23 Q Now, what is the red striped area?

24 A Those are areas which are not necessarily
25 restricted because of poor susceptibility to septic

1 effluent disposal but that are generally steep and
2 they are subject to erosion.

3 Q What is the caption for that
4 classification?

A The caption?

5 Q Right on the map.

6 A Right--well, this is the lined area in red--
7 areas with severe erosion potential.

8 Q All right. Where did you get--how did
9 you pick out those areas for the red lines?

10 A By going through the tables and selecting those
11 properties, soil properties that were labeled severe.

12 Q Labeled severe by whom?

13 A By the U. S. Conservation Service in terms
14 of factors that were relevant to erosion and septic
15 effluent disposal respectively.

16 Q Now, on this map are there any areas
17 that have both solid red and a red line?

18 A That's correct. The solid red will also include
19 areas of excessively steep slopes because those areas
20 were classified and included in those areas that were
21 poor in terms of septic effluent disposal. So that
22 means that--

23 Q I do not understand.

24 A All right. What I am saying is that we have
25 steep areas and areas where the soils are particularly

Q Right.

1
2 A But those conditions with steep topography and
3 that particular kind of soil are also in some areas
4 included in the solid red areas because there are--in
5 other words, some steep areas where you can still absorb
6 the effluent but they are potentially damaging in terms
7 of the fact that they can erode if you build on them.

8 Q How can--my specific question is:
9 Are there any areas that should be both solid red and
10 red lined?

11 A Yes. There are such areas included in the
12 solid red.

13 Q I can't tell then?

14 A No, you can't tell that.

15 Q I can't tell them apart?

16 A No. That's an overlap that you cannot see.

17 Q All right. Would you tell us what use
18 you made--withdraw that.

19 Is this to your recollection an accurate
20 reproduction of the map that you created in 1972 or '73
21 as part of the planning process?

22 A Yes, as close as I can get.

23 Q Did you follow the same procedures now
24 that you did then? A Yes, I did.

25

1 Q Did you use the same data base now
2 that you did then? A Yes, I did.

3 Q What use did you make of D-40 back in
4 the planning process?

5 A It gave me an overall picture of the problems
6 and potentials in terms of those factors, erosion and
7 pollution for the entire Township and it, first of all,
8 told me that the entire Township includes significant
9 areas that are indeed sensitive to septic effluent
10 disposal through the septic tank system respectively
11 include high erosion potentials. There are very large--
12 very large percentage of the Township has such
13 restrictions.

14 Now, it also told me in a very general way
15 which areas that would be the worst in this respect.
16 Respectively--

17 Q Worst for what purpose?

18 A In terms of sensitivity to pollution and
19 erosion potentials. Which ones would be the most--
20 which ones would be the most likely to become polluted
21 or to provide erosion by development.

22 Q When you say pollution, can you be more
23 specific? Exactly what do you mean by that?

24 A Okay. The criteria used for the red areas
25 here include a number of factors that have to do with

how the--

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Q The thrust of my question is:

Are we talking about surface water or ground water overlays?

A We are talking basically about ground water, but surface water would also come into play because of the fact that a particular soil that is located nearby a stream and the soil cannot absorb the effluent, but basically lets the effluent continue down the stream.

By this pattern you will actually pollute your streams as well, so you are talking about both the streams and the ground water.

Q Did you use D-40 as a tool in locating and drawing the boundaries of the various potential land classifications which you proposed in the Master Plan?

A To a certain extent I did, yes. I found that the areas that are white, basically white, here in this map, they would be better to build upon considering these factors we are talking about.

Q In what densities?

A The densities, I would--

Q Well, I will withdraw that.

Tell us how you used this map in determining what densities are appropriate for what areas.

1 A In terms of the densities, I was using the
2 same sources as the Academy of Sciences in Philadelphia
3 to pinpoint what particular source--soils could absorb
4 at certain densities or which densities that you could
5 permit on certain soil groups and the general statement
6 was--oh, I am getting out of the question, I am sorry.
7 That is out of the question really.

8 What I used this map for in that respect isn't
9 necessarily to identify the actual density but rather
10 to try to check on certain locations for higher
11 intensity development and, for instance, where I
12 found that there is around the Borough a somewhat
13 larger extent of white areas which leads me to believe
14 that in terms of soil conditions we are better off to
15 locate development in this white area around the
16 Borough here than to go into, for instance, an area
17 like the Black River. If it would be available to us,
18 or areas south of the Borough among those areas also
19 the subject site would be included because the other
20 areas would be more red as a general pattern than the
21 areas surrounding the Borough where the white is more
22 dominating.

23 THE COURT: Excuse me, gentlemen. I
24 have a phone call. Why don't we break now
25 for lunch and come back at one-thirty.

(Luncheon recess)

AFTERNOON SESSION

THE COURT: How about that book?

MR. LINDEMAN: I just started to look at it, Judge. I do not know.

THE COURT: Okay.

MR. FERGUSON: Your Honor, we can identify it and ask the witness if this is what he was referring to and what he relied on.

THE COURT: Okay.

Q Mr. Hultgren, during the luncheon recess through the Judge's Chambers arrived a book entitled "The Future of Morris County" a supplement to the Second Regional Plan, a draft for discussion for the Regional Plan Association, July 1970, and I would ask you if that is the study to which you referred earlier in connection with your testimony about the second indented paragraph on Page One of the Master Plan?

A Yes. This is the booklet that I remember. There was more material from R.P.A., but this is the one I remember.

Q Would you tell us what the Regional Plan Association is?

A It is an association for the production of Plans and Programs for the metropolitan area of New York,

1 in a section of New York State and New Jersey,
2 Connecticut. It doesn't have, to my knowledge at
3 least, any official powers to implement the Plans.
4 It is totally an organization that depends upon
5 contributions from public and private sources for
6 their planning and their--they work with all the
7 publications with recommendations that concern the
8 planning of the metropolitan region.

9 Q Do their publications serve as a
10 reference source for comprehensive professional
11 Planners such as yourself and Mr. Kasler, Mr. Zimmerman,
12 and Mr. Hobough? A Yes, it does.

13 Q Is this document--withdraw that.
14 Did you rely on this document in formulating
15 your conclusion, reading from Page Two: "Chester
16 Township should not assume any major regional
17 responsibility for housing and urbanization due to
18 the relatively remote location as related to major
19 regional employment areas and communication corridors."?

20 A Yes. This was at least one of the sources of
21 R.P.A. documents that I used.

22 MR. FERGUSON: I do not plan to
23 put it into evidence.

24 THE COURT: Okay. It is available. I
25 do not believe it has to be put into evidence.

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We will make it available then for purposes of cross examination.

MR. LINDEMAN: Thank you.

THE COURT: And it makes a little more wholesome evidentially dealing with the problem we had before.

Q I call your attention to Page 31, a section entitled "Air and Water Quality", some paragraphs entitled "The Inner Action of Water Supply and Pollution" another one entitled, "Existing Water Problems", another one entitled "Water Supply and Control", another one, "Waste Management" some Second Regional Plan recommendations, and I ask you if that is part of the source material that you consulted with respect to those topics, Water Pollution, Water Resources?

A Yes, it is.

THE COURT: I am going to ask that it be marked at least for identification, D-41, so that we have a method of identifying it in the record.

(The document referred to is marked as Exhibit D-41 for identification).

THE COURT: Okay. All right.

Q I think, Mr. Multgren, before the luncheon recess, I was inquiring of you as to the use

1 you made of D-40, your map, in determining the land
2 use that you recommended to the Planning Board, 1972 and
3 1973 and in preparing the Master Plan.

4 A Right.

5 Q What use did you make of this map in
6 terms of your recommendations to the Planning Board
7 and why?

8 A It constituted one of the overlay maps that I
9 applied to the base map and that I was using for the
10 analytical purposes to arrive at conclusions and
11 recommendations concerning the location of development
12 of areas--of various types and densities.

13 Q Now, with respect to residential
14 development, would you tell us what purpose did D-40
15 serve?

16 A In a very simplified way you may say that this
17 map gave me an indication that the red areas should not
18 have more than low or very low density development.

19 Q Can you define those terms, "low" and
20 "very low"?

21 A Yes. I would say low density is around one acre
22 per dwelling unit. This is really necessary to apply
23 to a local situation. I would say in the Chesters I
24 would define low as one acre per dwelling unit, very
25 low densities would be in the vicinity of four or five

1 acres per dwelling unit.

2 Q Now, can you tell us in what respect
3 or how this guided you in the selection of areas for
4 low and very low density?

5 A Okay. The red areas as indicated here would
6 be suitable for only very low residential development
7 and, basically, in the category of at least--or around--
8 five acres per dwelling unit. The white areas on this
9 map would be suitable for somewhat higher intensity use.

10 The conclusion I made from review of various
11 sources of information as--

12 Q I do not want you to tell us the
13 conclusion you made unless you recommended it to the
14 Planning Board.

15 A That is what I am going to get to, yes.

16 Q Okay.

17 A On the density that could be permitted on soils
18 of this general type led me to recommend that for all
19 practical purposes low areas be developed with higher
20 intensity than two acres per dwelling unit.

21 Now, this is the overall picture. We will have
22 to talk about the proposals for medium density
23 development separately, but if you are talking the
24 overall picture for Chester Township, the lowest density
25 residential development was suggested by me to be two

1 acres per dwelling unit and as a distinct step
2 towards a very low density, I suggested five acres
3 per dwelling unit in especially those areas where you
4 have a general pattern of poor circumstances to
5 accept septic tank disposal which would be the red
6 areas on this map.

7 Q I should have covered this earlier, but
8 are there any public sewerage collection facilities
9 in Chester Township or Chester Borough?

10 A No. There is no such facility or public type
11 for sewerage and there was not at the time. Naturally,
12 this can be provided within the context of engineering
13 and economy.

14 Q Now, was the comprehensive--withdraw that.
15 Was the Plan, a copy of which is Page 20 in the
16 Master Plan, prepared on the basis of D-40 as you have
17 testified in terms of the two and five acres residential
18 zones?

19 A Well, that is true, but you must understand that
20 this is a very general picture and I can only in a very
21 general way, without looking at each particular site,
22 steer myself into certain districts where slightly
23 higher intensity can be permitted without detriment.
24 Respectfully, I didn't have general areas where the
25 concern is really with us on the question of whether we

1 could accept anything more than five acres per
2 dwelling unit.

3 Q Prior to the preparation of the original
4 of which this is a later made copy in 1972, had you
5 seen this technique utilized in the preparation of a
6 Master Plan?

7 A Yes. To use overlays with various positive and
8 negative factors and apply those overlays may be on
9 transparent copies, that is a procedure that I had
10 been using both in Sweden and in the United States
11 earlier and it has become, I would say, since more
12 of an environmental concern has developed in this
13 country, it's become almost a routine procedure and
14 the way of applying various, as I said, negative
15 and positive factors, to a base map has also been
16 brought into the computer media.

17 In other words, you are nowadays, when you are
18 talking about larger areas, more complex situations,
19 analyzing the situation with the aid of computers which
20 you program with various data and where, as you ask
21 the computer to make certain overlays, one or several
22 overlays, on the base map for the purpose of reading
23 analytically what happens under certain circumstances.
24 So, the procedure is well established. It was
25 established and it is even more so established at this

1 time.

2 Q Drawing your attention to an area between
3 the southern boundary of the Borough and the Somerset
4 County line--

5 THE COURT: That cannot be. Southern
6 boundary of the Borough?

7 MR. FERGUSON: Of the Borough.

8 THE COURT: Oh, of the Borough.

9 MR. FERGUSON: And the Somerset County
10 line.

11 Q Would you tell us what your
12 recommendations to the Planning Board were with
13 respect to the two and five acre residential zoning
14 in the area, general area of the Peapack Water Shed and
15 the Caputo site? Tell us what your recommendations
16 were and why you made them.

17 A My recommendations were to preserve in the
18 bulk of the area between Route 24 and Route 206 a
19 majority of the acres in R-5, meaning five acres per
20 lot use. This was not directly reflecting the zoning
21 at the time which was prescribing basically two acres
22 per dwelling unit. I found that I recommended that
23 this area needed more protection from development
24 than the R-2 would offer and accordingly suggested a
25 lower density. The existing development along the

1 old Peapack-Gladstone Road, that was already in R-1
2 useage, meaning one acre per dwelling unit. That area
3 was singled out and recommended to stay like that for
4 infill purposes.

5 Q I do not understand.

6 A Basically, the area that we identified a
7 somewhat higher intensity use, R-1, was preserved in
8 the Master Plan within the context of something that
9 was called low density residential, which was somewhat
10 higher residential density than the rural residential.
11 If we look at the Master Plan, Page 20, the Map, we
12 can see that certain areas along Peapack-Gladstone Road
13 were suggested for a somewhat higher intensity than
14 the bulk of the area between 24 and 206.

15 Q Why is that?

16 A Because of somewhat better circumstances in
17 terms of soil because of, as I started saying, the
18 existing R-1 development and also some existing R-2
19 development in those areas.

20 Q Did you at my request review Ordinance
21 76-12, the Zoning Ordinance of 1976, and looked at
22 the zoning of the same area, south of the Borough down
23 to the Somerset County line in the vicinity of Peapack
24 Brook Water Shed?

25 A Yes. I can see it now and I just brought out the

1 same Map with the same content.

2 Q Let the record show that we are looking
3 at Exhibit P-19-3 in evidence which was used on the
4 plaintiff's case and which is a colored copy of the
5 1976 zoning Map.

6 Mr. Hultgren, do you have an opinion as to
7 whether this Ordinance follows the recommendations of
8 the General Plan with respect to zoning in the Peapack
9 Brook Water Shed south of the Borough down to the
10 Somerset County Line?

11 A Yes, it does basically. The exception would be
12 the areas just immediately towards Route 206, but if
13 we are talking about the areas around the old Peapack-
14 Gladstone Road and further easterly and northerly
15 towards Route 24, yes, the Zoning Map of '76 basically
16 follows the recommendations in the General Plan.

17 Q The zoning of Mr. Caputo's property--
18 firstly--first I will ask you, do you know where Mr.
19 Caputo's property is?

20 A Yes, I do. I have it outlined on my copy of
21 the Zoning Map, as a matter of fact.

22 Q Would you, for the benefit of the Court,
23 point to it on this Map?

24 A Certainly. We have the corner here of
25 Peapack-Gladstone Road and Fox Chase Road and the

1 property abuts Fox Chase Road up here towards Route 24
2 and then the other, shall we say, westerly boundary
3 follows for all practical purposes Peapack-Gladstone
4 Road. The property is then a rectangle based upon
5 those sides I indicated and those roads I indicated.
6 It falls within the designation of R-5 in its westerly
7 portions. The Caputo property.

8 Q Easterly.

9 A I am sorry. Easterly. And the western areas
10 up towards the intersection between the two local
11 roads is in R-2.

12 Q Do those two classifications, R-2 on
13 Mr. Caputo's property and R-5 on Mr. Caputo's property,
14 coincide roughly with the white and red areas on your
15 Map, D-40 for identification?

16 A Yes, they do. I have here on this Map a rough
17 green circle in the midst of the red here which
18 generally outlines the Caputo area. Actually, the
19 Peapack-Gladstone Road follows here as I am indicating
20 down here. It's difficult to see the difference between
21 the boundaries of the soil properties and the road
22 itself. Fox Chase Road is essentially along this line
23 where I am laying the pointer, so here we can see that
24 the bulk of the area towards the east, which is located
25 in the R-5 District, is generally red, meaning that we

1 do have severe limitations in terms of septic disposal,
2 while the area up towards Peepack-Gladstone Road is white
3 on this Map, meaning that we can tolerate somewhat
4 higher intensity usage at that point.

5 Q Is that the same scheme that is set forth
6 on the General Plan, Page 20, of the Master Plan?

7 A Yes, it is.

8 Q In your opinion is this Zoning Ordinance,
9 76-12, consistent with the Master Plan in that respect,
10 the zoning of the Caputo tract? A Yes, it is.

11 Q Now, you said a few minutes ago that you
12 would treat the location of a higher residential use,
13 such as M.D.R. differently.

14 A Yes, because a number of factors are coming
15 into play there with those areas. You cannot just
16 arbitrarily locate a medium density development just
17 in an area because of somewhat more favorable soil
18 conditions. You have to take into consideration also
19 the transportation picture and the potentials for
20 serving the area with various public and private
21 for that part services.

22 Q Now, did D-40 play any part at all for
23 the citing of the M.D.R. Zoning in the Master Plan or
24 M.D.R. areas?

25 A Oh, yes. You mean the soil?

1 Q Yes.

2 A Overlays here, if I may so--

3 Q Yes.

4 A Yes. It did play a part in that it confirmed
5 that our forebears when they established the Borough,
6 were aware of what they were doing. They were locating
7 the Borough not only where you had a road intersection
8 of a traditional pattern following the ridges and the
9 valleys, but they were also seemingly lacking or
10 definitely considering the conditions for construction.

11 Q Why? Tell us exactly why you say that.

12 A I am saying that because this soil overlay
13 indicates that the largest concentration of areas in
14 white are actually more or less covering the Borough
15 and its immediate surroundings.

16 Q All right. Now, what part did the soil
17 overlay, D-40, play in your selection of potential
18 areas for M.D.R. development in the Master Plan?

19 A I would check from a general standpoint the
20 suitability of the land for somewhat higher intensity
21 and found that there were several areas from a
22 general standpoint that were suitable for somewhat
23 higher intensity development.

24 Q And where are those located?

25 A They are located in this white area just south

1 of the Borough and continuing actually towards the
2 east here and south of the Borough.

3 Q Is that east or west?

4 A This would be east here--I am sorry--west here.
5 Then we have another area along 24 and south of the Borough
6 which also is favorable actually including some of the
7 areas here too.

8 Q Now, favorable for purposes of the soil
9 overlay is in white?

10 A That's correct.

11 Q Am I accurate?

12 A Yes, that's correct.

13 Q Comparing, if you would, the white areas
14 you just pointed to on D-40, the soil overlay, would
15 you look at P-19-B, the Zoning Map, and tell us if the
16 R.M. Zones of the '76 Zoning Map coincide or if they
17 do not coincide with the areas you pointed out on
18 D-40 and in the Master Plan?

19 MR. LINDEMAN: Your Honor, I object.

20 Much of the reference to D-40 for identification
21 is objectionable or perhaps should have been
22 objected to before but now the witness is going
23 to specify that particular parts of D-40 which
24 presumably, according to his testimony, were
25 satisfactory for higher density, are in fact the

1 areas that were zoned for high density
2 on the Zoning Map of 1976. All of that pre-
3 supposes that D-40 for identification is
4 admissible and whenever that event would have
5 come around I would have objected to it and
6 I do object to it and I certainly object to
7 any testimony coming in on the relationship of
8 what is white on D-40 to the R-M Zones on the
9 Zoning Map of 1976 because I think what that
10 does, that brings into evidence the things of
11 D-40.

12 THE COURT: Well, we are a long way
13 along that road. Mr. Ferguson?

14 MR. FERGUSON: I am not sure I under-
15 stand the objection but I will move D-40.

16 MR. LINDEMAN: I would like to ask
17 some questions about D-40.

18 MR. FERGUSON: Okay.

19 THE COURT: All right. Go ahead. It
20 would seem to me we are quite away along that
21 road, you know, you may be correct in your
22 objection, but--and I am not saying you are--
23 but you may be. You waited a long time--you
24 know, the door has been open and all that evidence
25 has come through and now you are saying close the

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door and go back and exclude it all.

MR. LINDEMAN: No, I don't think so.

THE COURT: Okay.

MR. LINDEMAN: The witness has said, he referred to a circle of the Caputo's property and all that is on the record is a circle. Without the document it is nothing.

THE COURT: Let's do this then--I am sitting here seeing it and I am writing down notes and I am seeing what I am seeing and I am hearing his testimony and I am comparing what he is saying to that Map that was admitted in your case, P-, whatever it is, 19. All right. Go ahead. You can voir dire him on the Map.

MR. LINDEMAN: All right.

BY MR. LINDEMAN:

Q Mr. Hultgren, D-40, of course, was done within this calendar year, was it not?

A I believe so.

Q 1977?

A Probably in the beginning of this year, yes.

Q Did you do it personally?

A Yes, I did.

Q Now, the Map has a lot of curving lines on it, numbers and designations of letters. Where does

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that come from?

A That comes from the source I indicated, the extension service source, U. S. Soil Conservation Extension Service.

Q Was it copied on to this piece of paper or what?

A This is the copy of their base Map for soil characteristics covering this particular area, Chester Township and Chester Borough, that is.

Q You mean the pieces of paper that D-40 is on is actually furnished to you by the Soil Conservation Service?

A It has been copied--xeroxed, copied from the original resource, yes.

Q Now, can you tell us what was that that it was copied from? Do you have those documents?

A A Soil Conservation Survey made by the Extension Service.

Q Was it from the Interim Report of the Soil Conservation Service for Morris County?

A That's correct.

Q Not the Final Report?

A Not the Final Report, no. It couldn't be.

Q Now, you have the Interim Report here, do you not?

A Yes.

1 Q Could you show us, please, some of
2 those pages that bear--that are photocopied for D-40?
3 Will you do that?

4 A Yes, sure. The photocopy of the Map is here in
5 evidence. And the tables, right?

6 Q Yes. Not the tables. I mean the Map.

7 A That is the Map.

8 Q You say that is a photocopy?

9 A That is a copy of the Map.

10 Q Did you not say D-40 is the photocopy?

11 A I don't have the original myself with me, no, but
12 this is a copy of the original.

13 Q It is a photocopy from the Map?

14 A Yes.

15 Q All right. I think we have the final
16 document in evidence. I do not know that I have the
17 number.

18 THE COURT: How about those Maps from
19 the inventory?

20 MR. LINDEMAN: Not from the inventory
21 but from the--yes.

22 A This is my copy but you can refer to it.

23 THE COURT: I am sorry. I did not mean
24 to interrupt.

25 MR. LINDEMAN: Soil Conservation--Soil

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Survey. Right.

Q Now, can you show us what pages they are?

A Yes, sure. Okay. Now, these final--this final copy of the survey includes a number of aerial photographs on which the various patterns that you are showing on my Map copies have.

Q We have been through this before so I think the Court and I understand this. Are you now saying that sheet 32 is one of the pages that was photocopied for the purpose of D-40?

A That's correct.

Q Can you bring it up here and see where that is? A Sure.

Q Would you just tell me generally where Page 32 would have been photocopied on D-40?

A Okay. This would be Section--I have here Page 32 is the section that basically covers to the north a line from the western section of the Borough and over towards Route 24 and then continuing further in about as far as Chester Township goes. That would be the northern boundary of this Map and the southern end of this Map, Number 32, would reach basically down to the southern section of Chester Township.

Q How, do you know by what process D-40 was photocopied?

1 A Xerox copy of the preliminary document.

2 Q Now, if that was a xerox, can you tell us,
3 please, how it is that the dark parts of P-32--not P-32--
4 Page 32 of the Soil Conservation Map does not appear
5 on the Map?

6 A Very simple. The copy that was made here on the
7 easel did not have--was not a map that had the soil
8 characteristics superimposed on the aerial photograph.
9 It was the bare soil designation.

10 Q Wasn't it this Page 32 itself?

11 A No, it was not the page.

12 Q Oh, I thought that is what we were
13 talking about. I want to know the page from which
14 D-40 was photocopied.

15 A Well, this is the final document and I have not--
16 I did not have it available to me. I had only the
17 preliminary document available to me. That preliminary
18 document has then been carried over into the final
19 study and is expressed on that Page 32 in as far as the
20 southern end of the Chester area is concerned.

21 Q I am trying to determine the accuracy
22 of your D-40 and you said that it was photocopied from
23 something. Was it not--it was not photocopied then
24 from a page that was just like Page 32?

25 A Let me put it this way: It was photocopied

1 from the same material that constitutes Page 32 in
2 that Report you are holding in your hand.

3 MR. LINDEMAN: I confess that I am
4 mystified.

5 Q There are other maps, are there not, then
6 that did not have the shaded areas and the photographic
7 features of the Soil Conservation Survey? Is that
8 correct?

9 A That is correct. What has happened is that you
10 have had a photographic method where you superimposed
11 the Map that I have a copy of here and the aerial
12 photograph on to each other, so you can see both of
13 them. It is a much easier way to relate to the existing
14 features and that is why they selected to do that in the
15 publication, but I had the basic material available to
16 me in as far as the soil characteristics would go.

17 Q Now, I take it that what you are saying
18 is that the squiggly lines and the circles that appear
19 in the Soil Conservation Survey--

20 A Correct.

21 Q --were on a separate Map?

22 A Right.

23 Q And then they were later superimposed on
24 to an aerial photograph?

25 A That is correct.

1 Q That is what you copied from?

2 A Right, so I got it, my information, directly
3 from one of the overlays that has been used here in
4 the publication.

5 Q And the Page 32 or Sheet 32 contains
6 exactly the same data on it as was contained on that--

7 A It is the same--

8 Q Excuse me.

9 A Sure.

10 Q --contained on that page from which the
11 photocopy was made?

12 A I have not studied this until this point now
13 in time. I cannot say if the letters are exactly the
14 same. The lettering system may have been carried
15 further for the publication. I do not know that. I
16 can only say that I had information that I received
17 from the same source, preliminary material. I was
18 using that material and the added implications of the
19 soil characteristics or soil properties.

20 Q The difficulty that I have, Mr. Hultgren,
21 is that on the soil survey in the center of all of
22 these jiggly lines are letter designations, such as
23 E.D.B. and P.A.C., P.N.B., things of that kind.

24 A All right.

25 Q Excuse me. None of that appears on your

1 map. In fact, what you have on your map are four
2 different numbers and then something, B-12, that is,
3 are shorter numbers under that. Can you explain how
4 that happened?

5 A Yes. The--obviously, and I am taking this now
6 directly as it comes along, the property names have
7 been abbreviated and brought on directly on to the
8 photographic map, while here we have certain letters
9 in the original preliminary material. We have the
10 soil name and the table and then the soil has been
11 given a letter which is not necessarily an abbreviation
12 of the soil name itself. We have, for instance, here,
13 looking at the table that belongs to this particular
14 material, that I received at the same time, we have
15 certain numbers, 1420, 1421, 1427 and 1429 assigned
16 to sources that are called Califon Gravelly Loam and if
17 I--no, I may not speculate--but my assumption is that
18 Califon has been abbreviated to C.A. or something of
19 that sort and put on the particular outlining in the
20 final publication, while on this map they are using
21 instead the figures 1420, etc., but the material is
22 the same.

23 The properties as I have identified, the soil
24 properties, I mean, they are the same. It is the same
25 source and it couldn't change by any means from the

1 point in time when I received it in '73, '74, until
2 the point when they published that which was in '76,
3 I believe.

4 Q Do you know if the document that is
5 D-40 for identification was available to you when
6 your pretrial discovery was taken?

7 A I have shown that to the attorney who was
8 questioning me.

9 Q Now, was it D-40 or was it the earlier
10 one?

11 A No. The earlier one has disappeared. This is
12 the one I did show to Mr. Ambrose.

13 Q And your depositions were taken in
14 February of 1977? A Right.

15 Q And you had that document with you at
16 that time? A I did, yes.

17 MR. FERGUSON: I believe the record
18 will show that it is marked.

19 THE COURT: It had a marking?

20 MR. FERGUSON: The lefthand margin.

21 THE COURT: That was referred to at a
22 prior point in his testimony, I think.

23 MR. LINDEMAN: F.T.H., yes. I see that.
24 Yes. All right.

25 THE WITNESS: P.T.H..

1 MR. LINDEMAN: Well, your Honor, this
2 is very difficult. There is no way really to
3 verify either the designations that are on D-40
4 or certainly the location of the Caputo property
5 that Mr. Maltgren made. I know that P.T.H.,
6 plaintiff--I do not know what "P" was--plaintiff,
7 was identified at the pretrial discovery, but
8 that isn't to say that this document is
9 necessarily the best evidence of what it
10 purports to demonstrate.

11 THE COURT: Well, are you finished?
12 I am sorry.

13 MR. LINDEMAN: No, I am not really
14 finished. I think that having the maps in the
15 Soil Conservation Survey in evidence, that
16 that really is a better indication of whatever
17 may be shown for the character of the soil,
18 but this map which purports to be a photocopy
19 and we cannot tell the source of the photocopying,
20 it makes it awfully conjectural; and
21 secondly, Mr. Maltgren's merely showing in a
22 circle what is the Caputo property I submit
23 is not a proper way to identify the location
24 of any parcel.

25 I object to D-40 because a proper

1 foundation for it cannot be laid and it is
2 hearsay, therefore, and is not the best
3 evidence of what it purports to show.

4 THE COURT: Well, I think that in
5 light of the testimony that the witness has
6 given to me concerning how he arrived at it,
7 its correlation with the S.C.S., the matter,
8 I feel, is admissable. You can explore to
9 show errors in it. That would be something
10 else for cross examination and wait, but I am
11 satisfied that the map on the basis of the
12 testimony given, how he arrived at it, how
13 these correlations are made, is--there has been
14 a sufficient foundation to indicate its
15 admissability, so I will allow it to be marked
16 in evidence. That would be D-40.

17 (The Map formerly marked as Exhibit D-40
18 for identification is received in evidence).

19 BY MR. FERGUSON:

20 Q I believe, Mr. Hultgren, I had asked
21 you to compare the white areas to the south of the
22 Borough on D-40 with the areas you recommended for
23 a higher intensity multi-family use in the Master Plan
24 and finally with the R.N.Zones on the '76 Zoning Map
25 and ask you what correlation, if any, there is between

1 those three areas and those three documents?

2 A Well, the soil overlay that we have now been
3 discussing did contribute or did constitute part of the
4 base for my recommendations both for the allocation of
5 more extensive R-3 areas in the area south of the
6 Borough and in terms of identifying areas that could
7 be used for possible medium density residential
8 development.

9 Q Have you looked at the Zoning Map, F-19-E,
10 at my request and have you determined whether the
11 R.M. Zones as set forth on that map correspond to the
12 white areas you pointed to south?

13 A They do correspond and correspond very well to
14 the suggestions in the Master Plan.

15 Q Now, you told us that D-40, the soil
16 overlay, was not the sole criteria for your
17 recommendations as to the location for the sites for
18 M.D.R. Zones. Would you tell us what other criteria
19 you used and why?

20 A Well, the first thing that comes to mind--

21 Q Well, first, is there any statement in
22 the Master Plan pointing out the criteria you used?

23 A I believe so. On Page number 12, the last
24 paragraphs and I would say the very last paragraph,
25 there is a statement indicating why the area for medium

1 residential were selected. We indicated there and it
2 was based on my recommendations then that we have
3 favorable traffic access. We have sudden compability
4 in terms of the land uses and the reason for this, of
5 course, is that the Borough constitutes a major
6 conglomeration of residential and non-residential
7 uses in the Chesters which makes it compatible with a
8 slightly higher intensity useage, and also, as it says
9 in the Master Plan, we have somewhat less sensitive
10 natural resources, meaning that the soil conditions
11 are reasonably favorable and that there is a potential
12 to avoid pollution in these areas.

13 There is also an important statement in the
14 Master Plan as to the feasibility of providing sewerage
15 systems in the future. It is obvious that when and
16 if you come to the conclusion that the situation has
17 gotten out of hand and you do have to introduce a
18 system that is better in terms of pollution mitigation,
19 then the septic disposal system, then you have to try
20 to get as large a unit or as large a conglomeration
21 as possible to make such a utility, a sewerage treatment
22 system and collection system, economically feasible and
23 based upon the fact that we have or had already at the
24 time an area with a slightly higher intensity of use
25 in the center of the Chesters being the Borough and

1 at the intersection of the only major arterial roads,
2 that led me to recommend that that was just the place
3 to locate anything that would be of higher than low
4 density development. It could then have a better
5 potential to be handled in the future when and if a
6 pollution problem would occur.

7 THE COURT: Excuse me just a minute.

8 (Short recess)

9 THE COURT: Go ahead.

10 Q With respect to traffic access, what
11 considerations did you consider relevant in making
12 that recommendation?

13 A Well, the relevant situation was the intersection
14 between the two major arterial highways, Route 24 and
15 206, where actually when you look at the Master Plan
16 you will see--or the Map, that is--you will see that I
17 was trying to put most of this higher intensity use
18 around Route 206.

19 Q Are you referring to the Map on Page 20?

20 A 20. That's correct.

21 Q The General Plan?

22 A Trying to center those areas as much as possible
23 so that they would get access to Route 206, which I
24 deem to be the road that will be the most suitable for--
25 if not a tremendous increase in traffic, at least

1 improvements to carry more traffic.

2 Q Why did you deem good traffic access on
3 206 to be significant?

4 A Basically, because it is a higher standard road
5 facility than 24 and it has a wider right of way. It's
6 two lanes as well as 24, but 206 has much higher
7 standards in terms of the curves and the profiles.
8 Basically, it is a much better standard road. It's
9 also more removed from the development as it was at the
10 time, as development has occurred more around Route 24
11 than along 206, at least in this section of the county.

12 Q Why is it better to have it more removed
13 from the development around Route 24?

14 A Well, it's both--I am saying that both for the
15 fact that 206 can take more traffic and can be improved
16 to carry more traffic. You can also say that 24 is not
17 suitable for any additional traffic. It's--it already
18 carries a lot of traffic and one should try to avoid
19 to put as much as possible, to put additional traffic
20 on that road because it's more difficult, more expensive,
21 difficult engineering, from an engineering standpoint and
22 difficult from a local political standpoint, expensive in
23 terms of money to spend, to improve 24.

24 Q What is--

25 THE COURT: Could I ask a question?

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MR. FERGUSON: Yes.

BY THE COURT:

Q Are you talking about remote from--are you talking remote from 206 on 24--maybe the other way around? If an area is within a thousand to twelve hundred feet of Route 206 and it is off 24, is that an area you would exclude because it is not close enough to 206?

A No, not necessarily, because you can easily get to 206 from 24, yes.

THE COURT: All right, fine.

A (Cmt'd) But it is the traffic on 24 towards Morristown that I feel is really constraining the road at this time and was at that time too.

BY MR. FERGUSON:

Q You mentioned the element of cost when you were talking about traffic. What kind of cost are we talking about there? What kind of cost did you refer to?

A Well, I am talking about the actual cost for the construction of widenings and additional pavement and so forth. The acquisition of widening is one other factor. The total cost for a road improvement, of course, is generally at least less if you have a wider right of way and if you have a higher standard on the

1 road from the beginning and also if you are avoiding
2 or you should avoid areas or highway corridors which
3 have been already developed because of the fact that
4 politically it's becoming increasingly impossible to
5 conduct such road widenings in areas that are
6 developed because of resistance from local groups to
7 such improvements.

8 THE COURT: Let me ask you a question.

9 BY THE COURT:

10 Q Isn't Route 24 a three rod road? In
11 other words, isn't it 66 feet wide as it was laid out
12 by the Commissioners appointed back in the early
13 1800's or late 1700's? That is a fact of record. I am
14 sure it is.

15 A I think I have that here.

16 MR. FERGUSON: Three rod road?

17 THE COURT: Three rod road. 66 feet wide.

18 I think it is that. I know it is 66 feet. I am
19 not sure what the rods are. It might be two
20 rods or six rods. I know it is 66 feet wide.

21 A(Cont'd) I can confirm that. We have 66 feet for most
22 of the section in Chester Township.

23 Q Excuse me. Wouldn't 66 feet wide be
24 wide enough to accommodate and so you would not have
25 any acquisition costs or improvements along there and I

1 recognize that there are some houses in the street of
2 Route 24, in the road bed. I recognize that, but
3 given the fact that it is that kind of a road you
4 would not have acquisition costs.

5 A Well, yes and no. Sixty-six feet is really not
6 quite adequate for a four lane highway with shoulders.
7 206 correspondingly in the sections of Chester would be
8 80 feet and that immediately gives you much better
9 margin for the road itself. The driveway itself
10 without any divider actually for a four lane road
11 would be 43 feet.

12 Q What would 66 feet give you? That would
13 give you at least three.

14 A Yes. Then you also want to dualize the road
15 when you get into a four lane situation. You prefer
16 to do that. It is--as it is now, we are doing in
17 several places now in Morris County dualization, which
18 is very expensive and there has been plans to dualize
19 Route 206 in these sections of the county.

20 Q Isn't Route 206 dualized at the
21 intersection coming from, let's say, the north and going
22 south? There are three lanes at that intersection
23 both going north and going south, depending on the
24 traffic coming from the north has two lanes going south
25 and the traffic from the south going north has two

1 lanes so you have a turning lane--it is only the
2 opposite lane that narrows down after a while. Isn't
3 that correct?

4 A Yes, that's correct. That's correct.

5 Q Doesn't Route 24 at that intersection also have
6 the same configuration? It has four lanes across
7 going east and four lanes across going west at the
8 intersection.

9 A Yes, at particular intersections you have that
10 but the general condition of 24 is that of a two lane
11 road with very narrow shoulders and not only that,
12 your curves have a much smaller turning radius than
13 206, so this is where the acquisition of new land
14 would come into play, that you would have to more or
15 less, if I may say so, straighten out the road and
16 provide a modified alignment in order to raise it to
17 the standards that we are use to on such as a highway
18 like 206. This makes it expensive for 24.

19 Q Okay.

20 A In terms of profile that has to do with the hills
21 and valleys, so to speak, of the road itself and we
22 also there have very poor sight, distances on 24, at
23 several points and this is rather expensive to improve
24 because you basically have to either fill the valley
25 or cut the road.

1 THE COURT: I have a Grand Jury coming
2 in. Let's go for about five.

3 (Short recess)

4 BY MR. FERGUSON:

5 Q In your recommendation as to the areas
6 for M.D.R., residential zoning, did the Planning Board
7 and yourself consider spray irrigation as a possible
8 method of removal of sanitary sewerage effluent?

9 A Yes, we did discuss that.

10 Q And did you make any recommendations to
11 the Planning Board? If so, what were they and were
12 they followed out in the Master Plan?

13 A Yes. The recommendations are connected with
14 that. For spray irrigation you need relatively large
15 properties to be able to accomplish that system of the
16 disposal.

17 Q Why do you say that?

18 A Well, the areas that you use for the disposal
19 through spray irrigation have to be large. There is
20 a certain number of square feet necessary per person
21 or per family and as it comes out and we can certainly
22 see that in the proposal at hand.

23 Q Don't get into the proposal at hand.
24 Confine yourself to your discussions with the Planning
25 Board and what recommendations you made.

1 A All right. During the discussions of this
2 particular subject we had the Township Engineer,
3 Mr. Fox, with us and he could and did provide the
4 input of engineering into the discussion. My
5 recommendations were to select for R.M. purposes or for
6 medium density purposes areas that would cover large
7 lot ownerships, so that a clustering and spray irrigation
8 could be implemented. You cannot spray irrigate on
9 small properties where most of the area will be basically
10 occupied by the buildings themselves. You have to have
11 a large enough property to cluster the development and
12 set aside land sufficiently large for the
13 disposal.

14 Q How does that tie in with your
15 recommendation along the south side of the Borough?

16 A As the General Plan indicates in general on
17 Page 20, the areas, we did check jointly, the Planning
18 Board and myself, that we were covering areas where it
19 was indeed feasible to use spray irrigation system if
20 possible, if necessary, and where also we had enough
21 of a size of the properties to use the clustering
22 concept.

23 THE COURT: Why don't we stop here.

24 MR. FERGUSON: All right.

25 THE COURT: Make it ten after.

(Short recess)

1 THE COURT: Okay. I am told that
2 someone has scheduled an appointment for me
3 at four o'clock. I am sorry for that last
4 off the record discussion.

5 MR. FERGUSON: Your Honor, I will
6 just make a statement now. I do not propose
7 to go through the rest of the Master Plan
8 line by line, paragraph by paragraph, with
9 this witness. The Master Plan is in evidence.
10 This witness prepared it. He is here to answer
11 any questions which Mr. Lindeman or the Court
12 may have about its reasonableness as a
13 foundation for the Zoning Ordinance but I do
14 not want to take the time of the Court and all
15 the attorneys by plodding through it line by line.

16 THE COURT: Okay.

17 BY MR. FERGUSON:

18 Q Mr. Hultgren, did you make any
19 recommendations concerning clustering to the Planning
20 Board? A Yes, I did.

21 Q Are those recommendations, were they
22 accepted and are they reflected in the Master Plan?

23 A They boil down to a recommendation in the Master
24 Plan to consider clustering as much as possible for
25 very good reasons.

1 Q What were the reasons--well, what were
2 the reasons that you gave to the Planning Board?

3 A The reasons I gave to the Planning Board was
4 that a clustering concept will preserve environmental
5 resources by setting aside those areas that are either
6 sensitive as we have been talking about earlier today
7 in terms of pollution or have environmentally
8 character in terms of being wooded or creating
9 esthetic resources setting aside such an area for the
10 future and still get the development done on a
11 particular site. This is the major event of the
12 clustering concept and it also has major cost
13 implications.

14 A clustering is in general now a more economic
15 way of providing a number of dwelling units in a
16 particular area. You are shortening your distances
17 for roads, reducing the amount of pavement--pavement,
18 in other words. You are shortening your utility pipes
19 and you are generally getting into less expenditure in
20 site development costs if you are clustering. These
21 have implications both for the private person who
22 would be involved in developing a particular site as
23 well as for the public where, hopefully, if you carry
24 it through as a general pattern, the public expenditures
25 would be reduced somewhat by the use--

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Q What do you mean by public expenditures?

A That would be the cost to spend--the dollars to spend for the various utilities primarily.

Q Like what?

A Like water and sewer facilities and also transportation, of course, local roads.

Q During the recess I showed you Exhibit P-9 in evidence, which is a Site Plan prepared by John Rakos, which he testified, I will state to you, was prepared on the basis of the present Zoning Ordinance with two acre and five acre zoning on the Caputo property.

Can you tell by looking at that whether the cluster zoning provisions of the '76 Ordinance were in fact used in the preparation of that Site Plan?

A No. The clustering provision has not been used as far as I can see.

Q All right. Do you consider--withdraw that.

In your opinion is it necessary to use the clustering provision of the Chester Township Zoning Ordinance in order to determine the least cost at which a single family detached residential development could be built on the two and five acre Caputo property?

MR. LINDEMAN: I object, your Honor.

I think any answer to that question would be

1 irrelevant because whether or not the
2 clustering would result in least cost housing
3 for single family dwellings is hardly in issue
4 in this case. Besides, there are so many other
5 factors obviously that would go into the
6 determination of constructing single family
7 dwellings; the cost, least cost, I think has
8 to be irrelevant and I make that objection
9 conscious of the implications of Munt Laurel.
10 When we are talking about five acre zones, we
11 are not talking about--we are talking about a
12 different thing when we say a house which is
13 related to five acres should be at least a
14 possible cost.

15 MR. FERGUSON: I am not asking this
16 question to get at the Munt Laurel issues. I
17 am asking it only to impeach the inference or
18 the testimony of any of the prior witnesses
19 on the plaintiff's case who testified that it
20 would be so expensive to develop it on the
21 five acre, two acre, Site Plan as set forth
22 here that it amounts to a confiscation or it
23 amounts to unreasonableness of the Ordinance.

24 THE COURT: Okay. Would you ask the
25 question again then?

Hiltgren - direct

1 (The Court Reporter reads the pending question).

2 THE COURT: I will allow it.

3 MR. LINDEMAN: May I just add one
4 other dimension into this question, your Honor?
5 I think that it must be related to the Zoning
6 Ordinance, not to clustering in the abstract,
7 because if we are going to say that
8 development should be cheaper or not, if there
9 were clustering there ought to be some standard.

10 THE COURT: My recollection, if he is
11 offering it for the purpose that he is indicating,
12 my recollection is that your witnesses testified
13 that it would not make any difference if you
14 clustered or you used his Plan. There would be
15 no least cost concept involved. It would be
16 as expensive to cluster as this.

17 MR. LINDEMAN: That's right.

18 THE COURT: And I think he has got a
19 right to ask that expert that question.

20 MR. LINDEMAN: If your Honor please,
21 though, it was, I remember it very clearly, that
22 that testimony was based upon the 7612
23 Ordinance which speaks of clustering subject to
24 certain particular terms and conditions.

25 THE COURT: Well, this is the 7612 Zoning

1 Ordinance. P-9. That Plan is based upon--

2 MR. LINDEMAN: Yes, but I mean the
3 question--the question is not. I think the
4 question is if there were clustering, could it
5 be done more cheaply?

6 THE COURT: Well, how about can it be
7 built on two and five acres as reflected in
8 7612 ?

9 MR. FERGUSON: As reflected in 7612, yes.

10 THE COURT: I see what you mean. Okay.

11 A Based upon my experience in site design I would
12 definitely say that there are more economic ways to
13 locate the buildings in a site of this type by the use
14 of a clustering concept. Now, that may be too general
15 an answer but that is all I can do at this time because
16 I do not recollect exactly the details and the criteria
17 as stated in the 76 zoning.

18 Q All I wanted was the general statement
19 and that's all the questioning I have on that particular
20 area.

21 Mr. Hultgren, do you have an opinion as to the
22 relationship between the cost of land and the density
23 that the zoning on a particular piece of land allowed?

24 A Yes, I know about the inter-relationship between
25 the existing zoning and what it provides for and the cost

1 of a particular lot in an area.

2 Q Would you tell us what that opinion is
3 of that inter-relationship?

4 A Assuming a certain type of stability in the
5 zoning, you can say that the price or the cost for a
6 lot in an area reflects what it costs to buy the lot
7 and build a house, a dwelling unit on it, does not
8 necessarily relate to the cost per square acre--per
9 acre, I am sorry, per square foot, per acre.

10 In other words, an area with a low density zoning
11 does not have double the price--let me turn around--half
12 the price per acre than a double density area has.
13 The cost for a lot to build one house in an R-2 or an
14 R-5 area is not two and a half times the R-2 area in the
15 R-5 area.

16 In other words, so the construction of the
17 building itself includes a certain expenditure for the
18 builder and the land costs are basically in balance
19 with the cost for the building itself.

20 Now, in general, you can say that the pattern
21 is that the more density of the R-5 may be more
22 attractive to the general public that can afford to buy
23 lots in an area. So that the price per acre is still
24 relatively high in an R-5 area as compared with an R-2
25 area.

1 Q What happens if the land is rezoned for
2 M.D.R. or multi-family?

3 A Okay. If you rezone the area, that is where all
4 your cost considerations are basically void.

5 Q Why?

6 A Because you have--you have an established price
7 attached to the properties in a particular area based
8 upon the view that you can build one house on one
9 particular lot size as indicated in the zoning
10 Ordinance. If you all of a sudden change to permit
11 two, three, five, six, whatever the case may be,
12 instead of one unit per acre, would then benefit
13 from the--in that respect, relatively low value that
14 you would have per unit in the higher density
15 development. If you introduce the higher intensity
16 development in an area over a period of time, your
17 land cost will increase to become compatible with the
18 changed zoning, but at the moment when you are asking
19 for a change or a particular property owner may be
20 asking for a change, there is no reasonable rational
21 relationship between the price per lot in the higher
22 density development and the price in general per acre
23 in a particular area.

24 Q Is it correct to say that as a result of
25 a rezoning from low density residential to multi-family

1 there is a one time increase in the value of the land?

2 A Yes, that's correct. That's what happens.

3 Q Mr. Hultgren, with respect to the
4 preparation of the Master Plan, I call to your attention
5 --well, I will ask you whether Chester Township has any
6 significant areas of open public space?

7 A Oh, yes, very significant such areas.

8 Q Would you tell us what they are?

9 A Well, the major one would be in the Black River
10 area. It's called the Black River Fish and Wildlife
11 Management area and it includes major sections of the
12 northern parts of Chester Township. I think if we
13 make reference to the Master Plan, Page 20, again, we
14 will be able to see the extent of that area. It's the
15 area indicated with the pattern that resembles viewed
16 from above and covering there again the north, northern
17 to eastern areas of the Township. It's a very large
18 attractive land which is set aside for hiking, fishing,
19 not for any extensive recreational activities of that
20 type.

21 Q Go ahead.

22 A Yes. We also have among the other major
23 portions, we can follow Black River further down towards
24 the south and west and we will eventually reach the
25 Hacklebarney State Park, but in the path down toward

1 Necklebarney State Park on the western border of the
2 Township in its southern sections then, we also have
3 along that path, we have several county open space
4 ownerships. Indeed, we have also a number of Township
5 open space sections such as the Grubb property in
6 sections that are just south of the Borough, somewhat
7 westerly. I see that on the General Plan Map and,
8 again, we have an open space parcel in, I would say,
9 public or semi-public ownership which would be the
10 Rutgers property at the very southern boundary of
11 Chester Township and, again, in this western section,
12 west of 206.

13 Q What is this?

14 A On Fox Chase.

15 Q What is the one on Fox Chase?

16 A Yes, on Fox Chase, this is Mount Paul Memorial.
17 That is a county open space area, also basically for
18 not too intensive activities.

19 Q Now, what role, if any, did the existence
20 of these open public space areas play in the Planning
21 Board's consideration of the adjacent zoning, the
22 zoning around these areas and tell us what considerations
23 went into it, what your recommendation was and what
24 the Planning Board did in the Master Plan?

25 A My recommendations to the Planning Board were that

1 these areas are of regional importance. They are
2 state and federally purchased or managed areas.
3 They do have--they are of regional importance. Also,
4 the County ones, of course, are of County importance.
5 Otherwise they would not have been purchased in the
6 first place or accepted as gifts. The Township, I
7 recommended, has a responsibility to protect the
8 open space areas within the border of the Township
9 itself.

10 Q Did you recommend to the Planning Board
11 any strategies or mechanisms to give that protection?

12 A Yes. I recommended that the areas which are
13 directly visible or in direct--or directly adjacent
14 to the open space areas be monitored very carefully
15 in terms of the densities and the impact those areas
16 will have on the public areas. It is also important to
17 remember that what you see from those open space areas,
18 now-a-days is basically something that has a very rural
19 and wooded character. You can see, for instance, from
20 the Black River, Wildlife Management area, a number of
21 wooded areas opposite Black River to the south of
22 Black River, that is, some hill tops located between
23 South Road and the Dover-Chester Road and it was also
24 my recommendation to the Planning Board that not only
25 would we consider to go easy on the areas adjacent

1 to the public land but we would also have to consider
2 areas or features, that is, such as hill tops, that
3 would be located maybe away from or at least not
4 contiguous with the public land for the purpose of
5 not having an impact on the public land and whoever
6 visits the public land.

7 Q Are you talking about visual impact?

8 A Yes. I am talking about visual impact, yes.

9 Q And when you say "go easy" what do you
10 mean?

11 A What I meant was basically to make sure that
12 the character, the environmental character, as you
13 see it and experience it with all your senses really,
14 hearing, meaning that we want to have a wilderness
15 feeling in those open space areas, not to have any
16 noise over the--of the urban type penetrating the urban
17 areas. Of course, we want to control the land
18 water pollution. We want to preserve the visual
19 character which is very rural at this time and make
20 sure that it doesn't change radically from what it is
21 at this time.

22 Q Did you discuss with the Planning Board
23 the potential for small lot zoning in Chester Township
24 and I define small lot zoning to be a quarter acre
25 or less?

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A Yes we did discuss small lot zoning.

Q Is there any provision in the Master Plan for small lot zoning?

A Well, there is no provision in the Master Plan, even though the Master Plan may not spell out directly the exact number of dwelling units per acre. There is an indication that the Master Plan only assumes higher intensity use or some higher density use in certain selected areas which--in the medium density areas.

Q Why is there no small lot zoning recommended in the Master Plan?

A Because the land is basically not suitable for such development.

Q In what way is it not suitable?

A The concern or protection of water resources, preservation of the character of the Township, the wooded rural wilderness character and the pollution of the water resources.

Q Are you basically referring to septic tank limitation?

A Yes. Yes. The limitations we have indicated.

Q Would your opinion change if they had public sewer collection facility?

A The particular objection against small lot zoning that we have based upon, if I may say so, the

1 soil overlay or the soil conditions would more or
2 less disappear, assuming that we can get sufficient
3 treatment of the wastes not to create the pollution
4 anyway. Then, other factors, of course, are coming
5 into play there which have to do with the provisional
6 services facilities, utilities, the cost for them.
7 The private cost for them as well and access to
8 traffic, the needed facilities of other types:
9 protection, fire, police, and so forth.

10 Q In other words, the standard planning
11 considerations but without the soil overlay problems
12 as you characterize them? I will withdraw the question.

13 Do you have a copy of the New Jersey State
14 Development Guide with you this afternoon?

15 A I believe so. I think I saw it here.

16 MR. FERGUSON: May I have that marked
17 for identification?

18 (The document referred to is marked as
19 Exhibit D-42 for identification).

20 Q Would you tell us what D-42 for
21 identification is?

22 A This is the New Jersey State Development Guide
23 Plan prepared by the Bureau of Statewide Planning and
24 published January 1977.

25 Q Do you know what the Bureau of Statewide

1 Planning is?

2 A Yes. It is the agency within the State--the
3 governmental agency of the State that have responsibility
4 for planning on a statewide basis.

5 MR. LINDEMAN: For what?

6 THE COURT: Planning.

7 Q Do you know why this Plan was
8 promulgated or does that document tell you why it was
9 promulgated?

10 A It was made to provide a framework for certain
11 decisions that have to be made statewide and regionally
12 on development where it goes and how much.

13 Q Is there a Map as part of that report?

14 A Yes, there is. Following Page 2--I am sorry--
15 following Page 1 we have a Map that indicates--it is
16 called Concept Map and it indicates--identifies certain
17 areas called as follows:

18 growth areas, agricultural areas, open space
19 and limited growth areas.

20 Q Can you identify on that Map Chester
21 Township? A Yes, I can.

22 Q In what area is Chester Township located?

23 A Basically in the limited growth areas and
24 agricultural areas.

25 Q And the--

1 A Limited growth and agricultural areas, most of
2 it in the limited growth areas actually.

3 Q All right. Is any of it in the growth
4 area?

5 A None as far as I can see.

6 Q Is there a growth area point above and
7 below Chester Township as it were?

8 A Yes, there is one in Somerset County and there
9 is another one coming up the Morristown-Dover corridor.

10 Q All right. Do you know as a Planner why
11 those areas go above and below Chester Township?

12 A Yes. That is the development pattern that has
13 existed for a large number of years at this time.

14 Q Can you tell us briefly why that
15 development pattern went north and south of Chester
16 Township?

17 A Basically because of the availability of
18 communications--easily communications; I would say,
19 availability of land that could be developed with
20 ease as well.

21 Q When you say "communications" you are
22 talking about roads?

23 A Yes, roads and railroads. As a matter of fact
24 those development areas, growth areas, are basically
25 following some of the existing railroad corridors for

1 passenger traffic and, of course, following the major
2 roads which we had had historically back as far as you
3 want to go, as a matter of fact, in the County.

4 Q Is this document a Planning Guide
5 published by the State to which Professional Planners
6 such as yourself would have reference in evaluating the
7 planning of any particular municipality in the State?

8 A That document would be of importance to be
9 aware of, yes, as general.

10 Q I take it you would stop someplace short
11 of everything it says?

12 A Yes. As I say it is very general. I hesitate
13 to apply it to detail planning. You really cannot do
14 that. You can certainly do it on a regional basis and
15 I think it is clear that the State, as expressed in that
16 particular Map, has not foreseen that Chester is
17 located in any of the growth corridors. On the
18 contrary, they have excluded it from the growth--those
19 growth corridors.

20 MR. FERGUSON: I have D-42 with the
21 exception of the red underlining and I will
22 undertake to procure a clean copy of D-42 to be
23 officially marked into evidence.

24 MR. LINDEMAN: I surely object to it,
25 your Honor, and I am not even sure--the main

1 reason is that I never saw this before and
2 I think this was not part of Mr. Hultgren's
3 testimony that came in a month after--well,
4 it was a long time before January '77. He was
5 also examined on March 9, 1977.

6 MR. FERGUSON: I concede that it was
7 not. I want this to be one of those documents
8 to which--of which the Court is aware. It is
9 my position that it is a Regional Planning
10 document which is an appropriate reference
11 source. It is put out by the Department of
12 Community Affairs. I am not sure whether I
13 did reference it in the trial brief. I cannot
14 say. This witness did not testify about it.

15 THE COURT: Since it is after four, I
16 will give you a chance to look at it through
17 the night. If you will bring it back in the
18 morning, we will deal with it the first thing
19 in the morning.

20 MR. FERGUSON: If it is inappropriate
21 with this witness, I think it is appropriate.
22 I will present it through Mr. Kasler or one
23 of the other witnesses who is going to come on.

24 THE COURT: Let's stop for now.

25 MR. FERGUSON: I anticipate about

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another half hour of Mr. Hultgren and then I will be through.

MR. LINDEMAN: I may not be terribly long. I mean, you know, it might not be more than an hour.

MR. FERGUSON: I will have Mr. Boorman here about eleven.

THE COURT: All right. Thank you, gentlemen.

(Court adjourned to December 14, 1977).

1
2 JOSEPH CAPUTO AND)
ALDO CAPUTO,)

3 Plaintiffs,)

4 v.)

STENOGRAPHIC TRANSCRIPT OF
TRIAL

5 CHESTER TOWNSHIP,)

6 Defendant.)

7
8 Place: Morris County Court House
Morristown, New Jersey 07960

9 Date: December 14, 1977

10
11 BEFORE:

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

13
14 TRANSCRIPT ORDERED BY:

15 Philip Lindeman II, Esq.

16 APPEARANCES:

17 Messrs. Hallring, Lindeman, Lenden & Siegal,
18 By: Philip Lindeman, II, Esq., Attorney for the
Plaintiffs.

19 Messrs. Mc Carter & English
20 By: Alfred L. Ferguson, Esq., Attorney for the
Defendant.

21 James Hillas, Esq.
22 By: Forrest R. Goodrum, Esq.

23 Philip A. Fishman
24 Official Court Reporter
25

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MR. FERGUSON: Good morning,
your Honor.

THE COURT: How are you?

MR. LINDEMAN: Good morning, Judge.

MR. FERGUSON: I would move the
admission of D-42 for the reasons we stated
yesterday.

THE COURT: Okay.

MR. LINDEMAN: Your Honor, I object
to this document for a number of reasons. First,
this is a document which has not been presented
to us prior to the proceeding today and while I
have not generally stood on ceremony for the
reasons again that I have stated before to the
Court, on any question having to do with late
presentation of documents, I think this is one
where I take a different position.

The last page of this Guide states for
more information one can contact a Mr. Stensfield
who is the Chief of the Section or Mr. Roger
Oague who is the Section Supervisor. I think
if we had an opportunity to discuss this thing
in some detail either with either of those
gentlemen or anyone else in the D.C.A., I would--

1 who prepared this document, we might have
2 some information that could be helpful to us.
3 The thing, however, that bothers me and which
4 I think constitutes a reason for the rejection
5 of the document is the testimony by
6 Mr. Hultgren as to the place of Chester
7 Township on this Map. The fact that there is
8 some kind of a corridor which Chester finds
9 itself in so that north and south of that
10 corridor there may be development but in the
11 corridor there is no development. This is, I
12 submit, a fairly rough Map. I looked at a Map
13 last night of the State of New Jersey. I was
14 unable to pinpoint where Chester could be.

15 THE COURT: He already testified to that.
16 That is already in the record. I am not going
17 to take that out of the record.

18 MR. LINDEMAN: That may be, your
19 Honor, but the document is not in evidence.

20 THE COURT: All right, but he has
21 testified to it so you cannot change that.

22 MR. LINDEMAN: Well, I think it could
23 be subject to striking to. I have not had--
24 even had a chance to look at this thing or
25 make any analysis of it. This is, I think, a

1 case of fairness.

2 THE COURT: Yes, you know, talking
3 fairness, I think that in many instances when
4 a question is asked and an answer is given and
5 then nothing--there are no objections to the
6 questions, that you have to live with the
7 answer. I am not inclined to strike the answer at
8 some later date, whatever the result of the
9 answer good or bad for the questionnaire or the
10 opponent. With respect to this, if you need
11 some time to look into it, I would have no
12 problem with allowing you the time to look
13 into it. I do not know why it has to be
14 admitted. He already testified extensively from
15 it to corroborate his testimony, Mr. Ferguson.

16 MR. FERGUSON: Well, I had in mind,
17 your Honor, having it in the record for two
18 purposes. One is to show the regional planning
19 context within which all responsible Planners
20 in New Jersey must operate. They are either
21 rejected or accepted but it is there and the
22 testimony is that this kind of document is
23 what all Planners are aware of and the purpose
24 of this organization--well, the purpose of the
25 State Planning Division to promulgate this kind

1 of guide.

2 THE COURT: Okay. That is all in the
3 record of the testimony.

4 MR. FERGUSON: There may be other
5 things in the document itself which may become
6 relevant later on. I have particular reference
7 to what is going on now in Chester Township which
8 is the planning process. We we have an
9 amended Ordinance to any significant degree,
10 I would like not to have to go back and bring a
11 witness back to put in another document to key
12 in to whatever may happen. I just do not know.
13 I think it would be salutary to have the
14 documents in and available.

15 THE COURT: Well, I do not deal in
16 anticipations. I have to deal in what is
17 before me at the present time.

18 In light of the fact that Mr. Hultgren
19 has testified concerning--the answers are in,
20 his construction of it. I see no reason why it
21 has to be admitted into evidence at this time,
22 but if the objection is procedural, as Mr.
23 Lindeman has suggested, that he did not see a
24 copy of it, however, I am not about to go back
25 Mr. Lindeman and strike out what he has already

1 said because I think you had the right and you
2 should have exercised your right to object
3 at the time a question was asked of him.

4 Not having done so, I think--I do not
5 think we can play any roulette on the answers
6 and so I am going to say this:

7 All right. I will sustain your objection
8 to the admissibility of the document. However,
9 as to what he said testifying, I will leave that
10 stand.

11 MR. LINDEMAN: If your Honor please,
12 on that question, the ruling, of course, will
13 stand on it but just by way of this explanation
14 of our position, if we are to object to every
15 point, every question, when we cannot predict
16 what a witness is going to say, the character of
17 this trial, I think, would change very
18 dramatically. I dare say it is not in the
19 interests either of the Court or of counsel that
20 we really be called upon to object to every
21 question when we cannot possibly know what the
22 importance of it is going to be.

23 The witness, in my recollection,
24 volunteered from whatever the question was. I
25 forgot what it was at this time. It did have

1 to do with the location of Chester on the Map
2 but what he would say about the corridor and
3 the fact that the growth is north and south
4 of it, I do not see how I could possibly have
5 anticipated that, especially not even knowing
6 anything about the documents. So, that is the
7 reason why I say in this kind of a case I
8 think the testimony is improper.

9 THE COURT: Let me just say this on
10 that point:

11 I would agree with you perhaps as to
12 one question, but there was more than one
13 question. My notes reflect that there are
14 maybe four or five or six questions, maybe ten
15 questions that were asked yesterday late in the
16 afternoon starting first with, "Have you a copy
17 of the New Jersey State Development Guide" after
18 there was reference to it and the response was
19 "Yes" and then it was marked for identification
20 and he asked what was it, who produced it, and
21 he got information on that and then asked,
22 why it was promulgated, and then the response was
23 to that. Then they started referring to
24 specific questions.

25 It would seem to me while, yes, it does

1 facilitate the trial in not objecting to
2 every question, when there are a half dozen
3 questions asked about a document which you have
4 not heard about and which is the basis for your
5 objection here today, then I think it becomes
6 incumbent at that point to say, "Okay, I object"
7 but there has never been any closure on objecting
8 here and it has never been suggested that
9 there is one and you have objected as has
10 Mr. Ferguson when documents or other items
11 have been offered sometimes after we have gotten
12 a feeling of what the document is being offered
13 for.

14 So, I do not think it is fair to suggest
15 to me to not have objected is--and the reason
16 for it is because it would interrupt the trial.
17 I think once you have one question or two
18 questions--I agree that perhaps no objection is
19 necessary with one question or two questions,
20 but when you get all the questions you had
21 yesterday and particularly what the document was,
22 you knew then you had not seen it and I think
23 then would have been the time to object, not
24 after the questions were asked.

25 MR. LINDEMAN: Your Honor, I am not

1 suggesting that there has been any limitation
2 of counsel in the procedure of the trial.
3 None at all.

4 THE COURT: I understand what you
5 are saying, Mr. Lindeman. I am not trying to
6 defend my position. I am trying to explain it
7 on the record that your position is, well, I
8 won't object to every question. Well, this
9 was not a situation of every question as I
10 understand your position. This was a series.
11 I don't know, there must have been six questions
12 not--asked on what the document was about.

13 MR. LINDEMAN: That's right.

14 THE COURT: At that point you should
15 have said something if you were going to object
16 on the fact that you did not get it in
17 discovery, not after all the answers are in
18 with respect to the interpretation of the
19 document. Then I think it is too late. Then
20 I think you have dropped the guard that you are
21 provided with for protection and it is beaten
22 down, what have you, and then you cannot come
23 back and say: Well, I move to strike on the
24 basis that I never got it during discovery.

25 MR. LINDEMAN: My recollection, your

1 Honor, of the preliminary questions is that
2 they were directed toward an identification of
3 the document and I think the identification
4 saying: where did you get it, what is it, what
5 is the date of it, is important. We all have to
6 hear that. We have to know what it is that
7 they are talking about. I think that those
8 things constituted the preliminary questions
9 and it was really--I think there was only one
10 about the location of Chester. The previous
11 stuff--well, maybe it was a determination that
12 I made when I heard the questions but it did not
13 seem to me that they were objectionable because
14 you are finding out what a document is, who
15 promulgated it and it is at that point that you
16 find out, I think, that what it may contain
17 is either improper or irrelevant or whatever
18 the basis for objection one might have.

19 However, that is the position. I do not
20 think it is that material.

21 THE COURT: Let me make one comment.
22 You must have known at the time that those four
23 or five or six questions were asked identifying
24 the document that you had not gotten it in
25 pretrial.

1 MR. LINDEMAN: Yes.

2 THE COURT: Okay. That is the point
3 that your objection--that you had not gotten it
4 in pretrial, would have been very viable. Once
5 you get all the--you know--I even have one
6 question down here specifically: "Can you
7 identify Chester on the Map? Yes," he answered
8 it. Then he went on and asked another question.
9 At that point it seems to me your alarm button
10 should have gone on and said, I have got to see
11 this document now, because I have not seen it
12 before. Before he gets into it. He is not
13 going to offer evidence on my side of the case.
14 He is going to offer evidence on his side of
15 the case. Look out. The alarm button did not
16 go on. The questions went in.

17 I think after that point I just cannot
18 say--I do not think the ground rules, at least
19 the ground rules that I follow, are such that
20 you have gotten all these questions answered,
21 then you can come back and strike them. I do not
22 think that is the way a case should be tried.

23 You know, I could be mistaken and the
24 Appellate Division could always point out to me
25 the error of my ways as they are prone doing it
to me.

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MR. FERGUSON: I should state one thing with respect to the element of surprisa. I have not gotten--got my letter file with me. I think we sent a copy of this to Mr. Ambrose. I will check on it and make sure.

THE COURT: Okay.

MR. FERGUSON: In any event--

THE COURT: Even so, Mr. Lindeman, I have a little--lot of compassion for Mr. Lindeman in this case.

MR. FERGUSON: I understand his problem.

THE COURT: He is trying--I am not suggesting that he is not able to get prepared. I am sure there are things that transpired between you and Mr. Ambrose that even though he has seen them, he is not going to remember them unless he has got an awful lot of gray matter and he has an awful lot of total recall because I think it is physically impossible. You can remember something I think more readily if you participated in it than you can if you just look through a file and look at these letters.

MR. FERGUSON: No question about that.

1 In addition, we had this document listed on the
2 list of Exhibits which we prepared prior to the
3 start of the case. I think sometime last
4 summer.

5 THE COURT: Again, you know.

6 MR. FERGUSON: It was exchanged.

7 That is not the same as having it in a formal
8 answer to an interrogatory. I do not know if
9 there is an interrogatory that covers it. The
10 way we were proceeding was that we have a
11 whole stack of Planning documents. We have a
12 stack that makes Mr. Hultgren's look small by
13 comparison and at one point I said to Mr.
14 Ambrose, you know, all those are Planning
15 documents which we may or may not use. You
16 just don't know what you are going to use until
17 you get there. This is really in the nature of
18 going to a library and picking out a few things
19 that may help you on a particular point. It is
20 very difficult to apply the rules of discovery
21 as to specific documents with this kind of
22 evidence.

23 THE COURT: Okay. Well, I think I will
24 stick with my ruling. I do not see any reason
25 for the document to be offered.

1 However, what Mr. Miltgren has testified
2 to will stand and, Mr. Lindeman, I will say this
3 to you: If you wish sometime to explore this
4 with the promulgators of that document to get
5 some background and perhaps bring somebody
6 in if you find something that would disconcert
7 the evidence that has been presented to me, I
8 have no objection.

9 MR. LINDEMAN: Well, I must say my
10 reaction right now, your Honor, is that it isn't
11 worth it.

12 THE COURT: I do not know whether it is
13 worth it or not.

14 MR. LINDEMAN: Right. That is my
15 personal view about it.

16 THE COURT: Right.

17 MR. LINDEMAN: But I appreciate it.
18 I understand.

19 THE COURT: All right. Go ahead.

20 MR. FERGUSON: May we have these two
21 documents marked for identification?

22 (The Draft Land Use Element Summary referred
23 to is marked as Exhibit D-43 for identification.
24 The State of the Region Booklet referred to is
25 marked as Exhibit D-44 for identification).

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MR. FERGUSON: I know both of these exhibits were listed on our list of general background exhibits. I think we may have sent a copy to Mr. Ambrose. I can check. I just do not have that documentation with me. I cannot make that representation.

MR. LINDEMAN: Your Honor, I have looked through all of the documents in our file and while I cannot remember specifically about these two since I just saw them this morning, I do object to them.

MR. FERGUSON: I know they were listed and, you know, they are--they were maybe encompassed with a wave of the hand, whatever it is worth.

THE COURT: The guard is up.

MR. FERGUSON: The bell has been rung.

BY MR. FERGUSON:

Q Mr. Hultgren, would you tell us what D-43 for identification is?

A This is a Draft Land Use Element Summary by the Tri-State Region of the Planning Commission presented January 1977.

Q What is the Tri-State Regional Planning Commission?

1 A It is an official public body that covers
2 various Planning tasks for the Tri-State area of
3 New York, New Jersey and Connecticut.

4 Q When you say "official" what do you
5 mean by "official"?

6 A It is, for instance, a recognized agency, transfer
7 agency, for federal funds to local communities.

8 MR. FERGUSON: I will state for the
9 Court that it is also a statute or at least it
10 is a legitimate authenticated by statute.

11 THE COURT: Whose?

12 MR. FERGUSON: Ours. New Jersey's.

13 THE COURT: New Jersey's?

14 MR. FERGUSON: And I think the
15 citation is in our Trial Brief.

16 Q When was this document prepared?

17 A Preparation before--prior to January 7, 1977.

18 Q Is that the publication date of this
19 document? A Yes, it is.

20 Q Would you tell us, without giving us the
21 substance of that document, tell us what it purports
22 to do?

23 A It sets out to create, on the issue of housing--
24 it sets forth certain procedures as to how to prepare
25 Draft Housing Elements.

1 Q Does it cover land use?

2 A Yes, it does.

3 Q Land use and housing elements of what?

4 Are you referring to Plans of communities?

5 A Well, we are referring to Regional Plans as
6 well as community plans. Basically, the advices are--
7 they are including both the Regional Agency and
8 Community Agencies.

9 Q Is this--strike that. Has the Tri-State
10 Regional Planning Commission been the author of other
11 documents in the land use and housing area?

12 A Yes, they are, together with Regional Plan
13 Association, the main provider of statistics and
14 analytical material on the region.

15 Q Are the publications of the Regional
16 Plan Association and the Tri-State Regional Planning
17 Commission the kinds of materials that Community
18 Planners, municipal officials and Regional Planners
19 look to when ascertaining and obtaining the data base
20 on which they make their decisions?

21 A Yes, that is true.

22 Q Is it--withdrew that.

23 If a Planner such as yourself consulted the
24 publications of Tri-State and Regional Plan Association
25 and did not go beyond the publications to verify the

1 figures or statements contained therein, would that
2 be in accordance with generally accepted Planning
3 principles as practiced by you and others in your
4 profession? A Yes, I would say so.

5 Q Does that document update an earlier
6 document? A I cannot say.

7 Q You cannot tell by looking at that
8 document itself? A No.

9 Q All right. I show you Exhibit D-44 and
10 ask you to tell us what D-44 is?

11 MR. LINDEMAN: Same objection, your
12 Honor.

13 THE COURT: Okay.

14 Q Without telling us the substance of it,
15 just tell us what it is.

16 THE COURT: The objection is noted.

17 A This is a publication named The State of the
18 Region and it is published by the Regional Plan News.

19 THE COURT: News?

20 THE WITNESS: Basically, the
21 Agency behind it is Regional Plan Association.

22 Q What is the publication date?

23 A The publication date is March 1975.

24 Q Is the--the sub-title is A Digest of
25 Selected Trends Through 1974? A Right.

1 Q Is that the Regional Plan Association
2 that you just mentioned when you were talking about
3 the Tri-State Regional Planning Commission as being
4 the kind of organization or being an organization that
5 professional Planners such as yourself look to when
6 gathering data, statistics, and information?

7 A That is correct.

8 Q Without going behind that document to
9 verify the source of the information which the Regional
10 Plan itself--Regional Plan Association itself puts into
11 that document--

12 A The source of the data presented in a volume of
13 this type you mean?

14 Q Yes.

15 A Those sources would be a large number of
16 sources, as a matter of fact. Naturally, they will
17 depend upon the United States Census, '60 and '70. They
18 will also depend upon statistics that they will be
19 able to provide themselves in terms of various surveys
20 that they would make themselves, Regional Plan
21 Association. They would also draw on local and sub-
22 regional sources. The County statistics gathered would
23 be available to them.

24 Q Is it customary for Planners such as
25 yourself to rely on the Reports of the Regional Plan

1 Association without verifying the underlying sources
2 or data used by R.P.A.?

3 A Yes, I would say so.

4 Q Is it customary for municipal officials
5 to use the R.P.A. documents and data in the same way?

6 A Of course, as long as you are talking about the
7 data themselves, we can rely upon them. We do rely
8 upon them. Anything analytical, of course, you will
9 have to judge from case to case.

10 MR. FERGUSON: I would move these
11 documents into evidence, your Honor. They were
12 not used in the Planning process.

13 THE COURT: They were not?

14 MR. FERGUSON: No, sir. They are
15 dated after the preparation of the Master Plan.

16 THE COURT: Yes.

17 MR. FERGUSON: However, they do
18 constitute some of the major documents which
19 this Court must look at when judging whether
20 a Master Plan is appropriately based upon and
21 tied into Regional Planning considerations and
22 whether it be judged under the Municipal Land
23 Use Law, which is not right now in the case,
24 whether a Master Plan and Zoning Ordinance is
25 reasonably under the Madison Township and Mount

1 Laurel Decisions. I think they are relevant
2 documents in order to make that decision. I
3 would propose that once they are the evidence
4 to xerox pages which I think are helpful to this
5 Court in reaching a decision on the issues before
6 it, supplying them to the Court, and I can
7 indicate the passages or paragraphs with a
8 red mark at the side. I would anticipate that
9 Mr. Lindeman would want to look at the
10 documents and mark whatever portions he wants
11 the Court to read in a different color pencil
12 or pen.

13 I think this is an appropriate procedure
14 to use to bring to the Court's attention those
15 Planning Authorities which we contend support
16 the reasonableness of the Zoning Ordinance in
17 Chester Township and the reasonableness of the
18 Land Use Scheme as set forth in the Zoning
19 Ordinance under either of two issues, Mount
20 Laurel, Madison Township, issues or if it ever
21 does become appropriate, the Municipal Land Use
22 Law issues.

23 MR. LINDEMAN: I object to the two
24 documents for a number of reasons. First, the
25 procedural reason that I referred to before of

their not having been presented to us.

1
2 Secondly, because it was just suggested
3 they were not used in the Planning process. The
4 affect of offering and having documents of this
5 kind in the record would be this, so far as I
6 see it:

7 That there could be a myriad, perhaps
8 a--even a mountain of material that could be
9 offered to suggest that at some time in the
10 past the Planners were either right or wrong
11 and I think that that goes beyond reasonableness
12 and it goes beyond really what this Court ought
13 to be receiving.

14 THE COURT: Well, two things strike me:
15 one is that he is offering it to support the
16 proposition that the Ordinance conforms to
17 Mount Laurel and Oakwood. Now that is a--it is
18 after the Zoning Ordinance. However, so are
19 Mount Laurel and Oakwood. They both came up
20 after the Zoning Ordinance and the plaintiff
21 raises the challenge.

22 The second thing is that the plaintiff
23 raises the challenge to the Zoning Ordinance
24 under Mount Laurel and Oakwood. I do not have
25 any difficulty with allowing that type of thing.

1 However, what bothers me is the
2 relationship of the documents. What parts of
3 the documents--what are we dealing with? Why
4 are they being offered? You say you are going
5 to underline and it will give Mr. Lindeman
6 a chance to underline. Well, you have got a
7 Flanning expert here. He has identified them.
8 I rather have the foundation or, if you will,
9 the justification for utilizing those particular
10 documents or the portions of the documents that
11 you want to rely on come through the Planner.

12 Do you understand what I mean? The
13 related sections, rather than have the entire
14 document put into evidence for one simple
15 reason, I now have before me a mountain of
16 documents. I do not want that mountain to
17 get any higher than it has to be.

18 I question whether it is necessary to
19 put the entire document in. If the Planner
20 wants to testify that, yes, these documents
21 support the position of the Township and why, it
22 would seem to me that I could deal with that, but
23 not the entire document.

24 I am looking at the one that Mr. Lindeman
25 is looking at. It looks rather lengthy.

1 MR. LINDEMAN: It is.

2 MR. FERGUSON: Most of it is tables
3 and statistics. There is no reason for that to
4 go into evidence.

5 THE COURT: Yes. I would just rather
6 have a microscopic rather than macroscopic
7 approach to it. If you would zero in on it and
8 hit the significant details of it and let the
9 Planner deal with these, that is one thing. If
10 you are going to ask for the entire document
11 in, I think the Court is going to object.

12 MR. FERGUSON: I think the objection
13 is well taken.

14 THE COURT: Mr. Lindeman, on the other
15 point, why I brought up the first point is that,
16 yes, I would agree with you. We could probably
17 have a mountain of other documents to support
18 this type of thing. However, I think in light
19 of the fact that these are documents that are
20 promulgated by Agencies relied upon by Planners
21 and that my--certainly my responsibility here is
22 to, if I am going to remand it to the Township,
23 to look at what the future is dealing with and
24 what has happened since the Zoning Ordinance and
25 what Agencies--say has happened since the Zoning

1 Ordinance. They are relevant to the case.

2 Now, insofar as your not having received
3 them, I can do nothing other than what I had
4 offered to you before. Take them, review them.
5 If you need time to deal with them, to counter-
6 balance them, to find maybe some other Report
7 that counterbalances what is projected in these
8 things, I will allow you that time, but I do
9 think that in light of what I determine my
10 position to be giving some guidelines, if I am
11 going to remand it I think it is relevant to
12 that respect, plus it is also relevant from
13 1974 to the present date, the time that the
14 Ordinance was adopted to the present date
15 and dealing with the Mount Laurel, Oakwood
16 Decisions which came after the Ordinance, both
17 came after the Ordinance.

18 MR. LINDEMAN: If your Honor please, if
19 I may make a comment? I know the trial is not
20 a discussion. If I may just be indulged for
21 a moment?

22 THE COURT: Sure.

23 MR. LINDEMAN: I have the same problem
24 that the Court has and I think I agree with the
25 Court about the relevancy of documents of this

1 kind. When Mr. Ferguson was offering the
2 document in the first instance, I was trying to
3 think very hard about really whether I have a
4 legitimate objection because if it should just
5 so happen that the Planning Board and
6 Mr. Hultgren and others were lucky that what
7 they may have done by accident or just by
8 sticking their finger on a certain number, saying:
9 Okay, that's going to be it, maybe, not so
10 important. If it turns out to be right, then
11 they are right, what they did. What motivated
12 them perhaps might not even make so much
13 difference. That is stating it very
14 extravagantly, I think, so I think that anything
15 that might have been published in '77 and '75
16 could be relevant.

17 The fact of the mountain of documents is
18 something else.

19 The other observation that I just wanted
20 to make is that they might even support my
21 position. I do not know, so I would take up the
22 Court's offer to look at them.

23 MR. FERGUSON: There are statements
24 in those documents saying what Mount Laurel and
25 Madison Township say: You have got to provide

1 a full range of housing. We do not dispute that.
2 We accept it. We indeed embraced it in 1973.

3 THE COURT: You contend you embraced it
4 in 1973?

5 MR. FERGUSON: We contend we did.

6 MR. LINDEMAN: I mean, even in
7 numbers I think what they project may support
8 the position.

9 THE COURT: To lay a little groundwork
10 so we do not get into too many of these
11 discussions, I am willing to accept with reason
12 documents such as this. However, that mountain
13 of documents that you refer to I do not look
14 forward to and I would suggest to you that I
15 will not be inclined to go along with too many
16 of this type of thing, so with that admonition,
17 if you will, if you would zero in on the most
18 specific of the documents and those portions of
19 the documents that you rely upon most heavily,
20 it would be appreciated.

21 MR. FERGUSON: All right.

22 THE COURT: And I think much fairer to
23 Mr. Lindeman too.

24 MR. FERGUSON: All right. I think
25 what I will do is just hold these and either

1 through this witness or a later witness do it
2 in a more condensed form. I think that might be
3 helpful to the Court.

4 THE COURT: All right.

5 MR. LINDEMAN: I would like to see
6 them now. Maybe you will lend them to me.

7 THE COURT: Those are here. They are
8 marked for identification. You can read them
9 on the break.

10 MR. LINDEMAN: Right.

11 MR. FERGUSON: Well, the other
12 documents which I have in mind are such things
13 as the Governor's Commission on Capital Needs
14 which issued a series of Reports in the early
15 1970's about one of--one is entitled Water
16 Quality are Vanishing Options. It is our
17 contention that this is the kind of document
18 which a Planner must be aware of and look at
19 and supports our position in this case. It is
20 about that thick end we will point to appropriate
21 pages in it.

22 THE COURT: All right.

23 MR. FERGUSON: It is almost the kind
24 of document which the Court can take--

25 THE COURT: Judicial Notice?

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MR. FERGUSON: The Tri-State Planning Commission is a creature of the statute. R.P.A. is not. That is a private non-profit Planning group. Although as Mr. Hultgren testified is generally recognized. Another of the documents we are going to rely on in the same vein is, of course, the Morris County Master Plan. That is in evidence itself. What I would propose to do is assemble a package of xerox pages from these documents, show it to Mr. Lindeman and then if we have any objections maybe we can resolve them over the Christmas recess.

THE COURT: All right. If I might, if you could get to them so that he can read them at his--more at his leisure than under the pressure of the day-by-day trial.

MR. FERGUSON: Yes.

THE COURT: I am very sympathetic to having to read things under pressure.

MR. FERGUSON: There was a whole series of meetings scheduled between prior counsel where this was going to get done and never did, in fact, get done because of the events really from July on about who was doing what, where,

1 and how, which was confused.

2 THE COURT: All right. If you just give
3 some leeway time to Mr. Lindeman so he can
4 digest them, I think it can be good. All right.
5 Let's move on then.

6 Q Mr. Hultgren, we will tell you that Lee
7 Hobough, one of the Planners that testified on behalf
8 of the plaintiff, made a statement to the effect that
9 in his opinion as a professional Planner, large lot
10 zoning was not in accordance with general welfare.
11 Do you agree or disagree with that statement and do you
12 have an opinion about it?

13 A Well, I would say that that statement is really
14 more or less taken out of the context. I cannot find
15 that large lot zoning is per se counter to the general
16 welfare, public welfare. You have to look at the point
17 you are trying to get at. If a community has large
18 lots and small lots, provides for multi-family
19 developments as well as single family house developments,
20 there is nothing to say that you have to exclude large
21 lots. What you look at is comprehensively the balance
22 in the community itself or the Planning entity and you
23 talk about the distribution of various densities and
24 the potential for development of such type and extent
25 that would meet social goals if that is what you cover

1 under public welfare.

2 Q Do you have an opinion as to whether
3 two acre lots and five acre lots in Chester Township
4 under Ordinance 76-7 comply as a matter of general
5 Planning principles as you have testified to them with
6 the general welfare?

7 A As a matter of fact, I would go as far as saying
8 if you would not use two and five acre zoning, you
9 would go against or counter to the public welfare in
10 the community and the region.

11 Q Why?

12 A Because of the necessity to protect the regional
13 resources and to protect--I am talking about regional
14 resources such as the water resources now. Also, the
15 need to protect the open space resources which are
16 also regional interest. Further, to protect the
17 environmental character of the community, the wooded
18 character, the general land use and the land use
19 character, that is, the way the Township has been
20 developed, the large lot zoning to summarize it, is
21 necessary in the Township of Chester and that is not
22 the fact that we have large lot zoning in Chester, that
23 is--does not mean that we are disregarding social or
24 public factors or features because there is a balance
25 in the Master Plan and the implementing of the Zoning

1 Ordinance that meets those social requirements.

2 Q Mr. Hultgren, when you did the Master
3 Plan, did you consult--withdraw that.

4 You have mentioned extensively in your
5 testimony an environmental factor of preserving the
6 open space character of the community, wooded area,
7 etc.; did you consult any documents or Regional Planning
8 documents with respect to that particular characteristic
9 of land use Planning or the land use in Chester
10 Township during your preparing of the Master Plan?

11 THE COURT: Before you answer that.

12 Would you read that question back?

13 (The Court Reporter reads the pending question).

14 MR. FERGUSON: Your Honor, it is
15 grossly misleading. I will withdraw it. I am
16 sorry.

17 THE COURT: I was trying to follow it.

18 MR. FERGUSON: It is a bad question.

19 Q I show you a document. Tell us what it
20 is and if you consulted it? If you did, when and why?

21 A Okay. This document is titled Outdoor Recreation
22 In A Crowded Region.

23 Q What is the date?

24 A It is produced by the Tri-State Region of the
25 Planning Commission and published in September 1973. It

1 constitutes--actually, it was regionally published
2 in September 1969 and revised and updated September
3 1973. It was one of the documents that were indeed
4 available to me and that I was using in my evaluation
5 in Chester Township.

6 MR. LINDEMAN: I object to it, your
7 Honor, because it was not shown to us.

8 MR. FERGUSON: I do not--

9 THE COURT: It was not shown to you?

10 MR. LINDEMAN: Not to my knowledge.

11 MR. FERGUSON: It was not. I do not
12 think this was ever listed.

13 Q When did you give this document to me?

14 A I don't recall if I had shown it earlier to you
15 but I did show it today.

16 THE COURT: Well, let's mark it D-45.
17 He can testify to the extent that he referred
18 to it.

19 MR. FERGUSON: I am not going to offer
20 it marked if Mr. Lindeman--and I do not need it
21 marked if Mr. Lindeman wants it marked.

22 THE COURT: I think for the purposes
23 of protecting the record, it should be marked.

24 MR. LINDEMAN: Yes, I would like to have
25 a chance. What is the name of it?

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MR. FERGUSON: It is Outdoor Recreation
In A Crowded Region. A Plan for selecting and
acquiring lands, Tri-State Regional Planning
Commission, September '69, revised September '73.

MR. LINDEMAN: Tri-State Regional?

MR. FERGUSON: Tri-State Regional
Plan Commission.

(The document referred to is marked as
Exhibit D-45 for identification).

Q Why--what general purpose, without
giving us the substance, did you consult that document
which is now D-45?

A I read the document and I have here on Page--
well, before Page 1, a Map called "The Regional
Development Plan" as cross accepted with some regions
by June 1973. I have studied this Map during the
process of making the Plan for Chester Township and
found part of the base for the statement I have under
"Regional Setting" in the Master Plan which is that--

MR. LINDEMAN: I object if this is
the basis for the conclusion.

THE WITNESS: Part of the basis.

THE COURT: I am going to allow it. He
is relying on a document--regardless of the
truth of it again, he is relying on it. I have

1 spent more time--

2 (Short recess)

3 THE COURT: I will allow it on the
4 basis that I feel that it is--it is a document
5 that was relied upon by the Planner and this is
6 the method whereby Planners perceive in their
7 Planning for communities and regions, if the
8 regions are involved.

9 All right. Go ahead.

10 You said you found part of the basis?

11 THE WITNESS: Yes. This is actually
12 one of the problems with my profession, that it
13 seems to become vague at times and when I say
14 part of the basis, we have to, as Comprehensive
15 Planners add a number of different factors, a
16 number of data to each other, overlap them
17 and come to conclusions of analytical type.

18 A Planner becomes very sensitive as to
19 his use of those data because it is the multitude
20 of data that provides the base and I cannot, as
21 Planner, all the time point to a figure. This is
22 a dilemma for the Planner, but I become
23 sensitive when I understand that people may
24 question my sources and I want to document at
25 least part of the sources I am using.

1 This Map I am making refers to here,
2 on that Map I can find and I have outlined with
3 an arrow here, the Chester area and the Chester
4 area is covered by colors that in the legend
5 are indicated as low density uses, respectively
6 recreation and water shed.

7 Q Well, there are two different categories.
8 Low density use is one. Recreation and Water Shed
9 is another.

10 A No. In addition to that--

11 Q Is that correct?

12 A Yes, that's correct. I am sorry. That's
13 correct. In addition to that, I can read from this
14 Map in a very general regional way, something that is
15 marked in red on this Map and labeled "Primary and
16 Secondary Clusters", stretches in corridors north and
17 south of Chester, respectively.

18 Q Is this--just to be totally clear, is
19 this anything more than a general guide?

20 A No. It's a very general guide.

21 Q It--of course, you as a Planner must get
22 concrete information when you are making decisions on a
23 more specific smaller scale.

24 A Oh, yes, definitely so, but I also have the
25 responsibility to link my proposals to the regional

1 picture, the big picture itself.

2 MR. FERGUSON: D-46.

3 (Regional Transit 1990 document referred to
4 is marked as Exhibit D-46 for identification).

5 Q Would you tell us what D-6 for
6 identification is?

7 A Regional Transit 1990.

8 MR. FERGUSON: D-46.

9 MR. LINDEMAN: D-46.

10 THE WITNESS: D-46, yes, is the title.
11 Sub-title, "The Revised and Updated Regional Plan
12 and Program" published by the Tri-State Regional
13 Planning Commission in July 1974.

14 This is a document that was available to
15 me and that I did study for the Master Planning
16 in Chester Township.

17 Q Let me interrupt you. How could you have
18 studied it if it was published in July '74?

19 A The Master Plan was still not officially adopted
20 at that time. It was adopted later in the fall and I
21 checked my conclusions with this document.

22 In addition to that, the material in this
23 document--

24 MR. LINDEMAN: I object to the
25 document for the reasons that I have stated before.

1 THE COURT: All right. I will allow
2 them for the reasons that I stated before.

3 A (Cont'd) The information here is the same information
4 that I had previously picked up in similar documents.

5 Q And what is--

6 A And was using earlier during the Planning
7 period.

8 Q Would you briefly characterize the
9 importance of that document and its information to
10 you?

11 A It supports and provides part of the basis for
12 my statements on the regional factors that affect
13 Chester Township or the regional concept that concerns
14 the Township and again--

15 Q From what perspective?

16 A In terms of the development, the extent of
17 development within the picture of the regional
18 development.

19 Q I thought that document was transportation?

20 A Yes, but transportation cannot be applied to a
21 region without the land use and the land use is the
22 base for transportation and there is in the illustrations
23 here enough of regional plans for land use to support
24 the proposals that concern transportation.

25 Q All right. Okay.

1 By the way, what comes first, transportation or
2 land use? Is it the chicken or the egg?

3 A Land use is supposedly the factor that you first
4 consider and transportation, of course, is one of the
5 supporting or service factors that you apply, together
6 with other facilities and utilities to your concept
7 of land use development.

8 MR. LINDEMAN: Would you mark that?

9 Q Does it ever happen that transportation
10 comes first and land use comes to suit the transportation?

11 A Well, that may happen if you are talking about
12 the small scale. If you are talking about a particular
13 area along a major highway, the major highway, say,
14 for example, one of the Interstate Highways was built
15 because of land use considerations, agglomerations,
16 cities, and so forth, connected by Interstate
17 Highways. Of course, as the Interstate Highway
18 connects those major arterial--major city areas, it
19 passes other areas which traditionally have
20 experienced growth as a result of the better access,
21 but if you switch down to a local collector road or a
22 local road in a community, naturally that road has not
23 been established or traditionally practically it has
24 not been established or built until you have the
25 development that needs to be served.

1 Q In the Master Plan there was a figure
2 for housing, I believe, 600 units. Would you get the
3 Master Plan and find that figure?

4 A Yes. I believe it is on Page 10.

5 Q Would you tell us what the figure of
6 600 represents?

7 A Well, the discussion about housing ends up with
8 a conclusion that there is a future need of about 600
9 rental units. This includes and makes reference to
10 what is said earlier in the paragraphs under "housing".
11 We are talking about the need for apartments and houses
12 in the moderate cost bracket which then somewhat
13 unluckily was brought in under the word "rental"
14 meaning then, however, both--meaning more of a multi-
15 family or higher intensity uses.

16 THE COURT: I am sorry. Did you say
17 on Page 10?

18 THE WITNESS: Ten. I am sorry.

19 MR. LINDEMAN: '74 Chester Master Plan.
20 Is that what you have?

21 MR. FERGUSON: P-12.

22 THE COURT: Yes, I know.

23 MR. LINDEMAN: There is a Preliminary
24 Plan in February and then the Final in August.
25 I do not know whether the page--

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MR. FERGUSON: P-12-A.

MR. LINDEMAN: --is switched.

MR. FERGUSON: That is what he is looking at, I think.

THE COURT: My page 10 has "Recreational Facilities, Library and Fire Facilities."

THE WITNESS: Is that possibly the "Resource" page? Yes, it is. It is the wrong document. It is the Reference Base that the Court is making reference to.

THE COURT: Oh, okay.

MR. FERGUSON: You are looking at the Reference Base.

THE COURT: I am sorry. You are right. I grabbed the wrong one. Okay, yes.

Q Does that figure, 650, include all kinds of multi-family housing and not just rental units?

A Yes, that's correct.

Q That is, those could be sold as well as rented?

A That is correct.

Q How is that figure derived and I hand you a copy of the Reference Base which I believe has been marked P-12-B, if I am not mistaken. I do not want a detailed explanation, just generally tell us the pages and the Reference Base where that is discussed and

1 briefly, if you can, what that figure of 650 represents?

2 A Yes. The number of 650, which basically
3 corresponds to about ten percent of the projected
4 maximum population in the Township, is based upon a
5 number of general calculations. The first one being
6 that the general percentage of needs in the moderate
7 cost bracket for apartments and rentals would be
8 approximately ten percent of the total number of
9 dwelling units. It was also analyzed based upon
10 Table #12 in the Reference Base #P.H. 1.

11 Q No.

12 THE COURT: P-12-B.

13 Q P-12-B. Your copy does not have that one.

14 A All right. Where I could see the amount of
15 rental occupied dwelling units in the Chesters, as well
16 as Morris County, and Table 18 in the same Reference
17 Base, where a projected rate of rental units was
18 indicated for the year of 1990, again, rental units
19 in that case including the provisions for moderate
20 cost--moderate cost housing and the figure in the
21 projection in Table 15 then is for 1990, that the
22 percentage rate has been increased conservatively to
23 twenty-five percent of the total number of units rather
24 than about fifteen percent which was the case in the
25 1970 and the rental--that bracket of more moderate cost

1 housing was increased in 1970, 164 units to 1990, 645.

2 Q What is--is that projection or statement
3 about 650 to be realized by 1990? Is that the time
4 horizon of that statement?

5 A Yes, that is the time horizon of that particular
6 statement.

7 Q As a Professional Planner, do you have
8 an opinion about the time horizon of a Master Plan as
9 opposed to the horizon of a Zoning Ordinance?
10 Specifically, would you comment about the time
11 parameters of the statement for 650?

12 A Well, the Master Plan is a document that
13 covers a somewhat longer span of time than the Zoning
14 Ordinance. The Zoning Ordinance basically should be
15 looked into for potential revisions every five years
16 at least. While the Master Plan should aim at--to
17 cover at least a ten year period of time.

18 Now, you may select to go with a shorter horizon
19 date for a Master Plan in terms of the implementation
20 and the indications for implementation over a shorter
21 period of time and then I also have to say that both a
22 Master Plan and a Zoning Ordinance must be revised
23 as soon as something happens that significantly
24 changes the situation in terms of development or other
25 factors in the community itself, but I would say as a

1 comment on the figure, 650, this covers at least the
2 1990 situation, so it is more of a general Planning
3 figure. You must remember that the capability of the
4 Township was studied by the Planning Board as advised
5 by my company and we arrive at certain saturation
6 populations, so whether or not the saturation
7 population will be reached 1980 or 1990 may not be
8 quite so relevant but if you are going to approximate
9 the saturation point that is when the 650 units would
10 be needed.

11 Q Does the gross number at the saturation
12 point depend upon what public facilities are available
13 such as water, sewer and utilities?

14 A Yes. The saturation point was arrived at in
15 terms of population, was arrived at by various
16 analytical considerations, such as the preservation of
17 character, environmental character, the capabilities
18 of the water resources to resist pollution and minor
19 factors of a similar type.

20 Q All right. Mr. Hultgren, I am going to
21 give you a hypothetical question.

22 I want you to assume that a developer is going
23 to build a development along the lines set forth on
24 P-1 in evidence--

25 MR. FERGUSON: Does anybody have P-1?

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Q P-1 in evidence, which is a Site Plan for 856 units. I believe you have seen this before?

A Yes, I have.

Q Okay. In case you haven't, that kind of proposal, multi-family housing attached single family town house condominium type units, I want you to assume further that the developer is going to sell some of them at a higher price, say, \$50,000.00, in order to subsidize the sale of other units at a lower price, say, \$25,000.00, to persons of low or moderate income.

I want you to further assume that there is no public, either state or federal subsidization of the project and it is neither under the control of a state or federal agency related to a subsidization program. Do you have an opinion as to whether that price scheduling, as I will characterize that arrangement, is in accordance with sound Planning principles, number one, and number two, do you think it would work?

MR. LINDERMAN: If your Honor please, I object. I object to the question because the hypothetical assumes things which are not the subject of any testimony in this case and certain parts of the question are irrelevant and improper.

THE COURT: Okay. What are the points

1 not in--I think I know what you are talking
2 about. I want you to identify the points not
3 in evidence.

4 MR. LINDEMAN: Well, so far as any
5 precise testimony by any witness, of course,
6 that would have to be Mr. Caputo, of building
7 at a higher price in order to support a lower
8 price. I do not believe he testified to that.

9 THE COURT: I do not recall that either.

10 MR. FERGUSON: Your Honor, now I will
11 tell you my problem. That was in the discovery.

12 MR. LINDEMAN: Yes, it was.

13 MR. FERGUSON: Okay. I didn't think
14 Mr. Caputo really said that on the stand but I
15 was worried by a couple of statements he made
16 about earmarking something for low and moderate
17 income. I am very mindful of the statement
18 made in Madison Township by the Supreme Court
19 that "There was an indication that some of the
20 units would be earmarked for low and moderate
21 income."

22 He seemed to have made that with almost
23 some kind of blessing. I do not know if there
24 was any value judgment that went along with
25 those words in the Opinion. I think, kind of,

1 there was, and it worries me very much and if
2 it is stated that Mr. Caputo did not so testify
3 and this is not in the case, I will withdraw the
4 question.

5 THE COURT: I do not recall him
6 testifying. Mr. Lindeman, I do remember
7 talking to him quite a bit. I questioned him
8 about the prices and how he arrived at the
9 prices and square footage. There was a
10 reference by him to low and moderate income.
11 There is no question about it. He made that
12 comment. He did not in those words, however,
13 say that he would sell at fifty to subsidize.
14 I think 27 was the lowest figure he got to, but
15 my notes could refresh my recollection on that.
16 He did not ever, however, in my recollection,
17 say that he would subsidize the lower cost by
18 selling at higher costs. He just told us a
19 range. He did talk about low and moderate
20 and that is why I asked him about the square
21 footage and what he thought he would be able to
22 produce these one bedroom, two bedroom
23 situations at, but I do not recall--I think
24 Mr. Lindeman is quite correct in his objection.
25 There is nothing--no factual basis for that

1 conclusion. Having objected to it, I think
2 it overcomes your fear.

3 MR. FERGUSON: All right. That is the
4 reason I asked the question. I wanted to have it
5 established one way or the other.

6 THE COURT: Okay. You have done it.
7 I will sustain the objection to the facts
8 not in the record, that Mr. Caputo did not
9 testify that he would sell some of the
10 condominiums at a higher price to support sales
11 at lower prices to--for low and med--to low and
12 moderate income families.

13 MR. FERGUSON: That may eliminate
14 another witness altogether. That may be a helpful
15 ruling. I also have a legal argument wherein the
16 Supreme Court held it unconstitutional if a
17 town were required a developer to dedicate a
18 certain percentage of his units to low and
19 moderate income and subsidizing with the sale of
20 higher cost units.

21 MR. LINDEMAN: I guess this Court
22 does not have to rule about any provision of the
23 Zoning Ordinance that does not exist. The Court
24 certainly would not issue any advisory opinions.
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MR. FERGUSON: I am not asking you to.

I detected--Madison Township is really ambiguous on that. The statement is barely made and nakedly made in the Opinion. There is some kind of waiver of the hands of blessing over that. It is very troublesome.

(Short recess)

THE COURT: Okay.

Q Mr. Hultgren, have you--withdraw that.

Are there population projections for the population of Morris County or Chester or the region or whatever contained or implicitly contained in the Master Plan that you prepared?

A By the Morris County Planning Board?

Q Well, whatever. Tell us what population projection that you based your work on.

A The discussion about population, as I said earlier, is somewhat based upon saturation factors, but, of course, also takes into consideration what has been suggested in the County Planning.

Q What was the source of your population projections that you used in preparing the Master Plan?

A The source was--

MR. LINDEMAN: Judge, excuse me.

Pardon me. I object. I thought it was

1 Mr. Kasler who has the projections. I do not
2 know--

3 THE COURT: Population projections.

4 MR. LINDEMAN: I know.

5 THE COURT: He said he worked on the
6 housing.

7 MR. LINDEMAN: Yes, but I thought
8 housing projections had to do--I mean population
9 projections were the things that controlled
10 housing requirements.

11 THE COURT: Well, since he was a
12 project co-ordinator, I will allow it. In any
13 event, he supervised the entire matter.

14 THE WITNESS: Okay?

15 Q Yes.

16 A It's my turn? Well, the source of my base
17 data for the population projection was U. S. Census 1970
18 and for the trend picture, of course, I was also
19 employing the 1960 U. S. Census. I was checking my
20 projections that were, as I said, based upon a
21 reasonable development of the Township as I saw it,
22 based upon current growth, past growth and the
23 capabilities of the Township to sustain population and
24 I was checking that with the county projections and I
25 found--

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Q Wait a minute.

A I am sorry.

Q In all fairness to Mr. Lindeman, you were checking what you did back then?

A Yes, back then, yes.

Q When did you check it?

A During the time I was making the Plan for Chester Township.

Q All right.

A So I met with Mr. Woodbridge, as I indicated earlier, and one of the things I discussed with him was my projections in terms of population.

Q And did you receive any statistics or projections from the Morris County Planning Board?

A Yes. They had at the time projections made. They were, first of all, estimates of the current population. We were a few years into the seventies at the time when the Master Plan was made.

MR. LINDEMAN: I object if the witness is going to testify as to what was told to him. We have the documents. I submit they speak for themselves. If the witness is going to get to that, I object to it now.

MR. FERGUSON: He is going to get to it and he is going to also get to what he

1 verified in the last couple of weeks or months
2 as to what the revised projections are.

3 THE COURT: Projections as they are
4 reflected in the Master Plan?

5 MR. FERGUSON: Well, he is going to
6 testify as they are reflected in the Master Plan
7 and then what the projections look like from
8 the County Planning Board right now.

9 MR. LINDEMAN: Your Honor, I think what
10 the witness was about to do was to say that he
11 saw Mr. Woodbridge and estimates were given to
12 Mr. Hultgren by Mr. Woodbridge and he is now
13 going to testify to those and that is verbal.
14 That is hearsay. That is not checking a record
15 and saying, yes, he has a figure of 650 here and
16 it is supported by a Morris County Land Use
17 element or housing projection or something of
18 that kind or 1970 Census. It is now what a man
19 individually tells him verbally and I think that
20 that goes beyond what we were talking-talking about
21 before.

22 MR. FERGUSON: Well, it is admissable
23 as to what he did then.

24 THE COURT: Tell us what he did.

25 MR. FERGUSON: I do not really need that

1 testimony unless I can also ask him what he
2 was told by Woodbridge, but let's get in the
3 record--

4 Q What did Mr. Woodbridge tell you then--
5 back then when you were doing the Plan?

6 MR. LINDEMAN: Excuse me. If it is
7 numbers, I would object to it. If he is
8 verifying what is contained in reports, then
9 I think--

10 THE COURT: I think I have to agree with
11 Mr. Lindeman. If it is oral versus the Morris
12 County Planning Board Adopted Plan or Projection,
13 I think there is a difference.

14 Q Did you verify what you had done with
15 Mr. Woodbridge? A Yes, I did.

16 Q How?

17 A And I will not give any figures. I do not have
18 the particular table at hand that I was using at the
19 time, but I was given a table, but I will say this:

20 That reviewing the material, I found that the
21 County Projection was in terms of population, lower
22 than the saturation population I had estimated.

23 Q All right. Mr. Hultgren--

24 MR. FERGUSON: These, your Honor, are
25 aerial photographs. They were taken on Sept. 29,

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1977. They were not supplied in discovery. They were prepared as a visual aid to the trier of fact and to an Appellate Court, if necessary. I would ask if the witness can state whether these accurately portray Chester Township down to the county line?

THE COURT: All right. Let's mark them. Will you?

MR. FERGUSON: I do not know if Mr. Lindeman has any objections or if that procedure is satisfactory.

MR. LINDEMAN: That kind of procedure is fine with me and I indicated that to Mr. Ferguson before. I think I might have some trouble with the red markings on them. I would like to hear first how they got there and what they show.

THE COURT: Okay. Let's mark them D-47-A and B for identification.

(Aerial photographs referred to are marked as Exhibits D-47-A and B for identification).

Q Mr. Hultgren, would you--

THE COURT: I have got the other one.

MR. FERGUSON: I am sorry.

(Short recess)

THE COURT: May I see the other one?

I would like to see if I can identify where we are before someone points it out to me.

MR. LINDEMAN: The Court will disregard the red marks if it turns out to be improper, will it not?

THE COURT: Certainly. Okay.

Q Mr. Hultgren, would you look at D-47-A and B and tell us what the red lines on the overlay represent? Did you draw them?

A Yes, I did. I have looked at this beautiful aerial photographs, as a matter of fact, and based on my experience in survey from the air, I have outlined the Caputo property at least in a general fasion.

Q Is Mr. Caputo's house generally around-- house surrounded by what appears to be a white driveway on the Map?

THE COURT: Which one is it shown on?

MR. FERGUSON: Actually, both. It is the upper quadrant of D-47-B in the middle and in the lower portion of D-47-A.

THE COURT: Much more clearly on B.

MR. FERGUSON: Much more clearly on B.

THE COURT: All right. Do you remember the question now? Is it shown?

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A Yes. What I will say is that I have seen that building on Mr. Caputo's property.

Q Oksy. Now, for the benefit of the Court, on D-47-A, is this road that I am referring to Old Chester-Gladstone Road that runs by the Caputo tract, crosses 206 and comes up to the Borough?

A Yes, that's correct.

THE COURT: Let the record show that a white line slanting in--it is slanting away at one point, slants in towards the plaintiffs' property and then slants away from it at another point is Route 206 and it comes up, bends around and comes up to what appears to be a congested building area where there is an L-shaped building which is, as I understand it, the shopping center. The Chester Springs Shopping Center.

THE WITNESS: Correct.

Q The parking lot and L-shaped conglomeration of buildings, is that the Chester Springs Shopping Center? A Yes, it is.

Q Would you point out to us Route 24?

A Well, in the lower half of the aerial photograph, which would be the A photograph then, we have almost horizontal here the 206 as it--wait a second now. I

1 better get my bearings here.

2 (Short recess)

3 THE COURT: 206 is the white line that
4 runs off the bottom of the Map?

5 THE WITNESS: Right. So far it is
6 right but then where does it go after that?

7 THE COURT: It goes straight across
8 there where you are pointing and follows over
9 and stops right there and then takes a right
10 angle.

11 THE WITNESS: That's it.

12 THE COURT: And parallel down the side.

13 THE WITNESS: 24 would parallel very
14 closely to the left of the photograph.

15 Q Now, can you generally indicate the
16 boundary of the Borough, where the Borough stops and
17 where the Township begins, if you can?

18 A Yes, the Borough boundary is basically in this
19 picture horizontal and in the lower half of the picture.

20 Q Within a half inch on the photograph of
21 the top of Chester Springs Shopping Center?

22 A Yes, and horizontal further towards the left on
23 the picture and it intersects in fields in the very
24 center part of the photograph here which, as far as I
25 remember, partly in the Township and partly in the

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Borough.

Q All right. Now, is this photograph looking from north to south?

A Yes. That is basically the direction, yes.

Q With the Borough in the foreground and southern boundary, southern end of the Township in the background?

A That's right, so I was talking about the southern boundary of the Borough.

THE COURT: Would you agree at that time north to south would be more from the lower left hand corner of the photograph to the upper right hand corner of the photograph?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: That would be a slight distinction there, yes.

THE COURT: Okay.

Q Is D-47-B looking generally from south to north or from southwest to northeast?

A I believe that is more directly towards the north from the south.

Q And the Caputo property is in the foreground?

A Right.

Q Is it correct that the Borough, the

1 intersection of 24 and 206 is on the top of the
2 photograph?

3 A You are lining up on this Zoning Map here--you
4 are lining up the Caputo property basically where I
5 have my thumb here and the Shopping Center, so as you
6 can see, we are basically in the north-south direction.

7 Q All right.

8 THE COURT: The white blotched area
9 that looks like a landing strip on an airport
10 is the Shopping Center. It is up toward the
11 top, yes, right there.

12 THE WITNESS: That's it.

13 THE COURT: Okay.

14 MR. FERGUSON: I would move these
15 into evidence.

16 MR. LINDEMAN: A couple of questions,
17 your Honor?

18 THE COURT: Sure.

19 BY MR. LINDEMAN:

20 Q The red marks on the photographs were
21 placed there by you, were they, Mr. Hultgren?

22 A Yes, they were, yes.

23 Q And was that done with any engineering
24 machinery of any kind or was it just an estimate on
25 your part?

1 A It's an estimate based upon my knowledge of
2 the lot extent and my knowledge of the field area
3 itself.

4 Q All right. Now, I am holding up D-47-B
5 for identification. Can you tell me if that shows all
6 of the Borough of Chester or just part of it?

7 A I really cannot say. I will say this though,
8 that it probably covers most of the Borough.

9 Q So, therefore, at the very top of the
10 photograph would be part of the Borough, would it?

11 A You mean at the very top, probably could be in
12 that case and sections of the Township.

13 Q All right.

14 MR. LINDEMAN: If your Honor please, I
15 think the documents are excellent because they
16 graphically show what we are talking about but
17 I would just request that the documents be
18 received without the assumption that the red
19 marks are precise.

20 THE COURT: I think that is fair. He
21 said he estimated them.

22 MR. LINDEMAN: Right.

23 MR. FERGUSON: I would agree.

24 THE COURT: Let them be marked into
25 evidence and let's--

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(Short recess)

(Documents formerly marked as Exhibits D-47-A and B for identification are received in evidence).

THE COURT: Okay.

BY MR. FERGUSON:

Q Mr. Hiltgren, during the recess did you examine these Maps or photographs and do you have any further comment about the red outlining?

A Yes, I was--I had a chance of reviewing an aerial photograph Map and based on that I can see that I was a little bit short on the size of the Caputo property as indicated there.

Q In which respect?

A Of course, it was very simple to find my way along Fox Chase and Gladstone-Chester Road, but it is the inner boundaries that are a little bit too short, so if you please, I would like to put another line on here that more reflects what we actually have. We are coming out, basically, to this house on Fox Chase with the property and it comes down to include this wooded section here and then goes back, based upon what you can see the outlining of the Zoning Map. It comes down about here and this point would be coming down more in this direction.

1 THE COURT: Having walked the property,
2 I think the changes are more reflective of what
3 existed because as far as Mr. Caputo's
4 explanation to me, he did not cross the
5 Gladstone Road and the first outline crossed the
6 Gladstone Road and when we walked out of the
7 property, as you will recall, we came down off
8 this hillside into this field and he said that
9 that field was his and I am showing that field
10 between two lines, the original smaller line
11 being the inside line and now the new line that
12 Mr. Hultgren puts in, the outside line. I think
13 that is more in keeping.

14 Q Now, Mr. Hultgren, I would like you to
15 use whatever aids that you need to explain your answers
16 to the Court, be they your Map, D-40, the Zoning Map or
17 the two aerial photographs. I am going to ask you a
18 series of questions about the Caputo site.

19 Mr. Hultgren, do you have an opinion as a Pro-
20 fessional Planner as to the appropriateness of the
21 land owned by Joseph and Aldo Caputo of the project as
22 the kind and nature as outlined on P-1 in evidence, the
23 Site Plan I showed you earlier? I am asking you, not as
24 a Site Plan review statement but rather as a general
25 Planning Statement of that kind of project in that

1 particular area on that piece of ground. First, do you
2 have such an opinion? A Yes.

3 MR. LINDEMAN: Your Honor, I object
4 to whether the witness has an opinion or not.
5 The witness has testified as to the
6 environmental conditions in the municipality
7 insofar as septic systems are concerned. He was
8 asked one question, as I recall it, about spray
9 irrigation systems and there he had--he did not
10 testify very extensively but, in any event,
11 there has been nothing to relate anything about
12 the uses of any of the property in the
13 municipality for development of any kind with the
14 use of spray irrigation systems.

15 Now, P-1 in evidence, which is the 856
16 unit development is not just a number of houses
17 and roads that are going to be built. It is
18 the whole system. The drainage and the method of
19 handling whatever sewerage would be generated
20 in the premises. That, of course, was all--and
21 I submit would have been the subject of the
22 environmental impact statement which you
23 excluded. For the witness now to render any
24 opinion as to the propriety of this project the
25 way it was contemplated by the Caputos would

1 be as inappropriate as any other testimony
2 criticizing the environmental impact statement
3 without its having been received into evidence
4 and it is our position that nothing that the
5 witness can say about that project, except for
6 the fact that there are a lot of houses that
7 would be useful in terms of the impact on the
8 environment without knowing what actually the
9 plaintiffs were going to do.

10 MR. FERGUSON: My question does not
11 carry with it the excess baggage of the spray
12 irrigation proposal. I am just asking the
13 witness for his opinion as to the siting of
14 multi-family housing in general on the Caputo
15 site from his Planning point of view.

16 THE COURT: As I understand the question
17 and if it is in the framework that I understand
18 it, I think it is permissible. It is in a
19 general Planning context as this Planner has
20 planned out the Township. Does this fit into the
21 general Planning concept, that site?

22 MR. LINDEMAN: Well--

23 THE COURT: You know, and I take it he
24 is going to zero in on the reasons sort of
25 inverse, the reasons why he zoned it two and five

1 acre. I can almost tell you probably what his
2 answer is going to be. I think in a general
3 sense it is admissible. You remember I told you
4 one thing, Mr. Lindeman, and I will repeat it
5 again because I think it is important. I said
6 to you once before that your environmental
7 impact study might not get in as a specific Site
8 Plan item and that is why I excluded it, but it
9 might come back on rebuttal as a general Planning
10 concept problem or issue depending on the scope
11 of the testimony on the defense of the case.

12 Now, I am talking--I am talking--I talk
13 two things. When I talk about that environmental
14 impact study, Site Plan and if I did not make
15 myself clear, I hope I did, I was not going to get
16 into a Site Plan review of the parcel. All right?

17 MR. LINDEMAN: Yes, sir. That is
18 correct.

19 THE COURT: But from a general Planning
20 standpoint, that is something else again.

21 MR. LINDEMAN: Right. I understand that.
22 If that would be the import of the question,
23 then what the question seems to do is to say:
24 Mr. Hultgren, were you right or were you wrong
25 in zoning this property for two and five acre

1 sening, and that, I think, is really frivolous
2 because that really is what it is going to do.

3 If he is going to say now, no, it is not--
4 it is wrong for 856 units, that is as
5 inmemorable as the night following the day, which
6 I hope continues, but he has already done that.
7 For him to comment, however, on the project, I
8 think is prejudicial to us and it is improper.

9 THE COURT: I do not think that it is
10 prejudicial. It might be superfluous then. It
11 is clear. He has done what he has done. For
12 him to say: Yes, I really meant it, I do not
13 think it adds anything.

14 Doesn't it, Mr. Ferguson, cross the "t"
15 and dot the "i" perhaps twice? You have already
16 asked all those questions. He has already told
17 me why two and five acre is there. Now you are
18 asking the question the other way. Why shouldn't
19 multiple family dwelling units go on to that site?
20 This is something he already told me. I, you
21 know--if it is a lengthy--I will tell you what I
22 will do.

23 I will compromise it. I anticipate the
24 answer. As long as it is not a lengthy answer
25 I will allow him to answer it. I think it is

1 somewhat superfluous. If it leads into an
2 amorphous problem of testimony, then I am going
3 to cut it off.

4 MR. FERGUSON: All right. I think that
5 is a fair resolution of the problem. I think to
6 some extent it might be redundant but it does
7 tend to focus the art and discipline of the
8 Planner on what this plaintiff is asking for as
9 to specific relief. Do you remember the question
10 now, Mr. Hultgren?

11 A Yes, I do. I will try to answer it in the
12 context of what the Court said. I find the location of
13 a higher intensity use such as the proposal in the
14 proposed area to be inappropriate considering the
15 context of Master Planning for the community and for
16 reasons basically as stated before, I would like in the
17 context of the Master Planning, though, if I may, say
18 that should a development of this type occur in this--in
19 my mind, remote area, the criteria that we have been
20 discussing or talking about for these two days that we
21 have applied in the Master Plan to various areas, will
22 then not be valid because the criteria, resource
23 protection, facility provisions, transportation
24 considerations, orderly growth and so forth, they go
25 counter to the proposal development and you can take

1 any other site in the community, you apply the
2 criteria that I applied to them and you will find that
3 due to the fact that we have permitted, if that will be
4 the case, the Caputo development, those criteria are no
5 longer valid and the entire Township is open for
6 development of any density at any time, at any location.
7 This is against orderly development of a community. It
8 is against, of course, the intent of the orderly
9 produced Master Plan and the Zoning Ordinance and it is
10 certainly against generally accepted Planning principles.

11 MR. FERGUSON: No further questions.

12 CROSS EXAMINATION BY MR. LINDEMAN:

13 Q Mr. Hultgren, on your direct examination
14 you stated that D-41 for identification was one of the
15 documents that you used to support your conclusion that
16 there is no major responsibility on the part of the
17 Township of Chester to supply low or moderate income
18 housing for the region in which it is located. Would
19 you tell us, please, what part--what is it, D--

20 A 41.

21 Q 41 for identification does that?

22 A It may not be quite as difficult--as easy for
23 me to do that because it is inherited in the text.

24 Q You have another copy?

25 A Yes. I did find one at Fairleigh Dickinson.

1 Q Right.

2 A There are a number of areas in this report where
3 you can interpret as a Planner the statement I made,
4 Page 7.

5 Q Yes, all right. Tell us, please, where,
6 don't read it but just tell me where first so I may
7 look at it before you refer to it.

8 A Sure. Page 7, under Title 2, "Basic Patterns."

9 Q Is it the whole page or just the first
10 two paragraphs?

11 A I would say the two paragraphs and, no, you
12 should continue on Page No. 8 and stop at the title,
13 "Why Centers and Communities Seem Preferable." That is
14 one section that I can identify immediately. Then
15 again, there is on Page 31, statements on air and water
16 quality in the title and we have sub-titles there. We
17 can go to the next section on Page 33, stopping at what
18 is called "Transportation." I would have to reread the
19 document in order to be--to indicate or illustrate
20 further what I am saying.

21 Incidentally, as an answer to your question, I
22 said, I believe, before that there were other regionally
23 planned documents that provided the same impression
24 and one of which is called "The Second Regional Plan", a
25 draft for discussion published in November 1968.

1 Q I am sorry. Would you repeat that,
2 please? What is that?

3 A Yes. "The Second Regional Plan", a draft for
4 discussion, published by the Regional Plan Association
5 on November 1968.

6 Q Did you consult that document?

7 A Yes, I did consult that document too.

8 Q In connection with the preparation of the
9 Master Plan?

10 A Exactly, and I can take at this moment only one
11 page out of that report which is Map No. 8 following
12 Page 60, which basically supports my statement that no
13 major growth was assumed on the future development for
14 the Chester area.

15 Q Maybe first we ought to have some
16 definition at least as you understand it of the word,
17 "major". What do you understand that to mean?

18 A Well, as it comes out on this particular
19 example here of the Map, I would separate it between
20 multi-family respecting single family indications in
21 the legend. Wherever you have concentration of the
22 graphic symbols for multi-family, you would, in my mind,
23 have to assume that you are talking about more major
24 development.

25 Q Now, is there anything in D-41

1 for identification which talks about the obligation
2 or responsibility of Chester Township or anything like
3 that for any major responsibility, rather, is there--
4 let me withdraw that.

5 Is there any place in this D-41 for
6 identification which talks about the major
7 responsibility with regard to multi-family housing and
8 the area in which Chester finds itself?

9 A I believe there is but, quite honestly, I would
10 have to read the document again to pinpoint those
11 phrases.

12 Q Well, you do believe, however, that the
13 pages that you referred to us before say something to
14 that question?

15 A They are generally indicating all supporting
16 my statement, yes.

17 Q Perhaps we can study that at the noon
18 recess.

19 Would you also make an effort, Mr. Hultgren,
20 to tell me if there are any other places in at least
21 D-41 and I would like to have the document which you
22 just referred to marked for identification. This is
23 the Second Regional Plan, a draft for discussion,
24 dated November 1963, of the Regional Plan Association.

25 (The Second Regional Plan referred to is marked

1 as Exhibit P-46 for identification).

2 Q Now, did you say, Mr. Hultgren, that the
3 conversations with Mr. Woodbridge and particularly
4 the Morris County Master Plan, which is P-13 in
5 evidence, supported your position that Chester was not
6 in some kind of a region into which low and moderate
7 income families might be moving?

8 MR. FERGUSON: I object to the form
9 of the question. I do not think that is what the
10 witness testified to.

11 MR. LINDEMAN: Well, perhaps it isn't.

12 Q What is it then? What is it that the
13 Morris County Master Plan told you about the obligation
14 of Chester Township to afford multi-family dwelling
15 for low end moderate income people?

16 A The Master Plan for the County told me that
17 Chester Township was not supposed to assume any major
18 responsibility for housing for low and moderate income
19 families. That does not include--exclude, of course,
20 that you would have a certain amount of responsibility
21 for suburbia residence, but there was no major
22 responsibility for additional housing allocated to the
23 Chester area.

24 Q Well, in any event, it did not say, did
25 it, somewhat as you have testified, that Chester

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does not have a responsibility?

A Correct. It did not say that.

Q It did not say it does not have a major responsibility? Is that right?

A That's right. We did review my projections, incidentally, and Mr. Woodbridge found them to be reasonable.

Q Right. Well--

MR. LINDEMAN: I move that that be stricken, your Honor. I did not ask that, and for the witness to have volunteered: "Mr. Woodbridge found them to be reasonable."

THE COURT: All right. It will be stricken.

Q Now, do you have a copy of the Master Plan of the Land Use Element?

THE COURT: Of Morris County?

Q Of Morris County.

MR. LINDEMAN: I have it, your Honor. I have the Court's Exhibit.

A The County, you mean?

Q Yes. A Yes.

Q Would you look at Page 73, Paragraph 5, toward the middle of the first full paragraph?

THE COURT: Page what?

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MR. LINDERMAN: Page 73.

THE COURT: Yes. Paragraph?

MR. LINDERMAN: It is paragraph 5. It starts numbered paragraph 5.

A Yes, I am looking.

Q Now, it refers to Mendham, Chester and Long Valley Centers and in about the second or third sentence seven lines down, it says:

"Finally, these three concentrations are the three major towns of an area where pressure for development is severe and where new growth seems likely to occur."

Now, that does not support the position that growth is not coming into Chester Township, does it? In fact, it says the opposite.

A Well, this is exactly what is brought into the Master Plan for Chester Township. That growth will occur. The Master Plan assumes that.

Q What I am trying to do is to find out where you find it that there is no either major or whatever other responsibility that may apply to Chester for the furnishing of multi-family housing and you have stated that while it is not stated affirmatively that way, I guess it is implicit in the document or at least it does not say that there is the obligation to

1 furnish low cost housing as a major responsibility. Is
2 that what you are saying?

3 A I am saying that the growth will occur in the
4 Chester area but that does not mean and the statement in
5 the Master Plan does not mean, what I read, that you
6 have to provide for growth and multi-family housing to
7 any extent, to any significant extent. You can go on
8 the same page a little bit further down and you will
9 find statements covering the fact that--in the last
10 paragraph, second line, the area covers the head
11 waters or three major branches of the Raritan River
12 system which is used extensively for water supply and
13 I would certainly not be hard pressed to link that
14 statement to the sensitivity of the water resources.

15 Page 74, to continue on this question, down the
16 second paragraph from the bottom says:

17 "That highly respected groups such as the
18 Water Shed Association in the area have legitimate
19 concerns for the long term effects of development of any
20 kind upon an extremely important aquifer."

21 Q Yes.

22 A They are joined in this concern by the Regional
23 Development Guide of the Tri-State Regional Planning
24 Commission, which all used water areas, by general
25 policies of the Morris County Soil Conservation District.

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That's it.

Q Now, that refers to a particular aquifer, right? That paragraph that you just read?

A Yes. Under paragraph "Mendham, Chester, Long Valley Centers".

Q Is the aquifer--does the aquifer go through and under the entire section that you are talking about or does it have measurable limits?

A That question you have to ask the Water Resource Specialist.

Q The answer is you do not know? Is that right?

A I know what I have been told as a Comprehensive Planner that this Chester area is part of a sensitive water resource area. That is what I had to believe him. I have reason--very good reasons to believe that this is true.

Q Of course its being part of a sensitive water resource area does not mean there should not be development on it, including multi-family houses?

A No, not at all. It doesn't mean that.

Q In fact, it means it should be.

A You should manage or monitor your resources not to deplete them.

Q Which is an objective that all Planners

1 and all citizens should have in any event. Isn't that
2 so?

3 A Well, I do not think you have to make that a
4 provision. You have to look at details of the works.
5 There are areas that are not located in such sensitive
6 aquifers, of course, and I have been doing the Master
7 Plan for Morris Township and wouldn't call those
8 particular reasons for limiting the development in
9 Morris Township.

10 Q I am sorry. You would not use those as
11 reasons for limiting the development?

12 A I did not in the Morris Township Master Plan,
13 which I made, discuss at any depth or length the
14 protection of water resources. That was not an issue
15 in that Plan but it certainly was an issue in the
16 Chester Township Plan. My point being, the statement
17 to protect water resources is not a motherhood type of
18 statement that can be applied to any community. You
19 have to look at specifics and so I did.

20 Q Now, at the top of Page 74, the first full
21 paragraph where it says:

22 "However, the 1970-1980 decade alone, it is
23 projected that the population of Mendham will increase
24 by about 55 percent. Mendham Township by about 70
25 percent. Chester Township, 35 percent, and Washington

1 Township by 74 percent."

2 That does not support your view or the
3 implication that you drew from this that--

4 A Well, it--

5 Q Hold it. Let me finish the question.
6 That there is no regional obligation on the part of
7 Chester to support additional multi-family housing, if
8 you will?

9 A No. As a matter of fact, I did not quite go
10 with the recommendations or projects of the County in
11 this respect, in that I projected that our saturation
12 population would indeed be higher than these particular
13 projections. The 45 percent increase for Chester
14 Township is lower than I predicted over the general
15 Planning period so I have assumed a larger growth of
16 the Chester area than the County Planning Board
17 actually did.

18 Q Now, going to Page 75 toward the bottom
19 of the page, the Morris County Planning Board does
20 recommend that the three centers, including Chester,
21 be encouraged to grow, correct? A Yes.

22 Q And it says that the 1970 municipal
23 population of the Chester area in 1990 will be about
24 15,000. Is that a projection with which you disagree?

25 A Not necessarily. I think it is within the

1 ballpark. My projection, as I remember, was 18,000
2 in general figures, so I am not that far away from it.

3 Q When it speaks in--of Chester area, of
4 course, Chester Township is included? A Yes.

5 Q And it refers to pressures that would
6 come from sources outside of the municipality
7 obviously, would it not? I mean this 15,000 is not
8 being generated by the people who live in it now. Is
9 that contemplated?

10 A No. That would be--I do not think they would
11 generate that many children there, those ones who live
12 there. This is an immigration, necessarily, yes.

13 Q Okay. Now, let me just put this question
14 to you a little out of order from my--on my examination.

15 Though the period of 1970 and 1990 are periods
16 that are referred to, is that not because that is a
17 reasonable period of time within which Planners should
18 make their predictions and their preparations, that
19 is, the period 1970 to 1990?

20 A Yes. This is a 20 year projection. I think it
21 is reasonable. I normally try to shorten it down a
22 little bit to about 15 years because I have found from
23 experience that Master Plans do become outdated a little
24 bit faster than that and even though the 20 years or 15
25 years horizon is what you're aiming at, you are, of

1 course, constantly aware of the fact that when something
2 significant happens in the community that affects
3 development, you will have to revise your goals or your
4 horizon projections, so you are looking over a period
5 of 15, maybe 20, years. That is reasonable.

6 Q Now, you also testified that if a Master
7 Plan should speak, I think, you say this, the Master
8 Plan at least as you worked on it should speak for 10
9 years and Zoning Ordinance not necessarily for that
10 length of time. Is that correct?

11 A Yes. At least 10 years, I think I said.

12 Q Right.

13 A The Zoning Ordinance is a more day-to-day
14 oriented document in my mind.

15 Q What policy reason? How can you explain,
16 please, why the Zoning Ordinance ought not to try to
17 implement the Master Plan? What reason would there be
18 other than that the statement that you make that the
19 Master Plan speaks for a longer period of time?

20 A Well, I am glad you asked the question because
21 it's the question about implementation of the Master
22 Plan over a period of time. I find that we have very
23 few procedures available to us to provide an orderly
24 development in a time sequence, one area at a time or
25 a few areas at a time and as a continuous growth,

1 logical growth, but the dual relationships between the
2 Master Plan and the Zoning Ordinance is one of the
3 crude tools that the Planner can employ in order to say
4 in the Master Plan over a longer period of time I think
5 that these particular areas be proper to develop.

6 However, in the Zoning Ordinance, I am indicating
7 that in the short range perspective I feel that only a
8 smaller amount of properties would be developed, for
9 instance, in higher intensity use just to stage the
10 growth. I do admit it's a crude tool but it is some
11 tool that has been available to us and that we are
12 using.

13 Q When a Master Planner says, as you did, in
14 about 1974 that 650 units of multi-family dwellings are
15 projected for a period, I think it was up through 1990,
16 was it? That is what you testified to today. I do not
17 know that it states that in the Master Plan.

18 A Was a projected total need.

19 Q Projected total need up through 1990.

20 A Wait a second.

21 Q Isn't that correct?

22 A You said 1990, does have a year?

23 Q A year, no. There is no year in it.

24 Mr. Hultgren, I thought that was your testimony.
25 If it was not, you correct me.

1 A Over the Master Planning period subject to the
2 vague limitations of time that I have indicated.

3 Q All right. Now, assuming that it is
4 even 10 years or 15 years instead--

5 A Could happen, yes.

6 Q Whatever it would be. A Yes.

7 Q The need is referred to expressly in the
8 document and a Zoning Ordinance is then prepared and,
9 presumably, implemented which does something less than
10 that. Now, it is the fact, is it not, that the Zoning
11 Ordinance of Chester Township does not provide for
12 650 units but rather for 300 units?

13 A Yes. My reading of the Plan gives me--of the
14 Zoning, I mean, gives me the impression that you have a
15 lesser number provided through the criteria and the
16 location and indications in the Zoning than 650. It is
17 about 300.

18 Q Now, wouldn't it be a good and proper
19 element of Planning and coordination with the
20 preparation of the Zoning Ordinance that there be
21 something in the Zoning Ordinance which would honor--
22 pay some attention to the statement in the Master Plan
23 that a projection of 650 units is indicated, rather than
24 to do nothing about it? Is that not so?

25 A You know, as I said, it is a crude tool. I

1 would like to see some kind of provision for that. The
2 only way we can accomplish that now is to zone all of
3 the potential areas for medium density development in
4 the Master Plan, for such development in the zoning.
5 I do not think that is within the context of proper
6 growth and you do not need all of those areas
7 immediately because we are talking about a need of
8 approximately 650 units and that corresponds to a
9 population of, say, 15 to 18,000. We will not have
10 that very soon. At least not within the generally
11 assumed time of Zoning Ordinance over a five year
12 period.

13 Q Is that a principle of Planning and
14 zoning that is sacred in the bible of Planning and is
15 really supported by all Planners, that is, that you
16 should not provide for more than what you would need
17 let's say within a relatively short period, let's say,
18 such as five or six years? Is that something that
19 you can tell me is supported generally in the provision
20 and bears some substantiation in texts, that you do not
21 do more than you need today in a Planning--in a Zoning
22 Ordinance?

23 A Yes, I would say that in the first place the
24 Planner is looking for a way to implement his long
25 range proposals over a shorter period of time in stages

1 and I believe it is a generally accepted idea to
2 implement that through the crude tool of the zoning
3 as it is by including maybe a smaller amount of acreage
4 for, say, the high intensity useage in this case. You
5 have to balance between singling out only one area or
6 one ownership, thereby favoring one particular lot or
7 person which really is not within the context of what
8 the Planner wants to do either. So, you have to have a
9 choice of several lots but you still want to keep
10 monitoring the development so that it doesn't pop up all
11 at the same time. This would mean a costly type of
12 development both publicly and privately over a very
13 short period of time to develop what is supposed to
14 develop over a longer period of time would be quite a
15 shock to the public economy or the public expenditures
16 and revenues in the community, for instance.

17 Q Don't you think though that even that
18 Planners may have thought as you do and as you have
19 stated that they should change their thinking and it
20 should have been changed even as of 1974 and 1976, or to
21 the thinking of Judge Conford in Oakwood at Madison
22 Township, where he is talking about this problem of
23 what developers do in developing property for multi-
24 family use and where he says that over-zoning for the
25 category desired tends to solve the problem? Do you

1 recall--you did read the case, did you not?

2 A Yes, sure.

3 Q Now, isn't that a principle even if it
4 were not accepted and implemented before, has,
5 nevertheless, has validity and perhaps ought to
6 supersede some of the prior notions of Planners?

7 MR. FERGUSON: I object to the first
8 statement about Judge Conford in Mount Laurel.

9 MR. LINDEMAN: Did I say Mount Laurel?
10 Oakwood.

11 MR. FERGUSON: Oakwood. I have no
12 objection to the second statement, if he is just
13 making the statement about over-zoning.

14 A I think there is definitely e--

15 THE COURT: Well--

16 THE WITNESS: I am sorry.

17 THE COURT: It sets the framework for
18 the question. I will allow it. Go ahead.

19 A I think there is a risk that you may over-zone.

20 Q I am sorry. I did not hear.

21 A There is a risk and this is generally accepted
22 among Planners, I am sure, a risk inherited in over-
23 zoning for a particular purpose such as multi-family or
24 commercial use or industrial use. A risk that you will
25 upset the balance of orderly development in the

1 community.

2 Q What is your general experience in the time
3 period that elapses in outline--lying areas such as the
4 one we are talking about between the time of the
5 preparation of a Master Plan and the adoption of the
6 Zoning Ordinance on the one hand and the actual breaking
7 of ground and completion of construction for multi-
8 family dwellings on the other hand?

9 A Oh, that would be very difficult to answer,
10 sir, because the whole process of developing the policies
11 in the Master Plan, getting down to the engineering and
12 property related zoning and overcome various concern
13 from residents and so forth, it varies tremendously
14 from one community to the other. I really cannot give
15 any rules or any average as to the time it would take.

16 Q Well, do you have experience in that
17 process?

18 A Yes, I have. I have developed many Master Plans
19 and followed them up through the zoning period and
20 the development and I know that whatever I have
21 estimated as similar questions as you are asking me
22 now, my estimates have been wrong. Normally, I have
23 estimated too short a time.

24 Q I was going to say that usually would be
25 the way when any of this estimating--whether it be the

1 lawyer or the engineer or Planner such as you that
2 generally speaking it is shorter than it turns out.

3 In any event, we do not deal in speculations, I
4 guess, to any great extent in proceedings of this kind,
5 but is it not fair to say that the period of time
6 between the adoption of the Master Plan and the Zoning
7 Ordinance is measurable in periods of six months or
8 more at least generally speaking?

9 A From a very general standpoint and based upon the
10 cases I have heard, I think you are right, yes.

11 Q And the time period from the adoption of
12 the Zoning Ordinance to the completion of a project such
13 as 300 units of multi-family dwelling certainly would be
14 more than a year after the adoption of the Zoning
15 Ordinance and more likely two years. Is that not so?

16 I am speaking of actual real reasons why that is
17 the case.

18 A No. If there is a development intent, that is
19 matched in Zoning Ordinance, then I think the developer
20 will go ahead as soon as the Ordinance has become
21 valid. Then there wouldn't be any time at all between--
22 if you are just waiting for a Zoning Ordinance and you
23 are all prepared and lined up your backing resources
24 and your crew of workers and so forth, then I think
25 there is no more than one day in between getting the

1 Zoning Ordinance published and your starting to dig
2 on the property.

3 Q However, we live in a real world and
4 no developer would ever have his plans and specifica-
5 tions in such final shape that the day after the
6 adoption of the Zoning Ordinance he would be in a
7 position to apply for the Site Plan approval, would he?
8 I mean it is an actual--as an actual practical matter?

9 A That would be a gamble on the part of the
10 developer, of course, that the zoning would come out
11 the way he is asking.

12 Q I would not speculate any further on
13 that with you, Mr. Hultgren.

14 Now, you did state, however, in the answer that
15 you just gave that the intent of the owner or
16 developer, if that intent were such that he really
17 wanted to go forward, the time period would be lesser.
18 I think you indicated that. Something to that effect?

19 A Yes.

20 Q So, it is fair and correct to say, isn't
21 it, that the intent of an owner and developer is of some
22 significance even in terms of Planning as to the kind
23 of construction that will be done in the area in question?

24 A The intent of the owner?

25 Q The intent of the person who controls

1 what will be done on particular property?

2 A Now, that is a difficult thing to say. At
3 least I pride myself of being entirely objective in
4 those cases and I have been approached during my
5 time as a Planner both in this country and in Canada
6 and Sweden by people who own land in a particular
7 area where I am concerned and I have always decided
8 to disregard those statements unless they have had
9 any factual ground that directly relates to the
10 Planning factors that I am concerned with.

11 Q Let me put it this way then: This is a
12 hypothetical that I am inventing:

13 If, in Chester Township, a man owns a large
14 part of this land that you referred to as undeveloped
15 and open space, and has a beautiful mansion on it but
16 contains many, many acres, if the person happens to be
17 extremely rich and clearly does not appear to be in
18 the business of developing property, it is unlikely
19 that such land would be used for multi-family dwelling
20 even in the event that it were so zoned. Isn't that
21 the case?

22 A No, and you cannot say either because the man
23 may die tomorrow morning and his kin are very eager
24 to develop the whole thing.

25 Q In any event, those probabilities are

1 not taken into account?

2 A No, not by me.

3 Q All right. When you refer to the 650
4 apartment and rental units on Page 10 of the Master
5 Plan, were you referring to units for any particular
6 income category or was it just general?

7 A Indirectly, on the writing I think we have
8 something of that sort. Let me get back. Was it
9 Page 10?

10 Q Yes, I think it is.

11 A Okay. Okay. We have--it alludes to it in the
12 first paragraph under "Housing" on Page 10 where I say
13 the question is how much of the regional needs for
14 rental and moderate income housing that can be met, so
15 this is a subject of this paragraph here to discuss
16 those items and it also says that the major local needs
17 need provisions for service labor. That is the last
18 paragraph under "Housing", "Elderly Residents and
19 Young Family" who want reasonably priced dwellings with
20 less size and floor space to maintain. So, I believe
21 that the context is that I am talking about more the
22 lower and moderate income but, of course, there is no
23 figure attached to it.

24 Q But you are also talking to the need which
25 is generated within the municipality itself, aren't you,

1 the 650?

2 A No. The need generated in the community
3 itself at the time of 1970 was in the range of 15
4 percent. I was looking at the existing rental
5 situation. I was looking at the income actually as
6 pinpointed in the U. S. Census and arrived at those
7 conclusions with the 15 percent of the population in
8 Chester Township.

9 Q About 4500?

10 A Would be more moderate in terms of the income
11 but then to be conservative on this issue, I rose that
12 percentage to 25 in the projection so that the 650
13 units correspond to a larger percentage of people in
14 those categories that I indicate here. Service, labor,
15 elderly residents and young families and, of course,
16 assuming that we had a population increase and a
17 population increase was primarily immigration as we
18 said before. So, in other words, the need for the
19 650 units is not generated by the present residents.
20 It is generated by the present residents and the future
21 residents of the Township.

22 Q You cannot tell us of that 650 how much
23 probably--how much should serve low and moderate income
24 people and how much higher income people?

25 A We didn't go into that question. We did discuss

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it. We didn't pinpoint any levels or allocate any proportions.

Q They are all mixed together?

A Between the Planning Board and myself.

Q Right. They are all mixed together in the 650? A Yes, they are.

Q Now, I believe you testified on your direct examination that insofar as water supply is concerned that it exists in the northern part of the Town and immediately south of the Borough. Was that correct?

A No, not immediately south of the Borough.

First, as I understand the richest resources would be along Black River and in the northeastern sections of the Township and then the rest of the Township for average purposes would at least, so I was told by the various scientific resources I had, yield about 100,000 gallons per day and square mile.

Q Now, in your depositions--

THE COURT: Could we stop there and break for lunch?

Okay, one-thirty, gentlemen.

(luncheon recess)

AFTERNOON SESSION

BY MR. LINDMAN:

1 Q Mr.--

2 THE COURT: Wait a minute. Okay, go
3 ahead.

4 Q Mr. Hiltgren, you stated that you
5 believed that the best water supply was in the
6 northern section of the Town. You do recall, however,
7 in your testimony at Page 84, Line 8 on March--no, this
8 would be February 15, 1977 that you testified that you
9 thought that one of the areas was in the very southern
10 section of the Township and the other one in the very
11 northern section or in the Black River vicinity, so
12 does that change your testimony in any way that the
13 best--

14 A No, there is--to the best of my recollection
15 we have more abundant resources up in the northern
16 parts of the Township and that testimony obviously
17 overlaps what I am saying now. It is true--

18 Q Excuse me. Would you go a little slower,
19 please? A little slower, so I can get you.

20 A It is true that the southern section of Chester
21 Township is used as a water resource area in that water
22 from that brook is used for public purpose by the
23 communities south of the Township, but that doesn't
24 necessarily mean that we have a major resource in the
25 southern part. It is just a resource that exists and

1 that is being used but if I understand correctly, the--
2 the much larger yields than 100,000 gallons per square
3 mile are to be found along Black River and the
4 northeastern sections of the Township.

5 THE COURT: Mr. Lindeman, would you
6 repeat the page and line?

7 MR. LINDEMAN: Page 84. The question
8 appears at line 8, the answer at line 11 in
9 the transcript.

10 THE WITNESS: Now, again, the important
11 thing is, of course, it is uneven. We have
12 resources in one end of the community. We
13 do not have quite as much in the other end of
14 the community. It means that if you are at
15 some point getting into a situation where you
16 have a lack of water resources in a section
17 of the Township you could considerably, for
18 a price, pipe water from the better yield
19 areas to the lower yield areas so that as a
20 Planner I had to place a little bit less of
21 importance on that particular feature, the
22 water resource, within the boundary of the
23 Chester Township itself than may be Mr. Larsen
24 at the Water Shed Association and Mr. Fox, the
25 Township Engineer, would do.

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Q For purposes--

MR. LINDEMAN: For purposes of the record, your Honor, I would like to read that question and answer in fully.

THE COURT: Sure.

MR. LINDEMAN:

"QUESTION: Can you tell me, where to your best recollection the two areas of good or substantial water supply, whatever term you indicated, are?

"ANSWER: I think one of the areas was in the very southern section of the Township and the other one in the very northern section or in the Black River vicinity."

Q Mr. Hultgren, the very southern section would, of course, be generally around where the Caputo tract is, is that correct?

A No. The very southern section would be farther south, down by the school.

Q Is it fair to say, however, that if you would characterize any particular area of the Township that the Caputo property is in that it would be in the southern section as opposed to any other?

A Yes, I say in the--it's in the middle of the southern section, yes.

Q Now, it is a fact, is it not--well, no,

1 Let me withdraw that.

2 So far as the Borough is concerned, I think you
3 testified that you did not make a detailed study of the
4 extent of development and what all the zoning in the
5 Borough may be. Is that correct? You did not make
6 a detailed study of it?

7 A A detailed study of each lot?

8 Q Of the zoning in the Borough?

9 A Oh, yes, I acquired and I still have with me
10 here the Zoning Ordinance for the Borough, so I did
11 review that document, the Zoning Ordinance, yes.

12 Q And it is correct that there is no multi-
13 family dwelling that is or was permitted in the
14 Borough as of 1974 when you prepared the Master Plan?
15 Isn't that correct?

16 A Let me just cast a glance at the Map again and
17 refresh my memory because I have not seen it for
18 some time or studied it, that is. I suddenly do not
19 find it here. Oh, here.

20 Okay. You are right. There is no provision
21 here for other residential development of single family
22 housing.

23 Q Do you know whether that situation has
24 changed today? A No, I don't.

25 Q Would you say that the Borough is what

1 we would generally characterize as reasonably well
2 developed, which is to say, that most of it has been
3 built upon with a form of house, with a number of
4 houses that are permitted by the relative Zoning--
5 relevant Zoning Ordinances or the relevant Zoning
6 Ordinance?

7 A The density as provided in the Borough Zoning
8 Ordinance is a maximum--a minimum of 20,000 square feet
9 per residential lot.

10 Q All over?

11 A Yes. That's what it says in the Ordinance and
12 I am referring then, of course, to the Ordinance that
13 was valid at the time when I made the Master Plan.
14 There it says the minimum lot area being 20,000 square
15 feet per lot.

16 Q Are there--

17 A Residential.

18 Q No, excuse me a moment. Are you saying
19 that the minimum house--

20 A Minimum lot size for a residential building would
21 be 20,000 square feet.

22 Q There are other lot sizes, however?

23 A For industrial and business use, yes.

24 Q No, I mean other than for residential or
25 is it just--that is approximately half an acre, isn't it,

1 the 20,000?

2 A That is approximately half an acre per unit. Yes,
3 that is all they have in the Ordinance.

4 Q In the whole Township--I mean, the whole
5 Borough?

6 A Yes, in the whole Borough and that is basically
7 how the Borough has developed, I would say.

8 Q Now, is it fairly well used up to your
9 knowledge?

10 A No, there are a number of relatively substantial
11 portions vacant. I remember particularly one section
12 in the northeastern part of the Borough that had at the
13 time when we made the Master Plan and development
14 pressure on it and where the development, if it occurred,
15 would have been rather substantial, so there is vacant
16 land available. There is vacant developable land
17 available. I also know about sections of the southern
18 parts of the Borough that were vacant at the time.
19 There would also have been some vacant areas in the very
20 western parts of the Borough. We have a large public
21 open space ownership along Main Street but, of course,
22 that is not open for development but what I am saying is
23 that, yes, there were indeed areas available for develop-
24 ment in the Borough at the time.

25 Q Of the total lands which are zoned for use,

1 that is, commercial, industrial and residential, can
2 you estimate in any way what percentage of it is as
3 yet undeveloped?

4 A No, I really cannot do that because whatever I
5 say is going to be too much of a guess.

6 Q Can you guess it even in wide latitudes
7 such as over, if you think it is over 50 percent or
8 over 75 percent or under either of those figures, or is
9 that still not positive? If you cannot, you cannot.

10 A You are pressing me. I will say at least half
11 of the community is developed, something like that.

12 Q All right. Now, when you were in the
13 process of preparing the Map or, rather, the Master
14 Plan for the plaintiff--for the defendant Township,
15 you did consider the attitudes of property owners in
16 terms of what they would or wouldn't do with their
17 property, did you not? I know that before you said you
18 could not speculate on whether a rich landowner who
19 had an estate would or wouldn't develop his property
20 but that did come into the equation in some respects,
21 did it not?

22 A Only in one respect and that would be during the
23 public meetings and public hearings that we had, I was
24 exposed to residents, presumably residents, of the
25 community that were in the process of our democracy for

1 giving me and the Planning Board ideas about our
2 preliminary proposals. I did not know at the time,
3 know whom they represented, those who spoke at the
4 meetings. I did not know exactly where they were
5 located, where their property was. It was an
6 expression from the general public as far as I am
7 concerned.

8 Q It is your impression, however, that as
9 to those who did appear at the meetings, whatever
10 public meetings there were, and those who had anything
11 to say either privately or publicly in your presence,
12 that these owners were not orienting themselves
13 towards low to moderate income housing construction.
14 Is that not fair to say?

15 A No, it's unfair to say.

16 Q It is unfair?

17 A I believe that we got a very wide range of
18 comments from the citizenry. There were both those
19 who spoke for the large size lot zoning and also
20 spoke for multi-family development and more intensive
21 development. It also spoke for commercial development
22 suggested various areas where to locate it and so
23 forth and even though I may be hard pressed to put
24 the finger on that particular person or incident, to
25 the best of my recollection, the question about housing

1 for low and moderate income people was brought up
2 either by the Planning Board or by people in the
3 audience. I know that the question was brought up.

4 Q I am speaking about--well, all right.
5 I withdraw that.

6 Let me ask you to hear this question and answer
7 and see if this does not change your view as to what
8 your opinion was or what your recollection of what
9 you heard was. On Page 57 of your depositions on
10 March 9, 1977, Page 57, line 13, this question was
11 asked:

12 "QUESTION: What information, if you can
13 separate it, was told to you or did you learn from
14 these public hearings insofar as the particular point
15 we are discussing is concerned, namely, the current
16 status of the housing market and the outlook for the
17 next two to five years?

18 "ANSWER: I was told that the housing
19 market is in the high price range in the Township of
20 Chester and that I was told by several people as well
21 as officials that this is the fact. This is what is
22 happening. Now, I was not told anything about
23 projections, such as somebody saying: 'I want to
24 have a high price market' or 'I want to have a low
25 price market'. I would also say that the impression

Hiltgren - cross

1 I got from those who were landowners or are
2 landowners in the community, was that they were not
3 orienting themselves toward the low to moderate
4 income housing market. Their interests were, of
5 course, primarily in the field of gaining as much as--
6 as much as possible of profit from their investment in
7 land." There is a little bit more to your answer after
8 that. That is the relevant part. So that at least
9 as of March 9, 1977 your impression then was that the
10 property owners, according to your testimony, were
11 not orienting themselves towards the low to moderate
12 income housing market.

13 MR. FERRISON: Excuse me. I request
14 that the next paragraph be read.

15 MR. LINDENMAN: All right.

16 Q You go on to say:

17 "And accordingly, they were concerned about the
18 densities and their major concern was not in any of
19 the cases that I can recall that they found that there
20 is such a large need for low income housing in
21 Chester, that we have to provide it and we are going
22 to provide it on our particular property. That was
23 never told to me."

24 So, the impression as of last March is that
25 the owners were not intending to build low cost housing.

1 Isn't that so? Did I misread that?

2 A No. Whatever you had read there is still a
3 statement I could make today. There was no one who
4 argued the point of actually providing low and
5 moderate income housing. What I am saying today is
6 that the question was brought up so that we did cover
7 the question of low and moderate income housing but
8 that does not mean that we came to any firm
9 recommendations. I would say my statement in March
10 is still what I would believe in.

11 Q Okay. Now, is it not correct, Mr.
12 Hultgren, that much stress and reliance was placed
13 upon the capacity of the soils to accommodate septic
14 tanks in terms of your recommendations that housing be
15 in two acre or five acre areas? I am not saying that
16 was the exclusive thing but that much stress was
17 placed upon that factor. Is that not so, the capacity
18 of the soil to accept septic tanks?

19 A I would say that the disposal system, the
20 pollution of water resources was certainly a question
21 that was with us all the time through the Master
22 Planning period and it was an important question. There
23 is no doubt about it.

24 Q And that other--

25 A That I can agree upon. It was an important

1 question. You said yourself that you recognize that
2 we had many other grounds for analysis and evaluation
3 but you are right. It was an important question, the
4 soil conditions.

5 MR. LINDEMAN: Does the Court have a
6 question?

7 THE COURT: No.

8 MR. LINDEMAN: I am sorry.

9 Q Some of the other factors had to do
10 with location of utilities and potential development
11 or construction of soil--sewerage disposal facilities,
12 is that not so, location of schools?

13 A Yes.

14 Q And other factors of that kind?

15 A Sure. When you have soil that you repeatedly
16 get to hear that they are sensitive to pollution, of
17 course, you start thinking and discussing all the
18 lines of some more sophisticated facilities, sewerage
19 systems and sophisticated sewerage treatment facilities
20 and I asked the Comprehensive Planner, I have to link
21 that to technical feasibility and the cost feasibility,
22 of course, and I have to also remember the orderly
23 growth of the whole thing so that we can avoid scattered
24 development of such rather expensive treatment
25 facilities that we are talking about.

1 Q Now, did you not conceive it as one
2 of the responsibilities of a Planner in doing this
3 Master Plan that recommendations of expenditures of
4 monies might have to be made in order to improve
5 facilities of one kind or another? Isn't that one of
6 the obligations of a Planner?

7 A Well, can you be more specific?

8 Q Well, naturally what I am thinking about
9 is a sewer system and that kind of thing and if I
10 may preface the question with a little bit more
11 foundation, here we have a municipality that does not
12 have a sewer system and I think you can correct me if
13 I am wrong, it is not unfair to say that the municipality
14 did not want to have one because it did not want to
15 build it. It did not want to spend the money to do it.
16 Would that be fair to say at least in the present state
17 of affairs?

18 A Against my very sincere discussions with the
19 Planning Board as a whole and the members there, I have
20 never gotten the impression that they were point blank
21 opposed to spending money publicly, but, of course,
22 as any other public agency or official, they had
23 considered how recent it would be and I believe they
24 came to the conclusion that within the framework of at
25 least the existing population there was not any good

1 reason to spend money on such facilities, sewerage
2 facilities, and over a period of time it may be
3 necessary to do so and that is one of the reasons why
4 they followed my recommendations to locate the medium
5 density development along the Borough because then
6 they knew that if the time came that they had to
7 spend the money for utilities at least they would not
8 have to go all over the Township to spend and enter a
9 structure of collection and treatment facilities.

10 Q That last factor had to do with the
11 possibility of a sewerage system being first constructed
12 in the Borough, didn't it?

13 A No, I think it was--my recommendation was really
14 that not only do we have other urban planning reasons
15 for the location around the Borough of those medium
16 density developments, we also had the fact that we
17 had half acre lot densities in the Borough and,
18 actually, Mr. Larsen and Mr. Fox both told me that the
19 soil conditions even in the Borough are really not good
20 enough for half acre lots, septic tank disposal. So,
21 I felt that it was proper planning to recommend or to
22 conceive that maybe the need would occur in the
23 vicinity of the Borough and in the Borough itself for
24 utilities, sewerage utilities, so we could put both
25 the Borough and the Township together and they could

1 join and share the cost for this expense structure.

2 Q Isn't it fair to say, Mr. Hultgren,
3 though despite the fact that you made an assumption
4 about what the Borough might do, that there was
5 really no data upon which you relied, no factual
6 basis to say that well, yes, there is this and this
7 factor that is likely going to cause the Borough
8 first to create a sewer system or sewerage system
9 which--

10 A I think you objected before when I got into
11 this question. The fact that we did meet the
12 Planning Board and myself with the Planning Board
13 and the Mayor of the Borough because you felt it was
14 hearsay and so forth.

15 Q Well, let's not go into that, Mr.
16 Hultgren. You just tell me--

17 A What I mean is that we did talk with them and
18 they, of course, did not commit themselves to
19 cooperation but they did not rule out cooperation
20 either on common problems such as the potential
21 problem with water pollution.

22 Q It is possible that multi-family
23 dwelling project if it were economically sound could
24 have its own treatment system, could it not, one
25 that would have no more than 150 units per tract?

1 Isn't that so?

2 A It depends upon what market you are covering
3 with those potential units. I have to assume that you
4 have to meet certain requirements, economic
5 requirements, if you are going to receive, for instance,
6 subsidies for low and moderate income housing in an
7 area that has to be provided with utilities but I would
8 say yes to you in that respect that, yes, if you can
9 sell with a price tag that you will get a development
10 of 150 units with a sophisticated treatment system,
11 fins, then it is feasible obviously. I would say if
12 you do that in many different locations all over the
13 Township, the units may probably be possibly to be
14 too small to run economically.

15 Q Now, Mr. Hultgren, I am pointing to the
16 R. M. Zone, the Center R. M. Zone on P-19 in evidence,
17 P-19-B, which is one where multi-family dwellings
18 would have been permitted under the 7612 Ordinance.
19 That section is in the upper Raritan Water Shed, is it
20 not?

21 A Yes.

22 Q And septic tanks are generally
23 uncongenial to a pure water system in this Water Shed,
24 isn't that so?

25 A A sophisticated treatment system would have to be

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utilized for that site, yes, that's correct.

Q If there were multi-family dwellings done there, they would have had to have a treatment system?

A Yes, they certainly would have had to have, yes, I feel so. I think it is even called for in the Plan.

Q But that is without regard to whether or not there is or will be a sewerage system in the Borough of Chester.

A It could be developed privately together with such a development you are pointing to there, yes, of course, there is always an option if you are following the policy as expressed in the Master Plan where as you have more than one area indicated for medium density, that you could then tie these several units of treatment facilities together so that you will get a greater capacity and, accordingly, even better economy.

Q However, in the first instance, if you were going to build multi-family units on the three R. M. Zones even as you projected them in the locations you projected them in the Master Plan and assuming that you were only allowed to have 300 overall in the Township so that you could have, what is it, 50 or 75-- about 100--

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THE COURT: Excuse me a minute,

Mr. Lindeman.

Q If there were a hundred units built on each one of those three parcels, there would have to be sewerage treatment plants on each one of them, wouldn't there?

A There would have to be some sort of sewerage treatment plant there. It would depend on density of the disposal. Let's not beat around the bush. If you are talking about providing low and moderate income.

Q Mr. Hultgren, are you still answering my question? A Yes.

Q All right.

A What I am saying is that there are certain criteria you have to meet in order to spend money on a smaller area treatment facility and that is that in the future you are not necessarily stuck with that single size treatment facility in an area where you cannot support it with a potential public facility or utility, so I must want to stress that you cannot directly say fine, you are going to have, such as in the zoning here, three different treatment facilities. That may happen and it may be economically viable to

1 support even publicly but only because you have an
2 option of tying them together in the future in
3 accordance with policy and the Plan.

4 Q If you had--

5 A If you have them in the right location.

6 Q If you have 300 units, let's say even
7 perhaps a moderate amount more and--in each one of
8 those tracts--would they have justified the
9 construction of the sewerage system of the municipality?

10 A On the exact number of units necessary to
11 operate a treatment facility reasonably economical, I
12 think you really have to ask an expert. I really cannot
13 say that.

14 Q All right. Well, assuming then as you
15 have on each one of those tracts if there had been
16 multi-family construction commenced with a--within a
17 reasonable time without--a reasonable time without the
18 adoption of an Ordinance, without there having been
19 a public sewerage system servicing those parcels, they
20 would have to have their own treatment plants?

21 A Or spray irrigation systems.

22 Q Or spray irrigation or something like
23 that. And then there are--the public system would
24 not be a factor and could not have been a factor at
25 the time of the Master Plan and the Zoning Ordinance?

1 A I do not understand that question.

2 Q I mean they had to have their own
3 systems any way if they were going to be built.

4 A Oh, I see. Well, you know the small treatment
5 facilities are not as efficient and definitely not as
6 economic as larger units, so it was discussed. It was
7 penetrated at the time of the Planning that it may be
8 that you will provide for private or smaller maybe
9 somewhat aided, publicly aided treatment facilities in
10 different places but the important thing is that you
11 are not stuck with that for the long future. You can
12 tie them together if you develop within the context of
13 a particular area.

14 Q The long future means many years ahead,
15 of course.

16 A As soon as your problems occur, when it becomes
17 obvious that you cannot longer live with spray
18 irrigation in an area which has increasingly become
19 urbanized, then you have to consider other options and
20 that we have made possible to consider in the Plan, in
21 the Master Plan.

22 Q Wouldn't that be fairly wildly
23 speculative, Mr. Hultgren, in the light of your
24 conclusion that this part of Chester is not in the
25 path of development and that it is not going to

1 develop in the foreseeable future and that certain
2 documents which you looked at such as the D.C.A.
3 Guide indicates that Chester is not in such a path?
4 Doesn't that kind of reduce that as a consideration
5 that the three parcels being fairly close together
6 would ultimately be served by a public system?

7 A No, I cannot see that. It is--you are talking
8 about population estimates of 15-18,000 inhabitants
9 and that may be very little and is indeed very little
10 in the regional context of a metropolitan area which,
11 you know, ten million or whatever you want to
12 speculate on, but 18,000 inhabitants, that's quite a
13 lot if you consider this particular area, Chester
14 Township.

15 Q Have you been able to look at D-41 for
16 identification since we talked about it this morning?

17 A No, I haven't, I am sorry to say.

18 Q Well--

19 MR. LUDMAN: Well, I would like to
20 say this, if the Court please: Unless there is
21 something else that the witness can point to I would
22 like to reverse my field on the offering of this
23 exhibit and consent to its entry into evidence with
24 particular concentration to the Court on the pages that
25

1 the witness referred to this morning, that is,
2 pages 7 and 8; page 31 and 32 and page 33, which
3 I have read and from which I can discern no
4 statement or even implication that Chester
5 Township bears no major responsibility for
6 growth of multi-family in terms of the
7 construction of multi-family dwellings or
8 anything like that. Now, I may be wrong but
9 that is the way I read it and I would agree that
10 the document can be received into evidence and
11 the purpose of it is really to prove a negative
12 that while the witness says that he relied
13 upon it, it is not immediately detectable in
14 the document.

15 THE COURT: Mr. Ferguson?

16 MR. FERGUSON: It is okay with me.

17 THE COURT: I just hope you are not
18 running the same way Marshall for the Vikings
19 ran one year with the football.

20 MR. LINDEMAN: That's right. I hope
21 not. I think I looked at it all as much as I
22 can. All right. D-41 is in evidence.

23 (Document formerly marked as Exhibit D-41 for
24 identification is received in evidence).

25 MR. LINDEMAN: It is with the

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understanding, your Honor, that we are not offering it to prove the contents but for the purpose of stating what I did state. If it states other things, however, we are bound by them.

THE COURT: I have written down that the plaintiff wants D-41 in because the Planner's conclusion or the Planner's reliance is on what is not there.

MR. LINDEMAN: That's good. I think that's good, sir.

THE COURT: Okay.

Q Mr. Multgren, one of the factors which bears upon the location for higher density dwelling is access to transportation, is it not?

A Basically, that you are located--

Q Public transportation, I mean.

A I beg your pardon?

Q Public transportation.

A Oh, public transportation.

Q I do not mean roads. I am speaking now of facilities, busses, trains,

A Of course, you would like to locate such development where you either have already some sort of public transportation or where you could assume

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that there are some potential for introducing such facilities in the future.

Q All right. So far as railroad service is concerned, the whole southern section of the municipality south of the Borough has railroad connections only in Peapack, the Peapack-Gladstone Station, and that is the closest point. Isn't that so?

A I believe that's right.

THE COURT: Which is right? That it's the closest or the whole southern portion of the Township is served by that area?

THE WITNESS: That's right.

THE COURT: It is? Okay.

THE WITNESS: Well, that station serves large sub-area. When you go north you have to go to Dover and those areas to find another station in this development corridor, or the corridors do not stretch that far out from the metropolitan area.

Q The 3-M Zones--let me withdraw that.

The westerly and the easterly zones are serviced by Route 24, as the closest road, important road, arterial road, is that not so? I think the center one has some frontage on Route 206 but the other

1 two are serviced by Route 24.

2 A They have immediate access to 24, yes, but
3 they are basically all located in the vicinity of
4 the intersection of 206 and 24.

5 Q But you have to go over a fair part of
6 Route 24 in order to get to 206?

7 A Yes, that's true.

8 Q On the east and west portions.

9 A Yes, that's true.

10 Q Now, the consideration which motivated
11 you in the upgrading or whatever, if you will, part
12 of the Caputo tract from an R-2 to an R-5 Zone was the
13 soil condition and the fact that there were severe
14 conditions that might be confronted if too many
15 septic tanks were in that kind of a section. Isn't
16 that so?

17 A That was one of the considerations but the
18 other considerations that have to do with protection
19 of open space were also--also goes into play. You
20 have the Mount Paul Memorial Park on Fox Chase Road,
21 so it would be affected by development on the Caputo
22 property.

23 Q Are you talking about this P-Zone that
24 I am referring to now? A Yes, right.

25 Q You mean it is better than--that an

1 area such as that adjacent to a large zone, large
2 house zoned area than a small?

3 A Yes, I feel it would be better, yes, but I
4 am trying to apply, because you draw my attention to
5 the Caputo property and you are asking me why I
6 suggested a lower density there.

7 Q Right?

8 A And I had to say that, yes, as before, the
9 soil conditions were very important but also the
10 question of protecting the open space of considering
11 the general visual character, the noise level of
12 this area, the traffic situation potential to serve
13 it adequate with car traffic and public transportation.
14 Those factors were also considered when I suggested
15 a lower density.

16 Q It was not necessary in the northern--
17 most northern section of the Town to reduce the
18 density of some of that area to R-5 even though it had
19 adjoined the publicly held open spaces, did it?

20 A Well, those areas were more or less already
21 developed, well, more or less when I say, so there
22 was actually R-2 development in those areas much
23 more substantial than the area within the indicated
24 R-5 areas to the south, so you had an established
25 pattern along this Pleasant Hill Road in the northern

1 sections.

2 Secondly, you have somewhat favorable soil
3 conditions for septic tank disposal up there. The
4 ridge to the north of Pleasant Hill is pretty well
5 hidden behind the vegetation along the edge of the
6 public area. I would say that it would have been
7 probably desirable to go very softly on development
8 along Pleasant Hill but, again, it was already there.

9 Q Now, in the southwesterly section of
10 the Township, I am referring to an area right now
11 with my pen. A Right.

12 Q That is environmentally less sensitive
13 than others?

14 A From a soil condition standpoint, yes.

15 Q From a soil condition standpoint, yes,
16 and as best I can discern, you correct me if I am
17 wrong, that is shown on D or P-19-B in evidence, that
18 area is zoned P-5, which is the least dense section of
19 zoning of the municipality so that there those
20 considerations that you referred to, apart from the
21 proximity to the open space, green acres, or whatever
22 you want to use, that consideration of soil quality
23 did not control, did it?

24 A I think you are basically right when you are
25 saying that that particular section that looks white

1 on my red Map soil overlay, that particular area
2 was not put into the low rural density zoning because
3 of severe soil conditions. Obviously there were other
4 reasons for that area becoming R-5 in our
5 recommendation and interestingly enough that particular
6 area was picked up by the Planning Board in our
7 discussions as a typical area where the question was,
8 well, here is white area. Why don't we give that
9 higher intensity use and the reasons, of course, were
10 that we wanted to be consistent in our establishing
11 of the character of the community.

12 In the first place, the R-5 character was
13 already there in that area. It is very rural in its
14 character, that section of the Township. A lot of
15 open space, public open space, yes, it is, and even a
16 lot of active farming going on in those areas. So,
17 we had an established character and we also, of
18 course, had the reasons that we would like to stay
19 away from establishing any higher intensities in the
20 areas that were more remotely located away from the
21 highway facilities. As you see, this white area is
22 withdrawn from 206 and, of course, that has no
23 direct connection with 24. Other reasons of
24 facilities, of course, also came into play and in
25 order not to provide--

1 Q Mr. Hultgren, a little slower.

2 A What is it called to provide, not to provide
3 scattered development and more or less to use a
4 legal term, which I shouldn't use, create some sort
5 of spot zoning, we found it compatible to zone
6 even that white section, R-5.

7 Q You did mention in that fairly
8 comprehensive answer the use to which the property is
9 put is a factor. Namely, that it was being farmed.

10 A Some of it.

11 Q That is a consideration, correct?

12 A Oh, wait a second now, did you say the
13 Caputo property?

14 Q No.

15 A The section--

16 Q We are talking about that property in
17 the southwesterly quadrant of the Township where
18 there were open spaces.

19 A Yes, to my best--to the best of my recollection
20 we have some actively farmed areas in those sections
21 too, yes.

22 Q But, in any event, the use to which it
23 is put is a factor? A Oh, yes.

24 Q That determines how property is going
25 to be zoned?

1 A Yes, in terms of having a character established,
2 yes, the rural character in this case.

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

5 (Short recess)

6 THE COURT: Okay, go ahead.

7 Q Mr. Hultgren, is the principle of
8 good Planning and, indeed, a proper tenet in the
9 Planning profession that by Planning and Zoning the
10 public and scenic character of land is to be
11 maintained? Is that fair to say?

12 A The Planning and Zoning would be tools that
13 you would use to implement the objectives of the
14 residents. That is true. And, if the objectives are
15 to preserve the character of a community or a--or
16 sections of the community, then those are proper
17 tools to use.

18 Q Then, going just a step further, it is
19 your position and the position of the Planners today
20 or as of 1974, let's say, that if the residents in the
21 northeast section of the Town like the fact that in
22 the southwestern section there were open lands
23 and it was beautiful, that that should be preserved
24 by means of zoning ordinances, residential zoning
25 ordinances that would require very large lots? Is that

1 a proper basis to zone property?

2 A I would say that it is an accepted basis in as
3 far as all residents in a community have the chance
4 to let their voice be heard in terms of any area and--
5 in its potential zoning, planning and zoning. You are--
6 we are getting--getting at the particular problem we
7 have inherited here. The owners of a particular
8 property then would not have enough of a say in the
9 matter of his own property. This is what community
10 development is all about, that you have to take into
11 consideration all of the residents and even the
12 potential residents of a community.

13 Q Was it not--was it and is it not one
14 of the functions of a Planner and a Planning as a
15 profession that where lands of a particular
16 municipality would best serve everyone as publicly
17 held and for the benefit of all time, for all citizens
18 that such a recommendation be made in a Master Plan
19 and that the recommendation, in fact, state, gentlemen,
20 these properties should be acquired for public
21 purposes?

22 MR. FERGUSON: I object to the
23 form of the question. I am not sure I
24 understand it. I am not sure the witness
25 can understand it. I think there is a legal

1 conclusion at the end of it there also. I
2 wish it be broken down.

3 THE COURT: The question was a little--

4 MR. LINDEMAN: It's too long. Let
5 me try to reframe it.

6 Q Is it not a proper Planning obligation and
7 was it not in 1974 that the Planner recommend to a
8 municipality that certain lands be publicly held if,
9 in fact, if that is what the things ought to be?

10 A Oh, yes. The Planner has an obligation to
11 recommend the land uses and intensity of uses, etc.,
12 based on his professional knowledge and experience,
13 background. That is quite true. And, if he finds that
14 a particular area is particularly suitable for public
15 open space, he should recommend to the community to
16 purchase this for the purpose.

17 Q There is no such recommendation in the
18 Master Plan of 1974 that you worked on, is there?

19 A I believe that the Township was lucky enough
20 to have of-land to serve the Township itself, in open
21 space, but there is a recommendation as far as I
22 remember and we can probably confirm it if you want,
23 to provide more activity facilities on available land.
24 It was a recommendation on at least one of the Township
25 open space parcels to provide recreational facilities.

1 Q In any event, one of the purposes of
2 maintaining the R-5 area in the lower left-hand
3 quadrant is that it continue as open space?

4 A Yes. That is in line with my recommendations.

5 Q Is it not a fact that the whole trend
6 of population movement and the presence of jobs in
7 an area such as that which Chester finds itself is
8 affected by the zoning character and history of the
9 area and the word I would use is "exclusionary" except
10 that may be a legal term. I dare say you know what
11 it means but if a municipality has exclusionary
12 zoning, does that not affect the trend of population
13 and the creation of jobs in an area?

14 MR. FERGUSON: I object to the question
15 in so far as it uses exclusionary, unless
16 Mr. Lindeman would care to define it.

17 MR. LINDEMAN: Well, let me--probably
18 is improper.

19 THE COURT: What he is getting at--

20 MR. LINDEMAN: Sir.

21 THE COURT: I think we are get--we
22 understand what you are getting at. If you have
23 a large acre zoning, does that not minimize the
24 potential for growth or in the creation of
25 jobs? I will rephrase it for him.

1 MR. LINDENMAN: That states it better.

2 MR. FERGUSON: As a causative--as a
3 causal factor?

4 THE COURT: As a causal factor. You
5 cannot have the growth--all right.

6 MR. FERGUSON: That's a chicken and
7 egg question.

8 THE COURT: Yes. Okay.

9 MR. LINDENMAN: All right.

10 THE COURT: It's a fair question. I
11 will allow it.

12 MR. FERGUSON: I do not object.

13 THE COURT: In the way I phrased it?

14 MR. FERGUSON: Yes, if your Honor
15 please, yes.

16 Q Did you get--

17 A You are certainly getting into the philosophy
18 of suburban Flanning hear. If that is what we are
19 going to talk about, I can certainly do that.

20 Q I am not asking for a philosophy of it,
21 but if it is the fact that up until 1974 Chester and
22 some of its outlying or neighboring communities had
23 mostly large lot zoning, that that in itself is a
24 factor which affects the movement of population and
25 the creation of jobs. I am not asking for a philosophy.

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1 I am asking for that as a fact.

2 A Well, it is very difficult for me to answer
3 that question out of context. I must say it is true
4 that as a result of movements of population from the
5 inner sections of the metropolitan area to the
6 suburban areas, the particular people who moved are
7 the ones who could afford to move in the first place
8 and they have looked upon the suburban areas as areas
9 where the large lot zoning is the real quality because
10 we can then traditionally assume that the person who
11 moves out has felt the pinch of very small lots and
12 high density in the more urban areas, so he looks for
13 a facility of which he has not had anything before
14 which is a large lot zoning. So, once the migration
15 out towards the suburbs has started, you will see that
16 these people want to close the gates and so the zoning
17 comes in afterwards and it reflects the initial
18 development of the area. It is quite true. I cannot
19 get away from that.

20 Q Getting back to what we were talking
21 about a little while ago of the use, the actual
22 implementation of the Zoning Ordinance in the 3-R.M.
23 sites, I think you stated that one of the reasons for
24 the correctness of that selection, of those site
25 selections, is that they are closer to a center. That is

1 where the sewerage treatment or the sewer system
2 is likely to emanate from and the people like to live
3 that way? They are closer to their stores and things
4 of that kind. Isn't that so?

5 A I think that is a fair interpretation, yes.

6 MR. FERGUSON: All right.

7 THE WITNESS: Fair.

8 MR. FERGUSON: I object to an awful
9 lot of different parts to that question and I
10 think it is unfair to ask the question which
11 one--if they are all fair.

12 THE COURT: Maybe you should rephrase
13 that question, Mr. Lindeman.

14 MR. LINDEMAN: I have to think about
15 it for half a minute, your Honor.

16 MR. FERGUSON: There are sewer
17 systems and shops in the same question. I do
18 not know that people have any particular desire
19 about sewer systems.

20 MR. LINDEMAN: Let me try again.

21 Q That the 3-R.M. properties are close to
22 one another and they are close to the most densely
23 populated area of this particular region, if we call
24 it that, because that is the best way to plan?

25 A I feel that is the best way to plan in this

1 Township, yes.

2 Q And isn't it also a fact that urban
3 sprawl is created because of use that we have had at
4 least up until about now, that centers of population
5 should continue to be centers of population and that
6 they should grow on the periphery and that is the best
7 way to do it because of some of the factors that you
8 have spoken about?

9 A As a Planner, I tend to agree with the need for
10 certain nucleus.

11 Q Tell me why conceptually it isn't even
12 better that we stop that way of thinking and that we
13 decide now that we are going to have pockets of some
14 concentrations so that, for example, if there were
15 people living in multi-family dwellings on the Caputo
16 tract they could overlook large vistas of land without
17 looking, overlooking, smoke stacks and that they would
18 be able to take walks along country lanes much more
19 easily than people in this central city. Now, this
20 is not really central city, of course, in the Borough,
21 but it is center nucleus. They would be living in the
22 densely populated area. So the question is:

23 Conceptually, why is it not better really that
24 pockets be created?

25 A I think I answered--you answered the question

1 already yourself. Really, we are not talking about
2 any smoke stacks or anything of urban character in
3 the Township and the Borough, even if we would
4 develop medium density development surrounding the
5 Borough to a certain extent, so my answer would be
6 that it is still inappropriate to provide a sprawl
7 within the community itself. There is still--there
8 are several different layers or scales of urban
9 development. You have the regional scale where you
10 have in New York City relating to a sprawl of which
11 includes, for instance, I can be even daring enough
12 to say that from the New York City viewpoint, Chatham,
13 Madison, Morristown, almost includes a small sprawl.
14 It was a sprawl that was established 200 years ago, but
15 anyhow, it is a sprawl.

16 While--why then you go down to the scale of
17 a community such as Chester Township and you can talk
18 about the Borough and the Borough vicinity as the
19 center and the Caputo tract would be in this particular
20 case an undesirable sprawl if you will allocate higher
21 intensity uses there. It is also relative, the
22 intensity itself, of course, is also relative.

23 In Chester, three to five acres--three to five
24 dwelling units per acre is a rather high density
25 relative to the established character of the

1 community while, of course, I do not even have to
2 mention figures to compare New York City with
3 Morristown.

4 MR. FERGUSON: Excuse me. Does the
5 Court have my trial brief there?

6 THE COURT: No, I do not. It is in
7 on my working bench.

8 MR. FERGUSON: I do not want to
9 interrupt.

10 THE COURT: Excuse me, Mr. Lindeman.

11 MR. LINDEMAN: It is okay.

12 MR. FERGUSON: Your Honor, really--

13 THE COURT: It is all right. No, I
14 did not want to go get it. I just wanted to
15 do something.

16 Q You testified on direct examination that
17 clustering was a desirable Planning objective because
18 that could reduce costs of site development and still
19 save open spaces or save the environment. Is that a
20 fair--

21 A Yes. Clustering is done and recommended for
22 that purpose, among other things.

23 Q But, am I correct that you did not make
24 any study for the purposes of this testimony of the
25 clustering section of the Zoning Ordinance that is under

1 attack? Is that correct?

2 A No, I have really had the tasks to look
3 comprehensively upon this site, the Caputo site, not
4 to go into the Zoning Ordinance itself, especially
5 since I did not do the Zoning Ordinance I am trying to
6 contain myself to those questions concerning the Master
7 Planning.

8 Q Do you recall if, in your conversations
9 with the Planning Board and Mr. Fox, the Engineer, the
10 subject of other forms of waste treatment was discussed?
11 I mean other forms, forms other than septic tanks.

12 A Yes, we were discussing the spray irrigation
13 system and other systems that would be available in
14 the market, that I remember.

15 Q Yet you have no technical expertise on
16 the performance of spray irrigation systems, is that
17 correct, and how they are constructed?

18 A Well, I am an Architect and Planner and I have,
19 of course, a general engineering background but I
20 would not try to pretend that I know enough about
21 treatment facilities, especially as we have other
22 witnesses to testify on that question.

23 THE COURT: When you do your Planning
24 and you consider a site where there will be
25 high density use, do you recognize the possible

1 need for a, other than spray irrigation,
2 possible need for an effluent to be placed in
3 some kind of water course, i.e., you know, I
4 am sure understand--as I understand it we have
5 a primary, secondary and tertiary treatment
6 plants, not too many of the latter, but each
7 one of them has an effluent that has to be
8 disposed of. The traditional way is to put
9 it into a water course, a flowing water course.

10 When you zone for high density use, if
11 it is not a very large tract, which I assume
12 you need for spray irrigation, do you consider
13 the availability of water courses for carrying
14 off the effluent?

15 THE WITNESS: Yes, we did discuss the
16 availability and there is a slight--that is a
17 slight problem because we only have one major
18 stream.

19 Q Mr. Miltgren, I simply did not understand
20 your testimony about cost of buildings on smaller as
21 opposed to larger lots, so I am going to ask you if
22 you will go over that again perhaps a little bit more
23 slowly because not that I want to challenge it
24 necessarily, just that I did not understand it. Would
25 you tell us when you were saying it does not cost either

1 any more or less as opposed to build on a two as
2 opposed to a five acre zone property? Is that what
3 you are saying?

4 A All right. I was not too happy with my
5 wording either.

6 Q So, I am going to give you the
7 opportunity to make things a lot better.

8 A All right. We are talking about two different
9 prices. We are talking about one price that is
10 attached to an acre of land.

11 Q Price of what?

12 A Price of an acre of land.

13 Q Right.

14 A For development purpose. Dollar per acre,
15 in other words. We are talking about a price attached
16 to a permissible one dwelling unit development lot, a
17 lot, a single lot that we can build a house on and
18 that is priced dollars per lot, in other words, and
19 those two prices are not directly related. In an
20 attractive area you will find that a five acre lot,
21 if that is what it takes to build a house, has a
22 certain price tag and a two acre lot then would not
23 be less than half the price because no matter what, if
24 you have a two or five acre lot, let's assume this
25 community has a certain degree of attractiveness and

1 that sets the price per lot and then the acreage price
2 is derived from that by dividing the price per lot
3 with the number of acres that you have and you cannot
4 directly compare the acreage price going from one size
5 lot to another. What you have to consider instead is
6 what it costs to buy the land for one single building.

7 Q Okay. I think I get the general drift
8 of it.

9 THE COURT: You are saying that the
10 price of a five acre lot is not necessarily
11 proportionate to the price of a one acre lot
12 when you multiply those proportions out?

13 THE WITNESS: Correct. It would not be
14 five times the price.

15 MR. LINDEMAN: Right.

16 THE WITNESS: In a similar area.

17 THE COURT: I see.

18 MR. LINDEMAN: May I see Table 3 of--
19 what is it--was it D-46 for identification?

20 Q You were referring to a table that deals
21 with the population projections as of 1970 and 1990. I
22 think it was D-46, the Regional Plan, Tri-State
23 Regional Plan.

24 A Okay.

25 MR. LINDEMAN: This is not it.

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A The Regional Plan Association.

Q There was a Table B to which you were referring. It is hard to tell what document it was.

A Was it a population projection by another source than myself?

Q Yes.

A It must have been a County Projection then.

THE COURT: Table 13. I do not think that this is it but let's see. It was a Table 13, where it projected the rate of rental units--that was in the base data, I believe, of the--

MR. LINDEMAN: No, 12-B.

THE COURT: Yes, 12-B.

MR. LINDEMAN: I do not think I was referring to that.

THE COURT: Well, it's ten of. Why don't we take a break. Maybe you can find it.

I believe at three o'clock I have a bail reduction application that is going to take me five minutes, so why don't you plan on ten after.

(Short recess)

Q I don't know what--

MR. LINDEMAN: I don't know what

1 Table that was, your Honor.

2 Q Were you able to find it, Mr. Hultgren?

3 A Yes. Do you want me to go back to The Future
4 of Morris County?

5 Q Is that what it was? Table 8 that you
6 were testifying from?

7 A I am sorry about that. I was trying to read up
8 on this book that you asked me to look into. Table
9 number--The Reference Base?

10 Q Maybe it was that. Yes, it was it.
11 Table 8 from which you derived your projections.

12 A Oh, for--

13 Q 1970 and 1990.

14 A Oh, it may have been 18, I think, yes,
15 "Estimated Rental Dwelling Unit Needs." Is that what
16 you are making reference to? Are we talking about
17 population?

18 Q No, that's it. The total number of--

19 THE COURT: Just for the record,
20 that is Table 18 in P-12-B. Go ahead.

21 MR. LINDEMAN: All right.

22 Q The Table shows a total number of rental
23 and owner occupied units, 1,143 for 1970. That means
24 the then existing number of such units, is that correct?

25 A Yes.

1 Q None of that, however, does refer to
2 multi-family dwelling though, does it, so far as
3 Chester Township?

4 A No, because we really didn't have that at the
5 time.

6 Q All right, and the 164 figure below that
7 is what?

8 A That is the rental dwelling units in the
9 Township at the time of the Census, 1970.

10 Q What is 1,143, the total number?

11 A That is--that must be then all of the dwelling
12 units in the Township. 1,143 would be all of the
13 dwelling units.

14 Q I see. For 1975 there were 1,500 overall
15 dwelling units of which 225 were rentals. Was that
16 from an actual count so far as you know or is that a
17 projection?

18 A As far as I know that was an estimate. Well,
19 no, sorry, '75 it was really a projection.

20 Q It was a projection?

21 A Yes, it was a projection, because we had not
22 seen 1975 at that time, so it was estimating up until
23 the time of the Master Plan, '74, and then using the
24 trends to make a projection for 1975.

25 Q And the additional homes in 1990 and the

1 rental units of 645 at that time was also a
2 projection, of course. A Yes, it is.

3 Q And that includes those that were
4 existing as of 1970 and whatever additional ones
5 were projected, obviously. Correct?

6 A That's true. That's right.

7 Q Do you recall offhand what the basis
8 for the projection contained, the projection was for
9 the Table 18 figures?

10 A Well, they were, as I tried to say, based upon
11 the share, the existing share of rental units which
12 was the closest I could get to units that would be
13 occupied by families of more--low, moderate income of
14 the type where you would talk about similar circumstances
15 that you would have in multi-family housing. So, in the
16 wider meaning of the word then, the projection was
17 derived in the present rate of rental units, reviewing
18 also the U. S. Census in terms of the age distribution
19 so that I could find the reasonable amount of elderly,
20 the rate of elderly in the community, and also
21 reviewing U. S. Census in terms of the income, finding
22 a rate for those who would earn a less than medium
23 size income at the time of the Census.

24 Q Now, going to D-41 in evidence, did you
25 find any other place in that document that supports

1 your conclusion of lack of responsibility or major
2 responsibility on the part of Chester Township to
3 provide multi-family dwellings?

4 A Yes, I did start reading it here.

5 MR. FERGUSON: I object to the form
6 of the question. I thought it was--

7 THE COURT: Low and moderate income
8 housing?

9 MR. FERGUSON: Which I think is
10 quite distinctly different.

11 MR. LINDEMAN: What did I say?

12 THE COURT: You said multi-family
13 dwellings.

14 MR. LINDEMAN: I beg your pardon.

15 Q Yes--

16 THE COURT: It's getting late.

17 MR. LINDEMAN: Yes.

18 Q Did you find any, Mr. Hultgren, any
19 additional places in this document? I thought you
20 were referring to that before.

21 A Yes, but I got confused here all of a sudden.
22 We were not talking about low and moderate income for
23 the Regional Plan Resource. What I said as far as I
24 remember, the Regional Plan documents did not indicate
25 that Chester was in the path of any major development.

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Q Well--

A Is that your interpretation of what I said?

Q Of the additional things that you have found, are they supportive of that fact?

A Yes.

Q Then, I do not want to ask any questions. I do not think that is what you were referring to before.

A Okay. Well, this document is only in evidence because I find, right or wrong, that I would like to make reference to something that I was supporting my conclusions, that supported my conclusions and I may at this time--

Q No. I have no such question pending then, Mr. Hiltgren.

A Okay.

Q I will withdraw that.

Let's go, please, to Page 6 of the Comprehensive Plan of P-12 in evidence.

THE COURT: 12-A?

MR. LINDEMAN: Page 6.

THE COURT: P-12-A?

MR. LINDEMAN: I beg your pardon.

P-12-A.

Q The first section refers to the general

1 objectives of the Master Plan under "Community
2 Objectives".

3 Now, unless I do not read this correctly,
4 Mr. Hultgren, I do not see anything in here that talks
5 about providing housing of any kind for persons
6 outside of the municipality. Now, is there anything
7 in here that I have missed and can you point it out
8 of the one through five general objectives?

9 THE COURT: Do you mean for
10 potential immigrants?

11 MR. LINDEMAN: Yes.

12 A Well, I think we are covering under the
13 "Community Objectives" all of the major aspects that
14 you would like to--we are talking about housing under
15 general objectives. In the first objective, number one,
16 A-1, provides for facilities such as housing and
17 commercial services to meet the needs of Township
18 residents and Township residents, of course, includes
19 existing and potential, and what else do you want to
20 ask about?

21 Q Is that what you mean when you say
22 Township residents, that reference to people who would
23 come in and become residents? A Oh, yes.

24 Q Okay. I would not read it that way
25 but that is neither here nor there.

1 All it--all right. The next section, B, under
2 "Functional Objectives" number one, refers to the--
3 at the end to social and economic goals that should be
4 maintained, created, developed. What is meant by
5 "economic goals?"

6 A Well, this, of course, is a very wide meaning
7 of the word. I would say that the community has to
8 set certain goals in terms of what is the acceptable
9 tax revenues and revenues and expenditures. You have
10 to live with a budget if you are a community.

11 Q Toward the end of your direct
12 examination you testified that if multi-family
13 development were to exist on the Caputo tract, that
14 the criteria for, I guess, for proper zoning such as
15 resource protection, utility, development, transportation
16 and the like would no longer be valid. Is that
17 something about the way you testified?

18 A Yes, that's correct. My words.

19 Q Just passing the resource protection
20 for the moment, would you tell us, please, why it is
21 that utility development and transportation that the
22 criteria would no longer be invalid?

23 A Because to serve a development in Chester
24 Township within reasonable, a reasonable economic
25 framework and reasonably conveniently, you would have

1 to concentrate the development as suggested in the
2 Master Plan and if you would, on the other hand,
3 expect to supply roads, utilities and other facilities
4 in any area no matter how far away from another area.
5 it would be located, that would not be proper in
6 terms of Planning and orderly development of
7 community, neither environmentally nor economically
8 and if you permit such development, such incompatible
9 and improper development to occur in one place, there
10 is really nothing within the framework of Planning
11 and Zoning that can stop you from developing any area
12 no matter how inappropriate.

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

15 REDIRECT EXAMINATION BY MR. FERGUSON:

16 Q You mentioned your review of what
17 existed in the Borough. Is there a Trailer Park in
18 the Borough? Are you aware of that?

19 A I was not aware of that. There may be a
20 trailer or so parked on a farm.

21 Q Well, you are not--

22 A No Park, no.

23 Q You are not aware of that. You
24 mentioned Mr. Fox. Who is Mr. Fox, specifically?

25 A Mr. Fox is, or was at the time at least and

1 may still be, the Township Engineer for Chester
2 Township.

3 Q Would you describe briefly the extent
4 of his participation in the Planning process?

5 A I can recall generally at least a half a dozen
6 meetings when he would have been present discussing
7 relevant questions with the Planning Board and Council
8 members.

9 Q Give us an example of the kinds of
10 questions you can recall him discussing.

11 A Well, of course, him being the Township
12 Engineer, we would discuss questions about utilities
13 with him, questions that have to do with drainage,
14 erosion, road construction, anything within the
15 Civil engineering field that then was applicable to
16 our general Planning.

17 Q Would sewer systems or proposed methods
18 of treating sanitary sewerage effluent be among those?

19 A Yes, indeed. We spent quite some time talking
20 about those issues.

21 Q Mr. Lindeman asked you about the Station
22 in Feapack-Gladstone of the Erie Lackawanna line.
23 Would you tell us what part, if any, existence of that
24 line and that Station played in your evaluation of the
25 public facilities available to the Township and,

1 I suppose, the Caputo site in particular?

2 A It did not play any major role in my
3 evaluations, basically because you have to be--you
4 cannot walk to the Station from Chester. It is too
5 far away from Chester to walk. It may be good
6 exercise but for all practical purposes, I believe,
7 that you would have to be driven by your wife or
8 drive your car yourself and park it at the Station
9 and under those circumstances it really doesn't
10 matter too much whether you live at the southern
11 border of the Township or even the northern border.
12 You still have to get into a car and drive for a few
13 minutes and park your car or use the system of
14 kiss and ride which means that your wife leaves you
15 off at the Station and drives home again.

16 Q You intrigued me when you said the
17 Morristown, New York, sprawl is 200 years ago. Would
18 you just explain that?

19 A Well, Morristown happens to be a city that
20 was focused upon by some of the richer New York
21 merchants so that they established what has been
22 described in historic books the affluent Morristown.

23 MR. LINDEMANN: Was that affluent or
24 affluent?

25 THE WITNESS: Maybe not 200 years, but

1 certainly a long time ago, the 1800's. Then, of
2 course, a lot of changes have occurred since that
3 time but the suburb businesses of the Morristown
4 area is old. That is my point.

5 (Short recess)

6 THE COURT: Do you have any more
7 questions, Mr. Lindeman? You have another
8 question?

9 BY MR. FERGUSON:

10 Q I show you a document and ask you to
11 tell us what it is.

12 A Regional Development Guide, 1977 to the
13 year 2000.

14 Q Published by whom?

15 A Tri-State Regional Planning Commission.

16 Q Date of publication?

17 A And date June 30, 1977.

18 MR. FERGUSON: All right. Mark that
19 for identification.

20 (Regional Development Guide referred to is
21 marked as Exhibit D-48 for identification).

22 Q Is this a document put out by the
23 Tri-State Regional Planning Commission similar in
24 scope and purpose to those you testified about earlier
25 and, specifically, D-45 and 46?

1 A let me take a look at it, please.

2 MR. LINDENMAN: I have the same
3 objection to it, your Honor.

4 MR. FERGUSON: I just want to
5 identify it, qualify it, will treat it the
6 same way with the others.

7 MR. LINDENMAN: You did not give me
8 a copy of that, did you?

9 MR. FERGUSON: I do not know.
10 Probably not.

11 THE COURT: Why don't you check that
12 list?

13 MR. FERGUSON: I will.

14 THE WITNESS: The answer is yes at a
15 glance. This is the--a similar type of
16 document.

17 Q This is a document to which a person
18 should look in determining whether a municipality in
19 the region which this purports to cover has planned
20 or zoned in accordance with Regional Planning
21 mandates or urgings set forth in this document?

22 A Yes, this is the kind of document you would
23 look at.

24 Q It is the kind of document that a
25 Professional Planner would look at?

1 A Yes. Not only that, I think the meaning is
2 that it should be for the general public too, but the
3 Planner has an obligation really to look at it.

4 Q During the most recent break, did you
5 look at D-41 in evidence? A Yes, I did.

6 Q Did you find there any particular passages
7 which you either relied on at the time you did the
8 Master Plan or what you now think support what you
9 say you did? If so, point them out and tell us what
10 they are.

11 A Well, again, it is one of the sources I had and
12 I may in this time perspective mix up the various
13 resources I had from the same Association, be that as
14 it is, on page number 7, and I have statements--a
15 statement in the second paragraph under the title
16 "Two Basic Patterns, Centers and Communities."

17 There is a proposal here to preserve the local
18 centers that already exist, like Dover, Boonton,
19 Mendham, Madison, Morris Plains.

20 Q Well, would you just read the sentence
21 that you are referring to for the record?

22 A Okay.

23 "Generally, this would remain the local centers
24 that already exist like Dover, Boonton, Mendham,
25 Madison, Morris Plains, Denville, Rockaway, Pompton

1 Flains, Wharton, Butler and Lincoln Park. As local
2 facilities are added or enlarged, they would remain
3 primarily though not entirely in these local centers
4 rather than leaking out along the roads."

5 Q Do you have an opinion as to whether
6 Chester Borough is such a local center as that
7 paragraph described?

8 A It is not included as an example of a local
9 center of that type and the second thing I derived is
10 that typically even if it would be a local center
11 you would have to make sure or it is--there is a
12 recommendation here that development not leak out
13 along the roads in the more rural areas, which applies
14 directly to Chester Township.

15 Q Okay. Do you have any other passages?

16 A The following page number 8 in the beginning
17 of the first paragraph here, the fifth sentence, I
18 quote:--

19 Q Well, do you need the first two
20 sentences to make sense of the--out of the fifth?

21 A Yes, probably.

22 Q Read what you need to to make sense out
23 of it as long as it is not too long.

24 A "Centers are social magnets. People want to
25 reach them frequently so they are attracted to live as

1 close to them as possible. The larger the center
2 the more people will want to live nearby. If allowed to,
3 then, housing would relate to these social magnets
4 as iron filings relate to physical magnets. Units
5 would be close together in and around the centers
6 (apartments and houses on small lots) and would be
7 spread further apart as distance from the centers
8 increases," which directly then the later part of this
9 statement applies to Chester Township.

10 Q Any other particular passages?

11 A Yes. Again, the next paragraph. The second
12 paragraph:

13 "In this pattern then, Morris County would
14 consist of 15 or 20 local centers, each surrounded
15 by the local community that is served by the center
16 and each local community would be surrounded by open
17 space. These local communities would vary in average
18 density according to their relationship to the
19 metropolitan center. The densest housing would be
20 built around the metropolitan center, tapering off to
21 the edges of the County", and, of course, Chester is
22 basically to the edges of the County.

23 Q For my benefit, would you read the last
24 sentence in that paragraph?

25 A "And around the metropolitan community would be

1 the lowest density housing and open land."

2 Q All right. Any other passages?

3 A On Page 5 there is a title, "Why Centers and
4 Communities Seen Preferable."

5 Q All right. Without reading that, would
6 you tell us if that language supports what you
7 advocate as sound Planning as represented by the Chester
8 Township Master Plan?

9 A Yes, it does.

10 MR. LINDEMAN: Hold it, hold it.
11 Excuse me. I object to the question. I think
12 that really is a determination for the Court
13 to make.

14 MR. FERGUSON: I kind of concede it is,
15 your Honor. The witness is pointing out those
16 areas. I think it is too long for him to read
17 it into the record. The other two were fairly
18 short.

19 THE COURT: Okay. I think Mr. Lindeman
20 is correct on that. Before you move out of that
21 area, Mr. Hultgren, I have here and I will hand
22 it down to you, a Map of Morris County.

23 THE WITNESS: Right.

24 THE COURT: Now, two things you have said
25 so far. You mentioned the population or the

1 centers and one of those centers that was
 2 mentioned was Mendham. It remains a local
 3 center. Now, if you look on Route 24, are you
 4 familiar with what Mendham looks like today?

5 THE WITNESS: Yes, I am.

6 THE COURT: All right. Mendham has
 7 one shopping center. Is that correct?

8 THE WITNESS: Yes, right.

9 THE COURT: Doesn't Chester Borough
 10 have more shopping centers than Mendham has?
 11 Doesn't Chester Borough have two, I had reference
 12 to two, the something Springs and the one on the
 13 other side of Route 24 going west, so it's
 14 become a larger center than Mendham has,
 15 hasn't it?

16 THE WITNESS: Well, there are--let us
 17 put it this way, your Honor: there is an attempt
 18 to make it a larger center. I have warned the
 19 Planning Board in Chester Township against ap-
 20 proving for any commercial of that type and my
 21 investigation at the time, '73, '74, was that
 22 there was no need for any additional center
 23 facilities, shopping center facilities.

24 THE COURT: Okay, now, let me ask you:
 25 Given that change, is that the kind of change you

1 talk about that justifies going back and
2 looking at the Zoning Ordinance because
3 something has happened that was not called for
4 in the Master Plan?

5 THE WITNESS: Yes, I think it
6 actually--I think you have to take a look at the
7 Ordinance under those circumstances.

8 THE COURT: All right. There is
9 one other thing. You pointed out that the--you
10 pointed out one thing with respect to Chester
11 where you get away from the centers and get
12 toward the edge of the County, it is to be open
13 space. Then, going along on that concept,
14 anything along a County boundary line would be
15 conceptually open space unless it is in a highly
16 concentrated area or high density area.

17 THE WITNESS: I think you have to
18 interpret the word "edges" as areas that are
19 remote in terms of transportation.

20 THE COURT: That is what I wanted
21 to clear up because my knowledge of Morris
22 County and looking at that Map, you have
23 tremendous concentration of high density running
24 along the edges of say, Essex County.

25 THE WITNESS: Yes.

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THE COURT: And Union County.

Okay?

THE WITNESS: Correct, sir, yes.

THE COURT: Okay, fine. Thank you.

MR. FERGUSON: I think that's all I have on redirect, your Honor. I would like to retain the option of recalling this witness for the limited purpose of moving into evidence some of these Planning documents if that becomes necessary. I do not know at this point that it will be.

THE COURT: Okay. Any questions, Mr. Lindeman?

MR. LINDEMAN: Well, I guess I ought to ask this one.

RECROSS EXAMINATION BY MR. LINDEMAN:

Q You would have to hop into a car to go shopping into any one of the R. M. Zones just as you would have to go to the railroad station from the Caputo tract, wouldn't you?

A I would say this is the pattern in the United States as we are used to it.

THE COURT: He is talking specifically about those R. M. Zones that you have.

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THE WITNESS: Yes, even if--I can say this:

I can say from some of the R.M. areas you would be able to walk directly to the center and that is the truth, especially the center one of the R. M. areas there is to--so close to the center that you would be able to walk. Whether or not people would do that, that I will leave as an open question. I would but I know several of my friends who would not.

(Short recess)

THE COURT: Okay, you can step down. I think we will just recess for the day. I have a meeting. As a matter of fact, it starts right now and I will not see you then again until after the Christmas-New Year's recess.

MR. LINDEMAN: Have a fine holiday.

THE COURT: Happy holiday season. Nice seeing you all. It's the 10th and 11th.

MR. FERGUSON: I think Mr. Lindeman is through cross examination so we don't need to bring this witness back.

THE COURT: Right. Okay, thank you very much.

(Court adjourned to January 10, 1978).

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

1
2
3 JOSEPH CAPUTO AND)
ALDO CAPUTO,)

4 Plaintiffs,)

5 v.)

6 CHESTER TOWNSHIP,)

7 Defendant.)
8)

STENOGRAPHIC TRANSCRIPT OF
TRIAL

9 Place: Morris County Court House
Morristown, New Jersey 07960

10 Date: January 10, 1978.

11
12 B E F O R E :

13 ROBERT MULR, JR., Assignment Judge, Superior Court
14

15 TRANSCRIPT ORDERED BY:

16 Philip Lindeman II, Esq.
17

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

19 Messrs. Hallring, Lindeman, Landau & Siegal,
20 By: Philip Lindeman, II, Esq., Attorney for the
Plaintiffs.

21 Messrs. Mc Carter & English
22 By: Alfred L. Ferguson, Esq., Attorney for the
Defendant.

23 James Hillas, Esq.
24 By: Forrest R. Goodrum, Esq.

25 Philip A. Fishman
Official Court Reporter

MORNING SESSION1
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THE COURT: Okay.

MR. FERGUSON: Mr.--

MR. LINDEMAN: If your Honor please,

before we begin this morning, Mr. Ferguson wrote me a letter on December 22, 1977, which I would like to offer into evidence. It's his letter to me with which there was enclosed the record of Mr. Thomas Lloyd showing the number of hours that he and his associates devoted to the testimony. I think we spoke about that.

Mr. Ferguson promised to furnish the record to me. He has now done it and I would like to have it marked.

THE COURT: All right.

MR. FERGUSON: No objection.

MR. LINDEMAN: May I have it marked?

THE COURT: Yes, we can have it marked.

MR. LINDEMAN: May I have it offered in evidence?

THE COURT: Offered as P-47 in evidence.

MR. FERGUSON: No objection. I do not see how it is relevant but I have no objection.

1 THE COURT: Well, he asked the
2 question.

3 (The document referred to is marked as
4 Exhibit P-47 for identification and is
5 received in evidence).

6 JOHN O. LASSER, sworn.

7 MR. FERGUSON: If it please the Court,
8 Mr. Lasser is a qualified real estate expert
9 and Appraiser. He will comment upon his
10 knowledge of the Chester Township real estate
11 market. He will give an opinion as to the
12 marketability of two, five acre lots in the
13 Chester Township area under the two and five
14 acre Zoning Ordinance. He will comment upon
15 the value of the Caputo property in one large
16 tract and give his opinion in general terms,
17 although he has not made any appraisal of the
18 property as to the marketability of the Caputo
19 property under the present Zoning Ordinance.

20 MR. LINDEMAN: If your Honor please,
21 on March 31, 1976 counsel was informed by
22 Mr. Ferguson that Mr. Lasser might be called
23 as a possible expert witness in the field of
24 real estate valuation and appraisal. In the
25 second paragraph of his letter, Mr. Ferguson

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tells us that he has not received any reports from Mr. Lasser and he may or may not be used as an expert witness, depending upon the reports and testimony of our, that is to say, the plaintiffs' real estate expert, and then Mr. Ferguson offers to forward copies of any reports which Mr. Lasser may have furnished to him.

I am informed and it may be that it is the fact that no report has been prepared or sent to Mr. Ferguson, but if the testimony is to be offered as rebuttal or counter to that of Mr. Clifford Earl.

Mr. Earl's testimony was available to the defendant and in fact his deposition had been taken prior to the commencement of these proceedings, so that counsel was aware to whatever extent was required to satisfy him as to what Mr. Earl would testify to. I do not believe that there was anything in his pretrial discovery that was substantially different from that which he testified to, although Mr. Ferguson mentioned to me just before he may have referred to some valuations that became known to him between the time of his deposition and the time

1 of testifying, but in any event, we are all
2 familiar with the fact that Mr. Clifford Earl
3 was going to testify. We knew what his
4 testimony would be and Mr. Lesser was not--it
5 was not really clearly stated that he would be
6 offered as an expert. It was stated he may be
7 and if there were any reports we would receive
8 them, and now this is to be offered and if
9 this is to be offered just as rebuttal, I think,
10 that would be inappropriate.

11 MR. FERGUSON: I do not think it is
12 incumbent upon the defense to anticipate
13 everything that the expert is going to go
14 to say on the stand and prepare all experts
15 to meet it ahead of time. Had that been the
16 case, we would have expended a tremendous
17 amount of money to rebut what Mr. Zimmerman
18 testified to on deposition, for instance, but
19 nevertheless testified to at the trial. I do
20 think we have put the plaintiff on notice that
21 Mr. Lesser might be called in this field. I
22 did not want to make a commitment that he would
23 be called. I, frankly, did not make the
24 decision to finally call him until over the
25 Christmas holidays. His testimony--

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THE COURT: Is it for purposes of rebuttal of Mr. Earl?

MR. FERGUSON: Yes, it is.

THE COURT: All right. I am going to allow him to testify. If it becomes necessary, Mr. Lindeman, for some preparation on your part if you wish to recall Mr. Lasser, I will allow you to do that for your cross examination just so it is understood that he will have that opportunity if he needs it.

However, I will allow him to testify.

Okay. Go ahead.

DIRECT EXAMINATION BY MR. FERGUSON:

Q Mr. Lasser, what is your employment or by whom are you employed, I should say?

A I am selfemployed. My company is John L. Lasser Associates Incorporated. I am located at 11 Commerce Street in Newark.

MR. LINDEMAN: May I state to the Court that I accept Mr. Lasser's qualifications unless the Court wants to hear them anyway.

MR. FERGUSON: Well, why don't we do it this way.

THE COURT: I think I am

1 reasonably familiar with Mr. Lasser's
2 qualifications. Although he has never
3 testified before me, I have practiced law
4 as he recalls. Maybe he does not, but I do, and
5 as a Municipal Attorney I ran into him very
6 frequently.

7 However, I think for the record,
8 perhaps if some of his qualifications are
9 spread on it.

10 MR. FERGUSON: Why don't we mark
11 his curriculum vitae and very quickly I can
12 highlight some parts of it.

13 THE COURT: Okay.

14 (The curriculum vitae referred to is marked
15 as Exhibit D-49 for identification and is
16 received into evidence).

17 Q Very briefly, Mr. Lasser, would you
18 tell us your education?

19 A Yes. I am a graduate of Yale University. I
20 have taken courses given by the American Institute of
21 Real Estate Appraisers in all branches of real estate
22 appraising and I have taken Seminars given throughout
23 the years by the Institute in real estate appraising.

24 Q Of what professional associations are
25 you a member?

1 A I am a member of the American Society of
2 Real Estate Counselors, The American Institute of
3 Real Estate Appraisers. I carry their designation,
4 M. A. I., which means member of the Appraisal
5 Institute. I am currently a member of the National
6 Governing Council of the American Institute of Real
7 Estate Appraisers. I am Vice-President of the Real
8 Estate Board of Newark, a member of the New Jersey
9 Association of Realtors, The National Association of
10 Realtors. I am also a member of the Institute of
11 Real Estate Management.

12 Q Have you given any lectures or done
13 any teaching in the real estate field?

14 A I have taught real estate appraising at
15 Rutgers University both at the Paterson Center and the
16 New Brunswick Center. I did that for a period of
17 seven years.

18 Q Have you been active in the real estate
19 field in New Jersey and, if so, from what date? Would
20 you briefly describe your activities for us?

21 A I am a licensed Real Estate Broker in New Jersey.
22 I have been active in appraising and consultants since
23 1954. My work involves the appraisal research and
24 consulting areas. I have made appraisals of most
25 types of property throughout the State of New Jersey.

1 Also in New York, Connecticut and Pennsylvania, but
2 primarily my work is involved in the State of New
3 Jersey. I have appraised much vacant land, improved
4 properties, one family residential, multi-family,
5 high rise, industrial commercial properties, many
6 special purpose types, such as chemical plants,
7 service stations and that type. I have worked for
8 a variety of clients, including the Federal Government,
9 various branches of the Federal Government including
10 the U. S. Army Corps of Engineers, the General
11 Services Administration, the National Park Service.
12 I worked for the State of New Jersey, the New Jersey
13 Turnpike Authority, the Environmental Protection
14 Agency. I worked for a number of counties, many
15 municipalities. I am currently working for a number
16 of municipalities. I work also for a variety of
17 private clients, including banks, insurance companies
18 and private property owners.

19 Q Now, Mr. Lasser--

20 MR. FERGUSON: Do you have any
21 questions on qualifications?

22 MR. LINDEMAN: No.

23 Q Mr. Lasser, at my request did you
24 undertake a review or a program to familiarize yourself
25 with the real estate situation or market in Chester

1 Township?

A Yes, I did.

2 Q Would you briefly tell us what you did?

3 A Yes. I examined sales information regarding
4 sales of property in the R-2 and R-5 Zones within
5 Chester Township. In order to do that, I looked at
6 the what is known as the S. R. 1-A Forms, which are
7 forms prepared by the State of New Jersey for the
8 sales ratio study. I looked at those transactions
9 during the years 1972 through 1977, through October 1977,
10 and determined the location of those sales as they
11 related to the R-2 and R-5 Zones and the purpose of
12 that was to find out whether there was an active market
13 for land in the R-2 and in the R-5 Zones. In that
14 study I found that during that period of time that
15 there were some 97 useable sales.

16 Q Well, just let me interrupt. As a
17 result of your study, did you reach a conclusion as
18 to that question? Is there an active market?

19 A Yes, I did reach a conclusion and that
20 conclusion was that there is an active market for land
21 zoned in the R-2 Zone and the R-5 Zone, meaning two
22 acres--two acre minimum lot and five acre minimum lot.

23 Q Would you amplify that answer and tell
24 us what you mean by an active market, enough to explain
25 that conclusion to the Court?

1 A Yes. In the review of this factual
 2 information I concluded that there were sufficient
 3 sales within the community during this period of time
 4 to indicate that there were willing buyers in the
 5 market willing to purchase and willing sellers in
 6 the market willing to sell and that they came together
 7 on a sufficient number of occasions represented by
 8 some 97 sales during this period of time, that there
 9 was a market for land that was zoned for R-2 and
 10 zoned for R-5.

11 Q Can you give the Court some idea of
 12 the range of prices which can be expected for those
 13 zones, R-2 and R-5? If you cannot, tell us why not.

14 A Yes, I can give you a range of prices from
 15 my examination of the sales data. During this period
 16 of time, which was some six years ago, I found that
 17 land that is zoned R-2 sold for between \$14,500.00 to
 18 \$36,000.00 per lot or between \$7,250.00 per acre and
 19 \$18,000.00 per acre.

20 MR. LINDEMAN: May I have that again?

21 The acreage prices?

22 THE WITNESS: \$7,250.00 per acre to
 23 \$18,000.00 per acre. Now, this represents the
 24 sales prices for two acre lots or lots that
 25 approximate two acres. Those properties that

1 were zoned R-5 were selling for between
2 \$25,000.00 to \$32,500.00 per lot or from
3 \$5,000.00 per acre to \$6,500.00 per acre.

4 This would indicate that the larger lots sell
5 for more money but they sell for a lower unit
6 price.

7 Q Is there any way you can tell from
8 your study whether this was with respect to unimproved
9 lots or improved lots?

10 A I would tell that they were--in the majority
11 of the cases what would be improved lots for Chester;
12 that is, lots on improved streets.

13 In addition to that, the sales included sales
14 of acreage, that is, land in excess of two acres and
15 in those instances the acreage sales ranged in price
16 from \$2,000.00 an acre to \$8,000.00 per acre with an
17 average price of approximately \$3,500.00 per acre,
18 that is, where there was substantial acreage more
19 than two acres and ranging up into the class of 100
20 acres or more, those properties were selling at an
21 average of \$3,500.00 per acre.

22 Q Are you familiar with the subject site,
23 that is, the Caputo property? A Yes, I am.

24 Q Just give us briefly the extent with
25 which you are familiar with it.

1 A Well, I have not really gone on the property.
2 I have gone by it. I have stopped and looked at it
3 very briefly. I understand that it contains 270
4 acres. I understand that the zoning is R-2 and R-5.
5 It is located on the northwest corner of Fox Chase
6 Road and Gladstone-Old Chester Road.

7 Q Did I ask you, for this case, to do
8 an appraisal of that property? A You did not.

9 Q I will tell you that Mr. Earl, Gilbert
10 Earl, testified in this action that in his opinion the
11 Caputo property was worth as one tract, unsubdivided,
12 approximately \$310,000.00 or about \$3,000.00 per acre
13 for 270 acres. Would this opinion be consistent with
14 your review and--in your opinion of the marketability
15 of that tract as one tract?

16 A Yes, although I have not made an appraisal of
17 the property as such, it would be consistent with
18 my finding that the average price is approximately
19 \$3,500.00 an acre for larger tracts.

20 Q Would the price of the land as one tract
21 depend upon the zoning existing on the land when it
22 was offered for sale? A Yes, it would.

23 Q Could you briefly just tell us what
24 effect the zoning would have on the value of the
25 property when offered as one tract?

1 A Zoning is an obvious consideration on the
2 part of a buyer, although I find that there are a
3 variety of buyers in the market for vacant land
4 ranging from those people who want to immediately
5 develop it to its highest use under the zoning to
6 those people who want to buy and hold land for long
7 term investment or speculation. I think that a
8 prudent buyer would give consideration to the zoning
9 that was in place at the time of the purchase because
10 it represents the potential maximum development of the
11 site.

12 Q At my request did you look at Exhibit
13 P-22 in evidence, which is entitled "Housing Sales
14 By Price Range and Type, Chester Township 1976"?

15 A Yes, I did.

16 Q Do you have a copy of that with you?

17 A No, I do not.

18 Q Do you have an opinion as to whether the
19 data--well, withdraw that.

20 Would you, as an expert in the field of real
21 estate, give us your opinion as to the price range of
22 the sales of new and old homes as set forth on P-22,
23 whether they are peculiar to New Jersey or how they
24 fit in with the housing picture in New Jersey and
25 nationwide?

1 A Looking at this Exhibit it would appear that
2 the clustering of the house sales prices ranges
3 between 50,000. and roughly 90,000 and I cannot comment
4 as to the accuracy of this Exhibit, but assuming that
5 it is--that the background of it is correct, that
6 sales price range is not inconsistent with my knowledge
7 of, first of all, sales prices of properties, one
8 family homes, throughout the country which are at this
9 time just slightly in excess of 49--\$49,000.00 and the
10 sales prices of homes in Morris County which, I believe,
11 would be in excess of the average nationwide price.

12 Q Now, the average nationwide price of
13 \$49,000.00 is for new or used construction?

14 A It is for new construction.

15 Q Does that include the price of land?

16 A It includes the price of land.

17 Q So that is the lot and the house
18 together?

A Yes.

19 Q At my request did you look upon--did you
20 look at Exhibits of the costs that have been
21 introduced into evidence, P-25-A and P-25-B?

22 A Yes, I have.

23 MR. LINDERMAN: Which ones are they?

24 Pardon me.

25 Q Now, looking at P-25-A and B, would you

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1 tell us what method of appraisal or valuation these
 2 sheets represent?

3 A This is what is normally known as the
 4 development method and it is a recognized method of
 5 analysis of vacant land which can be used for one
 6 family lot development.

7 Q Is it the only method of valuation or
 8 appraisal?

9 A No, it is not the only method.

10 Q Would you tell us, if you would, what
 11 weaknesses this method would have inherent in the
 12 process by which they are done? In other words,
 13 comment upon the process of the development method
 14 without commenting upon the underlying figures and
 15 tell the Court if the method--what the limitations and
 16 the good things about the method itself are.

17 A As I say, the method is a recognized method,
 18 although not necessarily a primary method of evaluating
 19 property. It clearly is only as good as the assumptions
 20 that are made. Each step in the process involves an
 21 assumption by the person making the valuation of such
 22 things as what the individual lots can be sold for,
 23 how the property will be laid out, the configuration
 24 of the lots, the number of the feet of streets, some
 25 projection in regard to engineering and overhead costs

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1 so that each step of the way involves some either
2 factual material or some projection and, therefore,
3 because it has so many, what I would call hypothetical
4 elements, it is a method that has to be used with
5 great care in order to arrive at a conclusion as to
6 the value of the property.

7 Q Looking at the bottom of P-25-A where
8 it says: "Land Value, \$246,100.00", would you
9 agree that on any fair method of appraisal the
10 Caputo property would be worth \$246,100.00?

11 A It would appear to me that I am more in
12 agreement with Mr. Earl's conclusion that the property
13 has a value in the area of \$3,000.00 per acre than I
14 would agree to this development method. I think that
15 the other method that I have talked about, the
16 comparable sales method, would be a check against
17 this method and when this method does not produce a
18 value that is consistent with comparable sales, then
19 I would go back and question the assumptions that
20 were made within the use of the development method.

21 Q And turning to P-25-B, where the
22 bottom line "Land Value" is stated as "minus \$34,000.00"
23 would you comment upon that?

24 A I think the same principles apply. The method
25 is the same in this particular approach. The

1 assumption is that there will be two acre and five
2 acre lots. I think the prices that can be obtained for
3 those lots become the first item of projection by the
4 Appraiser. All of the other items again are subject
5 to some judgment and it would certainly be clear to
6 me that the land value conclusion of minus \$34,000.00
7 would basically be unreasonable because I doubt that
8 the owner of this property would give it to you and
9 give you an additional \$34,000.00 for taking it, so
10 that I think this method is subject to a lot of
11 hypothetical assumptions.

12 MR. FERGUSON: Your Honor, I believe
13 that when Mr. Caputo was on the stand and being
14 cross examined I began to ask him about material
15 that had been in discovery but was not yet, in
16 my opinion, in the case and that was price skewing,
17 selling some units at a greater price to
18 subsidize the sale of other units at a lower
19 price. Mr. Lindeman objected that I was going
20 beyond direct. Indeed I said I was but that I
21 wanted to be sure that that was not in the case
22 and if it were, I was going to cross examine the
23 witness on it. I would make the same statement
24 at this time. I would examine this witness on
25 the mechanism on price skewing in a real estate

1 environment that does not have state
2 subsidized projects in it. I understand
3 Mr. Lindeman is sticking by and will reiterate
4 the prior statement that that kind of evidence
5 is not in this case.

6 MR. LINDEMAN: That is correct, your
7 Honor.

8 THE COURT: All right.

9 MR. FERGUSON: That's all the
10 questions I have.

11 CROSS EXAMINATION BY MR. LINDEMAN:

12 Q Mr. Lasser, you say that a method to
13 check the development method of evaluating property
14 is in one instance the comparable method, correct?

15 A Yes.

16 Q Now, you did find that there were sales
17 in the R-2 and in the R-5 Zones in Chester Township,
18 I take it. Was that correct by the way that when you
19 mentioned those figures of 14,000 to 36,000 per lot
20 for R-2 Zone and, similarly, 25,000 and 32,500 for
21 R-5, that that was in Chester Township alone?

22 A Yes, those figures that I reported to you were
23 in Chester Township although the extent of my study
24 was to go to two adjoining municipalities, Washington
25 Township and Mendham Township just to see whether

1 there was a market for two and five acre lots. I have
2 not reported on that other than to find that the same
3 situation prevails.

4 Q Right. You also found that there
5 were values of 7,250 per acre and, two, 18,000 per
6 acre in the R-2 Zone and 25,000 at 6,500 in the R-5
7 Zone, correct? A Yes.

8 Q Now, you stated too that in both
9 instances they related to improved parcels. Each
10 parcel was an improved parcel. That is to say, they
11 each had frontage and a road. Is that correct?

12 A Yes, but not to be confused with a dwelling.
13 These were vacant lots.

14 Q Right.

15 A Available for the construction of a one family
16 dwelling.

17 Q Right. Now, were you able to check as
18 to whether any of the values in either R-2 or R-5
19 comprise developments of as much as either 80, 50 to
20 80 homes in any one development where new roads had to
21 be constructed say within the six year period or the
22 seven year period that you examined?

23 A To my knowledge there were no sales revealed
24 that involved development of 50 or 60 to 80 lots.

25 Q Right. Now, do you know as to any of

1 those parcels that you found record of in Chester and
2 immediate environs, whether any of them were multiple
3 development situations? That is to say, that there
4 were sales of properties which had comprised of three,
5 four, up to eight other number of parcels that were
6 developed by any one developer or were they in each
7 instance individual lots on old streets that had
8 existed for a long time?

9 A In regard to the lots, for instance, the two
10 acre lots, most of them involved the creation of lots
11 at some point immediately prior to the sale, although
12 I did find several lots that appeared to have been
13 in existence for a long period of time.

14 Q When you say that the lots were created,
15 you mean there had been subdivision applications and
16 approvals? A Yes.

17 Q And that some of these were fairly
18 recently? A Yes.

19 Q Now, in any instance did any of them
20 comprise subdivisions of, say, as many as three or
21 five lots to your knowledge?

22 A I don't know.

23 Q All right. Now, the valuations in both
24 an R-2 and an R-5 Zone would be different from which
25 you found, would they not, if there was involved in any

1 sale a development which involved subdivisions, site
2 plan approval for drainage and all that kind of thing,
3 with multiple lots in excess of ten lots, let's say,
4 and a construction of a road, a new road, within this
5 period of seven years, would that not be fair to say?

6 A I am not sure I understand your question. Do
7 you mean that if all that had been done would it be
8 worth more or are you saying if in order to use the
9 property you ad to subdivide it, would the price be
10 different than for a two acre lot?

11 Q You did help me a little bit in that.
12 Would the price not have to be different from
13 any of the values that you found if they involved
14 multiple unit, multiple parcel units and the
15 construction of new roads starting in about the time
16 that you examined for sales?

17 A Yes, if I understand your question, certainly
18 those sales which were of lots of approximately two
19 acres or five acres in size, single lots, would be at
20 higher prices than the sale for acreage and, therefore,
21 what I tried to show is that where lots are selling,
22 R-2 lots are selling between \$7,250.00 per acre to
23 \$8,000.00 per--\$18,000.00 per acre, that if you were
24 buying acreage, large acreage, those sales indicated
25 a considerably lower price per acre because that would be

1 in the raw state rather than the finished lot state.

2 Q And you do find or you did find that the
3 values in the R-2 and R-5 Zones were what the going
4 rate was in Chester Township and is over this six
5 year period, correct? A Yes.

6 Q It is in that range, that is what people
7 could buy properties for because they did in fact buy
8 them for that and presumably there are other lots
9 that are available at those prices. Is that correct?

10 A Yes, or now we are in 1978. I think I have
11 taken a broad span, but what I see is the trend upward
12 during this period of time because it is a six year
13 period that the more recent end of the span, that the
14 lots are going for higher prices.

15 Q Right. Now, if the properties--if
16 parcels were being sold on lots which were multi-
17 parceled lots such as would have to be in the Caputo
18 tract where roads had to be constructed, the prices
19 would be higher or would have to be higher than what
20 you have found because of the new construction and the
21 rise in cost today and all the other things attendant
22 upon development of properties to be available for
23 sale as vacant lots. Isn't that so? They would have
24 to be a lot higher. The price that would have to be
25 offered by the owner, would have to be higher than

1 what you found because of the development costs?

2 A If you make the assumption that development
3 costs are higher in 1976 than they were in 1975, then
4 it would cost more to develop a lot.

5 Q Well, I am not just asking for that
6 assumption. I think that you pretty well made it
7 clear that the lots that you found in both of these
8 zones were not those where new roads had to be
9 constructed. They were old--they were lots--

10 A In most cases they were not where new roads
11 had to be constructed.

12 Q And isn't that a pretty substantial
13 factor where you have to build new roads today?
14 Wouldn't that result in much higher cost per lot for
15 per two acre or five acre lot, because today you have
16 to build roads and the drainage requirements may be
17 such that they would be far more costlier than what
18 the property owner may have had?

19 A I am a little bit confused by your questioning.
20 It seems to me that some of the lots that sold at the
21 time they sold they were on roads. Someone had, in
22 some cases, to put those roads in and in other cases
23 they were on existing roads. At the time they sold,
24 they sold on existing--on what would be existing roads.
25 All of the lots that sold, for instance, the 97 lots

1 that sold in the R-2 Zone were not--all of the lots
2 were on existing roads at the time they sold but
3 some were on roads that had been recently extended
4 or developed so that in the case of the subject property
5 you have some frontage that goes along with that
6 property and you have some road development. That
7 kind of property usually sells on an acreage basis
8 rather than on a per lot basis. I would have to look
9 at details of the expenses to put in the roads as the
10 roads and whatever other improvements were put in
11 for the property as it ultimately would be developed.
12 To tell you whether it would cost more to create
13 those lots than the 97 R-2 lots that I examined--

14 Q You do have experience in some respects
15 in the cost of roads and drainage, storm sewers,
16 and that kind of thing such as were shown on
17 Exhibits P-25-A and B, do you not?

18 A I do have some experience with that.

19 Q I mean you have seen the costs that
20 developers have incurred and you know generally what
21 it would be like in this kind of area, is that not fair
22 to say?

23 A In a general way, yes; I am certainly not an
24 Engineer and don't purport to be one.

25 Q I understand. Looking at those two

1 Exhibits again, the costs that are shown for the
2 construction of the roads and the other facilities that
3 are required for approval by a municipality appear to
4 be generally correct, wouldn't you say?

5 A I cannot really comment on them. I think one of
6 the questions I would have would be, does this use the
7 cluster provision or does it use the non-cluster
8 provision? I think it is an area of expertise and
9 detail that I have just not studied for this particular
10 property and I can only comment on the methodology
11 rather than the numbers themselves.

12 Q Just on the cluster provision, since you
13 mentioned it, did you study that section of the
14 Chester Ordinance that deals with clustering?

15 A I would not want to characterize my review of it
16 as studying it but it is my understanding that there is
17 an alternate cluster possibility under the Ordinance.

18 Q It is fair to say, however, that you do
19 not know what the details of the Ordinance are, is that
20 correct?

21 A That's correct.

22 MR. LINDEMAN: All right. I have no
23 further questions.

24 THE COURT: You may step
25 down. Thank you.

1 R I C H A R D A. B E L L U S H, sworn.

2 MR. FERGUSON: Mr. Bellush is a
3 real estate developer. He has had experience
4 with developing two and larger acre tract
5 parcels in Mendham Township and he, in
6 December of 1977, filed an application for a
7 subdivision of property in two acre zone, I
8 believe, although subject to the documentation,
9 in Chester Township.

10 I asked Mr. Earl on cross examination
11 when Mr. Earl was testifying about his opinion
12 of various things whether he was familiar with
13 Mr. Bellush's developments in Mendham Township
14 and I believe Mr. Earl said something to the
15 effect of he knew that something was going on
16 but he did not know the name of the people
17 who were behind it.

18 Mr. Bellush's testimony is offered as
19 rebuttal of and as elucidation of the valuation
20 testimony given by Mr. Earl. His name was not
21 otherwise furnished in answers to interrogatories
22 and he is a recent entry to the case. I do
23 think for the limited purpose for which he is
24 being called that he should be allowed to
25 testify.

1 MR. LINDEMAN: If your Honor please,
2 I am more curious than I feel obstructionist
3 about Mr. Bellush's testimony. I will say,
4 however, I will not waive any right to object
5 as to relevance. I am curious to hear what
6 the man will say, so I will not object to it.

7 THE COURT: I recall a discussion
8 I had with Mr. Earl about the location of
9 Mr. Bellush's development.

10 MR. LINDEMAN: I recall.

11 THE COURT: A very lengthy
12 discussion as to trying to locate it and I
13 thought I had a pretty fair idea where it was.
14 Mr. Earl thought he thought it was the same place
15 I thought it was, as I recall.

16 All right.

17 DIRECT EXAMINATION BY MR. FERGUSON:

18 Q Mr. Bellush, where do you reside?

19 A Mendham Township.

20 Q What is your profession or occupation?

21 A I am a Land Developer, Builder, previous for
22 many, many years.

23 Q How long have you been so engaged?

24 A Thirty-five years.

25 Q Would you tell us briefly in your own

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words what that career has encompassed? Did you build houses, for instance?

A Yes, I built houses for about 25, 27 years; about 1,000 houses.

Q Did you stop building houses?

A Yes, strictly for health reasons, that's all.

Q For your own health reasons?

A Yes.

Q And since you stopped building houses have you been engaged in developing land?

A Yes, I have. I continue developing land.

Q Are you behind the development or do you own it in Mendham Township along Roxicitcus Road?

A Yes. I own the Saddle Hill portion of the hills of Roxicitcus, which is a section two. I do not own the first section.

MR. LINDEMAN: Would you repeat that again, please?

THE WITNESS: Section two, which is a filed Map of the hills of Roxicitcus.

MR. LINDEMAN: Hills?

THE WITNESS: Hills of Roxicitcus R-O-X-I-C-I-T-C-U-S. It's an indian name.

THE COURT: Maybe I should make--

1 Excuse me,-- Maybe I should make it clear
2 why I am so familiar with Mr. Bellush's
3 development. I had a law suit in Chancery
4 where Mr. Bellush was involved with a gentleman
5 by the name of Rocco who owned Roxicitous Hills
6 and that is why I am so familiar with it. I
7 have a pers--I have no personal knowledge of it
8 but we had a rather prolonged period of time
9 when, I think, there were three or four suits,
10 one including the Township and so I got a
11 working knowledge of that development.

12 MR. LINDEMAN: This is when Your Honor
13 was on the bench you mean?

14 THE COURT: Sitting on the bench,
15 yes. Sitting on the bench as a Judge deciding
16 cases in the Chancery Division. Okay. I just
17 want to put that on the record, I thought, to
18 clarify it. I have no personal knowledge of
19 Mr. Bellush's developments.

20 Q How big is the Roxicitous development?

21 Number 2.

22 A The portion I own is 130 acres.

23 Q And what is the present zoning in
24 Mendham Township on that?

25 A Five acre zone.

1 Q Five acre zone? A Yes.

2 Q To what extent is that parcel
3 developed?

4 A It's fully developed. We finished it a few
5 months ago.

6 Q Does that mean you sold all the lots?

7 A We have not sold all the lots. Out of the
8 21, we have sold 17. In a period of a year.

9 Q Would that be the last year, 1976 to 1977?

10 A From 19--from the end of 1976 to the end of
11 1977, yes sir.

12 Q You sold 17 lots on a 138 acre tract in
13 five acre zone? A Right.

14 Q Could you give us the idea of the
15 selling price of those 17 lots?

16 A The minimum was 59,000 and the maximum was 68.

17 Q Did you experience any difficulty in
18 selling those lots?

19 MR. LINDEMAN: If your Honor please,
20 I object. The fact that there may be 130 acres
21 and--in five acre zone does not necessarily
22 relate that development to this case in any
23 respect so far as I can see. I may be very
24 slow but I do not even see what we would be
25 driving at. The fact that the prices may have

1 been within a certain range cannot have any
2 relevance in this case. If we were to be
3 comparing the two properties to show that there
4 is something about perhaps the Caputo tract
5 that renders amenable to development because
6 Mr. Bellush did, maybe that would seem to be
7 relevant. I am not even sure that it would.

8 MR. FERGUSON: I am not trying to
9 establish these values for Mr. Caputo's land.
10 I expressly state that. I will not offer
11 evidence.

12 THE COURT: You are using to rebut
13 Mr. Earl's conclusions, particularly with
14 respect to P-25-B, I guess it was. Is that
15 where he breaks it up into five acre?

16 MR. FERGUSON: Yes, sir.

17 MR. LINDEMAN: I would assume that it
18 would be getting to that but you have got to
19 talk about comparability then in some respects.
20 I think the Court is referring to the Exhibit
21 where Mr. Earl concludes that after all
22 development costs that there would be a negative
23 value to the lots.

24 THE COURT: When you break it down
25 into five acre lots, I believe.

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MR. LINDEMAN: Right. The fact that a tract in Mendham may have been successfully done and that it contained 130 acres which may even be comparable to the number of five acre lots in--

MR. FERGUSON: It is in evidence. I am going to continue on with the witness about his activity in Chester Township and ask him to comment upon it. In fact, the values are much higher in Mendham than apparently they are in Chester.

THE COURT: Are you familiar with where the Caputo tract is, Mr. Bellush?

THE WITNESS: I know where it is.

THE COURT: You know where it is?

THE WITNESS: Yes, sir.

THE COURT: About how far, as the crow flies, is it from your development you just discussed?

THE WITNESS: Probably three miles, I would say.

THE COURT: Three miles?

THE WITNESS: I would say that is a fair decision.

MR. FERGUSON: That is not far away.

It is in the general area.

THE COURT: All right.

MR. LINDEMAN: I object to the relevance of this.

THE COURT: It is already in. I am going to allow it anyway.

Q Mr. Bellush, do you own land in Chester Township? A Yes, I do.

Q Would you tell us where?

A It's on Route 24 midway between the border of Mendham Township and Chester Borough.

Q Have you filed an application for a subdivision in Chester Township? A Yes, I have.

MR. LINDEMAN: I object, your Honor. The fact of the filing of a subdivision application can have no relevance here.

THE COURT: Well, all right. He has asked the question and answered it. I do not know where we are going from there.

Q Do you have a Site Plan with you that shows your property? A Yes, I do.

MR. FERGUSON: Can I have it marked for identification?

(Site Plan referred to is marked as Exhibit D-50 for identification).

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Q Would you tell us how many acres the tract consists of?

A Approximately 84.

Q In what zone is it?

A R-2 and R-5.

Q How many lots have you proposed to subdivide? A Seventeen.

Q Can you give us in general the proportions of your tract that is in two acre and the portions that are in five acres?

A I think it is split half and half as far as zoning is concerned.

Q Do you have a proposed selling price for the two acre lots and the five acre lots?

MR. LINDEMAN: I object, your Honor, "proposed selling price" can be evidential of nothing. I object that it is not evidentiary of anything, that a proposed selling price is a speculation and I object also on the ground of relevance.

THE COURT: Well, if you can tell me how he arrived at that selling price, what he did to develop it, then I will decide whether it is relevant then. It would seem to me the only place it would have relevancy would be in

1 contrast with Mr. Earl's approach to arriving
2 at the marketability of the land.

3 MR. FERGUSON: In general I think
4 it is relevant that an owner of this tract--
5 amount of acreage in the two and five acre
6 zone is going to develop--

7 THE COURT: Lay a foundation as to
8 how he arrives at it before he gives me the
9 ultimate answer.

10 Q Can you tell us how you arrived at the
11 proposed selling price?

12 A We did not go into two acre zone, to begin with.
13 We chose to go into four and five acres, even the two
14 acre zone, because of the natural terrain and trees that
15 are involved in this piece of property.

16 Q Would you tell us what you mean by the
17 natural trees and terrain?

18 A The terrain is of perhaps anywhere from eight to
19 ten percent grade and my experience has been that you
20 would possibly ruin more of the natural beauty by
21 cutting it into smaller parcels whereas to make it
22 less value by doing so. In this particular piece of
23 land.

24 Q So, do I understand you correctly, that
25 most of the lots are greater than two acres, even in the

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two acre zone?

A They are at least four.

Q Can you tell us how you arrived at a proposed selling price or what you think you can sell the lots for?

A Strictly by marketing within our own real estate office.

Q Does your firm have a real estate office?

A Yes, it does.

Q Does it employ real estate brokers?

A Yes, it does.

Q And does that office, I guess, it has been engaged in selling your own lots in Roxicitcus?

A Very much so.

Q Are your proposed selling prices based upon your experience as a builder and developer for the number of years you have testified about, approximately 30?

A It's based upon the normal land costs of that particular area, in the R-5, R-2 and R-5 zone and also the developing costs and the marketability of that particular area.

Q Have you used any of the cluster provisions of the Zoning Ordinance in this proposed subdivision? A We chose not to.

Q You chose not to?

1 A We chose not to.

2 Q Would you tell us what the proposed selling
3 prices are?

4 A Middle forties. Let's say generalizing, yes,
5 middle forties.

6 Q If the proposed subdivision is approved,
7 when do you anticipate starting construction of the
8 improvements on the property?

9 A Early spring.

10 Q OF 1978? A Yes.

11 MR. FERGUSON: I offer Exhibit D-50
12 in evidence and in particular the inset on the
13 upper lefthand corner which shows the location
14 of the proposed subdivision and it shows the
15 end of Fox Chase Road coming in to Route 24.

16 MR. LINDEMAN: May I ask some
17 questions about the Exhibit first, your Honor?

18 BY MR. LINDEMAN:

19 Q Mr. Bellush, what stage of the subdivision
20 process are you in?

21 A We are now in the engineering stage of
22 preliminary maps.

23 Q Well, then, have you not actually filed
24 your application?
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A We have filed a sketch but we are in the preliminary stage which includes a drainage, underlying--
underground utilities, I am sorry.

Q You filed the sketch before you have your engineering done?

A The engineering we have done has been topo; the boundary line surveys, generalization of all the drainage, consultations with the Township Engineer over his proposals and this was only for conceptual approval of the Township so that we knew approximately that we would accept our concept of roads.

Q I am really not entirely clear of that. Have you actually filed your application?

A We have filed an application.

Q You have filed an application. Has a hearing--

A Yes, sir.

Q When was it filed by the way?

A It was filed in December. A preliminary hearing has not been heard.

Q In December? December what?

A '77.

Q No. December, what day, if you remember?

A Oh, God.

Q Early, late?

A It was heard December 27th, I think.

1 Q It was heard?

2 A December 27th.

3 Q Did you say it was heard, though? I am
4 sorry. A Yes.

5 Q There was a hearing on it? A Yes.

6 Q An open Planning Board Meeting or was it
7 a caucus meeting or what?

8 A This was an open Planning Board Meeting.

9 Q Now, when was it filed then?

10 A It was filed 14 days before that.

11 Q And when is the date set for approval
12 of the application?

13 A We will be ready for that in February, strictly
14 from engineering--for engineering purposes.

15 Q It will be more than 45 days then from
16 the filing of the application, is that correct? The
17 date for that hearing date?

18 THE COURT: I think there is a
19 little confusion here. This is just a sketch
20 plat.

21 THE WITNESS: This is just a sketch
22 plat.

23 THE COURT: This is just a sketch
24 plat. All he has done so far, as I understand
25 most zoning ordinances or subdivision zoning

1 ordinances, he has just got a classification.

2 THE WITNESS: Exactly.

3 THE COURT: As to the type of
4 subdivision he has. Major versus minor. This
5 is a major subdivision. His next step is then
6 to file when he has all his engineering lying,
7 underlying engineering plans, an application for
8 preliminary approval. That is when you have
9 your public hearings and that is when your
10 45 days--I do not espouse or claim to be
11 familiar with the new land subdivision law, but
12 under the old land subdivision law, the sketch
13 plat came first. That just classified it, whether
14 it was major or minor. It was major. He has to
15 go a certain route. He has to go a certain route.

16 MR. LINDEMAN: That is what I am
17 trying to find out.

18 Q You have not actually filed for
19 preliminary approval? A We have not.

20 Q You just received your--

21 A Sketch plat approval.

22 Q Sketch plat approval. And its
23 classification? A Its classification.

24 Q Of course it has been classified as a
25 major. A Right.

1 Q You have not applied to the County for
2 any Planning Board approval? Are you required to?

3 A Sketch plat approval.

4 Q Have you applied to the County?

5 A Yes, we have.

6 Q Now, in connection with this application,
7 do you expect that you will be applying for any
8 variances? A None.

9 Q You were going to comply fully with the
10 requirements for curbing and the width of the road and
11 all of the requirements?

12 A Chester Township is now in a new road revision
13 for heavier zoning whereas this is why we have filed
14 four and five acre zoning rather than take advantage
15 of the cluster zoning or two acre zoning.

16 Q But, in any event, there is nothing
17 about your application that involves any variance?

18 A None whatsoever.

19 Q All right. You will, of course, have
20 made some estimates as to the cost of the construction
21 of the road?

22 A We are quite familiar with that, yes.

1 that we have about the subdivision plat. It
2 just seems to me--and I submit to the Court that
3 it is irrelevant in this case. Apparently, we
4 have a developer who thinks that his property
5 should be divided into 16 or so parcels and
6 they should all contain four to five acres and
7 he will offer them at a particular price, but
8 I do not know how--I fail to see how that can
9 have any relevance in this case.

10 THE COURT: Insofar as the
11 testimony of Mr. Earl and the marketability of
12 two and five acre lots and the result that it's
13 going to have on the Caputo tract, I think
14 there is some relevancy.

15 MR. LINDEMAN: Well, if I may say--
16 I am sorry.

17 THE COURT: Okay. Just that you
18 have a tract of land as I understand it on
19 Route 24 in Chester Township, your clients'
20 property lies on a road that is generally
21 perpendicular to Route 24 in Chester Township,
22 although some two or three miles removed from
23 it. It is in the same general zoning area. He
24 is proposing this development as sold within the
25 three miles. It is rebutting Mr. Earl's

1 suggestion at least, I think, to some extent,
2 that you cannot sell lots with development
3 costs as he estimated those development costs
4 to be, particularly the one, the P-25-B, the
5 one where you ended up giving the land away and
6 giving \$34,000.00 with it, if that could ever
7 happen, the theory behind it.

8 I think it is relevant from that
9 standpoint.

10 MR. LINDEMAN: Your Honor, that is
11 right. That was Mr. Earl's testimony and now
12 we have Mr. Bellush, certainly experienced in
13 the real estate business, but the fact that
14 he says that he is going to offer it at
15 \$40,000.00 per parcel, approximately, does not
16 mean that is what the market is, whether he will
17 be successful or that he will not be.

18 THE COURT: Well, I know it shows,
19 you know, what the Township has got to do is
20 rebut your theory that you could not sell the
21 land at all under the present zoning. They are
22 coming forward with a developer who is saying:
23 I have two and five acre zoning here. I am
24 going to sell it at these prices. This is the
25 way I have laid it out and this is the way I am

1 going ahead, so I think at least--I think
2 it is relevant. I do not know what weight it
3 has on the projection of it, but I think it is
4 relevant. I think insofar as it is offered to
5 rebut, Mr. Earl, which as I understand it is
6 the only reason it is being offered.

7 MR. FERGUSON: Yes, sir.

8 THE COURT: I will allow it.

9 D-50 in evidence.

10 (The document formerly marked as Exhibit D-50
11 for identification is received in evidence).

12 THE COURT: Anything else Mr.--of
13 Mr. Bellush?

14 MR. FERGUSON: Only a matter of
15 clarification.

16 BY MR. FERGUSON:

17 Q You mentioned Chester Township doing
18 something about the road construction?

19 A That is my understanding.

20 Q Would you tell us what your understanding
21 is so that your testimony can be clear?

22 A I can only refer to our own particular--I mean
23 I do not need it. I am sorry.

24 THE COURT: As I understood it--

25 Could I just ask a question and lead a little bit?

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MR. FERGUSON: Yes.

THE COURT: As I understand it you believe that Chester Township is in the process of upgrading its road specifications?

THE WITNESS: It is in the process of downgrading.

THE COURT: Downgrading?

THE WITNESS: Yes, it is, as far as dollars are concerned, so that we would not have taken advantage of the--we would have taken advantage of the cluster zoning had we not been assured that Chester Township is getting into a more liberal road ordinance for its heavier size lots.

THE COURT: In other words, it is going to cost less to construct roads?

THE WITNESS: Exactly.

BY MR. FERGUSON:

Q In what way is it going to be more liberal?

A Well, with the same engineer as is in Mandham Township. The Township Engineer, as in Chester Township.

Q Is that Mr. Fox?

A Mr. Fox, where we have developed certain ways of

1 drainage within our Mendham Township tracts which are
 2 quite satisfactory to Mendham Township and we have
 3 convinced Chester Township that it is quite reasonable
 4 to do and very effective environmentally. We also
 5 would expect that we will not have any sidewalks in
 6 here and, possibly, curbs only in the more critical
 7 areas of grade and not in the flatter areas and
 8 possibly down to a 26 foot street or something like
 9 that. We are not exactly sure but we think so, rather
 10 than a 30 foot street.

11 Q Those talks with the Township Engineer
 12 are ongoing as part of your application?

13 A Yes, it is.

14 MR. FERGUSON: No further questions.

15 CROSS EXAMINATION BY MR. LINDENAN:

16 Q Mr. Bellush, is this parcel which you
 17 are proposing to subdivide lands that are owned by you
 18 and your company now or do you have a conditional
 19 contract to buy it?

20 A It is a very strange thing here. We had owned
 21 it totally, previous section to this, had sold it to an
 22 associate that does a lot of excavating work for me
 23 and we had just now taken back the second section which
 24 we closed title on today or yesterday. I am sorry.

25 Q So, when you filed your first--

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A We did not own, physically own it, no.

Q But it was not a conditional contract?

A It was not a conditional contract, whatsoever.

Q Now, you do own the fee or you or one of your companies owns the fee? A Yes, exactly.

Q You had consultations, did you not, with Engineers and others having to do with subdivisions?

A Quite extensively.

Q In the Township prior to the making of your application? A Yes.

Q And you discussed various aspects of it with Mr. Fox, did you not? A Yes, we had.

Q And with others on the Planning Board on an informal basis?

A No, we did not, no, only at a public meeting with the Planning Board.

Q You did not attend any caucus meeting to ascertain peculiar requirements that they might have?

A None whatsoever.

Q Did you meet separately and privately with Mr. Fox about this application?

A This is quite frequent, yes.

Q I am not suggesting there is anything improper about it. It is the right thing to do.

A We are quite open about it.

1 Q Now, in connection with any such
2 meetings, what if any questions were raised by
3 Mr. Fox without necessarily stating what they were,
4 about the quality and condition of the soil on which--

5 A We are aware of the soil. We have taken
6 testing--

7 Q No, I am sure you are, but I am just
8 curious to know what questions if any were raised by
9 him about quality and condition of the soil?

10 A I think Mr. Fox was aware of the conditions
11 of the soil.

12 Q But you did not have to discuss it
13 with him, is that correct?

14 A No, there had been perc tests on file here for
15 several years on this particular piece of land I did
16 previously.

17 Q But did you have any actual discussion
18 with Mr. Fox about the quality of the soil?

19 A Yes, we did.

20 Q On this occasion?

21 A On this particular piece of property.

22 Q What were the discussions? Would you
23 tell us?

24 A Well, the discussions were basically as to the
25 percolation of this particular piece of property

1 which happens to be excellent whereas it will take
2 certain drainage facilities that we have designed in
3 other areas quite readily in this particular piece
4 of land.

5 Q What discussions, though, did you have
6 with him about that? What was said?

7 A Well, whether we will follow pattern of what
8 we previously had done in other subdivisions where
9 he had been Township Engineer which had been quite
10 successful, and in order to follow those patterns, this
11 particular tract had to have advantageous percolation
12 in order to do that.

13 Q Were there percolation tests made on
14 this?

15 A I had made percolation tests on this several
16 years ago, yes, I had.

17 Q Did you discuss those tests with
18 Mr. Fox? A They are on file.

19 Q No, no, did you discuss it?
20 A Yes, I discussed it.

21 Q When was that that you discussed that, if
22 you recall?

23 A It must have been October or November.

24 Q Of '77? A Of '77, yes.

25 Q In connection with your prospective

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plans to develop this property?

A Yes, right.

Q Is it correct to say that the method of sewage treatment will be by septic tanks?

A Yes, it is.

Q For all these parcels? A Yes.

Q What discussions if any did you have with Mr. Fox about the effect, if any, that this development might have on any water shed characteristic of this property?

A Quite extensive.

Q Would you tell us what that was?

A The proposal, first, with the cluster zoning which we were proposing, we were going to propose at first because we had no knowledge of the possible change of road specifications within Chester Township, so we envisioned here, first, a retention pond which we had done in previous subdivisions. We are still not sure we will not be using a retention pond. We hope not to.

One of the reasons for upgrading has been to perhaps eliminate that.

The other thing was the method of frequent cross drains which we have designed and done in other subdivisions with which Mr. Fox had been Township

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1 Engineer--a Township Engineer. We hope that this will
2 be satisfactory in itself in this large subdivision,
3 in this type of subdivision.

4 Q Was there any discussion at all about
5 the fact that the property is in a water shed area?

6 A Oh, sure.

7 Q Now, so far as a retention pond is
8 concerned, would that be a pond that would be on a
9 stream or near a stream?

10 A Yes, it would be near a stream.

11 Q Which stream is it, do you know?

12 A That is the head waters of the Burnet Brook, I
13 think.

14 Q Did you discuss that possibility with
15 Mr. Fox? A Yes.

16 Q What was his reaction to that?

17 A He feels and I am only--I am not answering for
18 Mr. Fox.

19 Q Just what he said to you.

20 A Just a discussion.

21 Q What do you recall?

22 A He feels that the possibility of using other
23 drainage methods besides a retention basin is quite
24 feasible on this piece.

25 Q Did he have any objection to your using

1 a pond if it came down to that, for you to using a
2 retention pond?

3 A No, no. He is quite an advocate, I would
4 believe, of the retention ponds, yes.

5 Q Did he state anything about precautions
6 that you should take in your development to maintain
7 the purity of whatever streams would be near or
8 surfaced by the property that you are developing?

9 A Yes, the elevation of this particular property
10 is extremely high.

11 Q Yes?

12 A We have one stream that we have to be careful
13 with which is already crossed with the previous
14 subdivision.

15 Q Which stream is that?

16 A That is the Burnet Brook.

17 Q Oh, yes?

18 A Burnet Brook Stream. However, the only
19 consideration we had there was to keep our house sites
20 considerably distant--considerable distance from the
21 stream itself and--which we think we have accomplished
22 on this presentation here.

23 Q Anything else that he said about the
24 environment and what you should try to do to protect it?

25 A Well, we have our normal construction maps of

1 retention by Byrnes and what have you, but this all
2 comes in due time as we process our subdivision which
3 we are quite aware of.

4 Q Will your drainage result in discharge
5 of surface waters into Burnet Brook?

6 A Under the way we propose it, no, it will not.

7 Q Where will your surface waters be
8 discharged?

9 A It will go on the land itself. The lots are so
10 big that we feel that this is the way to dispurse it
11 on the individual lots.

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

14 REDIRECT EXAMINATION BY MR. FERGUSON:

15 Q As I correct then in understanding that
16 you do not have, you have not discussed with Mr. Fox
17 a system of concrete collector pipes for storm water
18 runoff into a central disposal location?

19 A We have discussed the alternatives, yes. We
20 have discussed that and also alternatives of that.

21 Q And the alternative you are trying to
22 do is a land disposal? A Yes.

23 Q Not a centralized collection of disposal
24 system or storm water runoff? A Yes.

25 Q When you say land disposal, you mean the

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water will flow over land because of good percolation characteristics it would go into the soil?

A Yes. These are frequent cross drains across the road which are very frequent disposals on the land.

Q How frequent is frequent?

A 125 feet approximately, something like that. Every 125 feet.

Q The alternative to those frequent cross drains will be what?

A A retention pond, perhaps.

Q Would that require a centralized collection system?

A Yes, it would.

MR. FERGUSON: No further questions.

THE COURT: Anything else?

All right. You may step down. Let's take until five of.

(Lunch recess).

AFTERNOON SESSION

THE COURT: Okay. Let's proceed.

MR. FERGUSON: Mr. Boorman.

DEAN K. BOORMAN, sworn.

THE COURT: Let me tell you what I have done and I will give you your options.

(Short recess)

MR. FERGUSON: Your Honor, we have

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P-46 for identification which has now been substituted the copy that Mr. Hultgren had and which was marked.

THE COURT: Okay. You can get that back to Mr. Hultgren.

MR. FERGUSON: I do not know what the-- wait a minute.

THE COURT: P-46 was the Regional Transit document?

MR. FERGUSON: Second Regional Plan.

MR. LINDEMAN: Yes. That was the one he was looking for and he found that in the afternoon.

MR. FERGUSON: It is not here. We have got it.

DIRECT EXAMINATION BY MR. FERGUSON:

Q Mr. Boorman, by whom are you employed?

A by the firm of Boorman and Durham, which is my own firm along with a partner.

Q In what occupation are you employed?

A As a Professional City Planner or Community Planner.

MR. FERGUSON: Excuse me, Mr. Boorman.

Your Honor, Dean Boorman is the

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1 Professional Planner who was retained by
2 Chester Township to prepare the Zoning
3 Ordinance and to consult with them about the
4 preparation of Ordinance--the Ordinance which
5 subsequently became 76-12 and is now the
6 interim Ordinance in effect at the present
7 time. He will testify generally as to his
8 work in Chester Township as to advice he gave
9 to the Planning Board on the housing need, as
10 to the zoning criteria which were incorporated
11 into the Zoning Ordinance, about the zoning of
12 the Caputo property, about the relationship of
13 the Zoning Ordinance to the Morris County
14 Master Plan and, perhaps, some other regional
15 documents and he will testify briefly as to the
16 locational criteria for dense--denser
17 residential housing as it relates to the
18 Caputo tract.

19 MR. LINDEMAN: May I make an inquiry
20 through the Court? Is Mr. Boorman going to be
21 offered really as a fact witness or as a fact--
22 combination fact and expert witness?

23 MR. FERGUSON: Both.

24 MR. LINDEMAN: All right.

25 Q Mr. Boorman--

1 THE COURT: Hold it just a second.
2 Okay. Go ahead.

3 Q Would you give us your educational
4 background?

5 A Yes. I have a Bachelors Degree in Economics
6 from Princeton University, which I received in 1948 and
7 a Masters Degree in City and Regional Planning from
8 Massachusetts Institute of Technology, which I received
9 in 1951.

10 Q Do you hold any professional licenses
11 from the State of New Jersey?

12 A Yes, I am registered as a Professional Planner
13 in the State of New Jersey.

14 Q Do you practise in New Jersey today as
15 a Professional Planner and, if so, since what date have
16 you so practised?

17 A I have practised as a Professional Planner in
18 effect ever since my graduation from M. I. T.. I have
19 been working in New Jersey since, oh, approximately
20 1956. My partner and I formed our present firm,
21 Boorman and Durham Inc. in 1962 and our work has been
22 primarily in the State of New Jersey.

23 Q What kind of work have you done in the
24 Planning field in the State of New Jersey and, where
25 applicable, would you identify a client, either private

1 or municipal client, to illustrate the kind of work you
2 have done as a Planner?

3 A Yes. Before the formation of my present firm,
4 I was with a Newark Consulting Firm and I did Master
5 Plan and Urban Renewal work in several communities in
6 the State. Since the formation of my firm, my partner
7 and I have worked and--or are working in approximately
8 40 of the--or four of the approximately 40
9 municipalities in the State. In the--in preparing
10 Master Plans or recommending Zoning Ordinances and/or
11 providing continuing Planning services to the local
12 Planning Boards. Examples of the municipalities for
13 which we have prepared Master Plans in Morris County
14 include Florham Park and East Hanover and Mine Hill,
15 of course, the Chester Township Zoning Ordinance. We
16 are presently preparing a Master Plan in--let's see--
17 we did a central business district study in the
18 Borough of Chatham. We have worked and are working
19 in a number of adjoining areas, such as the Borough
20 of Peapack and Gladstone in Somerset County.

21 We are presently engaged in updating the Township
22 of Mendham Master Plan, which also adjoins Chester
23 Township.

24 Q What are you doing for Peapack Borough?

25 A We are redoing and updating the Master Plan of the

1 Borough which was last done prior to--in
2 approximately 1960.

3 In addition to the municipal work which we do,
4 we have done Land Planning and Site Planning studies
5 of a number of private developers. Also, marketability
6 studies and I have appeared on numerous occasions
7 before local Zoning Boards of Adjustment and in
8 Superior Court in regard to zoning matters.

9 Q Would you give us the name of your
10 professional--the professional organizations of which
11 you are a member or with which you are affiliated?

12 A Yes. I am a full member of the American
13 Institute of Planners. I am a member of the American
14 Society of Planning Officials. I am a member and
15 former associate, Director of the New Jersey
16 Federation of Planning Officials and I am a member
17 of the New Jersey Society of Consulting Planners.

18 MR. FERGUSON: I offer Mr. Boorman
19 as a Planner.

20 MR. LINDEMAN: No questions, your
21 Honor.

22 Q Mr. Boorman, when were you engaged by
23 Chester Township?

24 A In May of 1975.

25 Q And for what purpose?

1 A For the purpose of conducting a Planning Survey
2 and Study to carry the Master Plan which had recently
3 been adopted by the Township into the form of a
4 proposed Zoning revision.

5 Q Now, would you tell us the--generally
6 the kinds of work you did in preparing yourself and
7 the Township for the drafting and writing the Zoning
8 Ordinance?

9 A Yes. I familiarized myself with the Master
10 Plan Studies which have been prepared and which have
11 been adopted by the Township Planning Board. I looked
12 at and obtained copies of some of the source material
13 that was used in the preparation of the Master Plan
14 such as the Land Use Maps and the Topographic Maps.

15 Q Now, would you--

16 A And--yes.

17 Q Finish the answer and I want to go back to
18 the Land Use and Topographic Maps.

19 A I also obtained the Soil Survey Maps from the
20 Soil Conservation Service which have been used for the
21 Master Plan. Then, in addition, I made a review of a
22 series of proposed applications for developments in the
23 Township, including several multi-family applications
24 and then, as a further step in preparing for developing
25 zoning recommendations, I prepared a Regional Fair Share

1 Housing Study following the criteria set forth in the
2 Mount Laurel Decision in order to determine the
3 Township's responsibility in the provision of other
4 forms of housing than were previously zoned. Of course,
5 the Master Plan itself had a general recommendation
6 as to the provision of multi-family housing, but this
7 was not specific in terms of sites and numbers and
8 the study which I made was directed toward producing
9 a specific zoning recommendation.

10 Q All right. Now, you say you looked at
11 the Land Use and Topographic Maps. Can you tell us
12 from your recollection what those were?

13 A In regard to Land Use, I have a Map with me.

14 Q All right. Would you get it, please?
15 Tell us what that Map is and by whom it was
16 prepared, if you would.

17 A The Map itself actually is the key map for the
18 series of Tax Map Sheets of the Township and the
19 information that is entered in color on the Map is
20 a summarization of existing land use, which was
21 prepared by the Consultants who did the Master Plan.
22 This is their work map showing existing land use on a
23 single map for the Township as a whole.

24 Now, they also plotted the land uses in detail
25 on the individual Tax Map Sheets and I also have those

1 available for my use while I was working on the
2 Zoning Ordinance.

3 THE COURT: I am sorry. They
4 also plotted what? What did they plot?

5 THE WITNESS: They also plotted
6 existing land use information on the individual
7 larger size Tax Map Sheets.

8 THE COURT: On the sheets of the
9 Tax Map?

10 THE WITNESS: Right.

11 THE COURT: Okay.

12 THE WITNESS: This is the key map
13 and this has a summary, a general picture of
14 all of the land uses.

15 Q Now, you mentioned the Topographic Maps.
16 To what does that refer?

17 A That refers to the U. S. Geological Survey
18 Contour Maps of which I used in their original form
19 as published by the U. S. G. S. and also there was an
20 enlargement, I believe, which has been made by the
21 Master Plan Consultants and that shows the topography
22 at 24 contour intervals.

23 Q Was this given to you by the Planning
24 Board or did you obtain it from original sources?

25 A I obtained the U. S. G. S. Maps themselves

1 from the original sources but I obtained an
2 enlargement from the Planning Board.

3 In regard to the Soil Survey Maps, I also
4 have those here with me and those had been given by
5 the Soil Conservation Service to the Chester Township
6 Planning Board.

7 Q I would like you to identify those
8 Maps which I believe are the Soil Survey Maps and
9 tell us what they are and when you got them.

10 A Yes. These are Maps plotted on air photographs
11 by the Soil Conservation Service that separate out
12 areas with different soil types which are identified
13 by letters and numbers and on this particular set of
14 three Maps, they added a color code to show particular
15 characteristics of these soils. One of the Maps here
16 is--

17 Q Okay. Excuse me. Let me interrupt.

18 THE COURT: Will you have the--

19 MR. FERGUSON: I will mark the three
20 Maps and have you describe what each one of them are.

21 THE COURT: Could we mark the first
22 one that he referred to, the key Map of the Tax Map
23 Sheets?

24 MR. FERGUSON: Yes, sir.

25 THE COURT: Make that one D-51.

1 MR. LINDEMAN: At the moment, for
2 identification, isn't it, your Honor?

3 THE COURT: For identification, yes,
4 just for identification.

5 (The Map referred to is marked as Exhibit D-51
6 for identification).

7 Q The Tax Map, which is the Land Use Map,
8 is D-51 for identification. The record should note it
9 is also the same as P-83 for identification, at
10 Mr. Boorman's deposition.

11 MR. FERGUSON: D-52 for identification
12 is a Map entitled: "Soils which severely limit
13 or complicate development, Township and Borough
14 of Chester" prepared by Morris County Soil
15 Conservation District, funded by State Soil
16 Conservation Committee, New Jersey Department of
17 Agriculture based upon cooperative soils Survey,
18 Soil Conservation Service, United States
19 Department of Agriculture and had been
20 previously marked P-82-A at Mr. Boorman's
21 deposition.

22 (Map referred to is marked as Exhibit D-52
23 for identification).

24 MR. FERGUSON: D-52 for identification
25 is a Map entitled--

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THE COURT: D-53, you say is a Map entitled "Flooded Soils" with all the same other titles that the previous Map had and had been previously marked P-82-C at Mr. Boorman's deposition.

(Map referred to is marked as Exhibit D-53 for identification).

MR. FERGUSON: D-54 for identification is a Map entitled: "Prime Agricultural Lands based on soils' capability."

Once again, for Chester Township and Borough, Morris County Soil Conservation District, funded by, etc., the same organizations that were on the first Map and this Map had been previously marked P-82-B at Mr. Boorman's deposition.

(Map referred to is marked as Exhibit D-54 for identification).

Q Mr. Boorman, would you take each of these Maps and just briefly tell the Court what part the Map played in your consultation with and services rendered to the Township and the formation of the criteria which you used to prepare the Zoning Ordinance?

A Yes. In regard to the existing Land Use Map, I drove up and down all of the roads in the Township

1 and checked and confirmed and observed for myself
2 the pattern of land uses that is shown on the Map.

3 I also, incidentally, used for this purpose a
4 set of air photographs at an inch equals 400 feet,
5 which I obtained from the Morris County Planning
6 Board. I have some examples of these here, if you
7 would like, including one that shows the Caputo
8 property.

9 Q I do not intend to have them marked but
10 they are available as to anyone who wants them.

11 THE COURT: All right.

12 A With regard to the Soil Survey Maps,--

13 MR. LINDEMAN: If your Honor please,
14 if they are going to be offered I wonder if
15 we can take them one at a time instead of as
16 a group.

17 THE COURT: What he is doing--
18 you mean you ask him questions on each?

19 MR. LINDEMAN: May I?

20 THE COURT: Oh, surely.

21 MR. FERGUSON: Of course.

22 THE COURT: There would be
23 no objection.

24 MR. FERGUSON: No, sir.

25 MR. LINDEMAN: I assume you are going

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to offer them.

MR. FERGUSON: Yes, sir.

BY MR. LINDEMAN:

Q Mr. Boorman, on D-51, I am not clear. Who prepared this Map? Was it you or Candeb and Fleissig, in the first instance?

A That was Candeb and Fleissig.

Q And then you did some of the drawing on it after you first received it from them. Is that correct or is all of it the work of Candeb and Fleissig?

A I may have put a few notations of my own on, but basically the Map was done by Candeb and Fleissig.

Q What you simply did was to drive around the Town and verify that the uses indicated on the Map were correct, is that right?

A Generally, and to observe their character.

Q I just was not clear about that.

MR. LINDEMAN: I have no objection to that document.

THE COURT: All right. That can be marked into evidence then.

MR. FERGUSON: Okay.

THE COURT: D-51

1 (Map formerly marked as Exhibit D-51 for
2 identification is received in evidence).

3 Q Now,--

4 THE COURT: You were right before
5 if you are going in chronological order. No.
6 The one you had before was the next one.

7 MR. FERGUSON: This one?

8 THE COURT: No. The one right
9 in the middle. That is it.

10 MR. FERGUSON: Actually, it is the
11 order I want to go in but reverse.

12 THE COURT: What?

13 MR. FERGUSON: It is reversed.

14 THE COURT: I thought that was

15 D-52. Isn't that D-52?

16 MR. FERGUSON: No, that is D-53.

17 THE COURT: Oh, I am sorry.

18 Q With respect to D-52 for identification,
19 Mr. Boorman, would you tell us what it is and what use
20 you made of it?

21 A Yes. This Map is entitled: "Soils which severely
22 limit or complicate development."

23 It shows soils with slopes with greater than
24 15 percent. That is the purple color. The blue color
25 shows soils with water within four feet of the surface.

1 The brown shows soils with bed rock within four feet
2 of the surface. The orange shows soils with slopes
3 greater than 15 percent and water within four feet of
4 the surface. The red shows soils with slopes greater
5 than 15 percent and bed rock within four feet of the
6 surface, and when they say water within four feet of
7 the surface, that means the water table, or seasonally
8 purged water.

9 The significance of the Map in these
10 classifications is that the areas with the colors are
11 areas in which intense development should not be
12 allowed.

13 Q Now, would you tell us where you got
14 that conclusion from, if it is yours, tell us on what
15 it is based? If you got it from someone else, tell us
16 who you got it from and the manner of acquisition.

17 A I would say, basically, this would be my own
18 conclusion but which in effect are--which corroborates
19 the Soil Conservation Service in that the reason they
20 prepared this Map with these classifications was for
21 the purpose of guiding the local Planning Boards in
22 establishing their zoning and planning patterns, so as
23 to minimize development on these kinds of areas.

24 To me as a Planner, it is axiomatic that you
25 should discourage development in areas with slopes

1 greater than 15 percent. In regard to soils where
2 there is a shallow water table, here I take into
3 account the fact that there is no central and sewer
4 water system in the Township and that there is concern,
5 particularly with individual wells and septic systems
6 and with soils with a shallow water table, this is
7 a significant limitation, particularly with regard to
8 septic systems. There are also implications with
9 regard to the pollution of the water table. In regard
10 to soils where the bed rock is close to the surface,
11 again this is a limitation on particularly development
12 with one family homes.

13 Q Why is that?

14 A Because, again, of dependence on individual
15 wells and septic systems. This can also apply to
16 larger scale development where, again, there is no
17 central water or sewer system for the Township as a
18 whole and it becomes necessary to have some kind of
19 well or disposal system on the site and, clearly, the
20 cost of development is increased also where you have
21 these conditions.

22 Q To what--can you expand on that or
23 elucidate on that in general? How do these conditions
24 which are pictured on that Map relate to the cost of
25 development in your opinion as a Planner?

1 would have been three to four thousand units.

2 Q For what purpose was your review made?

3 A It was made for the purpose of determining the
4 market pressure, if you would like, on the Township
5 in regard to the provision of this kind of housing
6 because this is something which I felt should be taken
7 into account in projecting zoning recommendations.

8 Q As a result of your review, did you
9 make recommendations--did you make any recommendations
10 to the Planning Board as to how to handle or take
11 account of these development proposals?

12 A Yes. It was my proposal in that in deciding
13 how much, if any, of these applications to approve,
14 and this was on the basis that the feeling of the
15 Township was expected to be against multi-family
16 development as such from the standpoint that most of
17 the officials and most of the citizens of the Township
18 were felt to be not very attracted by the idea of
19 changing the one family character of the Township, but
20 at the same time there was a feeling of responsibility
21 on the part or by the Planning Board of complying with
22 the Regional need for the provision of additional
23 housing of different types, so my proposal to reconcile
24 these two viewpoints was to conduct a fair share of
25 housing study along the lines indicated by the

Mount Laurel Decision.

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Q Did you conduct such a study?

A Yes, I did.

Q Do you have your report or reports with you today?

A Yes, I have.

MR. FERGUSON: May I have those two marked?

THE COURT: D-55 for identification.

(The Reports referred to are marked as Exhibits D-55, D-56 and D-57 for identification).

Q I show you three documents that have been marked D-55, 56 and 57, and ask you to tell us what they are?

A Yes. The first is called Preliminary Report on the basis for a possible Master Plan Revision, Chester Township, under date of June 1975, and what this does is to extend the Master Plan as a basis for zoning recommendations by means of a fair share housing analysis to determine the amount of zoning for multi-family housing which should be done by Chester Township up to the year 1980 and this is done in relation to, first, projecting the need for the County as a whole. And, then assigning--well, this is done in relation to surrounding Counties also and then of setting up a point of weighting system,

1 W-E-I-G-H-T-I-N-G, for municipalities in the County
2 which need to provide for new zoning for multi-family
3 housing and applying this to Chester Township to
4 produce a numerical quantity of units of multi-family
5 housing.

6 Q What was your conclusion in that first
7 Report to the Planning Board as to the number of units?

8 A My conclusion was that the zoning should allow
9 up to 300 units of multi-family housing.

10 Q All right. Did you make any subsequent
11 Reports to the Planning Board on the same subject?

12 A Yes. The second Report on the basis for a
13 possible Master Plan revision was dated July 1975 and
14 this was done at the request of some of the members
15 of the Planning Board who wondered if the figures could
16 not be calculated a little more closely with the
17 purpose or to see if the number of 300 might be reduced,
18 so, I did such a calculation or such a revision of the
19 calculations and came out with a reduced figure of--

20 MR. LINDEMAN: Your Honor, hold it,
21 hold it, please, Mr. Boorman.

22 There is a certain confusion that
23 Mr. Ferguson and I have, your Honor, about
24 D-55, 56 and 57. There is no question in my
25 mind that we have seen D-55 and there has been

1 extensive examination about it and I say
2 now that I do not object to its entry into
3 evidence if it is offered.

4 As to D-56 and D-57, I see no
5 reference--I can think now of no reference in
6 our previous record to those documents and
7 I am not--I am just not positive that they were
8 ever presented to us. I have gone over this
9 examination fairly thoroughly within the last
10 few days, as well as before the trial, and at
11 least just in the last few days I cannot
12 remember those particular documents, although
13 they may be referred to.

14 THE COURT: It is getting close to
15 the time. We are going to recess. Can he be
16 provided with copies so he can see them before
17 we come back?

18 MR. FERGUSON: I cannot swear to it.
19 It has been a long time but I am certain that
20 you have copies.

21 THE COURT: Something between '75
22 and 100 percent?

23 MR. LINDEMAN: Even if I had not seen
24 them at all or had them in the record, I am
25 satisfied to have them come in as long as

1 I could see them before I have to examine
2 on them.

3 MR. FERGUSON: Oh, certainly, copies
4 today.

5 THE COURT: All right. Let's
6 continue.

7 THE WITNESS: In the second Report,
8 the estimate is reduced to 220 but I was not
9 really convinced that this reduction should be
10 made and the majority of the Planning Board
11 agreed with me on that. They decided to go
12 back to the original estimate of 300, which I
13 think is a more reliable estimate and that is
14 the figure that is now incorporated in the
15 Zoning Ordinance.

16 Q All right. When in the Planning process
17 did the figure of 300 finally get adopted or decided
18 on and would you tell the Court where it appears in the
19 Zoning Ordinance? In other words, put it in context.

20 A The Zoning Ordinance went through several drafts.
21 I really do not have the dates involved.

22 Q Approximately as best as you can recall.

23 A Let's see. It would have been in the early
24 spring of 1976, between the end of 1975 or early 1976.

25 Q All right. What is the significance of

1 the number 300 in the Zoning Ordinance?

2 A The M. D. R., Medium Density Residential--wait a
3 minute. Let me refer for a minute to the Ordinance.

4 Q Yes, please do.

5 A I am not sure if I have the final adopted copy
6 of the Zoning Ordinance here. May I see one?

7 Q I show you Exhibit P-10 in evidence.

8 A Yes, all right. The Zone is the R. M. Zone and
9 the provisions for that Zone indicate that the number
10 of units of medium density or multi-family housing shall
11 not exceed a total of 300 for the Township.

12 Q Did the Planning Board accept your
13 recommendation of 300 as a number to put in the Zoning
14 Ordinance? A Yes.

15 Q And is that based upon your first Report
16 to the Planning Board? A Yes, it is.

17 Q Did you subsequently write a third
18 Report which bears the number D-57 for identification?

19 A Yes. The third Report was prepared at the
20 request of the Chairman of the Planning Board following
21 Judge Furman's Decision in regard to the Urban League of
22 New Brunswick, et al. v. The Mayor and Council of the
23 Borough of Carteret, et al.

24 In other words, the Middlesex County Decision.

25 Q And when was that prepared?

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A In May of 1976.

Q All right.

MR. FERGUSON: I move those three documents into evidence.

THE COURT: Why don't we hold off on that until Mr. Lindeman has an opportunity to review them? Let's break. It's three o'clock.
(Adjourned to January 18, 1978).

1 MR. LINDEMAN: I object for the
2 purpose of declaring as to the procedure.
3 We are almost at a point where testimony is
4 being offered from the Map and the Map is not
5 in evidence.

6 MR. FERGUSON: I will withdraw the
7 question at this time.

8 Q What use did you make of the information
9 on this Map when you prepared the Ordinance?

10 Perhaps I should first establish did you, in
11 fact, prepare the Ordinance with the Planning Board?

12 A Yes, I did and the proposed Zoning Map.

13 Q Okay. Now, what use did you make of
14 the information on this Map when you and the Planning
15 Board prepared the Ordinance and the Zoning Map?

16 A The use I made of the information on this Map
17 was really in two ways.

18 First, in determining boundary lines between
19 the lower density and the higher density areas such
20 as the one acre, the two acre, the five acre residential
21 zones and then the second use was in projecting the
22 cluster development provisions which are now in the
23 Zoning Ordinance and were not before we started work.

24 In other words, there was no clustering
25 provision under the Zoning Ordinance until it was--until

1 the new Ordinance was adopted.

2 Q All right. For each of those purposes,
3 tell us how this information was relevant and what you
4 did with the information. First, for the boundary
5 lines between the various zoning districts.

6 A All right. That here--I attempted to set the
7 lines with relation to the feasibility of development
8 in areas with particular soil types and with regard
9 to the environmental effects of development and these
10 are all factors that bear on the feasibility of
11 development and on environmental effects.

12 Q Can you--all right. The second purpose?

13 A For the second purpose, the cluster zoning
14 provisions recognize that zoning boundaries frequently
15 cannot reflect the detailed soil types or the fine
16 scale divisions between one soil type and another on
17 a particular property that zoning in effect has to
18 be broader.

19 What a cluster zoning provision does is to
20 allow a more intensive development on a part of a site
21 which has the better soil, preserving the rest of the
22 site as open space so it gives you more flexibility
23 in Planning and it makes greater provisions for
24 preserving necessary open space reflecting, among other
25 things, the soil conditions.

1 MR. FERGUSON: Your Honor, at this
2 point I would offer that Map.

3 MR. LINDEMAN: A few questions, your
4 Honor?

5 THE COURT: Surely.

6 BY MR. LINDEMAN:

7 Q Mr. Boorman, is your knowledge that
8 this Map was prepared by the Morris County Soil
9 Conservation District taken from what or derived from
10 what you were told by people in the Planning Office
11 and the printing on the document or by something else
12 as well?

13 A We also referred to the book of Soil Maps and
14 descriptions of the characteristics, which is published
15 by the Soil Conservation Service for the entire County
16 which Mr.--and that is the book that Mr. Ferguson is
17 holding in his hand.

18 MR. FERGUSON: It is D-1 in evidence.

19 MR. LINDEMAN: I think that may be--
20 my question may not have been entirely clear.

21 Q I am trying to find out how you know
22 that D-52 for identification was prepared by the
23 Morris County Soil Conservation District? Is it
24 because they told you that in the Planning Board?

25 A Yes. The Planning Board Secretary told me that

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these Maps had been received from the District Office and I believe it also indicates--it indicates so on the Map.

Q Now, did you also verify the classification of the soils from the document which you have in your hand, which is--excuse me--D--. It says one for identification.

MR. FERGUSON: I think it is in evidence.

THE COURT: It is in evidence.

MR. FERGUSON: Yes, I thought so too. Shall we have this remarked, your Honor, D-1 in evidence?

Mr. Boorman, did you verify the soil classifications from D-1 or did you just use D-1 separately?

THE WITNESS: I would say I used D-1 separately. I did not go through and look at individual descriptions of each soil and cross-checked them against the colors. I felt--

Q It was not clear from your testimony whether you did that or not. A Right.

Q All right. Now, so far as the coloring is concerned, what information do you have as to how

1 that was placed on D-52 for identification?

2 A Well, the underlying Map without the colors
3 has a series of letters and numbers within the
4 boundaries of a series of delineated areas on the
5 Map and these letters and numbers refer to the soil
6 types, so what was done to put the colors on was to
7 take all of the soils with a particular characteristic,
8 such as the slope or the water within four feet of the
9 surface and to apply that color to all of those kinds
10 of soils. This is a procedure which we often do
11 ourselves from the basic Maps in preparing our Master
12 Plan studies.

13 Q Again, I think I am not being very clear
14 in my questioning.

15 How do you know how that coloring was put on?
16 Do you know who did it?

17 A It was a staff person at the Soil Conservation
18 Service Office.

19 Q How do you know that?

20 A For one thing, I knew from experience in other
21 communities where we were working that all of the
22 communities in the County had received similar Maps
23 and I had--no, I remember I talked with the Director
24 at the time of the Office of the Soil Conservation
25 Service because we frequently consulted with him

1 in regard to our other work and he mentioned that these
 2 Maps had been prepared and had been delivered to
 3 Chester Township. I think I found that out before I
 4 actually obtained the Map at the Planning Board Office.

5 Q This is the Director of the Morris County
 6 Soil Conservation District or the State Soil Conservation?

7 A This is the Director of the Morris County
 8 District Office of the Soil Conservation Service.

9 Q So that you did consult with him and at
 10 one point prior you are actually using this. You were
 11 satisfied from him that this is what the Map looked
 12 like and that the coloring was there and was placed
 13 on the Map by the Soil Conservation people, not by
 14 somebody else?

A Right.

15 Q Okay.

16 MR. LINDEMAN: I have no further
 17 questions.

18 THE COURT: Any objection?

19 MR. LINDEMAN: No, I have none.

20 THE COURT: All right. D-52 in
 21 evidence.

22 (Map formerly marked as Exhibit D-52 for
 23 identification is received in evidence).

24 BY MR. FERGUSON:

25 Q Now, I want to leave the Soils Map for

1 a minute and just ask you briefly to describe the
2 other Maps and tell the Court what part they played
3 in the Zoning process, if you would?

4 A Yes. The Map marked P-82-B is entitled:

5 **Prima Agricultural Lands.**

6 THE COURT: D-53?

7 MR. LINDEMAN: Yes, it should be.

8 THE COURT: No, 54. That is 53.

9 MR. FERGUSON: D-54.

10 THE WITNESS: This Map shows in green

11 soil of land capability classes one and two,
12 which is the best soil for farming. The yellow
13 color shows soil of land capability class three,
14 which is not as good but still possible
15 performing. The red color shows soil used for
16 special crops and, actually, that seems to
17 reply to the Black Brook which I suppose would
18 be something like a peat bog that might be
19 used for growing celery.

20 In regard to my use of this Map for
21 zoning purposes, I did not make a great deal
22 of use of this Map since I did not observe any
23 extensive amount of active farming in the
24 Township, so it was my conclusion that it is
25 really not feasible through zoning to preserve

1 farming as such in Chester, since, in effect,
2 unfortunately it no longer exists to any
3 significant scale. From a Planning standpoint
4 though, the Map does reflect the best and
5 easiest land for development because for better
6 or for worse this coincides with the best land
7 for farming and, unfortunately, has led throughout
8 the State to the removal of a lot--of such
9 land from agricultural use.

10 Q And this Map, which is--D-53: "Flodded
11 Soils."

12 A Yes, this Map shows from red soil subject to
13 annual flodding. It shows an orange additional soil
14 subject to flodding at least every two years and in
15 yellow additional soils subject to flodding less
16 frequently than every two years and I did take this
17 Map into account in projecting that the soils shown in
18 the colors here should not be developed, but this is land
19 that should be kept open under any circumstances.

20 Q Is there any color over Mr. Caputo's
21 property on this Map?

22 A There is a section at the southeast corner of
23 the Caputo property which is shown in the orange color.
24 That is in and adjoining a stream, which is the soil
25 subject of flodding at least every two years.

1 Q Is that the soil--excuse me--the land
2 adjacent to the Feaspack Brook on the southerly section?

3 A Yes.

4 MR. FERGUSON: I do not plan to offer
5 either the Flodded Soils Map or the Prime
6 Agricultural Land Map, although you certainly
7 may, if you wish.

8 MR. LINDEMAN: I do not think I will.

9 Q You said that you reviewed multi-family
10 applications for development in the Township?

11 A Yes.

12 Q Would you tell us what you reviewed, what
13 your conclusions were from your review?

14 A Yes. I do not have a Map here of them at the
15 moment, but one was the Caputo tract. A second was
16 to the southwest of Caputo, which was the Sugarman
17 property on Route 206. A third was the Graytop
18 property, the Guerin property on Route 206, just
19 south of the Borough. A third was called Continental
20 Homes and that was off Route 24 between the Borough
21 and Mendham and then there was a fifth, I believe, on
22 Route 24 just to the west of the Borough and Town
23 Houses and/or Apartments were proposed on all of these
24 tracts and the total number of units which would have
25 resulted from the approval of all these projects

1
2 JOSEPH CAPUTO AND)
ALDO CAPUTO,)

3 Plaintiffs,)

4 v.)

5 CHESTER TOWNSHIP,)

6 Defendant.)
7)

STENOGRAPHIC TRANSCRIPT OF
TRIAL

8 Place: Morris County Court House
Morristown, New Jersey 07960

9 Date: January 18, 1978.

10
11 **B E F O R E:**

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

13
14 **TRANSCRIPT ORDERED BY:**

15 Philip Lindeman II, Esq.

16
17 **A P P E A R A N C E S:**

18 Messrs. Hellring, Lindeman, Landau & Siegal,
19 By: Philip Lindeman, II, Esq., Attorney for the
Plaintiffs.

20 Messrs. Mc Carter & English
21 By: Alfred L. Ferguson, Esq., Attorney for the
Defendant.

22 James Hillas, Esq.
23 By: Forrest R. Goodrum, Esq.

24 Philip A. Fishman
25 Official Court Reporter

AFTERNOON SESSION

(Maps referred to are marked as Exhibits D-58-A through G for identification).

THE COURT: I apologize to you, I got out of here about a quarter of. Maybe it was a little earlier. It seems to me--

(Short recess)

THE COURT: Now, let me see. You are going to start now?

MR. FERGUSON: With Mr. Widmer.

THE COURT: Widmer?

MR. FERGUSON: Interrupting Mr. Boorman's testimony.

THE COURT: Okay. Let's go ahead then.

K E M B L E W I D M E R, sworn.

MR. FERGUSON: Your Honor, this witness, Kemble Widmer, is the State Geologist of the State of New Jersey. He is employed in the Bureau of Geology and Topography of the Department of Environmental Protection. He will be testifying here today about the LORDS System, which is a Land Oriented Reference Data System, prepared by his office to describe the geography and geology and other relevant

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1 information on New Jersey land. He will explain
2 his concern with development and the geology
3 and capacity of the land and explain his
4 opinion as to the relationship between
5 development and lot size on various types of
6 geology.

7 DIRECT EXAMINATION BY MR. FERGUSON:

8 Q Mr. Widmer, by whom are you employed?

9 A State of New Jersey, Department of Environmental
10 Protection.

11 Q In what capacity?

12 A As the State Geologist and Chief of the Bureau
13 of Geology and Topography.

14 Q How long have you held that position?

15 A I have held the present position as State
16 Geologist--I am not exactly sure--almost 20 year. It
17 may actually be 20 years.

18 Q Would you tell the Court your formal
19 education?

20 A I have an A.B. degree from Lehigh University in
21 geology. At Lehigh I had two years of civil engineering
22 and took a good bit of mining engineering.

23 I then went to Stanford University in Palo Alto,
24 California, where I did two years of graduate study
25 during which I had a number of courses in ground water

1 under C. F. Tolman, who wrote the original textbook in
2 English on ground water.

3 Subsequent to my two years at Stanford, I was
4 admitted for graduate study at Princeton. I got a Ph.D.
5 from Princeton in about 1952, after five years of war
6 interruption, where I served in the army.

7 Q Briefly, Mr. Widmer, do you have any
8 affiliations or memberships in professional associations
9 which would be relevant to the Court judging your
10 qualifications as a geologist?

11 A Well, a Fellow in the Geological Society of
12 America. I am a member of the American Institute of
13 Mining and Metallurgical Engineers. I belong to the
14 Association of State Geologists. I also belong to the
15 American Waterworks Association and the Water Well
16 Drillers Association.

17 MR. FERGUSON: Your Honor, Mr. Widmer is
18 a mixed fact and expert witness and I would offer
19 him insofar as it is necessary as an expert
20 witness.

21 THE COURT: Mr. Lindeman, any
22 questions?

23 MR. LINDEMAN: I have no questions on
24 qualifications, your Honor.

25 THE COURT: No questions on the

1 qualifications?

2 All right.

3 Q Mr. Widmer, would you briefly tell us
4 what the Land Oriented Reference Data System is. For
5 what purpose was it developed and under whose direction?

6 A It was developed under my direction, starting
7 about 1973. Originally, it was being developed because
8 we realized that we were getting far more calls on the
9 ground water resources in various parts of New Jersey
10 than we could efficiently handle. We still get about
11 90 such calls a month. In each of these instances they
12 ask us for information on a specific locality and we give
13 them from our records maximums and minimums, averages
14 and probabilities of the depth and yield of a well or
15 wells in that geologic formation in that part of the
16 state.

17 We developed this program originally with the
18 idea of making the data which we were looking up every
19 time, readily available to the public, easier for us to
20 handle. We have about 100,000 well records. We also
21 have the responsibility of maintaining a state
22 topographic atlas sheet series, which covers the entire
23 state with 17 atlas sheets on a scale of one mile to
24 the inch.

25 Since about 1890, all of our well records, our

1 geologic evidence, has been referenced to these sheets
2 with what is called the rectangular coordinate system.
3 In the rectangular coordinate system a seven-digit
4 number allows us to give a discreet specific number to
5 each approximately 30-acre parcels in the State of New
6 Jersey. We locate our well records when we get it
7 from the driller, using this seven-digit number so that
8 we know approximately within a quarter of a mile of
9 where the well is. Sometimes we can be even more
10 specific because the permit has a street address and
11 so forth. I might say that we administer the Well
12 Drilling Law of the State.

13 Now, the LORDS System grew out of this effort to
14 formally develop a method for presentation of the water
15 well data because at about that time we began to get a
16 lot of requests for other environmental data, such as:
17 What is the geology of this, that or the other township?
18 What is the relief? What is the land use, mineral
19 resources? They ask a lot of questions.

20 In this bulletin, which is kind of a handbook, it
21 was prepared in haste and it does have errors, but,
22 basically, we have taken the atlas sheet area for each
23 atlas sheet and we have presented a map which shows the
24 townships. Morristown and so forth, is on
25 atlas sheet 25. Each atlas sheet is divided in this

1 rectangular system into what we call blocks, which
2 are six minutes of latitude by six minutes of longitude.

3 MR. FERGUSON: Let me interrupt you,
4 your testimony, for one minute, Mr. Widmer.

5 I have made a copy of pages 39 to 45 of that
6 document you are holding, which is Bulletin 74.
7 At this point I would ask that this be marked.

8 THE COURT: Okay: D-59 for
9 identification.

10 (Pages 39 to 45 of Bulletin No. 74, "Land
11 Oriented Reference Data System," is marked as
12 Exhibit D-59 for identification).

13 Q Now, do pages 39 through 45 contain atlas
14 sheet number 25 and a description of various qualities
15 or parameters?

16 A Various items of fact and information, such as--
17 there are 23 items in this category--such as the U.S.G.S.
18 quadrangle maps that might be needed, what counties are
19 involved, water resource data, planning board Master
20 Plans for various townships, state-owned land, the
21 summary of the geology, two brief summaries of the
22 climate, the drainage basins that are concerned, all
23 lakes over 20 acres, water companies at the time--in the
24 area--at the time it was compiled, the statement as to
25 ground water possibilities and then a tabulation of the

1 so-called recovery rates of the various rock formations
2 within the area. This is expressed in gallons per day,
3 per square mile.

4 THE WITNESS: Now, your Honor, if I
5 may digress here and explain a little bit about
6 this gallons per day, per square mile. You can
7 call it recovery rates, safe sustained yield.

8 MR. LINDEMAN: Before you do that, Mr.
9 Widmer: If your Honor please, for the sake of
10 order, I wonder if we ought not to identify the
11 document from which pages 39 through 45 of D-59
12 for identification are taken?

13 I do not think that is in the record yet.

14 MR. FERGUSON: It is not. I am happy
15 to make it a part of the record. It is a thick
16 document.

17 THE COURT: What is the name of it?

18 MR. LINDEMAN: Exactly. That is what I
19 want to know.

20 MR. FERGUSON: "Land Oriented Reference
21 Data System, Bulletin 74.

22 THE COURT: Okay. Go ahead.

23 THE WITNESS: Well, perhaps I should go
24 on and give the rest of the items that are covered.

25 We make a recommendation of minimum lot size

1 and then we go on and show historic sites and state-
2 owned land, a number of other things. But with
3 respect to the minimum lot size and safe sustained
4 yield, this goes back a long way, almost 20 years.
5 My predecessor and his predecessor were for some
6 of the formations predicting what they chose to
7 call a safe sustained yield for the various
8 geologic formations. Since most of the people
9 lived in the area with Brunswick shale, this is
10 what they based their calculations on.

11 What it amounts to is getting a large
12 number of well records and seeing what the various
13 wells will yield. We then come up with a curve as
14 to the yield of the wells in this particular rock
15 type. This gives us our range, our maximums, our
16 minimums, our average and so forth. We do the
17 same thing with the depth and when you put all this
18 together, you find and you can--for the red shale--
19 you can work it out in a number of ways, base flow,
20 normally accepted concepts of what happens in the
21 hydrologic site between runoff and recharge,
22 which supplies the ground water and so forth.

23 When I began putting these curves together
24 for other formations, I found that the curves were
25 always the same shape. There is a great bulge in

1 the lower yield area and then there is a
2 tremendously long tail on the graph if you have--
3 if your base is the gallons, you increase it by
4 one gallon per minute of the yield of the well.
5 The curve is given in this other volume where
6 the study was made originally in which we
7 compared wells in the red shale and wells in the
8 argillite, which looked like the red shale but
9 wasn't.

10 Q Would you explain what argillite is?

11 A Argillite, it looks like the red shale, but has
12 a somewhat different composition. The rock is very hard
13 but has few fractures from which water can be secured. It
14 can be used as a building stone, shale's breakdown, the
15 two formations are common through the middle part of New
16 Jersey where many people live.

17 Now, the argillite is notorious for poor wells.
18 The red shale will give around--two percent of the wells
19 will be less than five gallons a minute, but in the
20 argillite, 20 percent of the wells are under five gallons
21 a minute. For the individual households, we consider
22 this as an unsatisfactory well. Mainly because the
23 smallest pump you can buy is four gallons a minute. You
24 can pump the well dry in just a few minutes.

25 The interesting thing is that you go to the

1 maximum and you find that the argillite is only half as
2 good as the maximum in shale. You go to the average, the
3 average in argillite is only half as good as the shale.
4 If you take the top four, the top 10 wells in the shale
5 and the argillite, you find a combined yield of the
6 argillite is only half of what it is in the shale.

7 Now, this type of statistical operation, therefore,
8 gives us a kind of a yardstick and they have--my
9 predecessors pretty well determined from base flow and
10 number of--the safe sustained yield is 500,000 gallons
11 per day, per square mile, of red shale. On the basis of
12 argillite, therefore, it would only be 250,000 gallons
13 per day, per square mile. But because of the failure
14 factor, this probably should be reduced. Well, let's
15 supply the safe sustained yield of the red shale.

16 The 500,000 gallons per day, per square mile, to a
17 population figure, to a lot size, there are lots of
18 assumptions as to how much water is used by an individual.
19 For convenience, we will say it's 100 gallons per person,
20 per day. Again, the family size, we know, it isn't five.
21 It's 3.8 or 4.2, depending upon which population figures
22 you have got. But the combination of five people in the
23 family, and most of our suburbs, this may be the size of
24 the household. One hundred gallons, per person, per day,
25 is also equivalent to four people. One hundred twenty

1 gallons per day, using that figure 500 gallons per day,
2 required per household; at 500,000 gallons per day, this
3 would mean 1,000 households in a square mile. This
4 would work out at two-thirds of an acre now, per lot.

5 Now, a developer would be quick and they have,
6 in public hearings, pointed out to me that I am assuming
7 that the water is leaving the area and that is a correct
8 assumption. But if I don't assume that the water is
9 leaving the area, it is recirculating. If you try to
10 use more, you have got to recirculate it and that means
11 you are saying you are drinking your own septic tank
12 waste.

13 Now, the safe sustained yield concept as related
14 to lot size is applied, we apply it in a--and I caution
15 my staff repeatedly: This is only the case when you are
16 relying on an individual well and an individual septic
17 tank, you must have this 100 percent dilution.

18 Now, we have applied these curves to all the other
19 geologic formations. If argillite is only half as good
20 as shale, and the shale had a minimum lot size of two-
21 thirds of an acre, in order to get the water necessary
22 for all of the people living on that square mile, if
23 argillite is only half as good, that means you need
24 four-thirds of an acre. Or, if you give it a factor,
25 because of the failures say, it's only a third as good.

1 This means that it's three times the requirement, or six-
2 thirds of an acre, and this would mean a two-acre lot.

3 We started using these figures before the '65
4 drought. In one housing development where we had figured
5 and they had gone ahead of the two-thirds acre minimum
6 lot size in shale, every single well in the development
7 went dry in the drought. So we, therefore, figured that
8 we are too conservative and we have upped in our most--
9 more recent publications, we have upped this lot size.

10 Now, your Honor, we don't say that this is
11 absolutely precise. It isn't. We are trying to get a
12 figure, somewhere between the man who says, "My well is
13 tapping an underground stream that rises in the Poconos
14 or the Great Lakes or Canada, or heaven knows where,"
15 which we know isn't true. We know you can't say, "The
16 water supply, the ground water supply, is unlimited." We
17 also know the engineer who says, "I can't tell you because
18 I don't have enough information," he isn't accurate. We
19 have got to go with whatever information we have and we
20 can develop. If somebody else can develop a better system,
21 we will be glad to discuss it with him and adopt it.

22 As far as I know, this system is working. We have
23 cases that are proving--well, in the one case, in the
24 earlier days, we are a little on the optimistic side.
25 Now, there is a tendency in some areas to try to make this

1 precise and say, "Bring the water supply down to a small
2 number of acres." But we know that isn't wrong--that
3 isn't right either. Because as soon as you get over
4 three, four acres, somewhere up in that area, you begin
5 to get changes in the local geology, such as, open joints
6 which would permit a householder on a very large lot to
7 move over and get his well into a place where the fractures
8 occur, where there would be more water.

9 On the other hand, there are some areas in the
10 Highlands, some of the granite areas in the Highlands,
11 where we have a case on record with a well drilled 20 feet
12 from the line of springs. That was for the Schiff Boy
13 Scout Reservation. The well, as I recall it, is somewhere
14 around 600 feet deep, never got a drop, not a single drop.
15 We went back and looked at the geology and we found the
16 joints, the cracks, where the ground water occurs are not
17 continuous. Our records indicate that they are three-
18 acre minimum lot size and maybe you will be lucky in
19 getting a good well in that three acres; on the other hand,
20 maybe you won't. Maybe there won't be anyplace on that
21 three-acre site where you can get a well adequate for one
22 household.

23 Now, we also have made some tabulations on depth.
24 You can't get water just by going deeper, you can't get
25 more water. We have figures and studies on size of the

1 well, diameter of the well and we have a lot of information
2 on specific faults or breaks in the rock. Geologists
3 tend to say that a fault carries more water than most
4 other places and this is true. It's particularly true
5 through Morristown, Boonton and so forth. We have actually
6 put wells into what is known as the Ramapo or Waterfall
7 and it--we go deep enough to get the water and the wells
8 are 100 gallons or 200 gallons, very highly successful
9 wells. There is a lot we don't know, but with the wealth
10 of information that we have got, we feel that we have a
11 pretty good handle on capacity, on the general capacity
12 of a rock formation to give a ground water supply.

13 Now, we equate this general yield to a lot size of
14 whatever it may be: Two-thirds of one acre, one and a
15 half, two acres. Maybe in some places, we will go to
16 three. I am reluctant to go above that although we do
17 have some information in print saying some of my staff
18 recommend minimum lots of four to five acres. I am a
19 little leery of that now, I have learned from experience;
20 but we think this is a reasonable approach. We think
21 it's more factual and this is the one we are using. So
22 far it seems to work and, as I say, if the developer wishes
23 to go to a smaller lot size, then we feel he should put
24 in a public water supply system or sewer system or both,
25 because we can't change what the rocks are going to yield

1 on the average.

2 Now, in LORDS, we have put this information together
3 and what we have--we were wiped out two years ago in July
4 as we were about to function. Our microfilm of all of
5 our block descriptions was ruined by a flood of water
6 and sewage in the office, 18 inches. At that point we
7 had been told, "Why don't you have regional pictures?"
8 Rather than draw a lot of little block diagrams, we went
9 to an overlay for the atlas sheets and the LORDS program
10 consists of three parts, I guess you would say:

11 First, is the overlays of which there will eventually
12 be six to cover the entire state. We now have three
13 covering the entire state, almost a fourth one completed,
14 which overlay on the topographic maps so that given the
15 characteristics of the water service areas for example
16 and all public supply and large industrial wells, you can
17 look through and see which topography and see which drain-
18 age basin and what have you. You can take the sewage
19 and land fill overlay and put it over the water supply
20 overlay and see which areas are served by water or by
21 sewer or by both, or however it is from your particular
22 spot to that particular place.

23 Where you have a population map which gives you the
24 average population density of each township, and we are
25 modifying that now to show where the people are, if there

1 are more than 2,000 people, per square mile in an area, we
2 give it a pattern and this is taken from the U.S.G.S.
3 publications. So we have this Bulletin 74, we have this
4 atlas sheet overlay series and then we have these block
5 descriptions. The block descriptions are the six minutes
6 of latitude and longitude. They will fit over the same
7 area as the overlay or the same area of the atlas sheet.
8 But in contrast to what is in the bulletin, where we are
9 talking about the 800 square miles of Morris and adjacent
10 counties for example on the atlas sheet 24, here we are
11 talking about roughly 40 square miles, roughly five miles
12 by eight miles.

13 In our opinion, most of your ground water geo-
14 graphical resource problems are going to be solved within
15 the area of a one block description and perhaps the
16 adjacent blocks surrounding it. These come out on an
17 eight and a half by eleven sheet. We were able to
18 reproduce the maps at will. On the geologic map we have
19 gone over the area and picked a whole bunch of the larger,
20 more important wells. We tabulate this information and
21 also give seven items in which we give more detail.

22 Specifically, we give the rainfall in this smaller
23 area, or the street address of the historic sites, or this
24 well information and certain other things.

25 Q Are pages 39 through 45 the block descriptions

1 for sheet 25 and does that include Chester Township?

2 A Thirty-five through 49, no.

3 Q I am sorry.

4 A That's out of the bulletin.

5 Q Excuse me.

6 A Yes.

7 Q No--

8 A For Chester Township, looking at the reference
9 here--

10 Q Excuse me. I have another document entitled
11 "Block 25-11."

12 A Right.

13 Q Is that the block description for---

14 A That's the block description for the western--more
15 than western half of Chester Township and all of the
16 Borough of Chester.

17 Q Is that the block description that you are
18 referring to?

19 A Yes, it is. It covers parts of Chester, Gladstone,
20 Mendham and Califon and it has three, six; it has 15 well
21 records.

22 MR. FERGUSON: All right. May I have
23 that marked?

24 (Block 25-11 referred to is marked as Exhibit
25 D-60 for identification).

1 MR. FERGUSON: It is Block 25-11. It
2 is dated 8/76 and it is a typewritten sheet,
3 two sheets, to which are attached a geologic map
4 and also Block 25-12, which is one page to which
5 is attached a geologic map.

6 Q Does Block 25-12 also include part of
7 Chester Township?

8 A It includes almost all of the eastern part of the
9 Township.

10 Q The dividing line is about down the middle.

11 A The dividing line is about through the southeast
12 corner of Chester Borough.

13 Q Would you tell the Court what is the primary
14 rock classification of the bedrock under Chester Township?

15 A I think I have 25-12 back here.

16 Well, most of Chester Township is in the Precambrian
17 rock with--I don't have a geologic map with me--I could
18 tell from the geologic map of the exhibit, if I may see it.

19 Q Yes, excuse me.

20 A All right. On the western part of the Township,
21 most of the Township is under land by various kinds of
22 what the geologists call Precambrian gneiss. Down in the
23 lower-most corner, and that's not actually in Morris
24 County so that doesn't count, there is some--Ogdensburg--
25 most of the Township then is under land by the Precambrian

1 gneisses of one kind or another.

2 Q Can you relate Precambrian gneiss and
3 argillite in the terms that you have been describing as
4 to the safe sustained yield concept?

5 MR. LINDEMAN: Your Honor, now I object
6 when we get into something that approaches something
7 either factual and perhaps of an expert nature
8 with regard to this witness' testimony.

9 I would like to say parenthetically this
10 is one of the few times I heard a long description
11 of something geological and hydrological sound
12 interesting. Notwithstanding that the reports
13 to which Mr. Widmer refers are documents which we
14 have not seen and while it is conceivable that the
15 answers will be made, that this is only rebuttal
16 to something we have produced.

17 I think that is not the case, that the witness
18 is now testifying to original testimony which deals
19 with the nature of the soil and the geology in
20 this--and this area. Presumably we will have
21 testimony that the limitations of building lots
22 and development generally is justified by the nature
23 of the soil and the capacity of that soil and this
24 geology to produce water to support this population.

25 This is something which certainly the

1 defendant knew about prior to the trial. It is
2 highly complex. I do not confess for half a
3 second that I can understand it just by hearing it
4 the first time. But I have never seen and I think
5 I, for the plaintiff, have never seen this atlas
6 sheet 25, nor have we referred to Block 25-11
7 and 12.

8 THE COURT: 25-11 and 12?

9 Mr. Ferguson, deal first with his question
10 as to whether he has seen it before.

11 MR. FERGUSON: I do not think he has seen
12 the documents because he never asked for them.
13 We had them in our office and I believe we listed
14 them on the list of documents that we were going
15 to use at trial and I think we gave that to Mr.
16 Lindeman, I know, in September, October. Mr.
17 Widmer was not the subject of any discovery. We
18 did in a letter advise that we had talked with
19 Mr. Widmer and that he would be testifying about
20 the LORDS System. I think that is in August but
21 I do not have it with me.

22 MR. LINDEMAN: I will not at this time
23 challenge Mr. Ferguson's statement on a list of
24 documents that included these, they may have been.
25 I do not think that satisfies whatever rights,

1 justify the production of the documents at this
2 time. Even so, there were a lot of documents
3 I could not possibly tell what they were, simply
4 because we may have received a list of them.

5 I might also say, it seems to me that the
6 witness can still testify perhaps to certain things
7 which we would not object to, without referring
8 to these very complex records.

9 THE COURT: Well, this all came about
10 by the question of relating Precambrian gneiss to
11 argillite.

12 MR. LINDEMAN: Yes.

13 THE COURT: If it means that you need
14 some time to review what he has testified to for
15 the purpose of rebuttal, I have no problem with
16 giving that to you.

17 The representation is that this report was
18 listed. Mr. Widmer was not the subject of any
19 pretrial discovery. You were advised or someone
20 was advised. I will not say you, either you or
21 your predecessor were advised that he would be
22 testifying. So I think there has been enough notice
23 to you with respect to both the report and Mr. Widmer
24 that he would be here. So that it is just a question
25 of giving you time to prepare to respond to him,

1 which I will be glad to do. I agree with you.

2 It is a complex subject.

3 MR. LINDEMAN: If your Honor please, I
4 think, or I object further on the basis that the
5 mere presentation of a name and identity of a
6 person does not satisfy the rules when we ask with
7 respect to experts, we receive some kind of a
8 report, a copy of a report, or the nature of the
9 testimony that he is going to adduce.

10 THE COURT: I do not know what has
11 precisely transpired in this case.

12 MR. FERGUSON: Perhaps I can respond to
13 that. I want to be as fair and candid as I can.

14 I do not think I was served with an inter-
15 rogatory in which we were asked to set forth each
16 and every document upon which, you know, you relied
17 in the planning process, in the zoning process,
18 or upon which your experts relied. I served Mr.
19 Ambrose and we had various statements in the
20 pretrial order requiring us to list experts and
21 exchange documents, or list of documents and
22 reports by experts.

23 Very early after the first pretrial we
24 agreed that we would observe the substance rather
25 than the formality and give as much as we could

1 reasonably and it was really as loose as that. I
2 did not talk with Mr. Widmer until, I think,
3 August of 1977. We had listed his name I think
4 together with that of many other people in the DEP
5 whom we knew about and knew might be coming to
6 testify. But it has been our contention all along
7 that our environmental planning process is justified
8 by state policy and concerns recognized by the
9 State DEP and that we were free at any time to
10 bring anybody we could find from the DEP to testify
11 as to that proposition. Exactly who it was and
12 what documents would be produced at any one time,
13 we really did not know until we talked to him in
14 August. We talked to Mr. Kasabach and other
15 geologists down at DEP and Mr. Widmer did come
16 and agree to testify.

17 THE COURT: Let's leave it this way:
18 I will allow him to testify. If you need time to
19 countervail any of his testimony, I will allow that,
20 Mr. Lindeman.

21 Q Would you relate the argillite to the
22 Precambrian gneiss.

23 A From the study of the well records that some of
24 my staff has made and in the Bulletin 74, several gneisses
25 have approximately the same value as the argillite or

250,000 gallons per day, per square mile, safe sustained yield.

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THE COURT: Is 250,000 gallons, per day?

THE WITNESS: Per square mile.

THE COURT: Per square mile.

Let me ask one question, I want to clear up: I think I know, safe yield, you mean that the wells in the area based on that could acquire out of the ground water at that rate and it would not lower it so that the well would run dry.

THE WITNESS: That's right.

THE COURT: You know, layman's language.

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: If the wells are too close together, you can have a well run dry because it was too close to some other well. But on the average, if your population density is restricted to this figure, somewhere around that figure, you aren't going to run into trouble with all of your individual wells going dry as they did in this one township near Fennington in Hopewell Township. Again, this is not a precise figure.

The interesting thing, I think, is that our experience indicates that this, whether or not the

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1 figure is adequate, doesn't show up until the area
2 is almost completely developed. Because, in
3 essence, if you only have half the number of houses
4 and half the number of people, you don't have the
5 demand on the ground water of the total number,
6 you only have demand on half of that. So a half-
7 acre lot is roughly equivalent to a one-acre lot
8 until you get them all into half-acre lots or
9 whatever.

10 In other words, a safe sustained yield is
11 what we feel can be gotten out of the ground by
12 all users from individual wells of whatever kind and
13 size without interference and without causing
14 pollution problems.

15 Q Referring to D-59 for identification, which
16 is pages 39 to 45, and the description of atlas sheet 25,
17 would you tell us what the recommended lot sizes are for
18 the geologic area which encompasses Chester Township?

19 A It says Precambrian crystallines, that would be
20 the gneisses and the schists. The minimum lot size of
21 three to four acres is recommended and there is an asterisk,
22 it says: "In certain areas of non-fractured rocks-"
23 which would be the granite gneiss surrounding the Schiff
24 Reservation that I mentioned... "even three or four acres
25 may be too small a minimum lot size."

1 Q By "fractures," do you mean faults?

2 A No, I just mean fractures, faults or joints. The
3 thing is in crystalline rocks, such as the shale or the
4 gneiss, as opposed to the sands and gravels or the gravels
5 and sands of the Ice Age material here in Morris County.
6 The crystalline rocks, the cemented rocks, the water is
7 occurring in tiny breaks known as joints or major breaks,
8 where there has been some displacement known as faults.
9 We could do a lot from air photographs in predicting these
10 directions and so forth, but this is where the water comes
11 from. The well goes down and gives no water until the
12 driller hits one of these openings, one of these breaks in
13 the rock, a joint or fault which is open enough to have
14 water flow through it. As soon as he hits that you have
15 water in the well at whatever depth.

16 Q For comparison purposes, would you tell the
17 Court what some of the other recommended lot sizes are
18 under different geologic formations.

19 A Brunswick shale formation, which I mentioned earlier,
20 the lot size is given here as one to one and a half acres.
21 For the Basalt flows, which form the Watchung mountains,
22 we go to two, to two and a half acres. For the Hardyston
23 sandstone, which is thin and occurs north of here and some
24 a little bit to the south, it's one and a half to three.
25 For the Kittatinny limestone in the valley to the north,

1 it's one and a half to three. The Green Pond conglomerate,
2 which makes Green Pond mountain, it's three to four,
3 similar to the Precambrian gneisses. The Martinsburg
4 shale of the Great Valley is three to four and a half.
5 The stratified and unstratified drift, the glacial deposits
6 are one to one and a half.

7 Now, of course, the glacial deposits overlie all
8 of these other hard rock formations. You, in essence,
9 have a double shot at getting a well because you can go
10 into the glacial deposits. If you don't get anything in
11 the glacial deposits, you can go into the rock. You
12 might be lucky to hit a fracture that would pick up the
13 water around the edge of the glacial deposits, so you
14 have a second shot at it. But this is the way, the way
15 we answer people, if they want to know "if there is enough
16 water for my land, or is my lot being enough, or where can
17 I drill my well, and what can I expect?"

18 Q Mr. Widmer, I show you a copy--let's be
19 orderly about it.

20 MR. FERGUSON: Your Honor, I would move into
21 evidence Exhibits D-59 and D-60.

22 MR. LINDEMAN: I make the same objection
23 in which the Court, I guess, partially ruled upon and
24 also a request that we receive a copy of D-60.
25 Mr. Ferguson just gave me a copy of D-59 for

Widmer - direct
identification.

1
2 MR. FERGUSON: I only have one, but we can
3 make arrangements.

4 THE COURT: Assuming the copy is
5 provided on that basis, I will give you adequate
6 opportunity to review them and rebut, countervail.

7 I will allow them to be marked into evidence.
8 (Pages 39 to 45 of Bulletin No. 74, "Land Oriented
9 Reference Data System," marked as Exhibit D-59
10 for identification is received in evidence).
11 (Block 25-11 marked as Exhibit D-60 for
12 identification is received in evidence).

13 Q I show you Special Report No. 24 of the
14 Division of Water Policy and Supply and ask you if you
15 are familiar with that document?

16 A Yes, sir. This is prepared by Mr. Kasabach
17 when he worked for me under my direction. It gives very
18 similar lot sizes and employs rationale that I described
19 for Hunterdon County.

20 Q Is there such a publication for Morris
21 County?

22 A No, sir, there is not.

23 Q I call your attention to pages 45, 46 and
24 51.

25 A Forty-five, 46---

1 Q ---51.

2 A All right.

3 Q On page 45, the title is: "Lot Size as
4 Related to Wells." I would ask you whether pages 45 and
5 46 are a written description of the process you have
6 testified about here this afternoon?

7 A Yes, because I approved this when this report was
8 published. It's brief, it is described elsewhere.

9 Q Is Page 51 recommendations for further action
10 to be taken, with respect to the water supply and policy
11 in Hunterdon County, in this publication?

12 A The general policies and the rationale is recorded
13 here, is what we are recommending.

14 Q So would it be correct to say that you would
15 make the same recommendations as are made on page 51 for
16 Hunterdon County, for Morris County, in the State of New
17 Jersey?

18 A If the rock types are the same.

19 Q Referring to page 51, Precambrian crystal-
20 lines have a recommended minimum lot size acres of one
21 to three. Is that the same recommendation?

22 A That is a little lower, one to three. In Bulletin
23 74, we have gone three to four. I prefer the three as a
24 maximum.

25 MR. FERGUSON: All right. I would move

1 those three pages for purposes of clarity of the
2 record, your Honor; 45, 45 and 51.

3 MR. LINDEMAN: I object to them, your
4 Honor, even without seeing them. Of course, I
5 would like to see them too.

6 I object for a number of reasons: One, on the
7 ground of irrelevancy inasmuch as they refer to
8 Hunterdon County and not to Morris County and the
9 premises which are the subject matter of this
10 litigation.

11 Secondly, the report prepared by a colleague
12 or predecessor of the witness apparently is one in
13 which the witness has great confidence. But what
14 it merely does is support a policy and it corroborates
15 what he said is his historical recommendation as
16 to Morris County. Insofar as an expert's report
17 corroborates the witness, himself, and that offered
18 is made by the party which calls the witness, I
19 submit it is not proper for admission into evidence.
20 It really does not add anything to the case and it
21 is kind of reverse impeachment.

22 MR. FERGUSON: I am not offering it to
23 buttress the witness' own testimony. Maybe I can
24 clarify it with another question.

25 Q Is this the policy of the Bureau of Geology

1 with respect to recommending lot sizes to municipalities
2 and developers in the State of New Jersey and,
3 specifically, in Morris County?

4 A This is the policies--what I have outlined is our
5 policy, what we would recommend to landowners, developers
6 and planners anywhere in the state. Because we are doing
7 it on the basis of the geologic bodies underlying the area
8 under consideration, whether the Precambrian gneisses are
9 in Morris County or Hunterdon County does not type, it's
10 the rock kind that counts.

11 We have done enough studies throughout the state
12 and throughout the occurrence of the wells in the various
13 rock types to know that the rationale is consistent for
14 Precambrian gneiss. This is our general recommendation.

15 MR. LINDEMAN: If your Honor please, I
16 think that even that testimony further supports the
17 basis for my objection, that it really is nothing
18 different from what the witness testified to. It
19 is corroborative.

20 THE COURT: The only thing I can see
21 that may be helpful too will be an explanation
22 so that it may be a little more thoroughly under-
23 standable by me.

24 I have to agree with Mr. Lindeman on that
25 basis that it relates, the testimony has been with

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respect to how it is arrived at and I think it is sufficient. I will sustain the objection as to that.

Did you mark that for identification? You didn't?

MR. FERGUSON: I will.

THE COURT: It should be D-61.

What is the title of it?

MR. FERGUSON: "Lot Size as Related to Wells."

THE WITNESS: I gave you the wrong one. Here.

MR. FERGUSON: Which are pages 45, 46 and 51 of Special Report 24: Division of Water Policy and Supply, Bureau of Geology; Department of Conservation and Economic Development, State of New Jersey, 1966.

(Pages 45, 46 and 51 of Special Report 24 are marked as Exhibit D-61 for identification).

Q Mr. Widmer, I would ask you to identify for the record Exhibit D-58-A.

A D-58-A is a printed copy of State Atlas Sheet No. 25.

Q What does D-58-A show?

A D-58-A shows, there is an inch topographic map with

1 24 contours, showing the topography: Overprinted in red,
2 are the main highways, interstate routes. Overprinted
3 in green, in dark green, are county boundaries. In light
4 green are state-owned lands. In blue are the water
5 bodies, lakes, streams, etc., and in black are the
6 secondary roads. The standard topographic map of the
7 state, of which atlas sheets 21 through 37 cover the
8 entire state.

9 Q Is that the base sheet for the LORDS System?

10 A This is the base sheet for the LORDS System.
11 Right.

12 Q Does this sheet contain Chester Township?

13 A Yes, it does.

14 Q Exhibit D-58-B is what? Would you please
15 tell us?

16 A That is the drainage basin overlay. It shows what
17 is on the topographic atlas sheet from the point of view
18 of the water bodies. But on it we have also drawn in,
19 using the topography, we have drawn the approximate line
20 of the drainage divider between the various water systems.
21 This one also has an overprint in a grey pattern, which
22 shows the flood hazard areas, as determined and rectified
23 from the HUD flood prone area maps. It's Housing and
24 Urban Development.

25 Q Can you tell us the date of the data,

1 approximately, on which the drainage basin overlay is
2 based and, particularly, the HUD flood area data?

3 A Well, the drainage basins and the drainage is based
4 on the atlas sheet. That hasn't changed over the years
5 significantly. There might be a new reservoir or lake
6 here and there. The HUD data I believe is given--the
7 date in the lower right-hand corner--I don't know it right
8 offhand.

9 Q Map of flood prone areas, U. S. Geologic
10 Surveys, 1972-76.

11 A So they produced it between '72 and '76.

12 Q D-58-C is what overlay?

13 A That is the geologic overlay. This was prepared
14 from our larger mother maps, various and sundry reports
15 and other geologic information in our files. It is not
16 an enlargement of our state geologic map. Up in the
17 Precambrian area we are using much more recent--the period
18 1960 to 1970--mapping of the Highlands by Bennet Smith of
19 Rutgers University and his students.

20 Q You are using that in preference to D-58-C.

21 Did I understand you correctly?

22 A No. D-58-C, this geologic overlay, is a geologic
23 map with all of the latest geologic information that we
24 have at hand, such as Smith's study of the Precambrian
25 or anything else. It is more up to date than an enlargement

1 of our state geologic map, which is quite old.

2 Q I see. Now, would you tell us what D-58-D
3 is?

4 A All right. D-58-D is a map, an overlay map and,
5 again, your Honor, these are on semi-transparent paper so
6 you can see the topographic base map underneath, one or
7 two, sometimes three.

8 But here, from the various planning boards and
9 sewer authorities and companies and other records in the
10 department and elsewhere, we have mapped the service areas
11 of the sewage systems shown in grey. The sewage treatment
12 plants are shown by circles and some of the sanitary land
13 fills are shown by the solid black. The sanitary land
14 fills, we do not have all. We are not able to get them
15 on the map, manpower problems. But we had whatever we
16 could get at the time we published the overlay and I
17 believe that's about two years old.

18 Q In the upper left-hand corner, it has
19 compilation as of August, 1975.

20 A Right.

21 Q Is that the date as to which---

22 A That's the date in which we submitted the overlay
23 to the printer to make them, semi-transparent copies.

24 Q And D-58-E?

25 A I should point out that on that sewage overlay, in

1 the left-hand side, we have, using a coordinate system
2 which is the basis of LORDS, we have the capacity of the
3 sewage treatment plants shown at that location.

4 The next one--what is that--D-58-E?

5 Q Water supply overlay.

6 A Water supply overlay, is the overlay for atlas
7 sheet 25. On that we have shown the service areas of
8 the various water authorities, water companies, the surface
9 water intakes and the location of public supply wells.

10 They may or may not supply a water system. Many of them,
11 for instance, are for high schools or hospitals or some-
12 thing like that. But this compilation gives you the
13 public water supply resources of the area, covered by atlas
14 sheet 25.

15 Q Now, there are two other overlays which I
16 am not going to ask the witness to testify to: Land use
17 overlay and population overlay.

18 But I would ask the witness whether the base map,
19 plus overlays that are on the board, that is B through E
20 and the two I am not going to put on the board, population
21 and land use, do they comprise the set of maps that
22 represent the LORDS System for the area, which includes
23 Chester Township?

24 A Yes.

25 Q Are these documents published by your office,

1 the Bureau of Geology?

2 A They are obtainable, each one of those, the map
3 and each one of the overlays is obtainable from us by
4 purchase. They are sold to the public. Atlas sheet
5 25 has the complete series of six overlay maps, giving
6 these various factors.

7 MR. FERGUSON: I would move the ones that
8 are on the board into evidence. I am not going
9 to ask any further questions about them.

10 Their relevancy is that they do show in one
11 place many of the factors which are relevant to
12 the development of Chester Township, specifically:
13 Water supply, drainage basin, geology--

14 THE WITNESS: --sewage.

15 MR. FERGUSON: --sewage, all of which there
16 has been testimony about and will be testimony
17 about.

18 MR. LINDEMAN: I agree with that, your
19 Honor. I think that they are really surplusage.
20 But that is not a sufficient objection, I realize.

21 May I just ask a couple of questions, just
22 for clarification?

23 THE COURT: Yes.

24 CROSS-EXAMINATION BY MR. LINDEMAN:

25 Q On this last overlay, Mr. Widmer--professor,

1 doctor--which do you prefer?

2 A I don't care. I have been called many names.

3 Q D-58-E for identification: There is a
4 grey line that runs up through Chester and it has a "W"
5 in it. Could you tell us just what that means?

6 A The grey line with a "W" on it is a major water
7 supply trunk within the service area.

8 Q Does that mean that there is a public system
9 there?

10 A Wherever there is a grey line, a grey area, that
11 part of the state is on a public water supply system. If
12 they wish, and where possible, we have shown where the
13 main trunk line of that system occurs.

14 THE COURT: Is it Peapack water system?

15 MR. FERGUSON: That is the pipe which runs
16 from the lake, which is above the Caputo property,
17 I think, through the brook, down to the Peapack
18 water system. There is a small line running up
19 alongside the road which services I think, from the
20 line up a few, a mile or two, into Chester.

21 I think Mr. Saltzman indicated it would be
22 inadequate for the plaintiff's development.

23 THE COURT: He did indicate that. I
24 did not remember what street it went up. He
25 indicated it went up one of the streets.

1 MR. LINDEMAN: Mr. Earl testified I think
2 something too. I do not associate ourselves with
3 the testimony that was just given, but there was
4 testimony about that. That is correct.

5 THE WITNESS: Your Honor, in answer to
6 that question, the line doesn't--we don't give size.
7 I believe we tried to make a cut off. As I recall,
8 we made a cut off at a six-inch main. It may
9 have been a four inch in some cases, but I would
10 have to look that up.

11 Q Doctor, is there any data that is available
12 to update the sewage system overlay, which is the immediate
13 preceding one? I guess it is D, D-50-D.

14 A The problem of updating these maps, we have started
15 it. The way we are doing it, we have done it in this
16 case in the water supply overlay, is that we submit the
17 map to the water company or the sewer company and ask
18 them for corrections. Or if somebody comes in and gives
19 us a correction, we then make a new block map, which can
20 be put behind the overlay. It gives us--shows you very
21 quickly and very graphically what the changes are.

22 Now, because of my small staff, and we are trying
23 to get all of this information out, we have not paid much
24 attention to updating, particularly on sewers. On water,
25 we have, and we have four blocks, two down in the lower

1 right-hand corner, one up north of us here. I think the
2 other one is over to the east in which the water companies
3 have given us an update since we published this one.
4 Hopefully, we will get to it.

5 MR. LINDEMAN: Notwithstanding that lack
6 of updating, I have no objection, your Honor.

7 THE COURT: You have no objection?

8 MR. LINDEMAN: No objection.

9 THE COURT: Mark them in evidence then:
10 D-58-A through E. All right, A through E in
11 evidence.

12 (Maps formerly marked as Exhibits D-58-A, D-58-B,
13 D-58-C, D-58-D and D-58-E are received in evidence).

14 THE COURT: Okay, they are marked,
15 gentlemen.

16 CONTINUATION OF DIRECT EXAMINATION BY MR. FERGUSON:

17 Q Mr. Widmer, would you tell us the significance
18 in your opinion of New Jersey geography and climate as
19 it relates to recharge of ground water supplies?

20 Would you tell us why it is significant?

21 MR. LINDEMAN: I object to that, your Honor.

22 THE COURT: There was a word I did not
23 get.

24 Would you read it back?

25 (The Court Reporter reads the pending question).

1 MR. LINDEMAN: I object, your Honor,
2 because I think it is far too broad for this case.
3 We are not talking about New Jersey, generally.

4 THE COURT: Yes.

5 MR. FERGUSON: I will confine it to
6 Chester Township.

7 THE COURT: The significance of the
8 climate of Chester Township, geography and climate
9 in respect to recharging the water supply.

10 MR. FERGUSON: Yes, sir.

11 THE COURT: All right. Go ahead.

12 THE WITNESS: Okay, your Honor.

13 Chester Township--I guess I shouldn't say
14 it--Chester Township has a climate which, on an
15 average, has about four inches of rainfall every
16 month. This is a bit unusual in the world.
17 It's not unusual for New Jersey, but--really the
18 northeast--we, therefore, have no wet or dry season.

19 Now, to recharge ground water, you have got
20 to have space for the ground water to go. The
21 rainfalls and the percentage of it, depending upon
22 the characteristic of the overburden, and much of
23 Chester Township is wooded, much of it is rock
24 hills with a very thin soil. Such rock hills with
25 a thin soil, most of the rainfall will go to

1 runoff, so the recharge is relatively slight.

2 In the valleys around Black Brook, where there is
3 60 feet or more of sand and so forth, there can
4 be a great deal of recharge if the porous space
5 in the sands or if the opening in the rocks is
6 free of water. If it's filled with water, the
7 rain can't go in and can't recharge the ground
8 water system.

9 Now, what happens is that if you pump out
10 in some area of Chester Township, if all your
11 wells go down, you are in essence draining the
12 fractures, the porous space, the openings in the
13 rock. As soon as it rains, this is restored.
14 If the water table is already up and you haven't
15 pumped it down, the rain would go to runoff rather
16 quickly, or the ground water in the rocks will
17 move downslope to the nearest stream or lake or
18 swamp, whatever, which it does in any event. The
19 thing is, if it rains, it raises the ground water
20 table a little bit and it goes a little faster.

21 Now, to take water out in some place and
22 put additional water on top of what we are getting
23 every month as rainfall, doesn't seem to work too
24 well where you have this very even distribution
25 of rainfall, because nature recharges the ground

1 water about every month. Therefore, there isn't
2 any great space to store any large volume of
3 water. You can't increase the storage capacity
4 of the rock bodies much above their natural ground
5 water levels because to do so puts an additional
6 head on the water and it therefore moves through
7 cracks faster until it gets back down to its
8 original level. So recharging Chester Township
9 might work a little bit in a few cases, I don't
10 think it will work very well in any area.

11 In any event, it's not going--you are not
12 going to be able to recharge large volumes of
13 water. You can put the water in, you can make
14 the area marshy, but that's about what it's going
15 to be. It's going to run off rather quickly.

16 MR. FERGUSON: No further questions.

17 THE WITNESS: What's that?

18 MR. FERGUSON: No further questions at
19 this time.

20 THE COURT: Mr. Lindeman.

21 **CROSS-EXAMINATION BY MR. LINDEMAN:**

22 Q Mr. Widmer, I did not understand that last
23 part. I will just try to clarify what it was that you
24 were saying. That the geography and climate of Chester,
25 being what it is, approximately four inches per month of

1 rain, that as the rain falls it must go into places,
2 whatever faults there may be in Chester, and whatever
3 streams there are and drain off or what?

4 A May I go outside of Chester Township with a general
5 explanation?

6 This is a general principle of ground water that's
7 used in California. In many of our--and many of our
8 environmental people are trying to apply it to Jersey
9 and it doesn't work.

10 Q Please do, if you can explain it by example.

11 A Well, when it rains the water goes three ways:
12 First of all, in this climate, about 50 percent goes to
13 evaporation or transpiration. The remainder has to go
14 either as recharge or runoff, that is, the flood water on
15 the stream.

16 Now, in California, when I was at Stanford this
17 is what I was learning. They have three months where
18 they get most of their rain and then they have nine months
19 with no rain whatsoever. So they pump the water out of
20 the ground, drop the water table sometimes 60, 90, 100
21 feet and that's during the dry season. Then as soon as
22 the rain starts, nature begins to put the water back in,
23 but that isn't sufficient because it can't go back in from
24 the intermittent rainfall. So what they do, is that they
25 catch it in the mountains where there is a heavy rainfall

1 with reservoirs and let it out gradually and recharge the
2 area.

3 In a similar fashion, I live on Stoney Brook in
4 Hopewell Township up near sewers. If we have a prolonged
5 drought as we had in '65, Stoney Brook will flow. After
6 a rainfall, it will flow a little bit more. It won't
7 flash flood until about five or six months later until
8 the ground water level has been raised again to the pre-
9 drought level.

10 Now, what this means is that if you keep watering
11 the lawn, so to speak, you keep watering these porous
12 spaces underground and you get it into the underground
13 spaces, just about as fast as it can run underground to
14 the nearest stream. Just as water through a pipe, there
15 is a friction lost when it runs through a long piece of
16 pipe with sand. The rate of flow through the ground isn't
17 as fast as the rate of rainfall, the movement of the water
18 on the surface of the earth underground.

19 Now, to have effective recharge, such as they have
20 in California, where they are building up this tremendous
21 head, you have got to have the water drained out of the
22 area to begin with, but you can't do this if you keep
23 adding water every month. You keep that water level right
24 up. You keep the pot practically full all the time.

25 Q Are you saying, therefore, that a good part

1 of the four inches of the rainfall or a good part of the
2 rainfall, itself, runs off in this Chester area?

3 A Yes. Roughly--in the red shale and the Brunswick
4 shale, which we have talked about, the 500,000 gallons
5 per day, per square mile--roughly one quarter of the
6 rainfall is runoff and the other quarter is ground water
7 recharge, natural recharge which eventually goes into
8 the base flow.

9 Now, if our safe sustained yield indicates that
10 there is only half as many cracks and fissures, the rain-
11 fall is the same. So up here in the crystallines, we
12 are going to have three-eighths of the total rainfall
13 that's going to go to runoff. Only one-eighth can get
14 into the ground because that's all the space there is to
15 take this volume of rainfall.

16 Q So if you dig more wells, you have more homes.
17 If there is more activity in use of an area, such as
18 Chester, the wells will be drained as a result of the use
19 by the people living there. Then when it rains, the
20 source of those wells will be recharged, will they not?

21 A Except for one thing: The case you cite is if
22 the water is being taken out of the area by sewers. If
23 it's going into the septic tank, it is not sufficiently
24 far away from the well, so that it doesn't actually
25 recirculate. This is the nub of our rationale: You have

1 got to have that additional rainfall to dilute that septic
2 tank waste, otherwise you are recirculating. The thing
3 is you pull the water out of the well. Around the well
4 is the so-called cone of influence. It's a small area.
5 Hopefully that the well is 100 feet deep and your septic
6 tank is 100 feet away, your septic tank isn't getting in
7 the cone of influence.

8 In actual practice, the water from a septic tank
9 is going to be sufficiently high and the water table will
10 go somewhere else and go away from your well. Maybe it
11 goes to your neighbors, who knows, if he is close enough.
12 But you are pulling down and then it's recharging from
13 around the sides when you are not using the well. Then
14 the rain comes and that fills up anything that may have
15 been lost from the septic tank. If you pull it down too
16 much, if you have too many wells and you are pulling below
17 the safe sustained yield, then you are pulling the ground
18 water down and your septic tank is running down into the
19 cracks, fissures.

20 Q Is it not possible from an engineering point
21 of view to place septic tanks and other sewer systems
22 natural--I mean except for pipes--I am thinking about
23 sewer systems, such as spray irrigation, so that that effect
24 will not be realized? That is, if you drain the cone down
25 so greatly that you will not draw from the septic tanks

1 or from the spray irrigation system?

2 A If you stick to the limits that we are suggesting.

3 Now, in the case of the argillite, where housing
4 developments have gone to a population density or a lot
5 size smaller than those that we recommend, they have
6 the pollution problems because you do pull the water in
7 from the septic tanks because there is not that much water
8 in the ground.

9 Q Are you familiar, Mr. Widmer, with the area
10 of Mount Olive, which adjoins Chester Township?

11 A Well, all I know, the general iron mining community
12 at one time.

13 Q Do you have any records that would show what
14 the nature of the geology is?

15 A Yes, in the LORDS program, under whatever block
16 Mount Olive occurs, we would have a geologic map. We
17 would have a tabulation of major wells and if called on
18 and given a specific site, we could then look up many,
19 many more wells.

20 Q Well, generally speaking, is the geology of
21 Mount Olive different from Chester Township?

22 A I would rather see a map before I answer that
23 question in Court. I don't, off the top of my head and
24 without looking at the map in a very general way, the
25 answer would be, no.

1 Q Do you have any such maps here?

2 A Not here, not with me, no. But Mount Olive is in
3 the iron belt, so it's going to be some of the Precambrian
4 rocks which are similar to Chester. Chester was an iron
5 mining community also.

6 Q What consultation, if any, was had by any
7 member, any professional staff retained by Chester
8 Township within the last five years and your office with
9 regard to the geology and the limitations of Chester
10 Township and the development of Chester Township? Any?

11 A From personal knowledge, of course, I talked to
12 Mr. Ferguson, his aid there, and I know that Mr. Ferguson
13 talked to my late supervising geologist, Joseph Miller,
14 who was in charge of most of the ground water work.

15 Q How do you know that?

16 A How do I know that?

17 Q Yes.

18 A Because I keep records of who--I try to keep records
19 of who my people talk to. Joe Miller discussed
20 problems and he has come to us on a number of townships.

21 Q Do you know whether it was Chester Township
22 in particular?

23 A I believe so. I would have to really consult the
24 records or ask somebody else.

25 Q What about anybody at Candeb and Fleissig?

1 A We do consult with them. I couldn't give you
2 specific dates. I am not even--I try to ask my staff
3 to keep a record of these things. We are keeping cards
4 now of exactly who we talk to on what, but we didn't
5 about three or four years ago.

6 Q Has any consultation been had with the
7 present planners of Chester Township to your knowledge
8 involving geology?

9 A Not as far as I know, at least, not with me. They
10 may have talked to one of my assistants or somebody on
11 the phone.

12 Q You say--

13 A What's that?

14 Q If anybody came personally to confer, is it
15 not likely that you would know about it?

16 A If they came to the geological survey with a
17 problem, they may have brought it to one of the ground
18 water people, I may not have been there. They try to
19 keep me informed, but I don't have a very good memory as
20 to the number of people that come through the office.

21 Q We will not hold you to it.

22 As to the development, the actual development of
23 Chester Township, as it is permitted by the current zoning
24 ordinance, that is, the ordinance that was adopted
25 approximately two years before, do you have any knowledge

1 about what is permitted and allowed?

2 A No, sir. I haven't seen either one as the finished
3 product or I haven't been asked about it.

4 Quite frankly, I don't particularly care, because
5 there are so many issues involved in zoning and everything
6 else. But as far as water resources go, we are preaching
7 this doctrine of safe sustained yield and we will tell
8 anybody. Some of the builders don't like it. Some of
9 the developers don't like it. Some of the Planning
10 boards don't like it. Sometimes they don't like us because
11 they want to go to five acres, we say--I say, no way.
12 Our information--

13 Q It is a fact, isn't it, Mr. Widmer, that the
14 testimony you give regarding the capacity of this area
15 to produce potable water would be all changed and would
16 really have no effect if there were to be a public water
17 supply?

18 A Absolutely. When we--we were talking minimum lot
19 size, the most important thing is that, and I hope the
20 Courts will make a point of this: We are talking about
21 a natural resource. We are talking about individual
22 wells and septic tanks. When you start bringing water
23 from somewhere else, then all bets are off.

24 Q You are not familiar, therefore, in line
25 with a question which I asked just previous to that one:

1 Would the fact that a certain amount of multiple-family
2 dwelling is permitted under the present Chester Township
3 Zoning Ordinance--

4 A No, I am not familiar with it. We have no
5 objection to multiple-family dwelling. The important
6 thing is when we say 500,000 or 250,000 gallons per day,
7 per square mile. This is all users. This may be the
8 3M Candy Factory, plus 100 homes, or it could be 500
9 families in an apartment complex. But if you have 500
10 families in an apartment complex on 10 acres, you better
11 have an awful big open space around it or have the
12 apartment complex hooked into a public water supply or
13 they are going to have wells that are going to go dry
14 within a few months or a year.

15 Q So that if they were, let's say, about 300--
16 what is it, or 500--380--

17 THE COURT: What are you trying to find?

18 MR. LINDEMAN: Our plot.

19 THE WITNESS: I don't know where--

20 Q I am sorry.

21 I will put it this way: Eight hundred fifty-six,
22 3.--856 units, town house units on a plot of 276 acres,
23 it is not inconceivable that they could be supplied by
24 the underground water available in Chester Township,
25 provided that enough of the land and the environs were

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1 still open so that they would not draw in the same--

2 A --same fractured system?

3 Q --same relevant way?

4 THE COURT: Did you tell him how many
5 people are going to be in these 850 units?

6 As I understand, that does not mean anything
7 because it is based on the water users. If you
8 have efficiency apartments, that is one thing.
9 If you have five-room apartments, you have another.

10 THE WITNESS: You are quite right, your
11 Honor.

12 THE COURT: That question is not going
13 to help me unless you qualify it. That is the
14 point I am making.

15 MR. LINDEMAN: I understand.

16 THE WITNESS: May I answer before we get--
17 go any further?

18 THE COURT: Okay.

19 THE WITNESS: I wouldn't want to hazard a
20 guess. I would want to see where it is because
21 of the experience with the gneiss, our experience
22 with the particular gneiss in the Schiff Reservation.

23 I was not able to bring in with me, but
24 just in the past three weeks I have had a letter
25 from someone else in the general area. Quite

1 frankly, I don't remember whether it's Chester
2 Township or just to the south, but it is in that I
3 say and we have stuck to our guns as we recommended
4 in LORDS: If you have a minimum lot size of
5 three acres. But we also wrote and told them,
6 considering the well records around the place
7 where he proposes to make these developments, and
8 actually, they are 15-acre lots I think, if I recall
9 correctly, we are wishing him luck and suggesting
10 he drill his wells before he puts in his houses.

11 THE COURT: You said there were two
12 600-foot wells and they did not get any water?

13 THE WITNESS: By the 2-foot line of
14 springs, it was one, but there are others. We
15 have them up in this Precambrian gneiss. We have
16 them go 700 feet and get not a drop, where 500,
17 600, 700 feet and get a quart a minute or a pint a
18 minute.

19 THE COURT: Looking at the Morris County
20 Map, the Schiff Reservation, as the crow flies,
21 would be about five to six miles from the Caputo
22 tract as the crow flies?

23 MR. LINDEMAN: Maybe.

24 Q Is there an optimum number of persons, per
25 square mile, that you would say should live in Chester

1 Township, assuming there is no public water supply, but
2 rather they rely solely upon the natural water that may
3 be available?

4 A Well, what I have been pointing out: If 250,000
5 gallons, per day, per square mile, is a safe sustained
6 yield and if all of Chester Township is in fact underlaid
7 by granite gneisses and Schiff's with that carrying capacity,
8 then the ultimate maximum in our opinion as to the
9 population of Chester Township, as a whole, would be 2,500
10 people times the number of square miles in the township.

11 Now, you have got to be careful with that because
12 we are proposing it to be spread out over the Township
13 almost equally.

14 Q Two hundred fifty--

15 A Two thousand five hundred.

16 Q Two thousand five hundred--I am sorry--

17 A --per square mile, times the size of the Township.
18 That is assuming everything is underlaid by the granite,
19 the Precambrian granite gneisses and so forth.

20 Q Excuse me, I just want to be sure I have
21 this right: Is that 2500, times the number of square
22 miles in the municipality?

23 A In the township; in the municipality.

24 Q That would be the optimum number, assuming
25 all of these other variables?

1 A Assuming it's 10 square miles in the Township--I
2 don't know what it is--that would be 25,000 people, is the
3 maximum population you can support from water resources
4 within the Township itself.

5 Now, you have got to give me a factor, like the
6 geologic dating, plus or minus a couple hundred.
7 Considering that one area, where we know the wells are so
8 abysmal, it might be considerably less than that.

9 Q This is the area that you referred to?

10 A The Schiff Reservation. There is a big mass of
11 ground up there with no fractures in it at all. I mean
12 the wells, I think our well records, off the top of my head,
13 we have got 12 wells. I told them to go back and get 20
14 because in the 12 wells, they first pulled, I don't think
15 we had more than three that went over five gallons a minute.

16 Q Well, just as there are some areas, such
17 as the one that you referred to, that produces very little--

18 A Black Brook might go higher.

19 Q --can be that there would be other areas
20 with the same, seemingly same geologic underlay that
21 produces more than you might reasonably predict. Isn't
22 that so?

23 A Well, not an area. For instances, if you want to
24 give us a chance and, this is what we are here for, if you
25 want to level with us as to where your property is, how

1 big it is, how much water you want, we will look at the
2 aerial photos, geologic maps, geologic notes, the well
3 records. For instance, if you are going to build an
4 apartment complex, it may be that we can find in some
5 place, fairly near your place, a potential for a well
6 that will give you two or three hundred gallons a minute
7 and you will have to run a pipeline from there to the
8 other place. You can't say, "Well, that's very interesting,
9 but I don't want to spend the money to run the pipeline,"
10 because what we are doing, we had a motel, your

11 Honor--

12 Q Hold it. Could you just hold that, please.

13 MR. LINDEMAN: Would you mark that, please.

14 I want to be sure I get your answer down.

15 Q Go ahead, I am sorry.

16 A We had a case in point right up here in Boonton
17 in which they built a motel and then found they couldn't
18 get enough water. We gave them a choice: They had to
19 go into a particular type of gneiss, which was only a very
20 small area in one corner of their property or buy the
21 gas station out next door that had a good well. Frankly,
22 I don't know which they did, but they got the water, and
23 that's what we will do.

24 That's why I say that this is a means and it is not
25 accurate. It's not something that the engineers dot the

1 "I" and cross the "T" and say, "This is it." We don't
2 say that. We are in the ballpark, we are sure, and we
3 think we are very close to the actual limits.

4 Q Just so that I can be certain about, or
5 reasonably certain about something you said before. You
6 referred to the fact that your handbook, or a handbook,
7 to which you made reference, was prepared in haste and
8 there may be some errors in it. Which one was that,
9 Mr. Widmer?

10 A That is the Bulletin 74. I don't think there are
11 errors on the lot size. I would not like to put in--I
12 will not include in the second edition, for example, the
13 low level--the dry year figures for two very good reasons:
14 The dry year that we are figuring on comes about once a
15 generation and, secondly, we find that everybody who
16 doesn't want change and all the environmentalists, and
17 don't understand ground water, grab the dry year figures
18 and those that want to build, use the wet year figures.
19 You have got a messy situation. So we will give the
20 average, which pertains for 24 of the 25 years, or 23 of
21 the 25 years.

22 Q How about in the identification of the rock
23 underlay, is there any potential for error in the
24 identification?

25 A No.

1 Q No?

2 A No, there aren't--as far as I know--there are no
3 errors in geology. There may be an error in the location
4 of a well, but that can be corrected when we study the
5 details of the particular area. Most of the errors are
6 in the way we treat some of the geographies, people
7 quotients as to sources of information, or things of that
8 nature.

9 Q A final question, I think a final question
10 out of left field, Mr. Widmer.

11 Just what is the function of your department?

12 What is it--

13 A Bureau of Geology--

14 Q the Bureau of Geology was designed to do
15 as such?

16 A We were charged by the legislature to study the
17 resources of New Jersey and issue reports and make this
18 information available to the public. This included
19 mineral resources, water resources, topography, and a
20 multitude of sins.

21 We started the Bureau of Forestry back in 1899.
22 We have studied riparian grants as early as 1864. We
23 are a little different from most geological surveys in
24 that, well, we are number one, the second oldest survey
25 in existence--in continuous existence; number five or six

1 in hierarchy since 1864, have been studying New Jersey
2 resources of all kinds. We are the only state that
3 does its own topographic mapping. We did the mapping
4 and we update them and, as far as I know, we are the only
5 state that's providing information in this manner in
6 LORDS and so forth.

7 We have a number of foreign governments in several
8 states that are very interested in our system here because,
9 if somebody comes in and wants information on the under-
10 lying geology, any of this information within five miles
11 of his area we can provide it in about five minutes.

12 Q Does it have any regulating power?

13 A Only with respect to the Well Drilling Law: The
14 licensing of the well drillers and the issuance of the
15 well drilling permits, and with the subsurface storage
16 of gas, oil or other chemical compounds. We also do
17 geodetic control, which is the precise location of points
18 on the surface of the earth from which the surveyors
19 can make their property boundaries without charging you
20 for surveying down to Newark or some other place.

21 THE COURT: Does every well drilled in
22 this state require a permit from your office?

23 THE WITNESS: To be legal.

24 THE COURT: To be legal.

25 THE WITNESS: To be legal.

1 THE COURT: In other words, if a well
2 driller, or a professional well driller, drills a
3 well, he knows he should go, to go get his permit
4 to drill that well.

5 THE WITNESS: Right. He knows we can go
6 into Court and fine him, not enough, if we catch
7 him drilling without the permit; but there are
8 still a good many wells drilled without the permit.

9 However, we operate on the principle that
10 if you get enough statistics in the mass, the
11 errors even out. So we are getting about 1,000
12 a month and the Health Departments are our biggest--
13 many municipalities in some counties are now saying,
14 "If you are not on the water system, bring us a
15 state permit before we will give you your building
16 permit."

17 Q What other criteria attain in your
18 determination of whether a permit will issue or not?

19 A If he is a licensed driller and has filled out the
20 information we give to him.

21 Now, one further point: That if he is asking for
22 over 65 gallons a minute, then he falls under the Diversion
23 Law, which is administered by the Division of Water Policy,
24 the Division of Water Resources and the Water Policy and
25 Supply Council. He has to get permission to use the

1 water that he may get in excess of 65 gallons a minute.

2 That's 100,000 gallons a day.

3 Q So that except for that limitation as to
4 the volume of water that a driller may be seeking, your
5 regulatory powers are limited to the professional
6 expertise and the manner in which the drilling is to take
7 place, but not do anything else?

8 A No. We examine the man and if he passes the
9 examination, we give him a license. Then if he is
10 licensed--the Well Drilling Law says that no one shall
11 drill a well in New Jersey except the licensed driller.
12 It says further, that the licensed driller, before he
13 drills the well, shall apply to us for a permit in order
14 to allow us to request samples, or whatever, and that
15 upon completion of the well, he shall file with us a
16 record of the conditions encountered and what the well
17 will produce and the size of the pump installed, and all
18 the rest of the vital statistics about that particular
19 well.

20 Now, what we are doing now is, when he applies to
21 us for a permit, we are sending a copy of the permit to
22 the local health officer of the municipality involved.
23 That allows him to check on whether the guy drilled the
24 well or whether he is drilling without a permit. When
25 we get the record back, we send a copy of the well record

1 so, if the Health Officer is doing what he should be doing
2 and we are doing what we should be doing, there are two
3 places where we have all the information about the wells
4 that have been drilled in the Township. It's only within
5 the last couple of years that we have been doing this.

6 MR. LINDEMAN: I have no further questions.

7 MR. FERGUSON: Nothing further.

8 THE COURT: Step down.

9 Thank you, Mr. Widmer.

10 MR. FERGUSON: Mr. Boorman.

11 D E A N K. B O O R M A N, recalled, previously sworn.

12 DIRECT EXAMINATION CONTINUED BY MR. FERGUSON:

13 Q I think, Mr. Boorman, at the conclusion of
14 our testimony the last time you were here, you had made
15 reference to Exhibit D-57 for identification, your memo
16 of May 26, '76 and I think you said you had prepared that--
17 you had requested--at the request of the Planning Board
18 after Judge Furman decided the Middlesex County case. Is
19 that correct? A Yes.

20 Q Did you send those three memos, Exhibits
21 D-55, 56 and 57 to the Planning Board at their request?

22 A Yes, I did.

23 Q And would you tell us what concern those--
24 of the Planning Board those memos were responding to?

25 A Yes, it was the concern of the Planning Board for

1 determining regional fair share of Chester Township in
2 regard to multi-family housing with reference to how fair
3 share housing was being defined by the Courts.

4 Q Were the results of your memo--well,
5 withdraw that.

6 As a result of your deliberations with the
7 Planning Board as to their fair share, would you tell us
8 what number of units is set forth in the housing, in the
9 Zoning Ordinance and what it is there?

10 A Yes. It's the number of 300, which is the figure
11 that I arrived at in my first Report on regional fair
12 share which was derived from applying the method described
13 in or implied by the Mount Laurel Decision. My later
14 analysis of Judge Furman's Decision in Middlesex County
15 was that there might be a somewhat higher share if his
16 method were used but that not all aspects of his method
17 seemed to be defensible, that is, seemed to make sense.
18 I indicated in my Report that some aspects of his method
19 were open to question. In particular, his making an
20 equal division between all of the communities in Middlesex
21 County which were found to need to have a regional fair
22 share of multi-family housing added to their zoning.

23 It was my conclusion that it would be more
24 reasonable to apply a weighting system to the analysis
25 of individual communities, instead of simply, say, if

1 there were twelve communities--communities taking one-
2 twelfth of the total housing need for each of these
3 communities.

4 Q And was your figure of 300 used in the
5 Zoning Ordinance?

6 A Yes, it was used and it is still, as far as I know,
7 in the Zoning Ordinance.

8 Q What is the time frame of the Zoning
9 Ordinance with relation to that number? In other words,
10 300 as of what day or through what date?

11 A My own analysis was through 1980 in regard to this
12 number of 300.

13 Q Now, did you make any recommendations to
14 the Planning Board about revision of that figure as the
15 result of changing conditions at sometime in the future?

16 A Let's see. Yes, I indicated that my calculation
17 applied to rezoning for multi-family housing through the
18 year 1980. I indicated that there might be a need for
19 additional housing after that year. I don't recall what
20 other conditions I discussed but I could look that up
21 in the Report.

22 Q Do you have a reference to future--if you
23 can find the reference to future revision of that number
24 in your Report, would you do so? A Yes.

25 Q Let's pass that. We will come back to it

1 after--I would like to take advantage of the time
2 while we have it. A Right.

3 Q Would you tell us why the Zoning Ordinance
4 had a limitation of 150 units per development or per
5 tract for multi-family housing?

6 A Yes, the desire was to not create an excessive
7 concentration of multi-family housing because of the
8 environmental limitations of the Township and it was
9 also an intention or the intention to provide an
10 opportunity for more than one property owner to develop
11 this kind of housing so that there would not be an undue
12 advantage for one property owner or an undue increase in
13 the price of the land which might be the case if all of
14 the housing were put on one property.

15 Q Now, did you make recommendations to the
16 Planning Board about where the multi-family zones should
17 be located? A Yes, I did.

18 Q All right. Would you tell us what
19 recommendations you made, how you arrived at them and
20 what the Planning Board did with them in adopting the
21 Zoning Ordinance?

22 A Yes, in my first Report which was of June 1975
23 on page 8, I indicated that the projected rezoning for
24 300 housing units can probably best be done in the
25 medium density residential zone proposed in the Master

1 Plan between 206 and Route 24. Then I went on to say,
2 however, not all this 267 acre area would need to be used
3 and I referred to the fact that with particular densities
4 there would be substantially less than 267 acres of land
5 needed.

6 Q Now, did you follow the recommendations
7 of the Master Plan in laying out the M. D. R. Zone?

8 A Yes. As a follow-up to my Reports, I went over
9 potential locations on the Zoning Map with the Planning
10 Board in terms of two possible alternatives, the first
11 being to set up a floating zone arrangement in which the
12 multi-family housing would not be put on the Zoning Map
13 at all but location criteria would be specified, such as
14 accessibility to Route 206 and Route 24 in proximity to the
15 Borough of Chester. That alternative was discarded in
16 favor of the second alternative which is that of
17 delineating specific sites in which the multi-family
18 housing can be located and all of the sites which were
19 used, I believe, are in the--well, two out of three,
20 anyway, are in the medium density residential areas shown
21 on the Master Plan and the third site is a comparable one.

22 Q All right. Would you tell us for the
23 record what criteria you believe--withdraw that.

24 Do you have an opinion at this time as a
25 Professional Planner as to the appropriate criteria for

1 locating multi-family residential housing of a density of
2 approximately five units per acre in Chester Township
3 and, if you do have such an opinion, would you tell us what
4 your opinion is and state those criteria for us?

5 A Yes. I believe the criteria be also reflected in
6 the Zoning Ordinance itself under the provisions relating
7 to multi-family housing. If you could supply me again
8 with the Ordinance?

9 Q I think that is all.

10 A Yes. The criteria which are included in the
11 Zoning Ordinance include accessibility to major roads
12 and highways.

13 I would add, as a further explanation of this,
14 accessibility to major roads and highways without going
15 through lower density residential areas; that is, one
16 family residential areas. Then, accessibility to shopping
17 and other community facilities is a criterion.

18 Q But would you comment upon that criteria
19 and how you viewed it in the Chester Township situation
20 when you, in fact, located the M. D. R. Zones where you
21 did with the Planning Board?

22 A Yes, the center for shopping and community facilities
23 in Chester Township is primarily the Borough of Chester
24 which forms the whole in the donut with reference to
25 Chester Township and the R. M. Zones as now delineated

1 on the Zoning Map are close to and accessible by major
2 roads and highways to the shopping centers in the Borough
3 of Chester and also to churches and the library and other
4 such community facilities.

5 THE COURT: Before you go further,
6 isn't it true that at present there are two major
7 shopping centers, both of which are outside the
8 Borough in the Township, located on the westerly
9 side of the Borough? I think one is called the
10 something Spring Shopping Center.

11 THE WITNESS: Chester Springs.

12 THE COURT: And the other has an
13 A & P in it.

14 THE WITNESS: The one with the A & P in
15 it is entirely within the Borough. Chester Springs
16 is largely within the Borough. Only a small sliver
17 of that is in the Township.

18 THE COURT: Those two shopping centers
19 are within the Borough?

20 THE WITNESS: They are.

21 THE COURT: I was not aware that they
22 were. All right.

23 MR. FERGUSON: I am not a witness but
24 I think the only shopping centers are almost
25 totally contained within the Borough.

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THE COURT: Okay. I was not sure of that.

THE WITNESS: Yes. In fact, that shows on the Zoning Map that there is a small piece of B business zoning on Route 206. It is the south end of the Borough.

THE COURT: Okay.

THE WITNESS: Which is a small sliver of the Chester Springs Shopping Center.

THE COURT: All right. Okay.

THE WITNESS: The other shopping center where the A & P is is right at the intersection of Route 206 and Route 24 which is all within the Borough.

THE COURT: I am mistaken. All right. Thank you.

Q Would you tell us--well, go ahead. Well, would you--excuse me, isn't that the second criteria we are on now? We are on accessibility to shopping.

THE COURT: And other community facilities.

Q Community facilities.

A Yes, in regard to--to go back for a minute to accessibility to major roads and highways, I would add accessibility to public transportation which is primarily

1 significant in the Chester area in regard to access to
2 the community railroad which has its termination in
3 Peapack and Gladstone.

4 Q When you say that is important, is it
5 another way of saying it--let me ask this question:

6 Is there any other public transportation in
7 Chester, Borough or Township, other than that railroad?

8 A I don't believe so. The Morris County has a
9 couple of local bus lines but I don't believe they extend
10 out to Chester. If so, they would only have minor
11 service.

12 Q As long as you mentioned the railroad, do
13 you have any information which you recently obtained about
14 the D. O. T. plans for that railroad station in Peapack-
15 Gladstone?

A Yes, I have and this is--

16 MR. LINDEMAN: I will object to any
17 answer on this.

18 THE COURT: I think that is prospective.
19 I do not think it is something that the Township
20 would have relied upon at the time.

21 MR. FERGUSON: I am not saying we did.
22 Indeed, we could not have because it is new.

23 However, it might be relevant to what the
24 Township is doing now or what this Court might
25 expect the Township to do.

1 THE COURT: I do not think you can
2 challenge what the Township might do. I do not
3 think I can decide what the Township might be
4 considering now. I do not think it is relevant.
5 I would agree.

6 I will sustain the objection.

7 Q I do not want to belabor the point but--

8 THE COURT: But you will.

9 MR. FERGUSON: One of the plaintiffs'
10 Planners did testify that in his opinion it was the
11 right place to put it. I think there is subsequent
12 information which this witness learned after that
13 witness testified which ought to be brought to the
14 attention of the Court.

15 MR. LINDEMAN: Your Honor, I also
16 object, not only on the ground that it is not
17 something which the Planners utilized when they
18 prepared the documents in question, but that it is
19 still speculative and it comes from another source
20 and that kind of hearsay, I think, is really frail.

21 THE COURT: I will sustain the objection
22 for various reasons. I think we have got four
23 minutes.

24 (Recess)

25 (Adjourned to January 24, 1978).

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,)

Plaintiffs,)

v.)

CHESTER TOWNSHIP,)

Defendant.)

STENOGRAPHIC TRANSCRIPT OF
TRIAL

Place: Morris County Court House
Morristown, New Jersey 07960

Date: January 24, 1978.

B E F O R E:

ROBERT MUIR, JR., Assignment Judge, Superior Court

TRANSCRIPT ORDERED BY:

Philip Lindeman II, Esq.

APPEARANCES:

Messrs. Hellring, Lindeman, Landau & Siegal,
By: Philip Lindeman, II, Esq., Attorney for the
Plaintiffs.

Messrs. Mc Carter & English
By: Alfred L. Ferguson, Esq., Attorney for the
Defendant.

James Hillas, Esq.
By: Forrest R. Goodrum, Esq.

Philip A. Fishman
Official Court Reporter.

MORNING SESSION

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THE COURT: Good morning.

MR. FERGUSON: Good morning, your Honor.

MR. LINDEMAN: Good morning, Judge.

MR. HILLAS: Good morning.

THE COURT: Okay.

MR. FERGUSON: Mr. Boorman.

DEAN K. BOORMAN, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. FERGUSON:

THE COURT: You were--just to refresh your recollection and everyone elses, you were going over the criteria for the provisions relating to the multiple family district and you had gone over, one, access to the major road and highways and public transportation and, two, access to the shopping and other community facilities and I had asked you a question. I had gotten confused on the logistics of the shopping center and the Township and that is about where we had stopped.

MR. LINDEMAN: That is what my notes show too, your Honor.

Q Mr. Boorman, were there criteria for the location of the multi-family district or the M. D. R. district in the Zoning Ordinance other than those which the Judge read from his notes contained in your Zoning

1 Ordinance?

2 A Yes. If I could have the Ordinance itself to make
3 sure I have the final version.

4 Q I assume your answer is "yes" and would you
5 tell us what those criteria are? A Yes.

6 Q Or were.

7 A The next criterion which I used and which is
8 reflected in the Zoning Ordinance is feasibility of
9 utility service and other factors related to physical
10 conditions and ecological relationships of the land.

11 Q All right. Would you tell us how you
12 used those criteria in the siting of the M.D.R. Zone in
13 the Zoning Ordinance?

14 A Yes. We considered or I considered along with the
15 Planning Board that if and when there is a central sewer
16 and water system in the area that it would be centered
17 in the Borough of Chester, that this would be the logical
18 starting point for such a system and the M.D.R. sites are
19 adjacent or near the Borough of Chester so that they
20 could readily be served by such a centralized utility
21 system.

22 I also took into account the soil conditions and
23 the drainage factors related to the sites themselves and
24 I assured myself that based on the available topographical
25 and physical information that we had on the sites that

1 these are reasonable sites for the development of
2 individual sewage treatment and water systems to the
3 extent that these are necessary until a centralized
4 system can be established.

5 Q Did you in that consideration take into
6 account Exhibit D-51 and D-52 which you testified about
7 earlier? D-51 is a key Map and D-52 is soils which severely
8 limit development, S.C.S.. A Yes, I did.

9 Q Would it help you in your explanation if
10 I put those on the case? A Yes.

11 Q All right. This is D-52?

12 A Yes, the three R.M. Sites--

13 MR. LINDEMAN: Mr. Boorman, do you think
14 you can do that from the other side? Thank you.

15 THE WITNESS: The three R. M. Sites
16 are all or pre--are all predominantly in the white
17 areas of the Map, which means that they are not the
18 soils with water within the four feet of the
19 surface or slopes greater than 15 percent, etc..

20 The site south of the Borough of Chester,
21 the grey top site is here in this general area.

22 THE COURT: Is there a number in that
23 area that you are referring to?

24 THE WITNESS: The soil type is E.D.B..

25 THE COURT: All right. E.D.B..

1 Let the record show he is referring to
2 an area almost in the center of that Map with
3 those letters E.D.B. and it is right on the
4 boundary line of the Borough and Township.

5 THE WITNESS: The second R.M. site is
6 at the west end of the Borough of Chester and a
7 part of it is shown as P.A.C. and then the third
8 R.M. zone is at the southeast corner of the Borough
9 of Chester or outside of the southeast corner of
10 the Borough of Chester and is primarily E.D.B..
11 There is also P.A.C. on the site.

12 Q Wait a minute.

13 A Oh, am I too far south?

14 Q Yes.

15 A All right. I will move my finger, but soil types
16 there are still P.A.C. and E.D.B..

17 Q Where there any other environmental
18 considerations which you and the Planning Board relied upon
19 when you sited the M.D.R. Zones other than those which
20 you have just testified about?

21 A Yes. The relatively level topography of the sites.

22 Q And anything else?

23 A The fact that the sites are not closely related
24 to streams in the Water Shed.

25 Q When you say "closely related" you mean by

1 distance?

2 A Yes, and by close proximity in terms of draining
3 into the streams, for example.

4 There was a fourth site that was considered just
5 to the north of the second site that I just described at
6 the west end of the Borough of Chester and that had
7 originally had been shown on the Master Plan as a possible
8 multi-family location but that was excluded upon
9 discussion between myself and the Planning Board on the
10 basis that it is adjacent to the Black Brook and that
11 there would be non-point pollution and such which would
12 be likely to drain directly into the Black Brook, and that
13 is not the case with the other sites.

14 Q Did you have an opinion as the Planning
15 Consultant to the Township as to whether the sites selected
16 in the Ordinance as you have just testified to were the most
17 suitable sites in the Township for that type of dense
18 development?

19 A Yes, I believe they are. They do not occupy the
20 entire area shown in the Master Plan and it is possible
21 that there could be nearby sites which could also be
22 suitable, say, at some later time, perhaps, after 1980.
23 My projection of housing fair share was up to the year
24 1980, which suggests the possibility that additional areas
25 might be rezoned after that, depending on what happens

1 in the regional housing situation. I think there is
2 one or two more criteria.

3 Q Excuse me. I did not mean to interrupt you.

4 A Right.

5 Q Go ahead.

6 A Let's see, the next criterion that is listed in
7 the Ordinance is compatible relationship, including minimum
8 visual exposure and traffic interference with adjoining or
9 nearby present or potential one family residential areas.

10 Q How was that criteria satisfied? How did
11 it work?

12 A The three sites zoned meet this criterion in that
13 they are directly accessible to the highways without
14 going through one family areas and they either adjoin
15 non-residential areas or zones or have limited visual
16 exposure to existing or potential one family neighborhoods.

17 Q All right. Are there any other criteria
18 there which you wish to comment upon?

19 A Yes. The extent to which the potential medium
20 density or multi-family housing will meet the housing
21 needs of the region related to population age groups and
22 income distribution. Well, this isn't so much a
23 locational criterion as it is a criterion for the Planning
24 Board to use in choosing between multiple applications
25 for multi-family housing, since with the limit of 300

1 units it would be possible to have two or three
2 applications which would exceed 300 units of the--the
3 Planning Board would have to make a choice. This is
4 expressed in the Ordinance as a criterion for this choice.

5 Q Giving a basis to use in choosing between
6 competing applications? A Yes.

7 Q Okay. Any other criteria in the
8 Ordinance or on which the Planning Board relied in siting
9 the M.D.R. Zones?

10 A The sites are all as I mentioned within the area
11 shown in the Master Plan, which, of course, was a
12 criterion. The sites are also compatible with the
13 regional considerations which I and the Planning Board
14 were aware of that were being developed and had been
15 developed by the County Planning Board and the Tri-State
16 Regional Planning Agency and the Regional Plan Association.

17 Q Would you tell us briefly what those
18 regional considerations were insofar as they spoke to or
19 were relevant to the siting of the M.D.R. Zones?

20 A This is the approach which is generally known as
21 concentrating development in centers, both larger centers
22 and smaller centers with development clustered or grouped
23 around transportation crossroads and concentrations for
24 commercial activity, shopping and community facilities and
25 centers of employment such as the densest development.

1 The highest density housing is toward the center--
2 or is toward the middle of the center or the cluster and
3 then development shades out from the centers. The
4 Regional Planning Association puts it as iron filings do,
5 if you put a magnet down under a group of iron filings.
6 So here, of course, the Borough of Chester forms the
7 local center for the regional area of the Borough of
8 Chester and Chester Township and the principal use here
9 is that the highest density development is in the middle
10 and then you shade out from that.

11 Q Did you review the Morris County Master
12 Plan in terms of their projected population growth and
13 their plan of land use for this area?

14 A Yes, I did, and they call for a--

15 Q First, let me ask you whether in your opinion
16 the Zoning Ordinance and the Master Plan is consistent
17 with the Morris County Master Plan?

18 A Yes, it is, in that the Morris County Master Plan
19 calls for a village center or a local center in the
20 Borough of Chester with accompanying development, again,
21 clustered around this center. The Planning Board and I
22 did have some disagreement with the County Planning Board
23 in terms of the ultimate population that this center would
24 accommodate.

25 Q Except for that disagreement, is the Zoning

1 Ordinance consistent in terms of its projected land use
2 with the projected land use of the County Master Plan?

3 A Yes, it's completely consistent with the approach
4 taken in the County Master Plan.

5 Q Now, are there any other criteria which
6 were used by yourself or the Planning Board in the siting
7 of the M.D.R. Zones?

8 A The availability of the land for use and
9 development for multi-family housing was taken into
10 account. This was a factor.

11 Q Would you tell us what information you and
12 the Board had about that?

13 A Yes. In regard to the grey top site we had--

14 Q First, would you tell us which is the grey
15 top site?

16 A That is the site which is directly south of the
17 Borough of Chester on Route 206.

18 Q All right. Tell us about the grey top site.

19 A There the owner of the site, had applied to the
20 Planning Board and the Township for a rezoning to allow
21 Town Houses and had submitted a preliminary Site Plan for
22 such development.

23 Q What is that owner's name?

24 A Harvey U-E-R-I-N--G-U-E-R-I-N. Querin.

25 Q Did he have a Planning Consultant?

1 A I don't remember.

2 Q All right. Can you recall what that
3 proposed development plan, in fact, proposed?

4 A It was somewhere on the order of a thousand units
5 of Town Houses, I believe.

6 Q For that--for his property alone?

7 A Yes. It also--the plan also extended into the
8 Borough but was later changed to one family homes in the
9 Borough and I believe those are presently under
10 development.

11 Q All right. Do you know if Mr. Guerin
12 is or his corporation is one of the plaintiffs in the
13 other five law suits which have been instituted against
14 Chester Township?

15 A I understand that he is, yes.

16 Q Now, go on and tell the Court what factors
17 affecting the availability of land were available to
18 yourself and the Township Planning Board.

19 A There was discussion about the tract at the
20 southwest corner of the Borough and that is, I believe,
21 the Mennen Tract and the--E-N-N-E-N. This is presently
22 a farm and estate and there was no knowledge that the
23 land was actually for sale, so in that instance there was
24 only an anticipation that it might become available for
25 development in the future if not right away and that

1 there was also an expectation that the rezoning would
2 probably change the viewpoint of the owner, as far as
3 making it available for development is concerned.

4 THE COURT: Did the Planning Board
5 discuss anything about the owner's potential for
6 developing land? In other words, you said it was
7 an estate. I assume that someone resides on it
8 and occupies it as an estate?

9 THE WITNESS: That was my understanding,
10 yes.

11 THE COURT: Did they discuss the
12 potential that that owner would have for putting
13 his property on the market after rezoning?

14 THE WITNESS: He is not--the owner isn't
15 a builder but the feeling was that he might well
16 make land available for sale once rezoning took
17 place. At the same time there was a feeling--

18 THE COURT: Did he inquire of him?
19 That is what I am really getting at. Did they call
20 him and ask him if he would be inclined for
21 making that property for sale if it was rezoned?
22 Did they do anything of that nature?

23 THE WITNESS: No. The Planning Board
24 did not want to do that because they didn't want
25 to be accused of carrying out a rezoning for the

1 benefit of any particular property owner, which
2 I think is a proper approach. They took the point
3 of view that they wanted to look at the best
4 locations and they were aware also of the
5 Problem that they could accuse of benefiting a
6 particular property owner. They wanted to
7 maintain an arm's length attitude from that point
8 of view.

9 THE COURT: Okay. They had no
10 knowledge that there would be any intent on the
11 part of the owner to make that land available for
12 multi-family housing?

13 THE WITNESS: No.

14 THE COURT: Just something that
15 they felt?

16 THE WITNESS: That's right. In regard
17 to the third site which is at the east end of the
18 Borough, there, as I recall, there was information
19 to the effect that the land had been or was
20 going to be offered for sale.

21 Q Can you recall what that information was?

22 A No, I don't, but it is really an empty field.
23 There is a corn field and it is not used as an estate or
24 such and, again, the discussion was to the effect that
25 the owner had been or was going to offer the property for

1 sale, but, again, it was not carried to the extent of
2 talking with the owner or taking other steps that would
3 be other than an arm's length approach.

4 Q Did you advise--excuse me. Are there
5 any other criteria or facts about availability of land
6 or criteria for siting the M.D.R.Zones which you or the
7 Planning Board used or relied upon? I just want to
8 make sure we have them all before I go on to the next
9 line of questions.

10 A I don't believe so. I did make a report or a
11 study and a report on the specific boundaries of the
12 R. M. Zones.

13 Q Would you tell us what that was and,
14 briefly, describe it?

15 A Well, I had made field inspections and detailed
16 examinations of the property maps and the topographic
17 maps and the soil maps and I made recommendations as to
18 just where the boundaries ought to be drawn with relation
19 to the streams and topographic features and also with the
20 intent of keeping a sufficient area within which there
21 would be flexibility to site the projects themselves,
22 site being S-I-T-E. Each of the sites, I believe, is in
23 excess of 100 acres, but 300 units at five units per
24 acre would only require 60 acres. So, there is
25 flexibility as far as the choice of particular pieces of

1 land within these sites and then between the sites
2 themselves. For example, two, say, out of three sites
3 would or two out of the three zone areas would probably
4 use up the 300 unit allocation, which was another con-
5 sideration, incidentally, with regard to the Mennen site.
6 There was discussion to the effect that even if the
7 Mennen site didn't become available for sale,

8 the other two sites would provide sufficient land
9 for the 300 units.

10 Q Did you advise the Planning Board about
11 a change in the number 300 as a limit on the number of
12 multi-family units, as time went on and, if so, what did
13 you advise them?

14 A Well, that was implicit in my reports that I said
15 that my estimate was up to 1980 and I discussed with the
16 Planning Board the point that there would need to be a
17 further analysis prior to 1980 to see what the regional
18 need had become and what the regional housing supply had
19 become.

20 Q In your opinion as a Planner, was there
21 sufficient land area designated in the Master Plan to
22 satisfy a potential need for multi-family housing as it
23 developed in the future and, if so, would you tell us
24 if you can, give us any time horizon or time parameters
25 on your opinion?

1 A No, I really can't except to observe that the
2 Master Plan does show more land than the three sites in
3 the general proximity of the Borough of Chester so that
4 there would be room to expand the zone area within the
5 area shown in the Master Plan, but I didn't make any
6 numerical analysis of how much more land could be used
7 or how many more units could be developed or what the
8 share might be after 1980. I actually felt this would
9 be speculative at the time I did the study.

10 Q Now, are we through with the criteria
11 used by yourself and the Planning Board in terms of a
12 siting of the M.D.R. Zones? A Yes, I believe so.

13 Q All right. Very briefly, I would ask you
14 for your criteria for the "B" Business Zones and the "H"
15 Highway Office Use Zone just for the record and to put
16 on the record the planning in back of the designation of
17 those zones?

18 A All right. For the "B" Business Zone, the major
19 criterion was existing land use of recognizing existing
20 business uses and providing a limited amount of space
21 for their expansion. Of course, keeping the major road
22 access to the "B" Business Zones, but at the same time,
23 there was an objective of restricting the extension
24 of strip commercial development along the major roads
25 and the conclusion was drawn from the Master Plan and I

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agreed that the Borough of Chester provides sufficient facilities for shopping and related commercial uses for the present and at least near term potential future population of the Borough and the Township and also the Borough has considerable room for future commercial expansion for future population growth and that this is the logical location for such commercial expansion and, therefore, there should not be zoning in the Township to allow substantial business growth.

10 Q Would you comment upon the rationale behind
11 the highway office use areas?

12 A Yes. Here there was a recognition of the need and
13 desirability of zoning and highway frontage land for
14 office use both because of the shift which is still taking
15 place in employment from industry to office oriented
16 employment in the Morris County area so that there is
17 some need that there is in effect a market demand for such
18 office use and this, combined with the difficulty of using
19 some pieces of highway frontage for residential use,
20 because of their exposure to the highway and related
21 factors, but there was a conscious attempt to keep the
22 amount of zoning for such use to a minimum.

23 Q Would you tell us why?

24 A Yes, because there was a desire to preserve the
25 natural appearance of the highways and to keep them free

1 for traffic circulation, not to have excessive, new
2 traffic generators coming into the highways but the
3 desire to keep the open rural appearance of the highway
4 frontage is related to the objective of maintaining the
5 Township as primarily an open rural type low density or
6 residential area and an area for natural preservation and
7 conservation of the resources of the Water Shed.

8 Q Now, would you comment very briefly upon
9 the criteria in back of the industrial zone or areas?

10 A Yes. Industrial zoning is limited to only the
11 areas where there is already industry in the Township and
12 some limited immediately contiguous sections which could
13 in effect only be used for industrial purposes. There are
14 no areas shown for significant new industrial development
15 which would involve an additional housing requirement.

16 There was a recognition by myself and the Planning
17 Board that industrial development and office or major
18 office development is related to housing needs and it was
19 my feeling and the Planning Board's that industrial and
20 office development and such should be encouraged primarily
21 in areas where there is a capability of providing closely
22 related housing.

23 Q Did you believe that Chester Township did
24 not have a large capability to provide housing?

25 A Yes.

1 Q Tell us why.

2 A Because of the physical characteristics of the
3 land areas involved in the Township and the objective
4 preserving the head waters of the Water Shed system and
5 also because of the relatively remote location of the
6 Township and the fact that it only has the one highway,
7 Route 206.

8 From my own standpoint, I have done studies in
9 many sections, northern New Jersey, and I am familiar
10 with areas where the Interstate Highways intersect and
11 the areas say, like, Morristown, where you have an older
12 urban center in addition to the question of encouraging
13 the development of Newark and Paterson and the older
14 urban areas and it is my feeling that there is--well,
15 this is also from the standpoint that the State is not
16 going to have wall to wall development, in any case.

17 Maybe ten or fifteen years ago, I think everybody
18 felt, including Planners, that the population was
19 continuing to increase and the Planning was a matter of
20 determining--of trying to improve the design, the form
21 of this development, but now the feeling has changed.
22 When you project the population, when you project
23 economic growth, it's apparent that wall to wall
24 development is not going to take place from here out to
25 the Delaware Water Gap, that there is not enough potential

1 growth there to occupy the many square miles of open
2 land in northern New Jersey. So, Planning has to become
3 more involved of where the development should go and not
4 just how it should take place once it gets there and I do
5 consider that Chester Township is one of the outer areas
6 which does not have to be intensively developed with
7 business and industry and employment and shopping and
8 housing.

9 Conversely, though, if Chester encouraged, say, the
10 relocation of corporation headquarters of the development
11 of major industrial parks, if they encouraged this,
12 through their zoning, and if such development took place,
13 again, I think the market is limited but sometimes say
14 a corporation will be attracted to an area because it
15 happens to like the piece of land although it could go
16 somewhere else. If that happened, then there would
17 certainly be a need for more housing in Chester Township.

18 Q In your opinion, does the existing system
19 of water and sewer and utility systems in the Chester
20 Township area, is it capable of supporting any significant
21 increase in the housing supply?

22 A That is another important factor that I considered
23 in the--and the Planning Board considered. Clearly, it
24 is physically possible for a new water and sewer system
25 to be established in the Township, but if this were to be

Boorman - direct

1 done on any kind of scale, there would have to be a regional
2 trunk sewer which would drain somewhere and I, personally,
3 inquired and talked with the Somerset County Planning
4 Board after reading the Morris County Planning Board's
5 Sewer Study that was done--

6 MR. LINDEMAN: Just one minute.

7 THE WITNESS: Which was done by Hillen
8 Associates.

9 MR. LINDEMAN: I will object and do object
10 now to any statement that he may make as to what
11 somebody told him.

12 THE COURT: If he is going to testify
13 as to someone from the Planning Board--told him, it
14 would be objectionable.

15 Q As a result of your investigations as Planning
16 Consultant to the Township, did you form an opinion as to
17 the likelihood of large scale public sewer construction in
18 the Chester Township area?

19 MR. LINDEMAN: I object. I am sorry.

20 MR. FERGUSON: I am just asking him if he
21 formed an opinion.

22 THE COURT: I will allow him to answer
23 whether he formed the opinion. Then the objection is
24 going to come.

25 MR. LINDEMAN: All right.

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1 A Yes, I did form such an opinion.

2 Q Now, did you communicate that opinion to
3 the Chester Township Planning Board as part of the
4 Planning and Zoning process? A Yes, I did.

5 Q All right. Now, would you tell us what
6 that opinion was that you, in fact, communicated to the
7 Chester Township Planning Board?

8 MR. LINDEMAN: I object on the ground
9 that I think this is not within the expertise
10 of the witness for him to have formed an opinion
11 as to whether or not such a system was likely
12 and I think there has been no real foundation
13 for the eliciting of any such opinion from the
14 witness.

15 THE COURT: Well, so far he told me
16 about the construction of large sewers. He made
17 the conclusion that it would have to be a trunk
18 to drain somewhere. All right. That is in
19 evidence. Now, whatever else he learned--he was
20 asked if he formed an opinion on the likelihood
21 of a large scale sewer construction and if he
22 communicated to it. Based on the factors, if they
23 are related to what he knew and not what he was
24 told, I would allow him to testify.

25 In other words, what he saw from the Maps

1 that I have allowed others to testify to, soil
2 conditions and things that he could obviously
3 note, area--

4 MR. FERGUSON: Well, your Honor, I think
5 it goes beyond that. I will ask the witness, if
6 the Court wants, but I think the profession of
7 a Planner is to go out and get all relevant
8 information and if that process includes talking
9 to recognized State Planning authorities and getting
10 material orally and factoring it into his Planning
11 process and then getting an opinion as a result
12 of that and on the basis of that opinion advising
13 the Township and on the basis of that advice the
14 Zoning Ordinance gets written, I think it is
15 admissible to show the factual foundation of the
16 Zoning Ordinance. It may be wrong.

17 THE COURT: What would the Somerset
18 County Planning Board have to do with Chester
19 Township?

20 MR. FERGUSON: Well, Chester Township--I
21 do not want to testify, but Chester Township is
22 on the county line and everything flows downstream.

23 THE COURT: But the likelihood of a
24 construction of a sanitary sewer, a large scale
25 sanitary sewer system in Chester Township as it

1 relates to whether or not it would be constructed
2 and that is dependent upon a Somerset County
3 opinion. I can see Somerset County giving you an
4 opinion that we do not want, storm sewer or
5 sanitary sewer point, as they call it, sources,
6 running into streams but all of the flow in
7 Chester Township does not go toward Somerset County.
8 It does not all tilt toward Somerset County.

9 MR. FERGUSON: Not all of it, of course.
10 Well, we can ask the witness, you know, what
11 relevance it has. I think he said that he looked
12 at the Morris County Sewer Plans and then--

13 THE COURT: I will let him testify
14 as to the Morris County Sewer Plan but if it is
15 based upon what they said in Somerset County, I
16 do not know that I am being too particular or not,
17 I have a little difficulty with that.

18 MR. FERGUSON: Perhaps I can clear it up.

19 THE COURT: Let's face it, my reaction
20 is nobody wants a sewer in their backyard. Nobody
21 wants a sewer being dumped into their streams that
22 are going to be flowing into their--so if you
23 carried it to the logical conclusion, you can go
24 all the way down to New Brunswick and have New
25 Brunswick, say: "Hey, we don't want Chester Township

1 to build a large scale sewer system because
2 that water flows into the Upper Raritan Water
3 Shed, which flows into the Raritan. We take our
4 water out of the Raritan River and we don't want
5 to have dirty water to have to purify. You can
6 take it down to the Delaware in front--in Trenton,
7 where all the people in the City of Trenton drink.

8 MR. FERGUSON: I do not think the
9 witness is basing anything on the fact that
10 nobody wants or does not want. Perhaps I can
11 clear it up with some questions.

12 THE COURT: You are going to have to
13 go over it. My point is that you are going to
14 have to clear it up before I let him testify, the
15 sources of information he went to.

16 MR. FERGUSON: All right.

17 Q What sources of information did you go to
18 in examining the prospects for public sewers in Chester
19 Township?

20 A Well, I went to the Morris County Planning
21 Board's Sewer Plan, which is a long range future projection
22 of possible trunk sewer lines in the region.

23 Q Is this a written document? A Yes.

24 Q What is the title, if you can recall?

25 A Oh, something like "Morris County Sewer Study."

1 The author is Elson Killam Associates, I believe.

2 Q What other sources did you consult?

3 A Well, that Report shows that if a trunk sewer
4 is built in the Chester area it would go into Somerset
5 County. It would drain into what would have to be a
6 continuation of the trunk sewer down into Somerset County.
7 So, at that point, I looked up the Reports by the
8 Somerset County Planning Board and I talked with the
9 staff.

10 Q Now, before you tell us what Somerset--what
11 you learned in Somerset County. As a result of looking
12 at the Killam Morris County Study and which you learned
13 in Somerset County, did you form an opinion as to the
14 likelihood of the construction of a public sewer system
15 to serve the Chester Township area?

16 A Yes. My conclusion--

17 Q Before you tell us, did you communicate
18 that conclusion to the Chester Township Planning Board?

19 A I believe it was--I discussed it with the Township
20 Planning Board, yes.

21 Q And did that conclusion and that opinion
22 play any part in making your recommendations to the
23 Planning Board about the reasonableness or appropriateness
24 of the Zoning Ordinance including both the M.D.R. siting
25 and the residential lot-size requirements?

1 A Yes, it did.

2 Q Now, I would ask you, having laid that
3 foundation which I hope was sufficient, to tell us what
4 that opinion was which you gave to the Planning Board,
5 first; and, second, to give us the facts on which that
6 opinion was based insofar as you obtained them from
7 Somerset County?

8 A All right. In terms of the Reports that I used,
9 in addition to the Morris County Report, I looked at a
10 corresponding Somerset County Planning Board Sewer Study
11 and I noted that that did not include accommodating a
12 trunk sewer coming down from Chester, so, at that point
13 I talked with both the Planning Directors in Morris County
14 and Somerset County to see what was likely to happen in
15 the future in view of this discrepancy.

16 Q Did you form an opinion as to what you as
17 a Planner believed might be likely as a result of your
18 conversations? A Yes, I did.

19 Q What is that opinion?

20 A My opinion is that there are obstacles both within
21 and outside of Morris County and these are both financial
22 and political, or obstacles which make the construction
23 of such a regional trunk sewer unlikely in anything like
24 the foreseeable future.

25 Q Can you give us a number of years that you

1 consider to be the foreseeable future?

2 A Oh, I would say at least the year 2000, but I
3 observe at the same time that technology and the
4 understanding of ecological factors has changed. The
5 Sanitary Engineers themselves are not placing as much
6 emphasis on regional trunk sewers anymore. For
7 example, because these tend to take water out of a region
8 and take it, say, out to the ocean whereas a more desirable
9 plan would be a means for recharging the water into the
10 ground water supply within the region instead of taking it
11 outside.

12 So, my own anticipation would be that technology
13 would become available to do this by or before the time
14 a regional trunk sewer would actually be built, so I
15 don't think there would actually be a large regional trunk
16 sewer ever built.

17 Q Now, you did communicate this to the
18 Planning Board? A Yes.

19 Q All right. What--withdraw that.

20 Would you comment upon the criteria which you and
21 the Planning Board used and considered in designing the
22 lot-- the residential areas of the Township of Chester
23 in the Zoning Ordinance?

24 A Yes. One criterion was existing lot size
25 patterns, particularly with regard to, of course, existing

1 homes and the lot sizes that they were developed on.

2 Another criterion is proximity or remoteness in
3 relation to highways and urban centers. Again, the
4 clustering or centering concept.

5 Then, another criterion, and following the approach
6 taken in the Master Plan, is environmental restrictions
7 which, I think, I have already discussed at some length.
8 The slope, the drainage, the vegetation, the septic
9 system, capability, protection of ridge lines. This is
10 an interesting criterion which I think is a valid one
11 in the Master Plan. The protection of the wooded hilltops
12 and the ridges in the Township which are seen for many
13 miles around, that once you allow development on top of
14 those areas, the tree cover is destroyed and you have a
15 major impact on the landscape. Then, wet or rocky soil
16 conditions and protection of the regional water supply.
17 What I actually did was to use the Soil Maps, the
18 Topographic Maps, the air photos, the land use Maps from
19 the old Master Plan and my own field inspection to arrive
20 at conclusions as to what areas should have different lot
21 sizes and where the boundaries should be drawn.

22 Q Now, in some areas of the Township
23 Ordinance 76-12 utilized a classification of five acre
24 minimum lots. Would you comment upon the criteria which
25 you used in siting those areas which eventually were

1 zoned to have five acre minimum lots?

2 A Yes, in terms of the five acre and the two acre
3 lot sizes which are the predominant lot sizes of the
4 Zoning Ordinance, I recognized in the Master Plan and from
5 my own experience in working with the State Geologist's
6 Office, that these are based on ground water supply and
7 pollution considerations which have been explained by
8 Dr. Widmer. In terms of deciding which should be the
9 five acre as against which should be the two acre, of
10 course, I recognize that there has to be a general
11 balance so that the density of two to four acres, I
12 believe, that the State Geologist's Office refers to
13 would be generally observed, but the five acre areas are
14 those which have the less adaptable soil conditions, which
15 have the steeper slopes, which are further away from major
16 highways, which are further away from existing development
17 areas and are in, again, the most environmentally sensitive
18 areas.

19 Q Mr. Boorman, I am going to ask you a series
20 of questions now directing your attention to the Caputo
21 property.

22 Are you familiar in general with the Caputo
23 property, that is the subject site?

24 A Yes. At the time I worked on the Zoning
25 Ordinance Application or request had been submitted by the

1 owner to the Planning Board for a rezoning for multi-
2 family housing, so I did pay attention to that site in
3 particular, as well as in general, in relation to the
4 entire Zoning Ordinance.

5 Q Did you review the material at the offices
6 of the Planning Board submitted by Mr. Caputo?

7 A Yes. At that time the material did not include
8 a Site Plan, but I determined the boundaries of the
9 property and, of course, saw the request that the site
10 be zoned for Town Houses or some other kind of multi-
11 family housing.

12 Q Did you and the Planning Board take into
13 consideration that request for a rezoning in your
14 deliberations and in the adoption of the Zoning Ordinance?

15 A Yes.

16 Q All right. Now, tell us what your
17 consideration and deliberations were, if you can recall,
18 and what criteria you applied and what the decision was?

19 A Well, the site was given the same consideration
20 that the others were given for which requests had been
21 made for a rezoning for multi-family use.

22 Q Can I interrupt you? How many other
23 requests had been received by the Planning Board?

24 A Oh, there were several. There was, again, the
25 Greytop Site; there was a site northwest of the Borough;

1 there was a site east of the Borough called Continental
2 Homes; there was a site at the south end of the Township,
3 the Sugarman Tract, in addition to the Caputo Tract.

4 Q All right. Now, you were telling us what
5 consideration they were given and what your decision was.

6 A The consideration that was given to these sites
7 was in relation to my finding of a regional housing need
8 for the Township and certainly these would be sites or
9 that these were sites that I considered as possible
10 locations for such multi-family zoning as indicated by
11 the regional housing need and this, of course, was a
12 criterion in picking the Greytop site as one of the sites
13 which was actually subsequently zoned.

14 Q Now, directing your attention to the
15 Caputo property, would you tell us why the Caputo
16 property was not sited as M.D.R. in the Zoning Ordinance
17 based upon your work with the Planning Board and your
18 recommendations to the Planning Board?

19 A Yes, let's see. As one factor but not the most
20 important factor, a part of the site is relatively steep
21 and has relatively less desirable characteristics for
22 development. That is the eastern side of the site across
23 the Peapack Brook. I did take that into account in
24 projecting the zoning recommendations I did make for the
25 site which were to enlarge the R-2 section of the site

1 above what was recommended in the Master Plan. I did
2 propose, and this was adopted, to move the R-2 line
3 eastward toward the Peapack Brook from Old Chester-
4 Gladstone Road.

5 Q Where had it been in the Master Plan?

6 A It had been closer to Old Chester Road, so that
7 under the Master Plan there was a smaller R-2 and a
8 larger R-5 area, so I proposed to move the boundary
9 to enlarge the R-2 to recognize the better section of
10 it, which is, again, between Peapack Brook and Old
11 Chester Road.

12 Q Was your evaluation of that section as
13 being better based upon the soil and other environmental
14 information?

15 A Yes, that was based on the soil data and the
16 topography in that part of the site.

17 Q All right. Now, I had asked you what
18 criteria you applied or the reasons why Mr. Caputo's
19 property was not selected for a multi-family zone.

20 A Yes. Just to get back to the previous question,
21 I did take a series of photographs of the site which do
22 illustrate, I think, my findings as to the topography
23 and the character of it.

24 MR. FERGUSON: All right. I guess you
25 better mark this.

1 (The photographs referred to are marked as
2 Exhibit D-62 for identification).

3 Q Would you tell us, Mr. Boorman--can you
4 see that far? A Yes.

5 Q Would you tell us what Exhibit D-62 is and
6 who took those photographs?

7 A Yes, that is a series of photographs of the
8 Caputo site and related areas which I took on April 5th
9 of 1976. This was after I had worked on the Zoning
10 Ordinance. At the time I worked on the Ordinance, I had
11 made, of course, field inspections of the site but when
12 I learned that I might be testifying here in Court I felt
13 that the photographs would be helpful to illustrate the
14 findings that I had made about the property.

15 Q Would you go through those photographs and,
16 for the record briefly, read the caption and any other
17 information you need to identify the site and as you go
18 by each photograph, tell us if it is there, what the
19 photograph is designed to illustrate in terms of what you
20 saw, what you found, what criteria you used?

21 A Yes. The first photograph shows the new shopping
22 center which is known as Chester Springs on Route 206 in
23 the Borough. This adjoins the Greytop R. M. site, in the
24 Township and its proximity, of course, is important in
25 relation to the multi-family housing. It provides the

1 close convenient facility for shopping.

2 Q Let me interrupt you and ask you one
3 question:

4 Since photograph number one has been taken, has the
5 parking lot been blacktopped?

6 A Yes, it has.

7 Q Go ahead, please.

8 A The proximity of the shopping center is also
9 relevant in that it would be less desirable to have one
10 family homes very close to the shopping center. Now,
11 there would be a better relationship between the R. M.
12 uses in the Zoning Ordinance in the Township than there
13 would be if that site were zoned for one family homes.

14 Q All right. Would you tell us why, briefly,
15 what is the difference in multi-family and one family
16 homes on separate lots insofar as it relates to the
17 existence of the shopping center and the inner structure?

18 A Well, for one family homes there is more outdoor
19 living. There is more importance attached to residential
20 atmosphere surrounding the area. The fact that the
21 traffic and the parking and the lights and the noise from
22 the shopping center might be somewhat apparent from an
23 adjoining section would be more detrimental for one
24 family homes than it would be for multi-family development.
25 Of course, we do have provisions at the same time in the

1 R. M. Zoning for screening, for making a buffer strip as
2 such to protect the multi-family, but even so, the
3 proximity of a shopping center is more of a detrimental
4 factor for one family homes than it is for multi-family.

5 Conversely, the proximity of the shopping center
6 for a concentration of people as you have in a multi-
7 family housing development, is a favorable factor. The
8 shopping center is there for the people to use without
9 having to travel.

10 Q All right. Go ahead, if you would, please.

11 A The second photo shows a view of the Greytop site.
12 It is the field in the rear and it is taken from within
13 the shopping center site and it shows the relationship of
14 the shopping center to the--on the photo it's called
15 M.D.R., but on the Zoning Ordinance it's R. M., the R. M.
16 area in the Township.

17 Q Are you saying that that photograph number
18 two is standing in the shopping center looking at the
19 Greytop site? A That's right.

20 Q All right. Go ahead, please.

21 A The third photo is going south on Old Chester
22 Road below Route 206, going toward the Caputo property.
23 This would be a primary access to the Caputo property or
24 is a primary access and would be if the Caputo property
25 were developed with multi-family housing.

1 Q What is the significance of picture three?

2 A The photo shows that the road is a narrow winding
3 country road that goes through some extremely attractive
4 scenery and through a rural landscape and one of my
5 points about the Caputo tract is that there would be
6 adverse impact if this road were used as a major traffic
7 access into a multi-family area.

8 Q All right. Go ahead, please.

9 A The fourth is at the south end of Old Chester
10 Road going into Gladstone. This would be a primary access
11 to and from the south and the photo shows again this is
12 a narrow two lane road. It shows the edge of Gladstone
13 where the road goes into a relatively densely developed
14 one family area with narrow streets and right angle turns.
15 There is not a direct route to and through Gladstone. My
16 subsequent experience in Peapack and Gladstone, working
17 on their Master Plan, has confirmed the feeling I had at
18 that time that it would be very undesirable and
19 detrimental to introduce heavy--heavier traffic volumes
20 on to that road into Gladstone.

21 Q Are you the Consultant to Peapack-Gladstone?

22 A Yes.

23 Q And now are you saying that your work with
24 that municipality--since you did the work for Chester
25 Township?

A Yes.

1 Q Has had an effect upon your opinion about
2 what you did for Chester Township?

3 A Yes. My opinion at the time, looking at Gladstone
4 was this, as I have said, that it would not be good
5 enough to have more traffic into and out of Gladstone, but
6 my work since then in Gladstone has confirmed that. I
7 have actually made a map of the pavement widths, for
8 example, of the roads in Gladstone and mapped the house
9 lots and how close they are together and the fact that
10 the County road makes right angle turns.

11 Q Now, are you talking now about right angle
12 turns on Old Chester Road?

13 A Yes. That is in order to get out to Route 206 or
14 down to Far Hills.

15 Q In your opinion, is Old Chester Road,
16 through the Caputo area and in the Peapack-Gladstone area,
17 sufficient to handle the present traffic on the road?

18 MR. LINDEMAN: I object, your Honor.

19 I think really that calls for a particular
20 form of expertise which we have introduced into
21 evidence and I think the defendant is capable
22 of doing so.

23 THE COURT: We have traffic experts.

24 I think you had an opportunity to explore that
25 question sufficiently.

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1 MR. FERGUSON: I will withdraw it.

2 Q Could you go ahead, please?

3 A The fifth photo shows Old Chester Road south
4 approaching the Caputo property on the left and here,
5 again, the photo shows the narrow two lane country road
6 character.

7 Q All right.

8 A Number six is the Caputo property itself from
9 Old Chester Road and this shows the level portion of the
10 property in the foreground between Old Chester Road and
11 Peapack Brook and this is the second that--section that
12 I propose should be put all in R-2 instead of partly into
13 R-5.

14 Q That is the section which has better soil
15 slope and drainage conditions than the area to the east
16 of the Peapack Road? A Yes.

17 Q Go ahead, please.

18 A The seventh is a photo which shows Fox Chase Road,
19 which is the east-west road adjoining the Caputo property
20 and this view is looking east along the property line. The
21 property itself is on the right on this photograph. The
22 picture shows that Fox Chase Road is unpaved in this area.
23 It also shows that it takes a steep slope down to Peapack
24 Brook and then turns or twists as it goes across the
25 Brook and up the slope on the opposite side. It is very

1 poor for accommodating traffic. It would obviously
2 require a major improvement if there were to be more
3 traffic put on it.

4 Q All right. What is on the other end of
5 Fox Chase Road?

6 A There is a substantial section of Fox Chase Road
7 which is not improved on the other side of Peapack Brook
8 and east of the Caputo property which, again, would have
9 to be--there would have to be a substantial investment
10 in improving that road.

11 Q Now, what is--excuse me--on Fox Chase Road
12 beyond the unimproved section? A Right.

13 Q What is there in terms of development?

14 A That shows on my photograph number nine.

15 Q Excuse me?

16 A Which is where Fox Chase Road comes into built
17 up residential area in Chester Township toward Route 24
18 and here the problem is that the road goes through this
19 one family area and my point in producing this photograph--
20 my opinion is that there would be an undesirable effect
21 on this existing residential neighborhood if substantially
22 more traffic were introduced on this road and that would
23 be the case if there were to be multi-family housing on
24 the Caputo site, that there would be substantial traffic
25 to and from Route 24, that is, of course, assuming that

1 Fox Chase Road is paved and improved enough to carry more
2 traffic, but I think it would have to be.

3 Q I made you skip over picture number eight
4 for which I apologize.

5 A Yes. That is Fox Chase looking east at the--or
6 toward the intersection of Old Chester Road and this shows
7 that Fox Chase Road is also unimproved to the west of
8 Old Chester Road.

9 Q Between Old Chester and 206?

10 A Yes, and it also has two right angle turns and
11 here, again, there would have to be major improvement in
12 this road if it is to carry traffic to and from a multi-
13 family development and it is unclear as to how this could
14 be done. If it is--if a multi-family development were to
15 be allowed. In effect, this is a factor against allowing
16 multi-family housing because these extraneous road
17 improvements would have to be made.

18 Q Now, picture number ten?

19 A That is a view of the multi-family site, which is
20 now zoned on Route 24 east of the Borough of Chester on
21 Route 24 and it shows the relatively favorable character
22 of that land. Again, it's a hay field or corn field.

23 Q What makes it relatively favorable when
24 compared to the Caputo tract? Why do you say that?

25 A Well, first, of course, the direct highway access.

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Q Okay. Would that M. D. R. site on--on Route 24 south of the Borough have to have the same improvements in terms of roadway improvement that the Caputo site would? A It would not, no.

Q All right. What else makes it more favorable?

A Well, the picture illustrates, I think, the favorable topography and soil conditions on the site. Of course, in considering the Caputo site, in photo number six, the section on Old Chester Road also has pretty good topography and soil, but on the other hand, it drains directly into Peapack Brook which is a sensitive area in terms of the water quality of the Brook and that is not the case with the site--with the multi-family site shown on my photo number ten. That does not adjoin a stream which it would have to drain into. In other words, the drainage could be accommodated on the site.

Q All right.

MR. FERGUSON: I would offer this Exhibit into evidence, your Honor.

MR. LINDEMAN: No objection.

THE COURT: In evidence.

(The photographs formerly marked as Exhibit D-62 for identification are received in evidence).

THE COURT: All right, Mr. Ferguson.

1 Q As a result of your investigations and the
2 criteria which you testified about in Exhibit D-62 and
3 the Plan, did you and the Planning Board conclude whether
4 or not the Caputo site is appropriate for multi-family
5 housing?

A Yes.

6 Q And what was that conclusion?

7 A The conclusion was that it is not appropriate for
8 multi-family housing.

9 Q Do you have an opinion as to whether there
10 are other areas in the Township which are more suitable,
11 and if you do have an opinion, would you tell us what it
12 is?

13 MR. LINDEMAN: I object on the ground
14 that it is irrelevant. If the Caputo site is not
15 suitable whether there were others more suitable
16 or not cannot aid the case.

17 THE COURT: I think the answer--the
18 question is suggestive of the answer in light of
19 the fact that he has told us that there are three
20 sites. I will sustain the objection.

21 Q Mr. Boorman, I will rephrase it. I won't
22 press it.

23 Mr. Boorman, aside from the three multi-family
24 zones, are there, in your opinion, any areas which are as
25 appropriate or more appropriate than the Caputo site for

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multi-family housing?

A Yes.

Q Now, would you tell us generally where they are and would you explain your answer for the Court?

THE COURT: Well, wait a minute.

I am a little confused. You said: Aside from the three multi-family zoned areas, are there areas as appropriate or more appropriate than the Caputo tract?

MR. FERCUSON: I should rephrase the question to just say "more appropriate" than the Caputo tract and not "as appropriate."

THE COURT: Okay.

A Yes, I am sure that there are. The area shown in the Master Plan for potential M.D.R. or medium density or including multi-family housing includes additional sites beyond the three now zoned, which would certainly be in that category, then probably there are additional sites which could be found closer to the major highways and closer to the Borough of Chester.

Q Now, I had asked earlier about--withdraw that.

Aside from the Morris County Master Plan, did you consult any other regional planning documents in the planning process to determine whether the siting and development of the M.D.R. Zone was appropriate in a

Boorman - direct

1 regional context.

2 A Yes, there was a book called "The Future of
3 Morris County" by the Regional Plan Association that
4 projects again the centers concept or the concept of
5 development clustered around a compact center. The
6 Tri-State Regional Planning Commission has reports-- I
7 am not sure if they were published at the time I worked
8 on zoning or not--but they reflect this concept as well.

9 Q Are you referring to the Regional
10 Development Guide or the Tri-State Regional Planning
11 Association? A Yes.

12 Q Can you recall whether you used that
13 document in your work with Chester Township?

14 A I can't. We are in rather close touch with
15 Tri-State since one of their land use Planners is the
16 Chairman of one of the local Planning Boards we work
17 with, so we frequently see drafts and such before they
18 are published but I can't remember what specific
19 documents I might have seen at the time I was working
20 on the Zoning Ordinance.

21 Q All right. Then, do you have an opinion
22 as a Planner as to whether the approach that you
23 recommended in Chester Township and embodied in the
24 Zoning Ordinance as adopted by the Planning Board is
25 consistent with the recommendations of the Tri-State

1 Regional Planning Commission?

2 A Yes, I have examined the Regional Development
3 Guide and that does reflect the kind of development
4 pattern that is projected in the present zoning in Chester
5 Township.

6 Q Would you elaborate that a little bit, if
7 you could, about the kind of planning recommended by
8 that Commission?

9 A Yes, I have the report here and a couple of
10 quotations from it, I think, are useful.

11 Q Would you identify the document you are
12 reading from?

13 A Yes. This is Regional Development Guide, Goals and
14 Plan for the Tri-State Region, October 1968, Supplement
15 added September 1972, and it is by the Tri-State--or what
16 was at that time called the Tri-State Transportation
17 Commission. It's now the Tri-State Regional Planning
18 Commission.

19 MR. LINDEMAN: If your Honor please, I
20 object to any reference by the witness to
21 statements actually contained in the document
22 because the effect of any such testimony would be
23 to introduce, by indirection, the testimony of
24 the Report itself. I think the witness has
25 merely stated that this document is one which he

1 may or may not have consulted but that, in any
2 event, his conclusions are consistent with
3 whatever recommendations are contained in it, but
4 for him to quote directly from it, I think really
5 insinuates into the case expert testimony which
6 is corroborative and which would be improper.

7 MR. FERGUSON: I think I agree with
8 everything Mr. Lindeman said except the improper
9 part.

10 THE COURT: Why is it necessary?

11 MR. FERGUSON: I will withdraw it, your
12 Honor, because I intend to offer that document
13 in evidence in a couple of minutes.

14 MR. LINDEMAN: I guess I will be heard
15 from again.

16 MR. FERGUSON: I am sure you will.

17 MR. LINDEMAN: At that time.

18 THE COURT: The entire document?

19 MR. FERGUSON: Well, what I have done--

20 THE COURT: It is a very voluminous
21 looking instrument that you are holding in your
22 hand, is what you are proposing to encumber the
23 trial record with.

24 MR. FERGUSON: Well, I would love to say
25 enlightened.

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THE COURT: Again, may I just say to you, assuming you win that battle with-- you are going to show me where you want me to read and then Mr. Lindeman will have a chance, but I want--I am just reminding you of that admonition of long ago. I am not going to read through the entire thing.

MR. FERGUSON: We recall it very well. What we are going to do is mark and move those documents. From those documents we have made copies of the pages which we think are relevant. We have put the copies of the pages that we think are relevant in this document and beside the paragraphs which we think are most relevant, we have drawn a green line.

THE COURT: You are telling me that you have condensed that eight inch pile of books down to two inches of volume.

MR. LINDEMAN: I would say about seven and a half inches.

THE COURT: All right.

MR. FERGUSON: The answer to that is, yes.

THE COURT: Okay. Well, let's see if you win the battle with Mr. Lindeman.

Q At my request, Mr. Boorman, did you consult

1 the Morris County Planning Board recently with respect to
2 the Morris County projection of population?

3 A Yes, I did.

4 Q Would you tell us when you consulted with
5 them?

6 A Well, it wasn't that recent but when I was
7 preparing my proposed statement for the Chester Township
8 Planning Board on the Morris County Master Plan land
9 use element for the purpose of the Planning Board's
10 submitting such a statement at the Public Hearing as a
11 partial objection to the Plan and that was in October of
12 1975.

13 Q Since that time have you consulted with
14 the Morris County Planning Board?

15 A I don't believe so.

16 Q At that time did you learn whether there
17 had been any revision to the Morris County projections
18 as to future population of the County?

19 THE COURT: Provisions of what?

20 MR. FERGUSON: Of the Morris County
21 Planning Board.

22 THE COURT: When did they promulgate
23 what was revised? That is what I am trying to get
24 at.

25 Q Can you answer that question, Mr. Boorman?

1 A Yes. I learned from the County Planning Director
2 that the staff was substantially reducing the population
3 forecast from the County--for the County from the level
4 that is projected in the future land use element.

5 Q First, what is that level in the land
6 use element?

7 A Well, for Chester Township the projection was for
8 6200 persons by 1980 and I was told that that had been
9 reduced to 5600 and I was also told that the level
10 projected for 1990 for the whole County was, according to
11 this later study, not expected to be reached before the
12 year 2000 or 2010, if then.

13 Q Do you know what that figure was?

14 A I don't have it here with me. I don't remember
15 what it was.

16 Q All right, Mr. Boorman, I show you--

17 MR. FERGUSON: Your Honor, at this point
18 I would like to mark these documents and ask the
19 witness to categorize them and I would ask him
20 whether they are the kinds of documents which a
21 Professional Planner would examine to obtain
22 statements of either State policies or Planning
23 policies which, in his judgment, ought to be
24 followed or taken account of in the Planning
25 process for a municipality in Morris County, New

1 Jersey, and I would ask him to identify each
2 document and then I would move them into evidence
3 and request the Court to take account of or to
4 read the distillation of these documents, the
5 pages which we have copied and bound in one volume
6 with an appropriate index and markers. We gave a
7 copy of the document to Mr. Lindeman, I guess,
8 ten days or so ago.

9 THE COURT: Can I see them?

10 MR. LINDEMAN: Which--

11 THE COURT: No, I want the undistilled.

12 MR. FERGUSON: One of them is the Morris
13 County Master Plan and that is in evidence.

14 THE COURT: All right. They can be
15 marked for identification.

16 MR. FERGUSON: I have an index prepared.
17 I think any reasonable way of handling it
18 mechanically would be--

19 THE COURT: Give them to Mr. Fishman
20 and he can mark them, using the index to
21 identify them. If you would, after you have
22 marked them all, read off to me, just mark them
23 consecutively D-63 through--I think there are ten
24 or eleven of them--through D-72 or 3, and then
25 tell me what the titles of each one is.

1 MR. FERGUSON: You can do it with one
2 number, A., B., C., D.. Maybe it's better just
3 to have numbers.

4 (The documents referred to are marked as
5 Exhibits D-63, 64, 65, 66, 67, 68, 69, 70, 71,
6 72, 73, 74, 75, 76 and 77 for identification).

7 MR. FERGUSON: Now, there is a little
8 confusion, your Honor, because some of them have
9 already been marked for identification during the
10 trial.

11 THE COURT: Well, all right. They
12 should not have been re-marked.

13 MR. FERGUSON: They weren't.

14 THE COURT: Okay. I would like
15 somebody then to read to me D-63 and all the way
16 through to what--D--

17 MR. FERGUSON: D-63 and the Index?

18 THE COURT: Index. Okay. Document
19 "A" is Department of Community Affairs, New Jersey
20 State Development Guide Plan, which has been
21 previously marked Exhibit 42 for identification.
22 D-42.

23 Document "B" is D.C.A.D.E.P Secondary
24 Impact of Regional Sewerage Systems.

25 Does that have an evidence number?

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MR. FERGUSON: No. That now does.
It's D-65 for identification.

THE COURT: All right. Just tell me
all the numbers and what number they coincide
with on the index. I think that would be
sufficient.

MR. FERGUSON: Document "C" is D-66 for
identification.

Document "D" is D-67 for identification.

Document "E" is D-68 for identification.

Document "F" is--

Can I go off the record?

THE COURT: Yes.

(Short recess)

MR. FERGUSON: All right. I have to
go back. Document "C" has two numbers. The
Summary Report is D-66 for identification?

THE COURT: Yes.

MR. LINDEMAN: Just the Summary Report?

MR. FERGUSON: Just the Summary Report.

The Research Report is D-67.

THE COURT: D-67?

MR. FERGUSON: Yes. That's the Research
Report.

THE COURT: All right. Now, and

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D-68 is then 'D' in the index?

MR. FERGUSON: That is correct.

THE COURT: Everything moves up?

MR. FERGUSON: That is correct, Judge.

THE COURT: All right.

MR. FERGUSON: So, Document "E" is now

D-69.

Document "F" is D-70.

Document "G" is D-71.

Document "H" is D-48 for identification.

Document "I" is D-43 for identification.

THE COURT: Document "H" was what,

I am sorry?

MR. FERGUSON: D-48.

"I" is D-43.

"J" is D-72.

"K" is D-44 for identification.

"L" is D-73.

"M" is D-74.

"N" is D-75.

"O" is--

THE COURT: P-13 in evidence.

MR. LINDEMAN: Right.

MR. FERGUSON: Morris County Master

Plan which is P-13.

1 "P" is D-76.

2
3 Q Looking at that stack of documents, Mr.
4 Boorman, would you--I want you to, when asked--I am
5 going to ask you the following questions about each of
6 those documents: I want you to tell us what the
7 publishing body or the author is of each of those
8 documents, whether you as a Planner and Consultant to
9 Chester Township in Morris County, New Jersey, would
10 in the course of your forming an opinion about municipal
11 and regional planning involving Chester Township, New
12 Jersey, consult that document for a statement of
13 policy or a statement of fact and whether that document
14 that you are talking about is relevant to planning
15 considerations in Chester Township, New Jersey, and then,
16 if you recall, tell us which of those you in fact did
17 look at during the planning process. Would you go through
18 them each seriatim and tell us as briefly as you can
19 the answers to those questions?

20 A All right. New Jersey State Development Guide
21 Plan, January 1977, by the New Jersey Department of
22 Community Affairs. Yes, I would consult this. I didn't
23 in Chester because, obviously, it is a 1977 Report.

24 Q What does it purport to do?

25 A It divides the State into growth areas,

1 agricultural areas, open space and limited growth areas.

2 Q In your opinion, is that a statement of
3 policy by the Department of Community Affairs about New
4 Jersey Statewide Planning? A Yes, it is.

5 Q All right. Document "B".

6 MR. FERGUSON: Now, your Honor,
7 perhaps I can save time. It is my intent to go
8 through each of these documents and lay that
9 foundation or similar foundation for it, move
10 them all into evidence and then ask the Court
11 to look at excerpts we have prepared from them
12 and if Mr. Lindeman is going to object, perhaps
13 we can do so now and save trial time.

14 MR. LINDEMAN: It might be a good idea,
15 your Honor. As to this first one, may I be
16 heard on it?

17 THE COURT: I think generally he is
18 asking you to object to everything.

19 MR. LINDEMAN: Well, I am.

20 THE COURT: And state why you are
21 objecting to everything.

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

23 THE COURT: All right. Go ahead.

24 MR. LINDEMAN: May I? I object to
25 these documents because, although I have examined

1 them somewhat cursorily, they are general in
2 the most extraordinary respect. I mean, they
3 say such things as motherhood and virtue are good
4 and evil is bad and we have got to be very
5 careful about our water supply system and we must
6 plan the development of the State of New Jersey
7 because not to plan would be a bad thing to do.

8 I think that it really is an imposition
9 on the Court. I am frank to say, not only on the
10 Court but on counsel as well, to some extent,
11 because it is just an enormous volume of reading
12 that really does not say anything about this case.
13 So, principally, I would say that the documents
14 with the exception of that which has already been
15 admitted into evidence are objectionable because
16 they are really irrelevant and they have not said
17 anything more than what the very detailed and
18 comprehensive testimony has already adduced, I
19 think. I just--I honestly do not see it.

20 Just as an example, picking anything out
21 at random, the document which is Item "C", The
22 Governor's Commission to Evaluate the Needs of
23 New Jersey.

24 THE COURT: Well, D-42 is not in
25 evidence yet, is it, or am I mistaken?

1 MR. LINDEMAN: No, I think it is not,
2 your Honor.

3 MR. FERGUSON: No, that is for
4 identification.

5 THE COURT: It was a 1977 document--
6 '76, is it? In any event, it is after.

7 MR. LINDEMAN: That is true. It is
8 our contention that for this Court in January of
9 1978 to evaluate what Chester Township has done
10 under the doctrine of Mount Laurel and Madison
11 Township, it must evaluate it in a regional
12 planning context and I do not know of any better
13 and more efficient mechanism of bringing to the
14 Court's attention the statements of public policy
15 statements of the State of New Jersey, Regional
16 Planning bodies, and other duly constituted
17 Planning Authorities than to do it in this manner.
18 It would be feasible, I suppose, to subpoena each
19 one of the--a staff of the Governor's Commission
20 or Senator Musko or someone like that and bring
21 him into Court and say: "Yes, we were authorized
22 by the Legislature to conduct a study of capital
23 needs. Yes, we did look at water quality and
24 quantity planning. Yes, we spent \$300,000.00
25 doing it. Yes, that is a copy of our Report."

1 Frankly, I think a Court could possibly
2 take judicial notice of many of these documents.
3 I think a better way is to put them in with the
4 testimony of a Professional Planner to the effect
5 that these are documents which give the facts
6 which must be used in the process of regional
7 planning.

8 MR. LINDEMAN: Your Honor, I think I do
9 have a tendency sometimes to be a little bit flip
10 about things and I do not really mean to be that
11 at all.

12 THE COURT: Well, let me be flip
13 back and say it is the first time that I have
14 heard that motherhood is bad and evil is good.

15 MR. LINDEMAN: Did I put it that way?

16 THE COURT: No, you put it the other
17 way but the result was--it seemed to be the
18 result.

19 MR. LINDEMAN: Yes, I appreciate the
20 Court's comment about that. My point really is
21 and this one thing is a serious and not a flip one,
22 that it really behooves us as advocates before the
23 Court to show the respects in which the material
24 actually is relevant and I think what these
25 documents do is simply overload the general

1 question that we must plan and we must be
2 careful of our water supply and we must develop
3 proper means of treating and handling waste
4 materials. I think it is a fair thing to say that
5 with the exception of the Morris County Land Use
6 document, element, which has already been admitted
7 into evidence, there is nothing really that addresses
8 itself to the particular issue in this case and I
9 say that even about the document which I think is
10 a--the very first one, which shows a Map of
11 New Jersey and generally tries to define growth
12 areas, agricultural areas, open space and limited
13 growth areas. I say that because it is not a
14 survey. It is not clear where Chester Township
15 is on that Map.

16 The particular Map in question was one
17 which there was discussion before the Court
18 previously in this case and it just is not--it is
19 not clear enough to show how the document and the
20 Map is relevant and I think that the same thing
21 really does apply to all of the other documents.

22 They do not really hurt me. I do not want
23 to take too much time to address myself to this
24 proceeding because the plaintiff--the plaintiffs
25 associate themselves with a general statement in all

1 of the documents, but I do not think that is
2 a reason to admit them into evidence and to take
3 the Court's time.

4 THE COURT: Let me do this:

5 It is 12:30. Let me digest what you said along
6 with my lunch and see what I come up with at 1:30,
7 all right?

8 MR. FERGUSON: I should advise the
9 Court of one thing. The New Jersey State
10 Development Guide Plan, which is the first
11 document, is what we had available when we
12 prepared this, which was during the last several
13 months, just making the copies. I understand
14 from Mr. Boorman that a printed copy of the State
15 Development Guide Plan has just been released and
16 I intend to mark this and introduce it separately
17 because it is a more colorful picture of the
18 same area.

19 THE COURT: All right. Okay. When
20 you make your effort to introduce it, then I will
21 deal with it.

22 You can step down, Mr. Boorman.

23 (Luncheon recess)

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

25 THE COURT: Well, let me tell you the

1 lines along which I am thinking.

2 Very candidly, they stem somewhat from
3 my own self-preservation doctrine, but justifiably,
4 I think. I am thinking along the lines of what
5 characteristically, which I am sure you are
6 familiar with, is Rule Four, the discretion of
7 the Judge to exclude admissible evidence.

8 Assuming that this is admissible evidence,
9 just for the sake of argument, necessitate undue
10 consumption of time. Now, you are going to go
11 over all of these documents. We have been
12 engaged in a rather lengthy trial and I question
13 the probative value when you substantially weigh
14 it against the undue consumption of time.

15 You have got your synopsis, your distillation,
16 as you call it--yes, you thoughtfully numbered the
17 pages. It is 33 pages long.

18 Now, technically, I am sure he would not,
19 but technically, Mr. Lindeman could end up cross
20 examining on every page. We could be here--and
21 this without your direct examination, we could be
22 here an interminable length of time and if all of
23 this is supportive of Mr. Boorman's position, I
24 do not know whether it is necessary.

25 MR. FERGUSON: I share the Court's concern.

1 I do not intend to ask Mr. Boorman to point
2 out each and every passage and comment upon it.
3 I do not intend to ask him any questions at all
4 about the synopsis. My only purpose in doing it
5 now is to have him testify as to the Planning
6 relevancy of the underlying publications and
7 documents. It would be my intention to have it
8 in the record and available to the Court so that
9 insofar as this Court or a reviewing Court has
10 to make what is essentially a Planning Decision,
11 it can have the benefit of this type of
12 generalized Planning statements by Regional
13 Planning bodies. To set the regional context for
14 it, now, I therefore, you see, have admitted in
15 my argument that there is no specific statement
16 about Chester Township in here and that this is
17 the kind of material which should be before a
18 Court and, particularly, the New Jersey Supreme
19 Court if it ever gets to the point of confronting
20 headon the question of fair share allocation of
21 a rural Township as juxtaposed against the need
22 to preserve the water quality, for instance.
23 You know, I do not know if that is going to get
24 that far in this case. I am not sure it is
25 necessary for the decision in this case. I think

1 It is an integral part, however, of the
2 justification of the Zoning Ordinance and that
3 is why I feel constrained to present it this way.

4 THE COURT: Well, let me say this:
5 It is far be it from me to ever deny the Supreme
6 Court the opportunity to go to the extent that
7 perhaps they may feel they want to, but I think
8 my criteria for determining admissibility here,
9 with particular reference to this, is that I am
10 not too sure from what you have said that it is
11 necessary to the case; relevant, yes. It may be
12 relevant, but not to the issues as I see them
13 coming up exclusive of the testimony that I have
14 already gotten. I think the testimony that I have
15 already gotten is sufficiently supportive of all
16 of your arguments and then to add to it a 77 page
17 synopsis without clear need for it, I seriously
18 question, because maybe you are not going to ask
19 any questions, but it could involve undue time
20 consumption on Mr. Lindeman's part.

21 I think I have the right to take note of
22 that under the Rule and say, okay, is it necessary?
23 Is it something that is sufficiently pertinent to
24 justify the potential for the additional time and
25 delay? I do not think it is.

1 Perhaps it would be nice to have all this into
2 evidence and if I am going to, if I ever have
3 to get into the Planning, but, you know, just
4 my--you know, I made the comment in the beginning
5 and it was part with tongue in cheek about my
6 own self-preservation, the time consumption has to
7 be a concern, a substantial concern, and I just
8 do not see the time consumption justified on the
9 basis of what I see in this index and some of
10 which we already have identified--I am not too
11 sure whether it is all in evidence--but I just--
12 I do not think it is necessary from the standpoint
13 of the issues as I see them now and based upon the
14 evidence that I have received or heard.

15 I think it is supportive, perhaps, but not
16 sufficiently pertinent to justify the time that
17 could be spent on it, so, I think I am going to
18 sustain Mr.--I know I am going to sustain Mr.
19 Lindeman's objection to it. All right.

20 MR. FERGUSON: Can we have the--

21 THE COURT: You know, let me say
22 this just so it is clear, Mr. Ferguson.

23 I appreciate--I always say this to counsel--
24 I appreciate any effort by counsel to assist me
25 in my task as a Trial Judge, so there is no inference

1 there that I think you are wrong in offering it.
2 All right. I do not want you to think that I
3 am saying that. I am just saying that I think
4 from the point--standpoint of evaluating the
5 nature of the case that I do not think it is
6 required and I think it is a--if it is relevant,
7 it is relevant in a supplementary sense, not in
8 a primary sense and, therefore, I feel justified
9 under Rule Four of excluding it, but there is
10 no intention to criticize your offering it, so
11 please do not think there is.

12 MR. FERGUSON: Indeed. I will take the
13 position that it is legitimate for us to include
14 excerpts from those--some of those documents in
15 a brief. For instance, when we talk, we might
16 have to talk about some particular issue.

17 THE COURT: But to use it for fact
18 finding, to use it for, as you suggested, Planning
19 guidance, whether that is an appropriate function
20 of the Court or not I make no determination now.
21 I just cannot see the relevancy of it at this
22 point.

23 MR. FERGUSON: May I have the synopsis
24 itself marked for identification?

25 THE COURT: Surely. I thought it

1 had been. You skipped--you skipped one of the
2 numbers, D-64, and I assumed that D-64 was the
3 number assigned to that, when you read them to me.

4 (Short recess)

5 THE COURT: D-64 for identification
6 is the synopsis of D-65 and other documents
7 referred to in D--well, D-65 through 76 and
8 other documents referred to in D-63.

9 (Short recess)

10 MR. FERGUSON: Mark that.

11 (State Development Guide Plan referred to is
12 marked as Exhibit D-77 for identification).

13 THE COURT: Okay. Now, having ruled
14 on that we shall now proceed.

15 MR. FERGUSON: At this point before I
16 forget it, I should like to move into evidence
17 D-55, 56 and 57, Mr. Boorman's Reports to the
18 Planning Board on his fair share analysis and on
19 Judge Furman's Decision which were made during the
20 Planning process and as to which he testified the
21 last time.

22 THE COURT: Any objections?

23 MR. LINDEMAN: No objection.

24 THE COURT: Okay, in evidence, D-55,
25 56 and 57.

1 (Documents formerly marked as Exhibits D-55,
2 D-56 and D-57 for identification are received
3 in evidence).

4 MR. FERGUSON: By way of explanation,
5 your Honor, I do not intend to ask Mr. Boorman
6 to go through each and every element of those
7 three Reports. They are to some extent self-
8 explanatory. They were done at a time just after
9 Mount Laurel and before Madison Township when the
10 state of the art, as it were, was influx.

11 I offer them for the purpose of showing
12 to the Court the efforts made by the Township's
13 Planning Consultant and the Planning Board to
14 ascertain a fair share and then to implement it.
15 I do not offer them now at this time as the most
16 perfect statement of what fair share might be. I
17 do not know that anybody is capable of giving it
18 in the context of the ongoing decisions being made.

19 It is mainly a matter of historical fact to
20 show what occurred during the Planning process.

21 There is one document and perhaps two which
22 are included in Exhibit D-64 which I do want to
23 ask the witness a few questions about.

24 THE COURT: In D-64?

25 MR. FERGUSON: It will be very brief.

1 Q I show you a document marked D-77 for
2 identification and ask you to tell us what it is.

3 A Yes, this is the State Development Guide Plan
4 prepared by the New Jersey Department of Community
5 Affairs in September 1977 and it is described on the
6 front pages as a brochure. It is later to be
7 supplemented by a detailed report which we have not
8 received yet from the State.

9 Q As far as you know, has it been made,
10 the follow-up Report?

11 A I don't know. We had a letter from the State
12 when they transmitted this saying that there would be a
13 follow-up Report and we can request copies but the
14 letter did not indicate if that had been actually
15 published.

16 Q Can you, by referring to that document,
17 tell us its purpose?

18 A Yes. It's part of a program to present the
19 Preliminary State Development Guide Plan to a wider
20 audience for their comments and it indicates that
21 meetings have already been held and will continue to
22 take place with State, County and Regional Planning
23 Agencies. It indicates that for the State Planning to
24 be meaningful, we need the input of everyone. They
25 urge the reader to offer suggestions either at the

1 meetings or by writing or calling the State Division of
2 State Regional Planners.

3 Q Would you tell us what this Development
4 Guide does in terms of classifying the land of the
5 State of New Jersey?

6 A Yes, it appears to be a reproduction of the
7 January 1977 Report which we discussed a little earlier.

8 Q Which is what number?

9 A That is D-64.

10 Q For identification?

11 A Yes.

12 MR. LINDEMAN: No, it cannot be.

13 THE COURT: No, it cannot be?

14 MR. LINDEMAN: That is the whole volume.

15 THE COURT: It is going to be--the
16 first document, D-42, whatever the first document
17 was.

18 MR. LINDEMAN: Yes, that is 42, right.

19 THE COURT: Okay, because 64 is the
20 compilation. I do not want to confuse the record
21 any more than it already is.

22 THE WITNESS: Yes, as I indicated with
23 regard to D-42.

24 Q D-42?

25 A It divides the State into growth areas, limited

1 growth areas, agricultural areas and open space. It also
2 adds symbols for the population of urban areas with the
3 smallest range being 10,000 to 35,000 and the largest
4 being over 100,000.

5 Q Does it have a delineation of what it
6 calls major highways?

7 A Yes, it shows existing major highways.

8 Q Are they shown in red? A Yes.

9 Q Does it have pink colored circles showing
10 the population of urban areas? A Yes.

11 Q Now, can you by examining that Map
12 determine in what classification Chester Township is?

13 A Yes, it is in the classification of a limited
14 growth area.

15 Q Where is the nearest growth area located
16 to Chester Township?

17 A To the north in the Flanders section of Mount
18 Olive Township.

19 Q Can you tell by looking at the Map, can
20 you as a Planner by looking at that Map, what in your
21 opinion is the determinative factor of the location of
22 the growth areas and the non-growth areas or limited
23 growth areas?

24 A The growth areas appear to be closely associated
25 with the existing major highways.

1 MR. FERGUSON: Your Honor, I offer
2 this document in evidence. It is a statement
3 by the D.C.A., the Planning Agency of the State
4 of New Jersey admittedly only in the most general
5 terms but I think it is helpful for this
6 Court to judge the appropriate regional context
7 into which Chester Township must be put. I think
8 the fact that it is to be followed by a more
9 comprehensive Report goes not to this document's
10 admissibility but to the weight to be given to it
11 and to the hope that the D.C.A. will hurry up
12 and get us the document so we all know what we
13 are doing with more definiteness.

14 MR. LINDEMAN: May I ask some questions
15 about the document, your Honor?

16 THE COURT: Surely.

17 BY MR. LINDEMAN:

18 Q Mr. Boorman, it is correct that the D.C.A.,
19 particularly with regard to what is shown on D-42 for
20 identification, has no zoning powers as such, is that not
21 correct? A Yes, that's correct.

22 Q And, therefore, it is not in a position to
23 direct any County or municipal entity that its property
24 be zoned in particular ways, that is to say, farm land
25 or forever wild, industrial or any of the other uses which

1 typically are found in Zoning Ordinances, is that not so?

2 A They can't direct the zoning of the area. Of
3 course, when an area is acquired by public acquisition
4 such as a park or development, easements are required in
5 farm land, that supercedes zoning.

6 Q Right, and that so far as D-42 for
7 identification is concerned, the Map to the extent that
8 it is a Map, is one which is--it is intended to be
9 general in nature, not necessarily to be accurate as to
10 boundaries, isn't that correct, or precisely accurate
11 as to boundaries? A Let's see.

12 Q Putting it another way, it is fair to say
13 that it is not a survey in any respect nor is the Map
14 drawn to scale?

15 A Well, it is called a Guide Plan Concept Map.
16 There is a scale of miles on the Map and the areas are
17 delineated with respect to county boundary lines and
18 with respect to the location of existing major highways.

19 Q Do you know, however, if the Map is an
20 accurate Map in terms of the delineation of the various
21 lines as, that is to say, as to whether they are correct?

22 A The county boundaries and the major highway
23 locations appear to me to be correct.

24 Q Appear from just a visual inspection or
25 from some knowledge that they have been done by an

1 engineer and reflect some kind of precise measurement.

2 Which?

3 A I frequently work with Maps of the whole State
4 or parts of the State which show county boundaries and
5 which show major highway locations and I am familiar
6 with their general configuration and this Map appears
7 to me to be consistent with my--with the other Maps
8 that I worked with in the past.

9 Q With general configurations, is that what
10 you are saying?

11 A No, I would say, again, that the county
12 boundaries and the highways are drawn with specific
13 accuracy.

14 Q How do you know that?

15 A Because, again, I have worked with a number of
16 Maps which are drawn to a scale such as the Maps
17 published by the U. S. Geological Survey and the State--
18 in the State Geologist's Office which are explicitly
19 drawn to a scale and the shape and configuration of
20 these lines appears to me to be consistent with what
21 is shown on this Map.

22 Q Now, apart from the appearance of
23 consistency of the various lines, do you know whether
24 there was any technical measurement that was applied
25 to the Map where it shows growth areas--well, the other

1 kinds of areas that are referred to on it?

2 A Well, there is another form of delineation that is
3 on the Map. It has a pattern for developed lands as of
4 1960.

5 Q Right.

6 A And I am familiar with Maps of that kind that have
7 been published previously by the State, so that the lines
8 for their proposed delineations of growth versus limited
9 growth, for example, are drawn with relation to existing
10 developed areas and appear to be accurate to that extent.

11 Q Appear to be accurate. You mean they
12 are consistent with what you have seen before in general
13 appearance. Is that what you would say?

14 A Yes, and with my knowledge of the location of the
15 developed areas.

16 Q Well, can you tell where the municipalities
17 are, for example, because they are outlined on the Map?

18 A The municipal boundaries are outlined in Exhibit
19 D-42 of which is an earlier black and white version of the
20 State Guide Plan and using the two Maps, it is possible
21 to identify where the proposed growth or limited growth
22 areas are with respect to the municipal boundaries.

23 Q You said D-42 has the municipalities on
24 them?

25 A Yes, particularly for the Morris County area that

1 we are working with. They show up quite clearly
2 because that is a limited growth area and, therefore,
3 it is white on the Map and the municipal boundaries do
4 show through.

5 Q Is the municipality of the Township of
6 Chester shown on D-42?

A Yes, it is.

7 Q Can you just point to it right now, please,
8 just with your finger?

9 A Yes, it's right here. It shows the Borough of
10 Chester in the middle.

11 Q Right. Now, what do you know about the
12 extent of any engineering data that renders the
13 placement of all of these lines to be accurate as such?

14 A Well, the Plan Report says that--again, they
15 considered 1960 developed lands. It says they recognize
16 the need to protect flood plains, wet lands, steep slopes
17 and other environmentally critical areas from
18 development. So, apparently, they took, I would assume,
19 Maps of those factors into account.

20 Q All right. Mr. Boorman, when it refers
21 to a State Plan on D-42 in the document which you have
22 in your hand, it is intended only to be a Concept Map, is
23 that not correct?

24 A The Map is labeled as a State Development Guide
25 Plan Concept Map.

1 Q Right, and was it not the intention of
2 the D.C.A. that there be conferences and consultations
3 as to the actual location of the various areas that are
4 referred to in the Maps for future purposes, that is to
5 say, for development or for the retention of areas in
6 a wild state or things of that kind?

7 A Yes, I would say that this is a proposal by the
8 D.C.A. and it is to be reviewed by other agencies and by
9 the public and, presumably, adjustments would be made
10 before the D.C.A. finally adopts the Plan or--well,
11 actually, they do not say in the Report the extent to
12 which its status would be changed after future review.
13 They simply say that there is a review process going on
14 and the implication is that this could result in
15 changes, but in the meantime this is the proposed Guide
16 Plan.

17 MR. LINDEMAN: Your Honor, I object to
18 the document pretty much for some of the reasons
19 that were expressed by the Court earlier this
20 afternoon. In the first place, the witness has
21 tried vainly to show that the Maps contained both
22 in D-42 and the other document, I think it is
23 D-77, is it, are correct but he says they appear
24 to be correct. Now, maybe they are and maybe they
25 are not, but I do not think there is sufficient

1 evidence before the Court now to show whether
2 they are or not.

3 THE COURT: I have not seen the Maps.
4 Give the Map of the State of New Jersey with
5 delineations of all the counties and the
6 municipalities within those counties, I mean he
7 has said generally that these are the locations
8 based upon information that he has seen from
9 working with other Maps.

10 MR. LINDEMAN: Right.

11 THE COURT: You know, he has not
12 suggested and I do not think he has any intention
13 to suggest that they are detailed--in a detailed
14 manner accurate.

15 MR. LINDEMAN: Well, that isn't really
16 the principal concern that I have. There are some
17 Maps there that show a delineation and a location
18 of growth and limited growth areas, but as to that,
19 the witness has testified and the documents
20 themselves say that they are intended to indicate
21 proposals for development of the State as is shown
22 on these Maps and insofar as the Department of
23 Community Affairs is going to receive additional
24 evidence or testimony or argument urgings from all
25 the various interests that have to do with the

1 development of the State and insofar as the
2 document is not final in any way, I object because
3 it does not really have any probative--

4 THE COURT: Mr. Ferguson, and in
5 fact they were never relied on by the Township.
6 They may be some day but they are not relied on
7 by the Township.

8 MR. FERGUSON: They were not relied on
9 by the Township in the Planning and Zoning process
10 because it was not prepared then.

11 However, we rely on it today for this
12 Court to--let's be candid, rule out one possible
13 alternative and that is Judge Furman's analysis
14 of how you take a county's fair share and allocate
15 it among the towns. He did it on a numerical
16 basis, said each town has got to have an equal
17 proportion of low and moderate income housing.

18 THE COURT: The Supreme Court in
19 Madison said that is not a judicial function, as I
20 read Madison. Didn't they? Do not get--it is not
21 a judicially--it is not--they do not want you going
22 in and deciding specifically what the fair share
23 is for a defined area. I have forgotten the
24 language used by Judge Conford.

25 MR. FERGUSON: I agree with all that.

1 What bothered me about Judge Furman was, about
2 his opinion, was that his opinion seemed to assume
3 that as a planning principle development would
4 occur more or less in the same proportion as it
5 had in the past and here is a document by the
6 State of New Jersey that says, basically, that
7 is not so, and here is the Plan that we see
8 projecting years ahead. By the way, Mr.--

9 Q By the way, Mr. Boorman, is there a
10 time line given on that Plan? I think the year 2000
11 is there, is it not?

12 A Yes, it is. The year 2000.

13 Q That is in the title of the Map? A Yes.

14 MR. FERGUSON: Here is the D.C.A. saying,
15 your Honor, this is what we think now that the
16 State of New Jersey is going to look like in 2000
17 in terms of where substantial development will
18 occur. I think it is relevant to this Court in
19 determining, you know, insofar as it is relevant
20 to this case, what should go where, what the State
21 of New Jersey projects. I think it is a very
22 important document and, indeed, when you look at
23 it you will see that the growth areas tend to follow
24 the major highways and that is fairly simple with--
25 of 70 and 80.

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THE COURT: What is the legal efficacy of a document prepared by the D.C.A. admittedly with no power, zoning powers, no authority over a municipality to designate?

MR. FERGUSON: The answer is candidly, none.

THE COURT: Okay.

MR. FERGUSON: But as a legal issue in this case of where--were proper planning decisions made and can they be supported now on the basis of proper planning testimony. I think any Map and projected development Guide Plan prepared by the Bureau, and I am quoting:

"The Bureau of Statewide Planning, Division of State and Regional Planning, Department of Community Affairs," deserves to get some recognition as being in existence by this Court and certainly by the witnesses.

THE COURT: Well, the witness has told me about it. The argument is that the document won't--is not to go into evidence.

Mr. Boorman has said that we will get some day the supporting data or more complex Report from the D.C.A., but when, he does not know, understandably so.

1 You are asking that this document go in as a
2 generalized Plan to support your proposition.
3 At this point I would be very concerned with the
4 absence of the detail for how the D.C.A. arrives
5 at this delineation, what they expect it will
6 represent to the State of New Jersey and how
7 it will be adopted and are they directing it to
8 municipalities and saying we expect you to rely
9 on this or is it a tentative Plan that may be
10 changed tomorrow or maybe changed next month or
11 maybe changed in six years?

12 What I am getting at is without knowing
13 the underlying criteria and how they arrived at
14 all of this mapping, I have difficulty with it
15 just coming in in the state as we have got it,
16 with the other problems that I have indicated.

17 A document--Planning documents that had
18 been relied upon--I think clearly I have taken
19 a position in this case, documents that are not
20 relied upon were not relied upon although they
21 may be relied upon today to show that, yes, we
22 were right, fine.

23 If that is the position, then I think you
24 have got to have the support for it. So, how it
25 was arrived at so there is an opportunity here to

1 develop, my understanding of it, I do not know,
2 it looks like a very terse document. It is a
3 Map with some writing on it, a limited amount of
4 writing.

5 MR. FERGUSON: It is not a comprehensive
6 Planning document with much detail.

7 THE COURT: Yes.

8 MR. FERGUSON: It is a very generalized
9 statement.

10 THE COURT: I am going to have to say,
11 although, you know, the inclination is to say let's
12 take it in as a reflection, but in fairness to
13 the plaintiff, I think in light of the fact that
14 we really do not know how the D.C.A. arrived at it
15 and measuring the fact that the D.C.A. has no
16 zoning powers, etc., I think I am going to have to
17 sustain the objection on it, so we will exclude--
18 what was the number on it, D-42?

19 MR. FERGUSON: Yes.

20 THE COURT: D-42.

21 MR. FERGUSON: Well, no, that is not
22 quite right. It is D-77.

23 THE WITNESS: 77.

24 THE COURT: Yes.

25 MR. FERGUSON: Which is a formalized and

1 colored reprint of D-42 for identification.

2 THE COURT: Okay. All right.

3 Q In the Planning process, did you consult
4 the Somerset County Master Plan? A Yes, I did.

5 Q Did you discuss the compatibility of your
6 recommendations to the Planning Board with the Somerset
7 County Master Plan? A Yes, I did.

8 Q At that time did you form an opinion about
9 whether Ordinance 76-12 and the Master Plan of Chester
10 Township was consistent with the Somerset County Master
11 Plan Land Use Element? A Yes.

12 Q Okay. What was that opinion?

13 A That it is consistent.

14 Q Can you briefly elaborate on that and
15 tell us in what way?

16 A Yes. The Somerset County Planning Board's Land
17 Use Plan calls for local village development exclusively
18 in the vicinity of Chester Township. They do show a
19 limited area around the villages of the Gladstone and
20 Peapack, which are proposed for continuation and a limited
21 expansion of what they call village development, which is
22 homes on smaller lots and with a limited amount of
23 multi-family use, but this area is circumscribed by a
24 larger area of open land which is to be held as a rural
25 type of area, and this is the area which extends up to the

1 boundary of Chester Township and which in effect is
2 reflected in the continuation of low density zoning in
3 Chester Township until you get close to the boundaries
4 of the Borough of Chester.

5 Q So, to sum up then, with respect to the
6 Morris County and Somerset County Master Plans, land use
7 elements, is it your opinion that the Master Plan and
8 Zoning Ordinance of Chester Township is consistent with
9 those land use elements?

10 A Yes. I previously mentioned the sewer question,
11 The land use element Plan of Morris County does include
12 a reference to a possible future trunk sewer line in
13 Chester Borough and Chester Township, but this is specifi-
14 cally excluded from the Somerset County Planning Board's
15 Plans. The Zoning Ordinance of Chester Township reflects
16 the non-existence of such a trunk sewer line and,
17 therefore, it is compatible in that respect with
18 Somerset County, but as I indicated before, there are
19 problems which the Morris County Planning Board now
20 recognizes in this trunk sewer proposal anyway.

21 Q All right. As a Professional Planner, you
22 are familiar, are you not, with the Tri-State Regional
23 Planning Commission and I think you testified that you
24 consulted with some of their--you consulted their
25 documents during the Planning Process? A Yes.

1 Q Do you have an opinion as to whether the
2 Master Plan and Zoning Ordinance of Chester Township
3 is consistent with the Planning as stated in those
4 documents by the Tri-State Regional Planning Commission?

5 A Yes, it is.

6 Q And that is your opinion? A Yes.

7 Q That it is consistent?

8 A That it is consistent, yes.

9 Q Are you familiar with the Regional Plan
10 Association? A Yes, I am.

11 Q Did you consult any of the Regional Plan
12 Association documents during the Planning and Zoning
13 process? A Yes, I did.

14 Q Can you recall which ones?

15 A Yes, I remember the "Future of Morris County" and
16 I believe also a document called "The Second Regional Plan."

17 Q Did you at that time form an opinion as
18 to whether a Master Plan and Zoning Ordinance of Chester
19 Township was consistent with the Planning principles
20 enunciated by the Regional Plan Association in those
21 documents? A Yes, I did.

22 Q What was that opinion?

23 A The opinion was that the zoning is consistent with
24 the Regional Plan Association's principles and planning
25 proposals.

1 Q Has anything come to your attention since
2 the time you were planning and drafting the Zoning
3 Ordinance to change any of those opinions you have
4 testified about today? A No.

5 MR. FERGUSON: Your Honor, that is
6 all the questions I have. I might have a few
7 more when Mr. Lindeman gets through, just on
8 one minor section.

9 CROSS EXAMINATION BY MR. LINDEMAN:

10 Q Mr. Boorman, to go to last things first,
11 with respect to the fact that the Zoning Ordinance in the
12 Master Plan of Chester Township comports with that of
13 Somerset County Master Plan Land Use Element.

14 A Yes?

15 Q Do you know whether or not there are any
16 law suits that have been instituted in Somerset County
17 respecting the so-called village approach to zoning in
18 Somerset County?

19 A There have been zoning law suits instituted in
20 Bedminster and Bernards Township that I am aware of and
21 I am aware of a Decision by Judge Leahy in which he
22 referred--this is in regard to Bedminster--in which he
23 referred to the Somerset County Master Plan and indicated
24 that that Plan should be followed with regard to its
25 proposals for village development along Route 206.

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1 Q Do you know whether--do you know what
2 happened in the Bedminster, Bernardsville law suits?

3 A Generally, yes. In Bedminster the decision that
4 the Township had to rezone was upheld and the Township
5 was ordered to rezone and they are now doing so or have
6 done so and I believe the results are being litigated
7 at this point and in Bernards Township, the litigation
8 has not yet been completed as I understand it.

9 Q Isn't it fair to say in the event that the
10 various Upper Court Decisions that have been handed
11 down on the various Somerset County municipalities should
12 remain the law, that the Somerset County Plan may have
13 to change simply because of the direction of the Courts?

14 MR. FERGUSON: At this point I am going
15 to object, your Honor. Unless we know exactly
16 what this witness was referring to and what the
17 question refers to, I think, is rank speculation.
18 Indeed, I know of at least one other reported
19 case in Somerset County; that is the Montgomery
20 Township case, Montgomery Associates v. Montgomery
21 Township, in which the town was upheld and I think
22 we crank in all the litigated cases and then ask
23 the witness to project it, it might be closer to
24 what Mr. Lindeman is trying to get at.

25 THE COURT: Why relevant?

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MR. LINDEMAN: Well, the witness

testified that in his opinion the Township of
Chester is consistent with Morris--with the
Somerset County's Master Plan. It may be that
their Master Plan will have to change because,
in fact, Somerset County in some respects has been
exclusionary and the fact that their Master Plan
may have stated something, their Master Plan, by
the way, which is not before the Court now--

MR. FERGUSON: It will be because it is
in those--

THE COURT: I think we are kind of
galloping along the road or toward the road of
irrelevancy. I am willing to let you reach out
but I think it is a little too far reaching.

MR. LINDEMAN: I will not pursue that
line of questioning, your Honor.

THE COURT: I will sustain the
objection.

Q Mr. Boorman, you did testify, I believe,
on direct examination, that there really was not very
much farming that was going on in Chester Township today,
that while there may be some lands that had been farmed
that in large respects it is not a farming community. Is
that not so?

1 A Yes, in the sense of working farms where the
2 occupant of the property is, say, making a living by
3 farming or where that is a primary activity.

4 Q Right, and that as a general proposition,
5 the defendant township is in the line of development
6 even though it is--it may be difficult to characterize
7 the strength and the force of the line, but that it is,
8 nevertheless, in the line of development and that
9 inexorably there is a certain push toward development in
10 the direction of Chester Township, isn't that so?

11 A No, I wouldn't say that is really the case.
12 Obviously the direction of development is determined by
13 the zoning of the areas involved. If there were no
14 zoning in Chester Township or if the zoning were
15 changed to, for instance, allow all the development
16 proposals that were made to the Planning Board, there
17 could be a push in this direction by the developers.
18 In other words, there is a possible market for additional
19 housing of this type perhaps over and above the amount
20 that is now zoned, but this market would be at the expense
21 of other areas in the region which, in my opinion, should
22 more desirably accommodate this market demand.

23 So, my conclusion is that, again, that the market
24 should be accommodated in other ways and that if the
25 zoning of Chester Township does stay as is, this will

Boorman - cross

1 prevent such a movement of the market and, therefore,
2 there is not an inexorable trend toward this kind of
3 additional growth in Chester Township.

4 Q I think you did say, however, in that
5 answer, Mr. Boorman, that if zoning were to change in
6 Chester Township so that, for example--well, you
7 did not say this, for example, multi-family dwelling
8 were permitted, that developers would develop for that
9 purpose in Chester. Is that correct?

10 A Well, as I concluded in my fair share housing
11 study, there is a regional housing need for the
12 construction of additional multi-family housing over and
13 above what is now zoned in the region. Certainly if one
14 community changes its zoning so as to allow, say, a
15 relatively large amount of such housing, the housing will
16 tend to go there, but, of course, that is not to say that
17 is the right plan for the region.

18 Q However, if the marketing forces were not
19 such that it was appropriate for development, developers
20 would not develop for multi-family or any other kind of
21 development unless the conditions really called for it.

22 MR. FERGUSON: I object to the form
23 of the question. I do not understand the word,
24 "appropriate."

25 THE COURT: Rephrase it.

1 MR. FERGUSON: Unless that is made clear.

2 THE COURT: Rephrase it, please.

3 MR. LINDEMAN: All right, I will. I am
4 sorry.

5 Q Even assuming that the Township were
6 zoned, let's say, for multi-family or even industrial
7 purposes, if the market forces were not such that there
8 was a need and a real commercial purpose, that such
9 building be done, developers would not build even if the
10 zoning were there for that purpose, isn't that so?

11 A Yes.

12 Q And it is also the fact, isn't it, that from
13 a regional standpoint Chester is in the path of urban
14 development spreading out from the growing employment
15 centers along Routes 80 and 287 in Morris County? Isn't
16 that so? So as not--I do not want to appear to be
17 trapping you, Mr. Boorman, I am referring to page 2 of
18 your Report of June of 1975 which, I think, is D-57, is it?
19 It was just one of those last documents.

20 MR. FERGUSON: D-57.

21 Q D-57. You see at the top of page 2 you do
22 state that Chester is in the path of urban development.

23 A Yes. This is referring as indicated in the succeeding
24 sentence to the fact that there is an area of wide
25 pressure and demand for new housing.

1 Q Isn't your opinion, Mr. Boorman, but for the
2 fact that Chester had been zoned the way it has been for
3 so long there would have been multi-family dwelling of
4 a larger amount in Chester at this time?

5 A I would say that Chester would probably be
6 subject to the kind of leap frog sprawl development which
7 could produce multi-family housing in the midst of
8 relatively open areas.

9 Q Is it not also fair to say that Chester is
10 changing its character or it has gone pretty far along
11 in changing its character from a farming rural community
12 to that in the direction of a suburban residential
13 community?

14 A No. I would say it is not very far along. There
15 is a distinction between farming and rural, when you
16 use farming in the sense of active working farms, but a
17 rural area does not necessarily have to comprise active
18 working farms. It can also comprise areas of large
19 estates or areas of woodlands or of large tracts of
20 undeveloped land for which farming isn't a primary
21 activity. Those kinds of areas are still--I would still
22 call in the category of a rural area and I would say that
23 Chester Township is still primarily a rural area by that
24 definition.

25 Q And you are not saying then that it has

1 shifted from farming to this estates residential, if not
2 suburban area?

3 A I don't think there was ever that much farming
4 in the Chester Township area. There was some, but it
5 was not as heavily a farming area as many other parts of
6 the State. It does not have that kind of soil and
7 topography.

8 Q Now, Mr. Boorman, in the Master Plan of
9 Chester which formed the framework for the Zoning
10 Ordinance that you prepared, there is--there has
11 frequently been referred to in this case a reference to
12 the need for apartment rental and rental units and as
13 has been shown, that number was 650 apartment and rental
14 units. Now, you, as I think I gathered from your direct
15 testimony, assume that the Zoning Ordinance should only
16 speak approximately to the year 1980? A Yes.

17 Q And that was the reason why you in
18 consultation with members of the Board provided for 500
19 multi-family units instead of--I mean 300 instead of
20 650. Is that correct? Am I stating that correctly?

21 A I don't remember the 650.

22 Q Well, perhaps you will just accept that
23 is what the Master Plan for Chester Township states?

24 A Oh, I see what you mean.

25 Q The Master Plan refers to 650 but you

1 thought that 1980 was the appropriate year or the time
2 period for the success stance of the Zoning Ordinance
3 that you were going to do and so you prepared--you
4 allowed for 300 units, correct?

5 A The 300 was a result of my calculation up to 1980.
6 I didn't make a calculation beyond that point and I
7 didn't derive any figure of 650. That is, you say, was
8 in the Master Plan.

9 Q And that was prepared by Messrs. Candoub and
10 Fleissig, correct? A Yes.

11 Q Now, can you tell us please, what
12 consultation, if any, you had with anybody in that firm
13 as to the foundation for their arriving at the figure of
14 650 units?

15 A Well, in the first place, the figure 650 does not
16 appear explicitly in the Master Plan Report. It is
17 derived from a calculation of the size of their medium
18 density residential area as against the density figure that
19 we project, and I think this is significant that they
20 really delineated in that area. They didn't work so much
21 with the numeric projection as I did because they didn't
22 do a fair share calculation.

23 In regard to the rest of your question, I did not
24 consult with anybody on their staff but the Planning
25 Board made available to me all of their studies and

1 reports and original documents or all those that were in
2 the possession of the Planning Board and I felt that
3 those were sufficient for the purposes of my analysis.

4 MR. LINDEMAN: I wonder if the Court
5 can help me on the number of this Exhibit. I
6 think it is P-12.

7 MR. FERGUSON: P-12-A is the Master
8 Plan.

9 THE COURT: The Master Plan?

10 MR. FERGUSON: P-12-B is the reference
11 base.

12 MR. LINDEMAN: Yes.

13 THE COURT: Broken down into P-12-A
14 and B.

15 Q Now, Mr. Boorman, I show you P-12-A in
16 evidence at page 10 of which reference is made, the place
17 I am pointing to, "a future need of about 650 rental units."

18 Now, I just wondered if you can explain your
19 previous statement that was not a numeric--there was not
20 a numeric calculation in the Chester Master Plan? Am I
21 running up the wrong alley?

22 A I see. I did not remember this part of the Report.

23 Q Okay.

24 A I did remember trying to determine how many units
25 could be accommodated in the medium density residential

1 area shown in the Master Plan and that was not explicit
2 in the text. I have to go and make a calculation between
3 the number of acres involved and the density and units
4 per acre and I don't know if that figure comes out to
5 650. I assumed that it was, when you spoke of 650 but
6 now looking at the Report, I am not sure.

7 Q Okay. In any event, you assume that that
8 figure--whatever figure was talked about--whatever
9 calculation was made in the Master Plan--did not run to
10 the year 1980 but somehow to a time beyond that. It had
11 to be. Is that not so?

12 A Well, I did not use this particular estimate of
13 rental housing need. I do not know how this was arrived
14 at and, instead, I used my own method which was by means
15 of making a fair share housing calculation.

16 Q Okay. And you have testified to that
17 before and I certainly am not going to ask you to go
18 over that again. The Zoning Ordinance, however, that you
19 did prepare was prepared using the Master Plan for some
20 purposes, certainly, was it not? A Yes.

21 Q You knew where their suggested place for the
22 M.D.R.'s were and where there should be two acre zoning
23 and five acre zoning, so that you did use it to some
24 extent.

25 A Yes, I used it primarily from the standpoint of the

1 proposed land use Plan Map. I proceeded independently
2 to make an estimate of the housing need and how much
3 should be zoned numerically.

4 Q Right. Now, in arriving at the figure of
5 300 units, which varied from time to time because I think
6 when you made subsequent calculations after your first in
7 June of '75, you even arrived at a lesser figure, didn't
8 you? A Yes.

9 Q But, nevertheless, as of June '75 when you
10 arrived at 300, that was for the purpose of generally
11 of the construction of multi-family dwelling?

12 A Yes.

13 Q Without necessarily pinpointing the number
14 of units that Chester had to accept or should have
15 accepted as its fair share of least cost housing, is that
16 not so? A No.

17 Q No?

18 A This was the fair share of least cost housing. My
19 report does refer to the possibility of one family houses
20 on small lots, but from a practical standpoint, I
21 recognize that it is more likely that the whole number
22 would be comprised of multi-family units.

23 Q So, when you were saying then--when you did
24 provide for 300 units in the Zoning Ordinance, they were
25 all to be in satisfaction of the Supreme Court direction

1 of fair share and least cost, whatever that may have
2 meant. Again, I don't mean to be contemptuous of the
3 Supreme Court, but that is what you were intending when
4 you allowed for 300 unites?

5 A Yes, at that time the least cost concept had not
6 come into existence because that came from the Madison
7 Township Decision, but the Mount Laurel Decision had come
8 down and it was in those terms that I proposed the
9 rezoning for 300 units.

10 Q Well, the words "fair share," in any event.

11 A Yes.

12 Q Were used in Mount Laurel and that was
13 your intention, that is what that 300 units should be; it
14 was the fair share that was allocable to Chester Township?

15 A Yes, of housing that could be low and moderate
16 income housing.

17 Q Now, you provided that there should be no
18 more than 150 units on each of the three parcels that
19 were selected and when I say, you, of course, I am referring
20 to you and the Planning Board. A Yes.

21 Q You did not mandate this separately and by
22 fiat? A Yes.

23 Q But it was the general conclusion that it
24 should be limited to 150 units? A Yes.

25 Q And that so far as, let's say, the Querin

tract alone was concerned, that is the middle one, right?

A Yes.

Q That was zoned for R.M. or M.D.R. comprising of about 100 acres, was it, do you recall?

A Yes, at least 100 acres, on that order.

Q May 150; whatever it was. A Yes.

Q It was more than 100 acres and that only 150 units could be built on it? A Yes.

Q And that would satisfy the fair share requirement for Chester Township, that together with whatever 150 might be built?

A Up to 1980, yes.

Q Up to 1980. Now, as a matter of economics, wouldn't it have been necessary that 150 units limited to a tract such as the Querin or even the Mennen tracts, would have to have been fairly expensive houses in order to justify the use of anyone of those parcels for up to 150 units?

A No. There is nothing in the sites themselves or in the proposed size, the 150 units that would necessitate high cost. For example, if New Jersey Housing Finance Agency funds were used to finance the projects, presumably they could have been built and have also brought in federal subsidies, so as to make them directly available to low and moderate income families.

1 Q Well, if there were to be that kind of
2 development for those parcels, wouldn't it have been
3 proper that there be such a requirement written into
4 the basic law of Chester Township, either in its
5 Zoning Ordinance or its Master Plan or some kind of
6 Ordinance that would have the force of law?

7 A Well--

8 MR. FERGUSON: I object to the question
9 insofar as it calls for a legal conclusion and
10 in voicing the objection I recognize there might
11 be a planning conclusion called for. I do not
12 think it is clear from the question.

13 THE COURT: We will assume it is a
14 planning conclusion.

15 MR. LINDEMAN: Absolutely. Oh, yes, it's
16 a fair objection. That is the way I do mean it.

17 Q From the planning point of view, in order
18 that either one of these or anyone of these three parcels
19 would be dedicated to the construction just up to 150
20 units, that there would have to be some kind of a
21 direction that public funds or some kind of public
22 assistance would be available or would be required; other-
23 wise, economically, they could not have been used for the
24 fair share that Chester Township was to bear, isn't that
25 so?

1 MR. FERGUSON: I object to the question
2 insofar as it makes the assumption that fair
3 share analysis seems to require that a house or
4 a lot--or an area actually be zoned for low and
5 moderate income and the low and moderate income
6 housing must be built in order to satisfy fair
7 share. There is a legal assumption in there
8 which I do not think is proper.

9 THE COURT: I do not think there is
10 an assumption. He said that the 300 units was the
11 fair share of the housing that could be for low
12 and moderate income housing. That is what he
13 said. This was his--as a basis of Mount Laurel
14 prior to Madison, so there is no--I do not think
15 there is any assumption. This is a statement that
16 your own witness has said. I think it is something
17 that he has the right to explore.

18 Let's take ten minutes.

19 (Short recess)

20 THE COURT: All right. We are back
21 to that question.

22 Q You still have P-12 before you, have you
23 not, Mr. Boorman? That is the Chester Township Master
24 Plan? A Oh, no.

25 Q Oh, I am sorry.

1 A That's over there.

2 MR. FERGUSON: We substituted. Over here.

3 THE WITNESS: Yes, it is on your table
4 there.

5 MR. FERGUSON: I apologize.

6 THE WITNESS: I put it there.

7 Q Well, anyway, but getting back, using that
8 and your Report which was D-55. A Yes.

9 Q When you were calculating fair share and--
10 fair share calculation on pages 4 through 8 of that
11 Report, you were referring to low and moderate income
12 housing, were you not?

13 A I was referring to housing which could be low or
14 moderate income under the terms of the Mount Laurel
15 Decision.

16 Q Now, in limiting the units or the parcels
17 to 150 multi-family units, the sole purpose was to avoid
18 concentration of housing, isn't that so, and no other
19 particular objective?

20 A Yes, well, one other objective was to avoid undue
21 benefits to one particular property owner.

22 Q Yes. You stated that. Now, you also
23 stated that before you drew your Zoning Ordinance and
24 possibly even before the Master Plan became effective,
25 that you had examined the application of Mr. Guerin?

1 A Yes.

2 Q Which was the Graytop parcel and that is
3 the center one, so that you know that Guerin, Greytop,
4 wanted to use that property for multi-family dwelling
5 purposes?

A Yes.

6 Q And that property was selected as one of
7 them. I take it it was just by happenstance that a
8 person who actually applied for such a use happened to
9 have property that was also one that fulfilled all of
10 the relevant criteria. Was it pure accident or was
11 there any connection between the fact that he wanted to
12 do it and that it met the criteria?

13 A I would say it was more in the category of what
14 you describe as an accident in that that site is
15 particularly well located for that proposed use being on
16 Route 206, being right next to the shopping center.

17 Q The other two parcels, both the easterly
18 and westerly ones, are both owned by Mennen, are they
19 not, by the same individual?

20 A The one on the west is. I am not aware that the
21 one on the east is.

22 Q In any event, you testified that no inquiry
23 was made of--no direct inquiry was made of either one, if
24 it were one party, of whoever the owner was of those two
25 parcels because there was an effort being made

1 not to appear to favor any one property owner, is that
2 correct?

3 A Yes. Of course, the area as a whole had been
4 shown on the Master Plan and had been put up for a
5 public hearing before the Master Plan was adopted and,
6 of course, before the Zoning Ordinance was adopted,
7 public hearings were held on the Zoning Ordinance in
8 which property owners had an opportunity to express
9 themselves.

10 Q Right. It would be fair to say that one of
11 the intentions of Mount Laurel and, therefore, the Planning
12 that emanates from Mount Laurel in zoning for smaller
13 parcels of land so as to enable a municipality to fulfill
14 its obligation of fair share was actually to see to it
15 that it was done, in fact. Isn't that so?

16 A No, not as I read the Mount Laurel Decision. The
17 ruling is that communities must zone for their fair
18 share of housing which can be for low and moderate income
19 families but doesn't have to be.

20 Q Right. Then was it not a principle or
21 is it not a fair principle of Planning that the areas
22 are--are not going to be zoned for low and moderate
23 income dwellings where the municipality knows that it will
24 not in the reasonable future be developed for that
25 purpose?

1 A Well, the only means of developing housing that
2 is really available to low income people and to the lower
3 ranges of the moderate income range is through the use
4 of State and Federal subsidies and at the time we were
5 working on the Zoning Ordinance and, in fact, up until
6 the present time, there are no such subsidies available
7 for new housing projects in New Jersey because of a
8 shortage of federal funds, so this just isn't a practical
9 alternative at the present time, anyway.

10 Q I am talking about the intentions of the
11 property owners. I am not going to pursue it, though.

12 There would be ways of finding out if property
13 owners did not want to dedicate their lands for the
14 purpose of multi-family dwellings, would there not? I
15 mean, couldn't a general mailing be sent to all of the
16 people in the municipality asking them, for example,
17 whether or not a whole number of questions among which
18 could be one asking if their property was zoned for multi-
19 family dwelling, would they use it for that purpose?

20 A I think that would be a bad idea. Obviously,
21 most of the owners involved have properties that would
22 not be intended to be zoned for the low or moderate
23 income families and there are locations which would not
24 be appropriate for that use, so I think that would not be
25 a good idea.

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Q Well--All right. I won't pursue it.

THE COURT: Mr. Lindeman, before we leave this area, one of the questions that you had before the break, raised the question in my mind--raised a question in my mind. I would like to ask a question about it.

Did you, when you discussed the 150 acre parcels, discuss the probable cost of land acquisition with the Planning Board or did the Planning Board discuss it in your presence?

THE WITNESS: No.

MR. FERGUSON: Your Honor, do you mean the 150 limitations?

THE COURT: Yes, of the three sites that were discussed, were land costs discussed in-- let's say if I was a developer coming along and wanted to acquire one of those parcels to build upon, were land cost acquisition or were the cost of acquiring that land discussed? It wasn't at all?

THE WITNESS: Well, there might have been some discussion about that. I don't remember very clearly.

THE COURT: Was there any--

THE WITNESS: But I think--if there was it was decided that was not a relevant factor

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1 or a factor that could be controlled by the
2 Planning Board.

3 THE COURT: Well, after your
4 Report on the 300 units and that it could serve
5 part of the low and moderate income fair share,
6 was land acquisition cost discussed after they
7 received that Report?

8 THE WITNESS: No, no, it was not.

9 THE COURT: Were building costs
10 discussed?

11 THE WITNESS: No. Of Course, at that
12 time when the Ordinance was adopted, the Madison
13 Township Decision had not come through that
14 talked about cost housing. I did do a subsequent
15 Report on that.

16 THE COURT: I am not looking at it
17 from that standpoint, quite frankly. I am looking
18 at it from the standpoint any discussions the
19 Planning Board might have had as they related to
20 how much it would cost to produce the housing
21 that the Zoning Ordinance permitted and the
22 potential of that housing ever serving low or
23 moderate income families in relationship to the
24 costs.

25 THE WITNESS: I advised the Board that the

1 zoning should be set so as to not exclude low
2 and moderate income construction in terms of
3 setting the standards and controls. For instance,
4 I don't believe there is a bedroom restriction.
5 My interpretation of Mount Laurel and the Planning
6 Board's was that the zoning has to be such as to
7 permit the construction of low and moderate income
8 housing and, as far as I know, the zoning controls
9 do not preclude a project, for instance, that
10 could be developed under the New Jersey Housing
11 Finance Agency and we did go so far as to include
12 in the criteria for choosing between applications
13 the extent to which low and moderate income
14 housing objectors would be met; that is, in the
15 language of the Ordinance, but I recognize the
16 problem that a local Planning Board, such as in
17 Chester has, that at that time and up to the
18 present, there were not any federal subsidy funds
19 available and any housing that any builder would
20 build I think anywhere in the State, at least in
21 the northern part of the State without subsidies
22 is necessarily going to be pretty expensive
23 housing.

24 THE COURT: Mr. Lindeman.

25 Q You did not intend that the 300 units were

1 to be all low or moderate income housing but that just
2 low and moderate income housing was to be included in
3 that 300 units. Isn't that so?

4 A No, again, the zoning is set so as to permit the
5 construction of low and moderate income housing. Now,
6 in my Report on housing need, I did discuss the fact
7 that, say, private town house construction would be less
8 expensive than one family homes and that even if this
9 were built without a subsidy, which, of course, we had
10 to anticipate that it would be built without a subsidy
11 because there were not any subsidies available, that even
12 in that situation that a contribution would be made to
13 overall housing needs in that accommodations comparable to
14 one family homes would be provided at a lower cost than
15 one family homes and then after that trickle down or
16 filter down or the filter up principle would apply so
17 that there would be at least an indirect effect on housing
18 for actual low and moderate income families.

19 Q Following up the Court's questioning then,
20 was there no calculation attempted of any kind as between
21 you and the Planning Board to show what the cost per unit
22 would have to be in a parcel such as the Guerin parcel
23 or in either of the other two assuming, of course, that
24 there are only 150 units on the overall parcels that
25 were set aside for the zoning as fixed by you, by the

1 Township? No such calculation was ever made?

2 A Well, because there was no feasible way of
3 accomplishing the construction of, say, a low income
4 housing project because, again, this has to have the
5 subsidy and there were not any subsidies and as far as
6 whether housing in Chester would be more expensive than
7 housing built in another community in Morris County,
8 that is a factor which I think is really overruled by
9 the fair share principle. The fair share principle says
10 that every community should zone for, again, a fair share
11 and this has to include higher cost communities as well as
12 lower cost communities. If Chester, say, or if we had
13 made the analysis, we might have found regardless of how
14 you set the zoning controls or the location, that any
15 multi-family housing construction in Chester would turn
16 out to be under private auspices more expensive than
17 housing, say, in Mount Olive, but if we carried--if we
18 tried to derive the conclusion that, therefore, Chester
19 has no need to zone for any multi-family, I don't think
20 that would be defensible and I think the fact that Chester
21 might or is an area where higher cost housing can be
22 sold, I don't think that is Chester Township's fault. I
23 think--but I think the Chester Township still has an
24 obligation which is recognized in the zoning to provide
25 for multi-family housing.

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THE COURT: Mr. Boorman, did the Planning Board ever get into the specifics of trying to develop a method whereby housing would be provided for, let's say, its municipal employees who obviously don't range out of the-- too far out of the moderate income, if their employees salaries are characteristic with other employees' salaries throughout the County, did they ever get into a discussion about making available housing within their municipal boundaries or discussing housing for these people within the area and where they would live?

THE WITNESS: Well, I recognize and I think the Planning Board recognized that there would have to be a subsidy in order to actually provide housing which would be lower cost. I don't think the idea was discussed of the Township providing a subsidy. I think that the feeling was and my feeling would be that there are State and Federal Programs and that if there would be a subsidy, that would be the way things should go but, at the same time, at that time and up to the present, the subsidies are not actually available. There isn't enough federal money so we are really at an impasse.

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THE COURT: Let me ask you this:

At any time did the Planning Board ever discuss the need for housing for their municipal employees -- Do you follow me--within the municipal boundaries? Was there ever any consideration given to people who might be employed as police officers--I don't know that they have fireman-- clerks in the Municipal Court, the clerks in the Municipal Clerk's Office, did they ever discuss meeting the needs of those people for housing within the municipal boundary by some form of zoning?

THE WITNESS: Well, there was a recognition that there is a need for more housing for that kind of person, including the people who work in the municipality and there was discussion also about senior citizen families, say, beyond limited incomes within the Township and this was a part of the--or this entered into the decision of the Planning Board to support rezoning for multi-family housing, but that is as far as it went.

There was not a discussion of how the Township itself could build or subsidize housing. Again, there was a recognition--

THE COURT: I am not talking about the

1 Township itself building the housing. What I am
2 asking about was this problem discussed? In
3 other words, you have a core of municipal
4 employees who, as I understand it, if their
5 range is at moderate income or less, would not
6 be able to buy a new home in Chester Township. Was
7 that problem discussed at all by the Planning
8 Board? That is what I am getting at.

9 THE WITNESS: I am sure it was. In
10 fact, at one point I made a draft--I worked up
11 a draft of the statement that the Planning Board
12 was thinking of issuing to tell the public why
13 they were working on the idea of multi-family
14 housing and, as I remember it, that did enter
15 into the discussion as part of the reason why the
16 Planning Board was considering multi-family
17 zoning.

18 THE COURT: Okay.

19 THE WITNESS: But they did look at both
20 from a regional standpoint, Mount Laurel, but
21 also--they also considered internally their
22 reasons and the justification for going into
23 multi-family zoning. They did consider local
24 needs of these people living there and I don't
25 specifically remember, but I think they--I think

1 we probably did include a discussion of municipal
2 employaes.

3 Q Mr. Boorman, do you recall a secret--not a
4 secret--I am sorry--a closed session meeting of the
5 Planing Board on August 2, 1976, at which the number of
6 multi-family dwelling units was discussed?

7 A I don't remember the dates of the various meetings.

8 THE COURT: What is the date? August
9 what?

10 MR. LINDEMAN: Second.

11 Q I show you P-43 in evidence and ask you if
12 you will just read quickly--read that section that is
13 designated R. M. Zones.

14 (Short recess)

15 THE COURT: What was the year?

16 MR. LINDEMAN: 76.

17 A Yes, I remember the minutes of this meeting.

18 Q Did you attend that meeting?

19 A I don't remember, but the reference is to a Report
20 which I made at the request of the Chairman on the
21 Madison--on the Middlesex County Decision of Judge Furman
22 and that is where the reference to 500 units comes in.
23 I said that if you use Judge Furman's method, you come up
24 with 500 units instead of 300.

25 However, in my Report I did not endorse that.

1 I said that there is a weakness in Judge Furman's method
2 which is that he just divides everything equally.

3 Q So, when the minutes says the Planner
4 has suggested a minimum of 300 units be established for
5 R. M. Zones within the Township, however, in a later
6 memo from the Planner this figure was raised to some
7 500 units, that you are just referring to Judge Furman's
8 formula for which you do not fully agree? Is that
9 correct?

10 A Yes, I don't believe I attended this meeting and
11 this is a reporting by the secretary of the discussion
12 at the meeting and what she makes reference to was my
13 original report about the 300 units and then the later
14 report I did at the request of the Chairman on Judge
15 Furman's Decision and to the best of my recollection I
16 was not at the meeting. This is simply her--the
17 secretary's relating the discussion of the Planning
18 Board in which apparently they considered my two reports.

19 Q Now, a sentence here states that suggestion
20 was made to set 100 R. M. units and 300 low and moderate
21 income units. Did you suggest any such thing?

22 A No.

23 Q That is unknown to you? You don't know
24 where that comes from? A Right.

25 Q They did not have another Planner at that

1 time, did they, so far as you know? A No.

2 Q And where it says "regardless of the number
3 of each to be set, the present R. M. Zone will
4 substantiate up to 500 units total," You don't know how
5 they come to that sentence? Is that correct?

6 A I can only infer that this was on the basis of
7 discussing my two reports which talked about 300 and 500
8 and it must have been that some of the members of the
9 Planning Board thought it might be possible to separate
10 zoning for low and moderate income as against other
11 kinds of multi-family zoning, but I never suggested or
12 recommended or endorsed that kind of approach and, of
13 course, it was not incorporated in the Zoning Ordinance.

14 Q Do you recall after August 2, 1976 having
15 a discussion with people in the Planning Board where you
16 were asked to explain that formula which you did not
17 endorse?

18 A Well, no, I would not have been asked to explain it
19 because I never presented it.

20 Q Well, here it is mentioned on August 2, '76,
21 and I am just asking you whether there was any discussion
22 after that time that you can recall where you convinced
23 the Board or you at least had further discussions so that
24 the figure was held down to the 300 units?

25 A The Planning Board arrived at the 300 on the basis

1 of my reports, but I do not believe I was at the
2 meeting where they made the final decision. I was at
3 a later meeting with the Township Committee or the
4 Council, the governing body where the rationale for the
5 whole concept was discussed and the possibility was
6 discussed of increasing the number to 300 or of doing
7 other things like allowing mobile homes and there was
8 a general discussion with some of the members of the
9 governing body questioning why it had to be as many as
10 300, but the governing body ended up by agreeing with
11 the Planning Board and the 300 units, of course, is what
12 is included in the zoning.

13 Q Would the fact that the Guerin property,
14 Greytop, was put up for sale, have any affect on your
15 view as to whether or not it was an appropriate parcel
16 for planning multi-family dwellings?

17 A Well, it was not put up for sale as far as I know.
18 I think Guerin, himself, was to be the developer.

19 Q If it were since, however, would that make
20 any difference?

21 A No. I don't see how it would.

22 Q All right. You stated on direct examination
23 that Chester Township did not have the capability to
24 provide much housing because of environmental, topographic
25 and other problems. I am wondering if you are familiar

1 with Mount Laurel and its topography and environmental
2 problems, if any?

3 A Generally. I am mostly familiar with Mount Laurel
4 through having read the decision of Justice Hall in which
5 the characteristics of the Township are described.

6 Q Do you know whether from a physical point
7 of view--do you know what Mount Laurel is like?

8 A Yes, I would say it is substantially different
9 from Chester Township. It's a level sandy area in the
10 coastal plain of the State.

11 Q You get that because of Judge Hall's--
12 Justice Hall's description of it?

13 A Well, that and my knowledge of the geologic
14 map of the State which I have up on the wall in my office.

15 Q Isn't that kind of sandy area a very
16 sensitive area from an ecological point of view?

17 A Well, in a different way.

18 Q Different, but nevertheless, ecologically
19 sensitive. Is that fair to say?

20 A No, I don't think so. It is not in the category
21 of the pine barrens which is sensitive to the extent that
22 it is completely or almost all undeveloped and still has
23 a pristine water supply. Mount--the Township of Mount
24 Laurel is close to the Delaware--the Delaware and has--and
25 while it has aquifers, these would not be of a sort which

1 pristine or unspoiled or form a distinct body of water
 2 as is the case with the pine barrens. The pine barrens
 3 also has unique vegetation which is peculiar to that
 4 area and which would be disturbed by a disruption of
 5 the water table and such and this isn't the case in
 6 Mount Laurel Township.

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

9 THE COURT: Okay.

10 MR. FERGUSON: Just a couple more.

11 REDIRECT EXAMINATION BY MR. FERGUSON:

12 Q Mr. Boorman, on cross examination you
 13 responded to Mr. Lindeman's question about what would
 14 happen if Chester Township did not have a Zoning Ordinance
 15 and the land owners could. I think you responded
 16 affirmatively to the thrust of the question, to the effect
 17 would there be more multi-family developments built in the
 18 Township if Chester did not have zoning restrictions?

19 A Yes.

20 Q Okay. Would you clarify what you mean, or--
 21 I do not understand--I am not sure I understood the
 22 question and I certainly did not understand your answer
 23 to it. Were you talking or assuming that other
 24 Townships would have Zoning Ordinances in effect and Chester
 25 Township would not? A Yes.

1 Q Or were you assuming that all Zoning
2 Ordinances in surrounding Townships would be eliminated
3 also?

4 A No, I was assuming that just the zoning in
5 Chester Township would be eliminated and the rest of the
6 area would still have the present restrictions.

7 Q Is that the context of your answer when you
8 said that development pressure would cause more multi-
9 family to be built? A Yes.

10 Q Now, if you assume that all surrounding
11 Townships did not have Zoning Ordinances either, what
12 would your answer be? In other words, if it was a wide
13 open ballgame, so to speak.

14 A My answer would be that the development pressure
15 would be much less. There might still be a small market
16 for high cost luxury, say, Town Houses, taking
17 advantage of the fact that the single family homes in
18 Chester are relatively high valued and there is a
19 relatively high income population, but the bulk of the
20 market for multi-family housing and Town Houses would
21 certainly be in lower cost areas and areas closer to
22 transportation and employment and shopping, and so forth.

23 Q Do I take it from your answer that you
24 think Chester--I do not want to lead. Do you have an
25 opinion as to whether Chester Township is a suitable area

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for multi-family housing, specifically for low and moderate income groups?

A Well, I think it is from the standpoint of a fair share concept in which most communities should assume a share of the expense, perhaps, of supporting low and moderate income housing. I think it is also true from the standpoint of the employees of the Township as Judge Muir has referred to and from the standpoint of particular population groups in the Township that might require multi-family or moderate income housing such as senior citizens on fixed incomes.

Q What about substantial employment generators like industry?

A That is a factor which substantially differentiates Chester from any of the other communities in the area and by comparison from the Township of Mount Laurel.

Q In what way?

A That there are no substantial employment generators in Chester and the Master Plan and the Zoning Ordinance would not permit the development of such in the future.

Q Did you seek any knowledge of Madison Township?

A Yes.

Q Would you comment about the employment and industrial picture in Madison Township in relation to

1 its housing need? What does that tell you about the
2 same situation in Chester, if anything?

3 A Yes, Madison Township is a much more intensively
4 developed community and it does have extensive commercial
5 areas, at least, fairly extensive industrial areas, which
6 are generators of employment and which themselves
7 create a housing need.

8 Q All right. In Mount Laurel Township, when
9 Mr. Lindeman was asking you about it, do you happen to
10 know from your reading of the Decision what the sewer
11 situation was in Mount Laurel Township at the time of the
12 Decision?

13 A Not specifically. I think they either had or
14 were proposing a trunk sewer system. At least the
15 discussion was in terms of there being no substantial ob-
16 stacles to the installation of central sewer and water
17 systems.

18 Q And what is the comparable situation in
19 Chester Township?

20 A It is the opposite.

21 MR. LINDEMAN: I object, your Honor,
22 because we have gone over that, I think.

23 THE COURT: Pardon me?

24 MR. LINDEMAN: We have gone over that.
25 I do not think--I do not object to its admissibility.

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We have done it.

THE COURT: I will read the case,
in any event. You won't have to tax his memory.

MR. FERGUSON: That's all I have.

THE COURT: Anything further?

MR. LINDEMAN: That's all I have.

MR. FERGUSON: Thank you, Mr. Boorman.

Your Honor, I have only one more item
before we close.

THE COURT: What is that?

MR. FERGUSON: I note from the Mount
Laurel case that Justice Hall, on page 160,
referred to the extensive oral and documentary
evidence introduced at the time of the trial. It
then says as follows:

"The record has been supplemented by
figures, maps, studies, and literature furnished
or referred to by counsel and the amici, so that
the Court has a clear picture of land use
regulation and its effects in developing
municipalities of the state."

I would take that statement and the fact
that the Supreme Court based its decision in
Mount Laurel on the kinds of things furnished by
the amici and the treatises and articles and

1 planning documents submitted to it, which were
2 not in the record, as a willingness to have the
3 Courts of New Jersey accept this kind of material
4 even if it is not of a nature to be introduced
5 into the record to be the basis of fact finding.

6 I would, therefore, think it appropriate
7 that the documents referred to in D-64 for
8 identification and the synopsis be received for
9 the Court, not for the purpose of fact finding
10 but to get the overlay of the regional planning
11 context which may or may not be appropriate.

12 THE COURT: Mr. Ferguson, you are
13 asking for something that I have already ruled on,
14 for one thing.

15 MR. FERGUSON: Oh, no, no.

16 THE COURT: The lattitudes--the
17 lattitudes that Appellate Courts have in receiving
18 documentation and I would respectfully suggest
19 the time that they have to deliberate over such
20 documentation far exceeds what I think I have in
21 time and lattitude.

22 MR. FERGUSON: The Court has ruled.
23 I am not asking that it change its mind or that
24 this go into evidence. I would still think that
25 we are free to refer to it or cite it or argue from

1 it as may be appropriate.

2 THE COURT: If you wish to, fine. I
3 will not use it as a basis for a fact finding.

4 MR. FERGUSON: No, the Court has ruled.

5 THE COURT: Nor will I refer to it.
6 You know, at some later time you want to convince
7 three Judges of the Appellate Division or seven
8 Justices of the Supreme Court that it is
9 something that they should consider and refer to--
10 you know it is not an uncommon practice for them
11 at the Supreme Court to refer to articles, law
12 review articles, other texts and as treatises in
13 adopting their thinking. That is where we get
14 changes in the law. I do not recognize my
15 contribution or my role as a policy setting. I
16 respectfully suggest that type of thing can be
17 limited to the ambits of the Supreme Court.

18 MR. FERGUSON: Of course in the specific
19 area of water quality legislation and planning,
20 this has not been passed upon by any higher Court
21 yet on the merits and it might be desirable--I am
22 not sure we are at that point yet.

23 THE COURT: Well, let me say this
24 to you--

25 MR. FERGUSON: I am not asking that the

1 Court admit it into evidence. The Court has ruled.

2 THE COURT: I recognize that there is
3 a great deal of documentation on the subject. I
4 think you can probably get enough to fill this
5 room if you looked hard enough and long enough.
6 I think there has to be a reasonable limitation
7 on it and for the reasons that I have stated
8 before, I think, sure, you can refer to it, but
9 not into evidence at this point.

10 Okay. How about tomorrow morning at
11 ten o'clock? That hour in the morning gave me an
12 opportunity to get--what I thought, was rid of
13 everything. I had a couple of things this
14 afternoon that I had discussed but it worked a
15 little better by not having you sitting, waiting
16 on me while I disposed of everything I have to do.

17 (Court adjourned)

18 * * *

19
20 I hereby certify the foregoing.

21
22 DATED:


23 PHILLIP A. FISHMAN
24 OFFICIAL COURT REPORTER
25