

ML - Green ~~the~~ Village v. Chatham

June 12, 1979

Transcript of Deposition of Edgar A. Alpaugh and Robert J. O'Grady

Pg. 108

ML 000826S

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : MORRIS COUNTY  
DOCKET NO. L-29276-78

GREEN VILLAGE 139 CORP.,  
GERALD WEIR and  
JOSEPH GIOVANNOLI,

ML0008256S

Plaintiffs,

vs.

DEPOSITION OF:

TOWNSHIP OF CHATHAM,  
THE TOWNSHIP COMMITTEE  
OF CHATHAM and THE PLANNING  
BOARD OF THE TOWNSHIP OF  
CHATHAM,

EDGAR A. ALPAUGH  
ROBERT J. O'GRADY

Defendants.

.....

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TRANSCRIPT of the stenographic notes of  
JACQUELINE AUGUSTO, a Certified Shorthand Reporter and  
Notary Public of the State of New Jersey, taken at the  
Chatham Township Municipal Building, 24 Southern  
Boulevard, Chatham, New Jersey, on Friday, June 22,  
1979, commencing at 12:00 noon.

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

MESSRS. FISCHER, KAGAN, KLEIN, GIAMPAPA & MILLER  
BY: NORMAN I. KLEIN, ESQ.,  
Attorneys for the Plaintiffs.

MESSRS. SACHAR, BERNSTEIN, ROTHBERG, SIKORA &  
BY: DANIEL S. BERNSTEIN, ESQ., MONGELLO  
Attorneys for the Defendants.

DOERNER & GOLDBERG, INC.  
CERTIFIED SHORTHAND REPORTERS  
80 MAIN STREET  
WEST ORANGE, NEW JERSEY 07052

(201) 736-5130

I N D E X

WITNESS

DIRECT

EDGAR A. ALPAUGH

By: Mr. Klein

2

ROBERT J. O'GRADY

By: Mr. Klein

55

EXHIBIT

DESCRIPTION

PAGE

P-1	1972 Master Plan.	13
P-2	1978 Master Plan.	34
P-5	Letter dated 2/5/79.	48
P-6	Interim Report No. 1 dated April, 1978.	81
P-7	Interim Report No. 2 dated May, 1978.	81
P-8	Interim Report No. 3, Financial Conditions, dated June, 1978.	81
P-9	Interim Report No. 4, Special Study Areas, dated August, 1978.	81
P-10	Addenda to Interim Reports.	81
P-11	Letter dated November 24, 1978.	96
P-12	Letter dated January 26, 1979.	98
P-12A	Letter dated January 9, 1979.	98
P-13	Letter dated March 12, 1979.	103

1 E D G A R A. A L P A U G H, having been duly sworn  
2 by the Notary, testifies as follows:

3 DIRECT EXAMINATION BY MR. KLEIN:

4 Q Mr. Alpaugh, my name is Norman Klein. I'm  
5 an attorney and a member of the firm of Fischer, Kagan,  
6 Klein, Giampapa & Miller. We represent Green Village  
7 139 Corp. and Gerald Weir and Joseph Giovannoli in  
8 a pending lawsuit in the Superior Court of New Jersey  
9 in Morris County against the Township, The Township  
10 Committee and The Planning Board of the Township of  
11 Chatham. You're aware of the existence of that suit,  
12 are you not?

13 A Right.

14 Q Okay. I am going to ask you a series of  
15 questions relating to our claims and the defenses of  
16 the Planning Board in the Town. I would like you to,  
17 if you should find that I, either, speak too quickly  
18 or too slowly or for some reason you don't understand  
19 a question or I'm speaking too loud or too softly,  
20 please, don't hesitate to interrupt me. Ask me to  
21 repeat the question.

22 If there's something that you don't understand,  
23 please, don't hesitate to ask to have the question  
24 explained.

25 Mr. Bernstein may object to a question that I

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1 pose. If he does object, please, do not answer the  
2 question until Mr. Bernstein and I have discussed it  
3 and until he instructs you that you may answer the  
4 question. Do you understand?

5 A Right.

6 Q Okay. And the only other thing I would say  
7 is that your answers need to be audible because the  
8 machine can't take down other kinds of responses.

9 A I recognize that.

10 Q Mr. Alpaugh, you are the secretary of the  
11 Planning Board?

12 A Correct.

13 Q In the way the Planning Board in Chatham  
14 Township is established, are you, also, a member of  
15 the Planning Board?

16 A Not a voting member.

17 Q You are not a voting member? Could you tell  
18 us how long have you been secretary to the Planning  
19 Board?

20 A Second year.

21 Q When you say "second year," does that mean  
22 commencing sometime ---

23 A Last year and this year.

24 Q --- 1978?

25 A Eight.

1 Q Was that at the time the Board reorganized  
2 in January of '78?

3 A Yes, I believe that's correct, as I recall it.

4 Q Prior to that time, were you, in any way,  
5 associated with the Planning Board?

6 A I was recording secretary.

7 Q And your position now is secretary?

8 A And recording secretary.

9 Q And recording secretary? How long had you  
10 been recording secretary?

11 A About twenty odd years.

12 Q Okay. Is your position with the Planning  
13 Board a paying position or is it a volunteer or  
14 appointed position?

15 A The recording secretary is a paid job.

16 Q Okay. Now, what is the distinction between  
17 your duties as recording secretary and secretary?

18 A Basically, I would say the only thing added by  
19 being secretary is that I am authorized to sign  
20 approvals and official papers of the Planning Board,  
21 which I was not authorized to do as recording secretary.

22 Q And as recording secretary, did you, also,  
23 maintain the minutes of the Planning Board?

24 A Right.

25 Q Did you help to establish the agenda for

1 the Planning Board?

2 A To a degree.

3 Q To what degree?

4 A Well, the chairman would, generally, indicate the  
5 items that were to go on the agenda. If I had informa-  
6 tion about others that were in the process of becoming  
7 eligible to go on that agenda, I would add them to  
8 them. I would, then, prepare the agenda.

9 Q Was the agenda prepared at the direction of  
10 the chairman or at the direction of the Planning Board?

11 A I don't know what you mean, at the direction of  
12 the Planning Board versus the chairman.

13 Q Well, would there be a meeting of the entire  
14 Planning Board at which the Planning Board would  
15 determine those matters which will be added to the  
16 agenda for the public meeting?

17 A No.

18 Q No, that is not your procedure?

19 A That's right, that's not the procedure.

20 Q So, then, it is the chairman who determines  
21 the matters which go on the agenda?

22 A The chairman and the recording secretary determine  
23 the agenda.

24 Q Okay. And when in the -- strike that.

25 How frequently does the Planning Board have its

1 meetings, its regular meetings?

2 A Well, it has two meetings a month. The first  
3 Monday of each month is a so-called conference meeting  
4 which, of course, is a public meeting. Its regular  
5 monthly meeting is the third Monday of each month.

6 Q Okay. As recording secretary and secretary  
7 of the Planning Board, are all official Planning Board  
8 documents deposited with you?

9 A I would say that's correct, ultimately, yes.

10 Q You are the official depository for Planning  
11 Board records and documents?

12 A Direct Planning Board records, yes.

13 Q Yes. Did there come a time in 1971 or  
14 thereabouts, when the Planning Board started to  
15 examine its zoning with the view towards developing a  
16 Master Plan?

17 A Well, I can't tell you the date it started. There  
18 was a new Master Plan in '72, and there was preliminary  
19 work on it which reached back into '71.

20 Q Would it have reached back to a time prior  
21 than 1971?

22 A I couldn't answer that without consulting records.

23 Q You do have records, though, that you could  
24 consult in regards to that?

25 A Well, what do you mean by starting -- I mean,



1 something might be talked about. Are you referring,  
2 specifically, to some affirmative act?

3 Q Yes.

4 A I would like a little clarification, what you  
5 mean by starting time?

6 Q Fine. Did there come a time when the Planning  
7 Board undertook to hire a planning consultant to help  
8 in the preparation of a Master Plan?

9 A There did come such a point. I couldn't give  
10 you the date at this time.

11 Q Okay. Would that date be reflected in the  
12 minutes and records of the Planning Board?

13 A That would be on record, yes.

14 Q Okay.

15 A You're referring, now, to the 1972 Master Plan?

16 Q Right. And do you have any recollection of  
17 when the planning consultant was retained for purposes  
18 of working with the Planning Board on what, ultimately,  
19 became known as the 1972 Master Plan?

20 A I couldn't answer that as to date without  
21 consulting records.

22 Q Well, without telling me exact date, do  
23 you have any recollection of an approximate date?  
24 Would it have been, for example, 1968 or 1970?

25 A I would presume, and this is only a presumption,

1 that it was sometime in '71.

2 Q Okay.

3 A Probably, the early part of '71, because the  
4 Master Plan was adopted in '72. Beyond that, I can't  
5 be sure at this point.

6 Q Okay. Would you check your records and  
7 provide me with a copy of the date upon which the  
8 Planning Board engaged a planning consultant to work  
9 with it in the development of what, ultimately, became  
10 known as the 1972 Master Plan?

11 MR. BERNSTEIN: Wait. I'm going to  
12 object here. If the attorney wishes to look  
13 at our minutes in 1971, they'd be made  
14 available to him, but this gentleman is an  
15 unpaid -- well, he's paid as a secretary  
16 but he's not paid as far as this litigation  
17 is concerned, and it's a matter of digging  
18 out a record, and I don't think that it's  
19 fair to ask the witness to do the work for  
20 the attorney. If the attorney wishes to  
21 look at our minutes, that's fine. He has an  
22 absolute right to do it, but I don't think  
23 that he can require town officials to do  
24 his work for him.

25 MR. KLEIN: Well, I disagree. I think

1 in litigation, I have certain rights of  
2 discovery and inspection which are addressed  
3 to the production of documents and information,  
4 and as long as I'm requesting that this be  
5 done of township employees who maintain and  
6 have these records in the course of their  
7 employment, and in connection with their  
8 employment by the town, I know those records  
9 are available. I believe it is a totally  
10 unreasonable burden when Mr. Alpaugh in total  
11 candor testifies that he does not know the  
12 date, it may have been '71, it surely may  
13 have been prior thereto, to put upon a liti-  
14 gant the burden of having to go through  
15 minutes and records of a town which can be  
16 quite voluminous, and if you want, Mr.  
17 Bernstein, we are set to see Judge Gascoyne  
18 on Tuesday, in any event. We can surely  
19 address these questions to him and have him  
20 issue an order informally.

21 MR. BERNSTEIN: This will have to be  
22 a motion, but I'm telling you that you have  
23 a right, if you want certain records, if you  
24 want to see all the minutes, I can have  
25 Mr. Alpaugh make the minutes available to you,

1 but I think it's improper for you to be  
2 asking Mr. Alpaugh to be going through all  
3 the minutes. As you've said, they're very  
4 voluminous and to make him do all of this,  
5 I don't believe is proper.

6 MR. KLEIN: Okay. Well, let's have  
7 them -- I am putting you on notice now that  
8 I am going to raise this with Judge Gascoyne  
9 on Tuesday, when we have the pretrial con-  
10 ference, and if I know him, he'll probably  
11 rule right then and there, so ---

12 MR. BERNSTEIN: We'll see. Now, let  
13 me say this: If you want a resolution that  
14 may not be in the minutes and if there are  
15 things that aren't easily ascertained from  
16 the minutes and could be on these matters,  
17 then I might ask Mr. Alpaugh if he has a  
18 file and he can readily produce it, so, I  
19 make a distinction between that which a  
20 litigant, through due diligence, could obtain  
21 on his own efforts and that which there's  
22 no way the litigant could find because it's  
23 not in any usual file.

24 MR. KLEIN: Well, in the first place,  
25 I don't recall, maybe I did, but I don't

1 believe that the question had reference to  
2 minutes. The question had reference to the  
3 documents relating to Planning Board action  
4 of retaining the planning consultant.

5 MR. BERNSTEIN: Are you talking about  
6 an agreement, contractual agreement, that  
7 the Planning Board had? because often times,  
8 as a matter of course, the chairman or someone  
9 on the Planning Board says all right, Mr.  
10 O'Grady, it's time for the Master Plan, let's  
11 start doing the backup work. That's usually  
12 what's done rather than a formal contract  
13 being entered into, especially since Catlin  
14 has done it for so long, but if you're looking  
15 for a formal document, such as a contract,  
16 I have no problem with Mr. Alpaugh looking  
17 for that, since that's something that you  
18 couldn't, on your own, find.

19 MR. KLEIN: Okay. For starters, I would  
20 like the contract, if one exists, relating  
21 to the retention of Catlin Associates to work  
22 on the Master Plan.

23 MR. BERNSTEIN: This is the 1972 Master  
24 Plan?

25 MR. KLEIN: 1972. I assume Catlin

1 Associates was the planner.

2 Q That's correct, is it not, Mr. Alpaugh?

3 A Yes, Catlin was the planner.

4 Q And it was ---

5 A That's a part of your question I'm answering.

6 Q And it was Catlin who prepared the 1972

7 Master Plan ---

8 A Correct.

9 Q --- in conjunction with the Planning Board?

10 A Yes, I think you'll find his name on the report.

11 Q Now, I show you this document, Mr. Alpaugh,  
12 I'll show it first to Mr. Bernstein, and I'm going to  
13 ask you if this is an official copy of the 1972 Master  
14 Plan?

15 MR. BERNSTEIN: Mrs. Lundt says it's  
16 all right.

17 MR. KLEIN: Since it's a Planning Board  
18 document rather than a town document, I'd  
19 like Mr. Alpaugh to ---

20 MR. BERNSTEIN: It would be all right.

21 A As far as I can tell, it's a true copy of the  
22 Master Plan.

23 MR. KLEIN: Okay. May we have this  
24 marked, please?

25 (The 1972 Master Plan was received for

1 identification and marked Exhibit P-1.)

2 MR. KLEIN: So that I understand this,  
3 Mr. Bernstein, if there is a contract with  
4 Catlin, the contract will be supplied?

5 MR. BERNSTEIN: I would ask Mr. Alpaugh  
6 if he can find in his records the contract  
7 between the Planning Board and Robert Catlin  
8 and Associates with regard to the 1972 Master  
9 Plan, that he should make a copy of same and  
10 send it to me and, then, I'll send it to you.

11 MR. KLEIN: Fine. Now, if there were  
12 any resolutions adopted by the Planning Board  
13 in connection with that contract, will they,  
14 also, be made available?

15 MR. BERNSTEIN: I have no problem with  
16 that, if there's a resolution in connection  
17 with the retaining of the planner.

18 The only objection I have, Mr. Klein,  
19 is requiring Mr. Alpaugh to go through  
20 records that you would have ready access to.

21 MR. KLEIN: I understand your objection  
22 and I think it needs to be determined by the  
23 appropriate person, whoever that may be.

24 Q Mr. Alpaugh, when the Planning Board sits  
25 in the course of its meetings, do you attend those

1 meetings?

2 A Yes.

3 Q And in fact, in 1972, you were taking the  
4 minutes of those meetings?

5 A Right.

6 Q Okay. To the best of your recollection, how  
7 did the Planning Board go about working with Catlin  
8 Associates on the development of the 1972 Master Plan,  
9 and let me refine that question somewhat because it's  
10 a little broad. Were there special Master Plan work  
11 sessions?

12 A There may have been. I can't be sure of it at  
13 this late date.

14 Q All right. How would you be able to determine  
15 that information, if I asked you to determine it?

16 A When you say "special sessions ---"

17 Q What steps would you take?

18 A What, specifically, do you identify as "special  
19 sessions"?

20 Q Would there be a meeting at which the  
21 Planning Board, other than its regular two meetings a  
22 month, that the Planning Board would have, let's say,  
23 a third meeting or a fourth meeting in the course of  
24 a month for the purpose of reviewing and discussing  
25 Master Plan proposals with Catlin Associates?



1 A There may have been. I could not say at this  
2 point.

3 Q Okay. In order to determine that, what  
4 records would you have to look at?

5 A I would have to look at minutes.

6 Q Okay.

7 MR. BERNSTEIN: I have no problem, if  
8 you want to ask Mr. Alpaugh if he can advise  
9 you if there were special sessions on the  
10 Master Plan and all you want are copies of  
11 those special sessions, I assume.

12 MR. KLEIN: That's right.

13 MR. BERNSTEIN: I assume, also, that  
14 you'd pay the Municipality, of course, for  
15 the reproduction costs.

16 MR. KLEIN: Yes, but not on the basis  
17 of \$25 for a zoning ordinance. If it's going  
18 to be that kind of basis, then, if they will  
19 be delivered to me, I will reproduce them  
20 and return the originals.

21 MR. BERNSTEIN: If you would pay the  
22 cost of whoever is delivering, waiting,  
23 picking it up, which will be more expensive--

24 MR. KLEIN: I'll tell you what, I will  
25 pick it up on my way to work one morning,

1 since I live in Morris County ---

2 MR. BERNSTEIN: And then, bring it back?

3 MR. KLEIN: --- bring it back on my  
4 way home.

5 MR. BERNSTEIN: We can trust you as an  
6 officer of the court. That's fair enough.

7 (There is a discussion off the record.)

8 MR. KLEIN: Are we agreed that I can  
9 secure a list of the special meetings, Master  
10 Plan meetings, held in connection with the  
11 1972 Master Plan?

12 MR. BERNSTEIN: Well, rather than make  
13 a list, and I'm trying to make it as easy  
14 for Mr. Alpaugh as possible, he will send to  
15 me copies of the minutes of the special  
16 sessions if, in fact, any exist. If no  
17 special session minutes exist, he'll advise  
18 me of that and that will be the end of it.

19 Q Mr. Alpaugh, if the Planning Board did not  
20 hold special sessions relative to the Master Plan, and  
21 leading up to the development of the 1972 Master Plan,  
22 would the discussions relating to the Master Plan  
23 proposals be contained in the minutes of the conference  
24 meetings and the general business meeting of the  
25 Planning Board?

1 A As a general proposition, yes.

2 Q Now, these minutes that you have maintained  
3 for these many years, are they taken in shorthand by  
4 mechanical device or how?

5 A The regular meetings of the Board, conference or  
6 regular meeting, would have been taken in longhand and  
7 transcribed by me.

8 Q So that those minutes wouldn't necessarily  
9 contain a verbatim ---

10 A That is correct.

11 Q --- statement, and, in effect, they would  
12 tend to merely contain the substance of what was said?

13 A The substance of the discussions and the aspects  
14 of it.

15 Q Okay. Are these minutes, in the normal  
16 course, approved by the Planning Board?

17 A Yes.

18 Q So that it's fair to say that -- well, strike  
19 that.

20 MR. KLEIN: For the record, Mr.  
21 Bernstein, I will make a formal request for  
22 the minutes of any meeting of the Planning  
23 Board leading to the adoption of the 1972  
24 Master Plan, where the Planning Board  
25 discussed Master Plan proposals with its

1 planner.

2 MR. BERNSTEIN: Are you saying that at  
3 every single meeting where the topic of the  
4 Master Plan might have come up, that you want  
5 copies of those meetings or only those meetings  
6 which were called specially on Master Plan  
7 matters? My problem is that sometimes, in  
8 the past, before the Sunshine Act, a Planning  
9 Board might discuss, at the end of its  
10 meeting for a half hour, the Master Plan or  
11 have a little chit chat with the planner,  
12 and if, in fact, you're looking for the  
13 latter, that would mean that Mr. Alpaugh  
14 would have to go back over all the minutes.  
15 If you're looking for the special meetings  
16 where it was discussed, he could turn to  
17 the time frame and have far less problems.

18 MR. KLEIN: I'm really looking for both.  
19 I know that in all probability, although,  
20 Mr. Alpaugh doesn't have an actual recollec-  
21 tion today, which is not unusual, it's going  
22 back seven years, in the normal course, the  
23 Planning Board, probably, did call special  
24 meetings which were set aside solely for the  
25 purpose of the Board discussing with the

1 planner the Master Plan; so, I presume some  
2 of those meetings exist.

3 It is possible, in fact, that none of  
4 them exist and that the whole process was  
5 done at ordinary Planning Board meetings,  
6 at either conference meetings, an hour would  
7 be set aside or half hour or however it was  
8 done.

9 My ultimate goal is to gather as much  
10 factual information as exists, written factual  
11 information, as exists today with respect to  
12 the process and the development of what  
13 ultimately became known as the 1972 Master  
14 Plan. If I can get all of that out of the  
15 special sessions, fine. I'm not looking to  
16 impose a burden on, either, Mr. Alpaugh or  
17 the town; but if the only way I can get that  
18 is by getting the minutes of the regular  
19 meetings, then, I want that as well.

20 MR. BERNSTEIN: Okay. I would object  
21 to requiring Mr. Alpaugh to go through all  
22 of the 1971 minutes to determine when there  
23 was any notation that a Master Plan item was  
24 discussed. I have no problem with him fishing  
25 out the special sessions relating to the

1 Master Plan.

2 Q Okay. To the best of your recollection,  
3 Mr. Alpaugh, were there periodic reports with respect  
4 to various Master Plan proposals and, perhaps, status  
5 reports delivered by the planner to the Planning Board  
6 in connection with the '72 Master Plan?

7 A Based upon more recent experience, I would say  
8 there, evidently, were, but I'm not certain. Here  
9 again, we're going back too far for me to remember  
10 details as to the process followed in 1972.

11 Q Okay.

12 A Obviously, there had to be some exchange.

13 Q Okay. Would these exchange and proposals,  
14 would they be in the ordinary course maintained by  
15 you as the depository of official Planning Board  
16 records?

17 A If they were considered pertinent, I would say yes.

18 Q And would you have, for example, a file or  
19 series of files relating to 1972 Master Plan proposals?

20 A I would have some -- I couldn't tell you the  
21 extent of the content at this point.

22 Q Okay. With Mr. Bernstein's permission,  
23 would you search the records of the Planning Board to  
24 determine what proposals and documentation was submitted  
25 to the Planning Board by the planner and make the same

1 available to me?

2 MR. BERNSTEIN: That's all right.

3 A Okay.

4 MR. KLEIN: That is including correspon-  
5 dence, Mr. Bernstein.

6 MR. BERNSTEIN: Well, you're looking  
7 for all correspondence on the 1972 Master  
8 Plan?

9 MR. KLEIN: Well, not only the correspond-  
10 ence but, also, ---

11 MR. BERNSTEIN: From Robert Catlin and  
12 Associates?

13 MR. KLEIN: Yes, but any kind, if there  
14 were reports and memoranda submitted, that  
15 kind of thing as well.

16 MR. BERNSTEIN: I have no problem with  
17 that because I -- well ---

18 Q Okay. Mr. Alpaugh, did there come a time  
19 when the Planning Board held a public hearing with  
20 respect to the proposed 1972 Master Plan?

21 A Well, there was a public hearing held on it.

22 Q And do you know when and where that public  
23 hearing was held?

24 A I can't answer that at the moment.

25 Q Were there minutes taken at that public

1 hearing?

2 A Yes.

3 Q Were they taken by mechanical device or by  
4 hand or both?

5 A I believe they were taken by mechanical device,  
6 but here again, I'm not sure at this point.

7 Q Okay. By mechanical device, I presume,  
8 we're talking about a tape recorder?

9 A Yeah.

10 Q Okay. Would the tape of the 1972 Master  
11 Plan public hearing still be available?

12 A I'm uncertain about that. Here again, I can't  
13 remember back to there. I'm sorry.

14 Q Okay. Did you, based upon the tape -- strike  
15 that.

16 Did you, based upon the tape, prepare minutes of  
17 the public hearing?

18 A I think the tape was transcribed, if I recall  
19 correctly.

20 Q Transcribed by someone other than yourself?

21 A I believe so. Here again, I'm uncertain. It's  
22 a long time back to remember the detail.

23 Q I recognize that and I appreciate that  
24 you're trying to be as cooperative as you can, and  
25 seven years is a long time. I recognize that.



1           Would you have, as the official depository of  
2 the Planning Board records, the minutes of the 1972  
3 public hearing?

4       A     I should have minutes of all the meetings,  
5 including hearings.

6           MR. KLEIN:   Mr. Bernstein ---

7           MR. BERNSTEIN:  No problem with that.  
8 If you want a copy of the minutes of the  
9 Master Plan hearing, I'm sure that Mr. Alpaugh  
10 could make that available to me.

11          MR. KLEIN:   Okay.  And the tape, if it  
12 exists ---

13          MR. BERNSTEIN:  Well, there's a problem  
14 with the tape.  If you want the tape to be  
15 sent to a service of your selection so that  
16 they can make a transcript, I have no problem,  
17 but I would be reluctant to let a tape which  
18 is an official record and could be changed  
19 or altered, I'd be reluctant to let the tape  
20 out of the possession of the Planning Board.  
21 If you want to send someone to listen to  
22 the tape, I have no problem with that, but  
23 a tape being such a fragile document, just  
24 to give up possession of that, I'd be  
25 reluctant to do.  If you say to me, I want

1 to use the Tape Recorders Incorporated or  
2 one of these services who prepares a transcript  
3 from a tape, then, I have no problem with  
4 the Board surrendering the tape to one of  
5 these services for production of the tran-  
6 script. If you want to have yourself or an  
7 associate listen to the tape, that's fine,  
8 but I hate to give up physical possession.

9 MR. KLEIN: I can understand.

10 Q To the best of your knowledge, Mr. Alpaugh,  
11 was there one public hearing only?

12 A I can't be sure.

13 Q Okay. We understand, though, that if there  
14 were more than one public hearing, that I'm referring  
15 to the tapes and the minutes of ---

16 A Encompassing ---

17 Q --- all of them. Yes. Okay.

18 To the best of your recollection, did the Planning  
19 Board -- strike that.

20 There came a time, did there not, when the  
21 Planning Board actually formally adopted what is  
22 referred to as the 1972 Master Plan, P-1 for identifica-  
23 tion?

24 A Correct.

25 Q Okay. Did that occur at a regular business

1 meeting of the Planning Board or was this at one of  
2 the Master Plan hearings or one Master Plan hearing,  
3 if there was only one?

4 A Well, it was not adopted the same time the hearing  
5 took place. It would have been adopted subsequent to  
6 the hearing.

7 Q Do you recall if that was at a regular  
8 Planning Board meeting or was it a special meeting  
9 dealing with the Master Plan?

10 A Based on my recollection, it would have been at  
11 a regular meeting. I don't visualize a special meeting  
12 for the adoption of the Master Plan. I could be  
13 incorrect.

14 Q Okay. To the best of your recollection, was  
15 this document, P-1, in any way revised by the Planning  
16 Board between the public hearing and its ultimate  
17 adoption?

18 A I can't be sure about that. One of the purposes  
19 of the public hearing was to get comments from the  
20 public, and there have been some times when some comment  
21 had been influential in causing some adjustments. I'm  
22 not saying that was true in this case. I don't recall.

23 Q Okay. Again, if there were revisions, you  
24 would have these revisions in your records?

25 A Should be there.

1 MR. KLEIN: Okay. And these would be  
2 part of the all-encompassing Master Plan  
3 documents that will be made available to me,  
4 Mr. Bernstein?

5 MR. BERNSTEIN: Well, these are the  
6 revisions by the -- I assume, by the planner?

7 MR. KLEIN: Well, I'm talking about  
8 several things in stages. First, in the  
9 normal course of developing a Master Plan,  
10 the planner, I presume, would have submitted  
11 proposals which would have been considered.  
12 There would have been revisions made. There  
13 may have been source material of one sort or  
14 another submitted and, then, there would have  
15 come a time when a draft of a Master Plan  
16 would have been submitted which, again, would  
17 have been reviewed, subject to further  
18 revision and submitted to the public for  
19 general hearing, for public hearing pursuant  
20 to statute. I want the documentation up to  
21 that point.

22 MR. BERNSTEIN: You're looking for any  
23 preliminary drafts or corrections to the  
24 original drafts with regard to the Master  
25 Plan?

1 MR. KLEIN: Right.

2 MR. BERNSTEIN: That's no problem.

3 MR. KLEIN: Then, what I would like is  
4 if, as a result of a public hearing, the  
5 draft that was submitted to the public was,  
6 in any way, modified or revised prior to the  
7 Board finally adopting what has been marked  
8 as P-1, I'd like those revisions as well.

9 MR. BERNSTEIN: That's assuming that  
10 any or all of this is in Mr. Alpaugh's files.

11 MR. KLEIN: Well, he is the official  
12 depository of the Planning Board records.  
13 To the extent that those documents exist, I  
14 presume that they would be in his files, and  
15 he can't produce what doesn't exist in his  
16 files.

17 MR. BERNSTEIN: My only comment is  
18 things are sometimes revised and the original  
19 draft is no longer kept, the thinking being,  
20 we've changed, why keep the original draft?  
21 And this situation could have happened. I  
22 don't know that it did, but it's possible.

23 MR. KLEIN: I agree. I understand that.  
24 That's fact. You can't change that. In fact,  
25 the minutes, which is one of the reasons I

1 think the minutes are important, is the  
2 minutes would reflect if there were changes  
3 made, even if the revisions themselves don't  
4 exist, because with a pile of paper you tend  
5 to throw away drafts that you don't need any-  
6 more.

7 Q Just for the record, Mr. Alpaugh, looking  
8 at P-1, the Master Plan of 1972 is dated August, 1972,  
9 and indicates that it was adopted by Chatham Township  
10 Planning Board September 18, 1972, which may help you  
11 in searching for documents.

12 A Thank you.

13 Q To the best of your recollection, did the  
14 Planning Board work with anyone other than Mr. O'Grady  
15 on behalf of Catlin Associates in the development of  
16 the 1972 Master Plan?

17 A I'd like that a little more specifically defined.  
18 Anyone other than Mr. Catlin is pretty broad. Some  
19 citizen might, possibly, have talked to him at some  
20 time.

21 Q No, I don't mean that. I mean the technical  
22 expert, the planner, that was hired, was Robert Catlin  
23 and Associates. Who at Robert Catlin and Associates  
24 did the Planning Board deal with?

25 A Basically, with Mr. O'Grady.

1 Q Okay.

2 A That does not rule out the possibility that there  
3 may have been conversations with Mr. Catlin.

4 Q Okay. Is it fair to say that the person  
5 generally responsible for planning work done by Catlin  
6 Associates for Chatham Township was Mr. O'Grady?

7 A Basically, yes.

8 Q Okay. To your knowledge, did the Planning  
9 Board ever have other representatives of Catlin Asso-  
10 ciates appear before it or submit documentation to it  
11 in connection with development of the 1972 Master Plan?

12 A I cannot answer that affirmatively.

13 Q Okay. If that did occur, that might appear  
14 in your minutes, would it not?

15 A If it was of substance.

16 Q Okay. All right. The 1972 Master Plan was  
17 adopted September 18, 1972. Was it, then, submitted  
18 to the Township Committee by the Planning Board,  
19 transmitted officially?

20 A That would be the routine that would have been  
21 followed, yes.

22 Q And you would have a covering letter  
23 transmitting it to the Township Committee in your files?

24 A There should be.

25 Q Okay.

1 MR. BERNSTEIN: No problem with that.

2 Mr. Alpaugh, if you can produce that  
3 letter, make that part of the packet.

4 Q Am I correct, Mr. Alpaugh, that at that time,  
5 the Planning Board had as one of its members an elected  
6 member of the Township Committee?

7 A The Planning Board always has two members from  
8 the Township Committee, the mayor and one other member.

9 Q Two members from the Township Committee?

10 A Well, the mayor is a member of the Planning Board  
11 automatically.

12 Q And the mayor is a member of the Township  
13 Committee under your form of government in Chatham?

14 MR. BERNSTEIN: Under all forms of  
15 government other than with certain limited  
16 municipalities. That was just in the new  
17 law, but prior to that, the mayor always was  
18 on the Planning Board, as was one member of  
19 the Township Committee or council.

20 MR. KLEIN: I recognize that, and that  
21 was the answer I was trying to elicit, but  
22 my next question was whether or not, under  
23 your form of government, the mayor is a  
24 member of the Township Committee?

25 MR. BERNSTEIN: Under all forms of



1 government up to the adoption of the Municipal  
2 Land Use Law, the mayor was a member of the  
3 Planning Board.

4 MR. KLEIN: I'm talking about the  
5 Township Committee, not the Planning Board.

6 MR. BERNSTEIN: I'm sorry. Repeat the  
7 question.

8 Q Okay. Under the form of government under  
9 which the Township of Chatham functions, is the mayor  
10 a member of the Township Committee?

11 A Who are you addressing the question to?

12 Q Well, I was addressing it to you.

13 A The answer is yes.

14 Q Okay. In the course of the development of  
15 the 1972 Master Plan, did the Planning Board, to the  
16 best of your recollection, meet with the Township  
17 Committee to discuss Master Plan proposals while they  
18 were still in the discussion stage?

19 A I believe no such meetings were held.

20 Q Okay. If such meetings were held, though,  
21 there would be minutes of those meetings maintained  
22 by you, would there not be?

23 A It was a practice to keep minutes of all meetings.

24 Q Okay. After the Master Plan was adopted in  
25 September of 1972, and transmitted to the Township

1 Committee, did the Township Committee, then, meet with  
2 the Planning Board to discuss any of the proposals  
3 contained in the Master Plan as adopted?

4 A I can't answer that. I don't recall.

5 Q Okay. If such meetings were held, you would  
6 have minutes for them?

7 A That is correct.

8 MR. KLEIN: Could I have copies of those  
9 minutes, Mr. Bernstein? They would be special  
10 meetings, I guess.

11 MR. BERNSTEIN: If there were meetings  
12 between the Township Committee and the  
13 Planning Board concerning the Master Plan,  
14 at those meetings Mr. Alpaugh took minutes,  
15 and Mr. Alpaugh has those minutes, I have no  
16 problem with you obtaining copies of them.

17 MR. KLEIN: Okay. Fine.

18 Q Did there come a time, Mr. Alpaugh, when a  
19 proposed zoning ordinance was submitted to the Planning  
20 Board in connection with the 1972 Master Plan?

21 A I believe that would have been the procedure.

22 Q Under your procedure, would the zoning  
23 ordinance, the proposed zoning ordinance, have emanated  
24 from the Township Committee or would it have emanated  
25 from your planner?

1 A I think a zoning ordinance suggestion may have  
2 been submitted by the Planning Board, but any affirma-  
3 tive action would have to be on the part of the Township  
4 Committee.

5 Q I understand that, but in connection with  
6 the adoption of the Master Plan, was the planner  
7 instructed to prepare a formal zoning ordinance based  
8 upon the Master Plan?

9 A I can't recall what the instruction was to the  
10 planner at that point.

11 MR. KLEIN: Okay. Again, Mr. Bernstein,  
12 I'd like to determine how the zoning ordinance  
13 process was developed at that time and by  
14 whom.

15 MR. BERNSTEIN: Yes. If Mr. Alpaugh  
16 can find correspondence indicating that the  
17 zoning ordinance came from the Planning Board  
18 to the Committee or from the Committee to  
19 the Planning Board, that's the thrust ---

20 MR. KLEIN: Right.

21 MR. BERNSTEIN: If he can find such  
22 correspondence, I have no problem with him  
23 supplying it.

24 MR. KLEIN: Okay. What about drafts  
25 of the proposed zoning ordinance ---

1 A I would ---

2 MR. KLEIN: --- and memoranda.

3 MR. BERNSTEIN: This is on the ---

4 MR. KLEIN: '72.

5 MR. BERNSTEIN: Was there a new ordinance  
6 prepared in 1972, Mr. Alpaugh, of the zoning  
7 ordinance?

8 THE WITNESS: My recollection is unclear  
9 at the moment about that.

10 MR. BERNSTEIN: I would suggest, based  
11 on conversations which I had with the town  
12 clerk, that there would, in fact, be no  
13 correspondence regarding an overall revision  
14 to the zoning ordinance, and I think that the  
15 town clerk could better answer this series of  
16 questions because she has a clear recollection  
17 of what was adopted.

18 MR. KLEIN: Okay. Fine.

19 Q Mr. Alpaugh, did there come a time when the  
20 Township of Chatham determined to revise its 1972  
21 Master Plan?

22 A Yes.

23 Q And to the best of your recollection, when  
24 was that?

25 A I can't tell you, sir.

1           Q     Okay. I'm going to show you this document  
2     and ask you if this is an official copy of the Master  
3     Plan as adopted by the Township of Chatham in October  
4     of 1978?

5           A     It is.

6                     MR. KLEIN: Okay. May we have that  
7     marked P-2, please?

8                     (The 1978 Master Plan was received for  
9     identification and marked P-2.)

10                    MR. KLEIN: Mr. Bernstein, to save time,  
11     you were here in this past hour or so when  
12     I've asked Mr. Alpaugh a series of questions  
13     relating to the retention of the planning  
14     consultant, the records relating to the  
15     development of the Master Plan, the hearings,  
16     the minutes, etcetera. If I were to ask all  
17     those same questions seeking, essentially,  
18     production of documents, would I continue to  
19     get the same cooperation that I've gotten so  
20     far?

21                    MR. BERNSTEIN: My position would be  
22     that the documents that you're entitled to  
23     receive vis-a-vis the 1972 Master Plan, you'd  
24     be entitled to receive vis-a-vis the 1978  
25     Master Plan, and the documents that -- the

1 one or two documents, the minutes, basically,  
2 that you wanted Mr. Alpaugh to review with  
3 regard to all of 1971-1972, I might feel  
4 reticent to have him do that extra work  
5 vis-a-vis 1977 and '78; but my objections  
6 would be the same, my cooperation would be  
7 the same, and I agree with you that there's  
8 no need to go through each and every question  
9 on the 1978 Master Plan.

10 MR. KLEIN: Okay. Fine. I appreciate  
11 that. Thank you.

2 12 Q All right. Starting from the assumption that  
13 all the information requested, to the extent exists,  
14 will be produced in due course, let me<sup>go</sup>/to the adoption  
15 of the 1978 Master Plan. P-2 indicates it was prepared  
16 in October of 1978. When, in fact, to the best of your  
17 recollection, was it adopted, Mr. Alpaugh?

18 A I don't recall the date, to be honest with you.

19 Q Okay. Could it have been December of 1978?

20 A It could have been.

21 Q Will you check your records ---

22 A Uh-huh.

23 Q --- to determine that date? Thank you.

24 Am I correct that there was more than one public  
25 hearing addressed to this Master Plan?

1 A Yes, I believe there were two, my recollection.

2 Q Okay. And the minutes of those were maintained  
3 both mechanically and transcribed?

4 A If there are meetings, as are minutes of all our  
5 meetings.

6 Q Okay. Now, in connection with this Master  
7 Plan, after it was adopted, was it submitted, trans-  
8 mitted to the Township Committee?

9 A Yes.

10 Q And in accordance with statutory requirements,  
11 were copies transmitted to the County Planning Board?

12 A The County Planning Board received a copy, yes.

13 Q Okay. Did any other governmental agency  
14 receive a copy?

15 A I can't answer that at the moment. Those that  
16 were supposed to be furnished a copy, I believe, were  
17 all furnished copies, to the best of my recollection.

18 Q Okay. And you would have correspondence and  
19 records to reflect that, would you not?

20 A I believe so.

21 Q Okay. Now, in connection with the 1978 Master  
22 Plan, was there a new zoning ordinance prepared?

23 A There was.

24 Q And who prepared that zoning ordinance?

25 A Robert Catlin Associates.

1 Q And was that at the direction of the Planning  
2 Board?

3 A Yes.

4 Q And so, the zoning ordinance emanated from  
5 the Planning Board, the draft of the proposed zoning  
6 ordinance?

7 A Right.

8 Q And was that submitted to the Township  
9 Committee together with the Master Plan?

10 A Well, I think that they had the Master Plan prior  
11 to that, but they received both, in answer to your  
12 question.

13 Q Okay. Do you have a copy of the zoning  
14 ordinance as submitted to the Township Committee?

15 A Yes.

16 Q Pardon me?

17 A Yes.

18 Q Do you have it with you today?

19 A No.

20 MR. KLEIN: Do you have ---

21 MR. BERNSTEIN: We have copies. I  
22 assume that you'd be reimbursing the muni-  
23 cipality for the cost of the ordinance, or do  
24 you just want to ask questions about it.

25 MR. KLEIN: Well, I would just like to



1 have it marked, for the time being.

2 MR. BERNSTEIN: Well, my position is that  
3 we have a right to be reimbursed for any  
4 zoning ordinance, if you purchase it, and I  
5 would have Mrs. Lundt obtain a copy of the  
6 zoning ordinance or the Master Plan or the  
7 NRI, but I believe that there's an obligation  
8 on your part to pay the Town for it. Your  
9 credit is good. If you tell me you're going  
10 to pay for it, I have no problem.

11 MR. KLEIN: I'm not going to tell you  
12 that. I will tell you, Mr. Bernstein, as you  
13 well know, in a deposition I can insist that  
14 documents be given to the reporter and that  
15 the reporter take the documents and photocopy  
16 them and return the originals back to the  
17 litigants, and in fact, make whatever charge  
18 they make for so doing.

19 If I can do that, it would seem to me  
20 that I can demand production of the document  
21 without reimbursing the Town to photocopy it,  
22 because I haven't asked the Town to photocopy  
23 it or to produce it specially or anything.

24 MR. BERNSTEIN: I think the Town can  
25 require, if you want to look at it, if you

1 want to look at it, that's fine, but  
2 essentially, I think you want to have a  
3 zoning ordinance that can be marked and placed  
4 in evidence, and I don't see that this is  
5 different from any other individual who wants  
6 a copy. He has to pay for it. The fact that  
7 we're engaged in a lawsuit doesn't mean that  
8 you get a freebie, and I would say that you  
9 can look at my copy, but I'm not going to  
10 instruct the Town to give you a copy because  
11 it's readily available at a set charge.

12 MR. KLEIN: Would you have your copy  
13 marked?

14 MR. BERNSTEIN: No problem having it  
15 marked, but I don't want it placed in evi-  
16 dence because during the trial, then, I'll  
17 be at the comparative disadvantage. I'll  
18 have to purchase another copy, so that if you  
19 want ---

20 MR. KLEIN: To which you can bill your  
21 client for ---

22 MR. BERNSTEIN: But it doesn't make  
23 sense. If you're suing ---

24 MR. KLEIN: I'm not going to argue the  
25 point. We're just wasting time. I will,

1 again, tell you on Tuesday morning, I'm going  
2 to ask Judge Gascoyne to determine this  
3 question.

4 MR. BERNSTEIN: You're asking, essentially,  
5 for a free copy of the zoning ordinance, and  
6 I'm saying you have to pay for the copy.

7 MR. KLEIN: I'm not asking for a free  
8 copy of the zoning ordinance. I'm asking a  
9 litigant to produce documents in connection  
10 with the litigation, and I am asking that the  
11 same be returned over to the reporter and that  
12 the reporter, as is a usual procedure, photo-  
13 copy it, attach it to deposition and return  
14 the original to the party from whom it came.

15 MR. BERNSTEIN: If you're going to tell  
16 me that my copy will be returned to me, along  
17 with a xerox copy, since anything that the  
18 reporter reproduces for you she has to  
19 reproduce for me, if you're going to tell me  
20 on the record that I'll get my copy back along  
21 with a xerox copy of this entire ordinance,  
22 along with a xerox copy of the maps, and  
23 I'll get it back within the next two weeks,  
24 I have a little problem.

25 MR. KLEIN: You'll get it back in the

1 normal course. I don't control the reporter.  
2 I'm not going to pay an expedite fee for this  
3 transcript, and I presume the reporter will  
4 proceed with this work in the normal course  
5 and that the same would be made available in  
6 the normal course.

7 (There is a discussion off the record.)

8 MR. BERNSTEIN: Are you telling me if  
9 I allow you to mark my personal copy of the  
10 ordinance, that I will not only get it back  
11 from this young lady who is taking the  
12 transcript, but I will, also, get back a  
13 xerox copy of my copy of the ordinance, the  
14 same as you? Is that what you're offering  
15 to me? since I'm entitled to a copy, the  
16 same as you are?

17 MR. KLEIN: I'll reserve on that for  
18 the time being. I'll let you know Tuesday.

19 MR. BERNSTEIN: Then, I'll reserve on  
20 giving you my ordinance. In fact, it's a  
21 one-day special. I think that you're required  
22 to buy the ordinance for 25 bucks, and I'll  
23 make you an offer at depositions today. If  
24 you think we're going to get a ruling from  
25 Judge Gascoyne, you can take your chances,

1 but if Judge Gascoyne decides in my favor  
2 or decides that the issue isn't properly  
3 before him, I may have second thoughts in  
4 futuro.

5 MR. KLEIN: And say, if I come in with  
6 \$25, the Town will refuse to sell it to me?

7 MR. BERNSTEIN: In fact, as you well  
8 know, there's a copy at the Morris County  
9 Planning Board, which is readily available.

10 MR. KLEIN: I'm aware of that.

11 MR. BERNSTEIN: And that goes for the  
12 National Resource Inventory as well.

13 MR. KLEIN: Same.

14 MR. BERNSTEIN: This document, obviously,  
15 though, having much more limited publication,  
16 would be less interest, possibly, to developers  
17 only interested in what they can do, would  
18 necessitate a higher price. I don't know  
19 what was charged, but if the Town wanted to  
20 even break even on it, which they're, of  
21 course, entitled to do -- if you wish to  
22 purchase an NRI for the low price of \$4, we  
23 can give you one now. Surely, you wouldn't  
24 say that's over-priced.

25 MR. KLEIN: No, as a matter of fact,

1 that should be what the ordinance is as well.

2 I will defer on both of them, and since I've

3 already paid for the Master Plan, I don't

4 have to worry about that.

5 Q Do you know when the zoning ordinance was  
6 submitted to the Township Committee by the Planning  
7 Board?

8 A I do not know the exact date.

9 Q Would it have been in the course of January  
10 of 1979?

11 A It would have been, I believe.

12 Q In the month of January, 1979, to your  
13 knowledge, did the Planning Board and Township Committee  
14 have any meetings respecting the zoning ordinance and  
15 its terms?

16 A Not to my recollection. You're talking about  
17 joint meetings?

18 Q Joint meetings.

19 A Not to my recollection.

20 Q To the best of your recollection, was the  
21 zoning ordinance submitted to the Planning Board for --  
22 I'm sorry. Strike that.

23 I assume that the zoning ordinance was introduced  
24 by the Township Committee for first reading sometime in  
25 January of 1979. Is that correct?

1 A I can't answer that.

2 Q Okay. Did there come a time, to the best of  
3 your recollection, when the Township Committee, after  
4 first reading, submitted the zoning ordinance to the  
5 Planning Board for review and comment?

6 A I assume such because that's the usual procedure.

7 Q But do you know if that was done?

8 A I can't answer that.

9 Q If it was done, would the minutes of the  
10 Planning Board reflect it?

11 A They should.

12 Q And to the best of your recollection, did  
13 the Planning Board, then, hold a public hearing with  
14 respect to the proposed zoning ordinance?

15 A I don't think so.

16 Q Was the fact that that matter was on the  
17 agenda of the Planning Board published specially in  
18 a newspaper?

19 A I can't answer that at the moment.

20 Q Would that have been your normal procedure?

21 A I don't think so, but I'm not sure.

22 Q Okay. Would you, with Mr. Bernstein's  
23 permission, check the records of the Planning Board  
24 and determine for me what procedures, if any, were  
25 followed by the Planning Board with respect to the

1 zoning ordinance after the same was initially trans-  
2 mitted to the Township Committee ---

3 MR. BERNSTEIN: I would object.

4 Q --- and prior to its adoption by the Township  
5 Committee?

6 MR. BERNSTEIN: Okay. I would object  
7 to your request here. I think here that we  
8 have the minutes of the Planning Board and  
9 they speak for themselves, and you're cer-  
10 tainly entitled to review same, but I don't  
11 think that this witness should be required  
12 to determine all the steps that the Planning  
13 Board went through or didn't go through; so,  
14 here's another area where I would object.

15 Q Mr. Alpaugh, did there come a time when the  
16 Planning Board was advised by the Township Committee  
17 that the zoning ordinance had been adopted?

18 A Yes.

19 Q And would there have been a letter of  
20 transmittal to that effect to the Planning Board?

21 A I think the Planning Board would have been  
22 furnished with a copy of the ordinance, as I recall it.

23 Q Okay. Now, at the time that that ordinance  
24 was adopted, did the Township Committee transmit to  
25 the Planning Board letters or memoranda submitted by



1 various persons objecting to different provisions of  
2 the zoning ordinance?

3 A I can't answer that.

4 Q Would that be reflected in your records?

5 A I don't know. I'm not quite sure the thrust of  
6 your question.

7 Q The thrust of my question is: Did there  
8 come a time after the adoption of the zoning ordinance  
9 when the Township Committee submitted letters or  
10 memoranda it had received from various persons objecting  
11 to portions of the zoning ordinance to the Planning  
12 Board for review and comment and study?

13 A That's somewhat different than what I interpreted  
14 your original question.

15 Q Okay. Then, I'm sorry.

16 A You coupled them together on your original  
17 question.

18 Q Then, please, excuse my inartfullness in  
19 framing the question.

20 A That's not the point. I want to be clear as to  
21 what you are asking me. I'm not reflecting your  
22 presentation.

23 Such letters or information that the Township  
24 Committee may have had come to their attention, if it  
25 was pertinent to the ordinance, was ultimately gotten

1 to the Planning Board. By what method, what time, I  
2 can't tell you.

3 Q All right. If I were to tell you that I saw  
4 a letter from, either, the township clerk or the mayor  
5 to the effect that various proposals submitted to the  
6 Township Committee were being forwarded to the Planning  
7 Board for review and comment, and that that letter was  
8 dated sometime in February of 1979, would that refresh  
9 your recollection, or, maybe, March of 1979?

10 A No.

11 Q Okay.

12 A Not with specifically ---

13 Q Okay. Would you, please, examine the records  
14 of the Planning Board to determine whether or not such  
15 correspondence was directed to the Planning Board and ---

16 A Can you be more specific about that correspondence?

17 (There is a discussion off the record.)

18 MR. BERNSTEIN: Mr. Klein, are you  
19 requesting a specific letter from this  
20 witness? because if you are, I could see no  
21 problem, if you're seeking a specific letter,  
22 so that the witness doesn't have to rifle  
23 through all of his letters to determine the  
24 contents.

25 MR. KLEIN: I am asking, yes, for a

1 specific letter.

2 MR. BERNSTEIN: Do you have a copy of  
3 that letter with you so that the witness  
4 might be able to identify it?

5 MR. KLEIN: I'm looking for it, but I  
6 would suggest that your town clerk appears  
7 to be very familiar with the letter. At  
8 least her facial expressions seem to indicate---

9 (There is a discussion off the record.)

10 Q Okay. I show you a photocopy with holes, a  
11 letter dated February 5, 1979, which I tell you and  
12 you can accept this fact, this is not a trick or any-  
13 thing, was received by me in my office sometime shortly  
14 after the date of the letter.

15 A I would assume that the Planning Board received  
16 it.

17 MR. KLEIN: All right. Could we have  
18 that marked, please?

19 (The letter above dated February 5, 1979,  
20 was received for identification and marked  
21 Exhibit P-5.)

22 Q Mr. Alpaugh, since you have no recollection  
23 of the letter, let me ask you the question another way.

24 Do you have a recollection of the Planning Board,  
25 sometime in February, March, April or, perhaps,

1 thereafter of this year, meeting and discussing the  
2 contents of the letters referred to in P-5 for identifi-  
3 cation?

4 A I can't answer your question as you phrased it.  
5 I will tell you this, that the Planning Board did, at  
6 one time or another, discuss such letters.

7 Q All right. Do you have any recollection as  
8 to when that was?

9 A No, I couldn't tell you the exact dates.

10 Q Okay. Would that be reflected in the minutes  
11 of the Planning Board?

12 A Generally speaking, yes. Again, it would depend  
13 on what the contents of the letters were, substance of  
14 them.

15 MR. KLEIN: Okay. Mr. Bernstein, I would  
16 like, copies of the February 5th letter and  
17 its attachments, together with any record of  
18 discussion and or action taken by the Planning  
19 Board in connection therewith.

20 MR. BERNSTEIN: Well, when you say  
21 "discussion or action ---"

22 MR. KLEIN: It would be reflected in  
23 minutes ---

24 MR. BERNSTEIN: It would really have to  
25 be minutes or a resolution.

1 MR. KLEIN: Right, or both.

2 MR. BERNSTEIN: No problem. I just  
3 would like to point out, Mr. Klein, that I  
4 assume that Mr. Alpaugh would want a copy of  
5 this deposition prior to his assembling the  
6 information, even though we think we know what  
7 it is. It's a lot easier if it's in black  
8 and white.

9 MR. KLEIN: I thought those copious notes  
10 you were taking ---

11 MR. BERNSTEIN: I would hope that I'm  
12 correct, but I may have gotten something  
13 distorted, therefore, we will be able to give  
14 you, hopefully, everything we had.

15 MR. KLEIN: I would suggest this: Unless  
16 Judge Gascoyne is going to force you to a  
17 trial in the very near future, and if this  
18 case instead of that moves along in the normal  
19 course, then, sure, we can wait for the  
20 transcript. If he's going to try and hit us  
21 over the head to try this case in July or  
22 August, which, as you know, he is sometimes  
23 apt to do, then, I don't know that that's  
24 going to be possible, but let's discuss it  
25 Tuesday.

1 MR. BERNSTEIN: When was the complaint  
2 filed?

3 MR. KLEIN: March of '79.

4 MR. BERNSTEIN: Judge Gascoyne will, at  
5 least, give us six months, nine months, so, I  
6 think we're safe.

7 MR. KLEIN: Well, the problem here, I  
8 think, he recognizes that this case is a little  
9 unusual, because he's having a regular pre-  
10 trial instead of his letter pretrial, and so ---

11 MR. BERNSTEIN: I think we're safe.

12 MR. KLEIN: --- I don't anticipate a  
13 problem, but I just mention it for the record.

14 Q Mr. Alpaugh, to the best of your recollection,  
15 did the Planning Board at some time ever transmit an  
16 official recommendation to the Township Committee with  
17 respect to these letters referred to in P-5?

18 A I can't answer it.

19 Q Okay. To the best of your recollection, were  
20 these letters transmitted to Mr. O'Grady?

21 A My recollection is Mr. O'Grady was familiar with  
22 them. Whether they were transmitted to him per se, I  
23 can't answer.

24 Q Do you recall the Planning Board discussing  
25 the contents of the letters with Mr. O'Grady?

1 A Well, they were discussed. I don't know whether  
2 Mr. O'Grady was always present or not. I know he was  
3 present on some occasions.

4 Q Okay. Are there currently any plans -- strike  
5 that.

6 Are there currently any proposals before the  
7 Planning Board with respect to an amendment or modi-  
8 fication of the 1978 Master Plan?

9 A Not to my knowledge.

10 Q Are there any proposed changes in the zoning  
11 ordinance which have, since March of 1979, to date, been  
12 submitted to the Planning Board, to the best of your  
13 recollection?

14 A There was an amendment to the zoning ordinance.

15 Q And do you recall what that amendment dealt  
16 with, generally?

17 A Various aspects of the zoning ordinance that needed  
18 some clarification or slight changes. That's what I  
19 understand it, but I couldn't give you the detail.

20 Q When was this before the Planning Board?

21 A I don't have the exact date it was.

22 Q Approximately?

23 A Subsequent to the adoption of the ordinance, and  
24 I don't recall the date that it was officially adopted  
25 by the Township Committee.

1 Q Would it have been the spring, summer?

2 A Wasn't the summer of this year.

3 Q Well, okay. That was yesterday, spring of  
4 this year.

5 A It was sometime subsequent to the adoption of the  
6 ordinance and the present time, probably, a month back,  
7 six weeks. I don't recall the exact date, sir.

8 Q Okay. Now, to the best of your recollection,  
9 has there been submitted to the Planning Board any  
10 development plans with respect to the R-3C zone?

11 A The R-3C, where is that?

12 Q It's right here (indicating).

13 A No, sir.

14 Q What about the R-3B?

15 MR. BERNSTEIN: What period of time are  
16 we talking about, Mr. Klein?

17 MR. KLEIN: Well, it would have had to  
18 be between the adoption of the ordinance,  
19 which was, I think, the end of January, and  
20 now.

21 MR. BERNSTEIN: Thank you.

22 A The way the light shines on that, I can only see  
23 part of it. Where is the one you just referred to?

24 The first one, the answer was no.

25 Q R-3C is -- I'm a little color blind, so, if



1 the colors don't match ---

2 A You're color blind and I'm affected by the glare  
3 of the lights, so, we're in a good position.

4 Q The R-3C are these brown zones. The R-3B,  
5 and if it's of any assistance to you, you don't have to  
6 sit in the chair, you can come up here if that will  
7 help you in any way. The R-3B is this grayish-green ---

8 A That's what you're pointing to?

9 Q That's what I'm pointing to.

10 A The answer is no to your question, if that's the  
11 area that you're pointing to.

12 Q All right. Then, that's not in 33B.

13 What about R-3A, which is this more prominent tan  
14 (indicating)?

15 A None.

16 Q What about R-1A?

17 A None.

18 Q What about the R-4, which is the red designa-  
19 tion here (indicating) or here (indicating), and I'm  
20 only talking about these two designations?

21 A There have been no proposals.

22 Q And none in the R-1A?

23 A Right.

24 Q Okay. Although no formal proposals have been  
25 introduced in any of the development plans having been

1 filed in any of those areas, has the Board been, to the  
2 best of your knowledge, advised informally, either by  
3 someone attending a meeting or by a letter of an  
4 intention, to, within the very near future, file an  
5 application for development in any of those areas?

6 A Not to my knowledge.

7 MR. KLEIN: I have no further questions  
8 of Mr. Alpaugh.

9 MR. BERNSTEIN: I have no questions.

10 MR. KLEIN: Thank you, sir. You've been  
11 very cooperative.

12 THE WITNESS: Thank you.

13 (A break was taken.)  
14

15 R O B E R T J. O ' G R A D Y, having been duly  
16 sworn by the Notary, testifies as follows:

17 DIRECT EXAMINATION BY MR. KLEIN:

18 Q Mr. O'Grady, you were present, so, you heard  
19 the introduction that I gave to Mr. Alpaugh, and I  
20 extend the same introduction to you and ask, also, that  
21 if there are any problems with any questions, to please,  
22 don't hesitate to advise me.

23 You are associated with Catlin Associates?

24 A I am.

25 Q In what capacity?

1 A I'm a member of the firm.

2 Q And are you Catlin's representative to the  
3 Township of Chatham?

4 A Yes.

5 Q And what is your function -- strike that.

6 Is it to the Township of Chatham or to the Planning  
7 Board of the Township of Chatham or is the distinction  
8 not made?

9 A Very frankly, I don't recall what our contract  
10 reads. I think it is, essentially, to the Planning Board.  
11 I believe our contract is with the Planning Board.

12 Q And what is the scope of services which your  
13 general contract with the Planning Board provides for?

14 A At the present time, we have a consulting agreement  
15 whereby we provide any services to the Planning Board  
16 as requested in connection with planning and zoning  
17 matters, the review of development applications, ques-  
18 tions concerning the Master Plan or zoning regulations.

19 Q Do you, in the normal -- strike that.

20 Are you one of the so-called departments or  
21 agencies to whom development plans are filed or submitted  
22 in the normal course for comment?

23 A Not in the normal course in Chatham Township.  
24 That's to the best of my knowledge.

25 Q So, you don't review all plans submitted to

1 the Planning Board?

2 A No, I don't.

3 Q Do you know, was the Master Plan program which  
4 resulted in the '72 and the '78 Master Plan, were those  
5 HUD funded, either or them?

6 A The 1978 Master Plan was definitely not HUD funded,  
7 and to the best of my recollection, the 1972 Plan was  
8 not HUD funded, either.

9 Q Was there, to your knowledge, any funding  
10 other than township tax dollars?

11 A None, to my knowledge.

12 Q How long have you been the person principally  
13 involved in providing planning advise to Chatham Town-  
14 ship?

15 A I was the principal in the firm in charge of giving  
16 advise to Chatham Township in connection with the 1972  
17 and 1978 Master Plans, and I don't recall the precise  
18 dates, but there was a previous Master Plan revision  
19 on which I was, also, the primary responsible person  
20 in the firm.

21 Q To the best of your recollection, how long  
22 would you say you've been working for Chatham Township?

23 A Well, to the best of my recollection, shortly  
24 after I joined the firm in 1955, so, probably, from  
25 about 1957 on, intermittently in one capacity or

1 another, I was involved in planning work in Chatham  
2 Township.

3 Q Addressing, now, the 1972 Master Plan, to  
4 the best of your recollection, when was the first time  
5 you heard that Chatham Township wanted to develop or  
6 revise a Master Plan in or about 1972?

7 A I don't recall the exact date when we may have  
8 been initially contacted to discuss doing planning work  
9 for the Township, but according to the Master Plan  
10 itself, the studies were begun in June of 1971; so, it  
11 would probably have been in that general vicinity of  
12 time.

13 Q And would you say that the genesis of the  
14 idea of the development of a Master Plan came from the  
15 Town or was it something in the course of rendering  
16 services that Catlin might have suggested to the Town?

17 A To my recollection, the genesis was from the  
18 Town.

19 Q Okay. Now, I guess, at that time, just prior  
20 to June of '71, Chatham Township had an existing Master  
21 Plan which may have been amended from time to time, but  
22 an existing Master Plan proposal?

23 A That's correct.

24 Q And I presume in the course of undertaking  
25 the work in the development of the 1972 Master Plan

1 proposal, you would have started with a general review  
2 of the existing Master Plan, such as it was?

3 A Yes.

4 Q In the course of the development of the 1972  
5 Master Plan, did you undertake studies of various  
6 aspects of a Master Plan, such as transportation,  
7 housing, population, etc.?

8 A Yes, we did.

9 Q Were these studies incorporated in, ultimately,  
10 reports which were submitted to the Township? Excuse  
11 me. When I use the word "Township," I'm really referring  
12 to the Planning Board, and in this context, I mean the  
13 two interchangeably.

14 A Yeah, to the best of my recollection, the only  
15 planning document that was submitted to the Planning  
16 Board in connection with the 1972 Master Plan was the  
17 Master Plan report itself. Probably, there was a  
18 preliminary draft to the report that was finally  
19 adopted, but there were no supplementary reports, as I  
20 recall.

21 Q Well, let me ask you the same question in  
22 another way. The Master Plan proceeds on certain  
23 assumptions and makes reference to certain statistics  
24 and things like that. What is the basis, the documen-  
25 tary basis, for these assumptions and statistics?

1 MR. BERNSTEIN: I'm going to object to  
2 this question and ask that the witness not  
3 answer it. That was work that he did in his  
4 professional capacity as a planner in drafting  
5 the Master Plan, and since you have directed  
6 us to produce the planner but have refused  
7 to compensate him, he's testifying as a lay  
8 person.

9 Now, since he had done certain work as  
10 an expert in compiling the Master Plan and  
11 referred to certain documents, I'm going to  
12 object to his testimony and instruct him not  
13 to testify as to what he did as an expert.

14 MR. KLEIN: I believe, Mr. Bernstein,  
15 that I am entitled to elicit fact testimony,  
16 as distinguished from expert testimony, from  
17 your witness. I have asked him no questions  
18 about his professional background. I intend  
19 to ask him no questions which will call upon  
20 him to render any kind of professional opinion  
21 or to exercise what might normally be re-  
22 ferred to as professional judgment.

23 I am simply asking him what he did,  
24 what he prepared, what books and documents  
25 he looked at, what he said to who, when, etc.

1 MR. BERNSTEIN: What I'm objecting to  
2 is not the specific documents that he prepared,  
3 not where copies are and not conversations  
4 that he had with municipal officials. I'm  
5 objecting to what he did in preparing those  
6 documents and what background material he  
7 looked into. That specific area I'm objecting  
8 to, not the others.

9 MR. KLEIN: Okay. I disagree with you,  
10 but for the moment, I'll pass on that ---

11 Q Let's turn, for a moment, to P-1 for iden-  
12 tification, which is the 1972 Master Plan, and do I  
13 understand your testimony that, essentially, the only  
14 documents which were submitted to the Planning Board  
15 in connection with this Master Plan would have been a  
16 prior draft of this plan, plus the revisions which  
17 resulted in this plan? Is that correct?

18 A That would be my -- that is my recollection, with  
19 the exception of in the course of the discussions  
20 leading up to the determination of what would go into  
21 the plan, we held meetings with the Planning Board and  
22 reviewed maps, work sheet-type of maps on which we  
23 presented various existing conditions and proposals.

24 Q Now, were these regular meetings of the  
25 Planning Board or were these special Master Planning



1 meetings?

2 A I don't recall back that far.

3 Q Okay. The maps that you had reference to,  
4 were these maps that were prepared in your office?

5 A They would have been prepared in our office, yes.

6 Q Do you still have copies of these maps in  
7 your files?

8 A It's possible. The maps were in the nature of  
9 just prints of the township base map on which we would  
10 freehand color different land use designations or other  
11 planning proposals.

12 Q But in the course of the maintenance of  
13 your business records, I presume that, at least, some  
14 of this documentation may still be available?

15 A It's possible that some of it<sup>is</sup>/still available.

16 MR. KLEIN: Okay. Mr. Bernstein,---

17 MR. BERNSTEIN: I have no objection to  
18 him supplying it, providing he is paid for  
19 his efforts in looking for this material.  
20 You are entitled to subpoena him as a lay  
21 person and ask him lay questions, but here I  
22 must even more strenuously object to any work  
23 that he does out of this room.

24 Mr. Alpaugh being a municipal employee,  
25 at least, on a parttime basis, is given some

1 reimbursement from the Town, but in no way  
2 could Mr. O'Grady be considered a municipal  
3 employee. He's a consultant and the Town has  
4 to pay him, not only for these depositions  
5 but for all the work that he does in looking  
6 for records, and my question to you, Mr. Klein,  
7 is will he be compensated for efforts of his  
8 office looking in his files trying to dig  
9 information out? because if he's compensated,  
10 of course, I would direct him to do it, but  
11 if you were refusing to compensate him for  
12 his efforts, then, I would say it should not  
13 be the municipality's responsibility to  
14 reimburse Mr. O'Grady. It's a question of  
15 money.

16 MR. KLEIN: It always is. I will  
17 reserve a decision on that subject to rulings  
18 from Judge Gascoyne.---

19 MR. BERNSTEIN: Well, again ---

20 MR. KLEIN: --- or whoever.

21 MR. BERNSTEIN: Then, I'll keep my  
22 options open, too.

23 MR. KLEIN: Fine. If you don't want to  
24 commit yourself to providing it, then, fine.  
25 I'll get a ruling and if the judge says I

1 have to pay for it, I'll pay for it, and if  
2 he says I don't have to pay for it, then, I  
3 won't have to pay for it.

4 Q Referring to P-1 for identification, Mr.

5 O'Grady ---

6 MR. KLEIN: By the way, I would just  
7 like to say for the record, because it's been  
8 alluded to several times, my refusal to depose  
9 Mr. O'Grady as an expert or to pay him for  
10 those services has nothing to do with what  
11 my understanding is of Mr. O'Grady's pro-  
12 fessional standing or competence, both of  
13 which I am not putting in issue at this time.  
14 This relates just to the matter in which I  
15 think it is appropriate to proceed in a  
16 deposition.

17 (There is a discussion off the record.)

18 Q Referring to P-1 for identification, there  
19 is a table referred to as Table One, called Land Use  
20 Analysis, and I show you this document.

21 A Uh-huh.

22 Q Okay. There is a footnote on the bottom and  
23 it says "based on consultant's survey."

24 A Yes.

25 Q Could you tell me, is that a written survey?

1 MR. BERNSTEIN: I'm going to object here.  
2 This was work that he did in a professional  
3 capacity, and I'm going to direct the witness  
4 not to answer. Otherwise, we could question  
5 the witness about everything he did in the  
6 Master Plan, the methodology he used, why he  
7 did it, and we would have, substantially, all  
8 the work he would have done without the  
9 necessity of paying him an expert fee. You  
10 could ask a doctor almost identical questions  
11 and get an answer everything that was done,  
12 so, here, I think we're treading into the  
13 area of his expertise as to what he did in a  
14 professional capacity.

15 MR. KLEIN: The witness has already  
16 testified there were no reports or memoranda  
17 submitted to the Town, with the exception of  
18 certain maps or, generally -- I'm not holding  
19 you to that exactly.

20 MR. BERNSTEIN: Is the thrust ---

21 MR. KLEIN: Wait.

22 MR. BERNSTEIN: I may save you some  
23 time. Is the thrust of your question, was  
24 there a written study, a copy of which I can  
25 get?

1 MR. KLEIN: That's where I was going.

2 MR. BERNSTEIN: Okay. Then, I withdraw.

3 MR. KLEIN: It says "based upon con-  
4 sultant's survey," and I wanted to know if  
5 there was a survey and if it exists. That's  
6 all.

7 MR. BERNSTEIN: I'll withdraw my objection  
8 and tell the witness he can answer that last  
9 question as you phrased it.

10 A The methodology used ---

11 Q I don't want the methodology. I didn't ask  
12 you that. I want to know, was there, in fact, a  
13 writing produced which you refer to as consultant's  
14 survey?

15 A No.

16 Q There was not?

17 A There was no writing.

18 Q There was an unwritten survey?

19 A There was an unwritten survey. This gets into  
20 methodology.

21 Q Okay. And Table Two, Population Increase,  
22 has a source, U.S. Census of Population. I assume  
23 that's a government publication?

24 A It is.

25 Q Table Five speaks of traffic volumes, ...

1 Township of Chatham, 1971 source, Morris County Planning  
2 Board. Is there a particular document or report or set  
3 of documents or reports generated by the Morris County  
4 Planning Board to which this has reference?

5 MR. BERNSTEIN: Objection and I instruct  
6 the witness not to answer. That was work that  
7 he did in his expert capacity as a professional  
8 planner.

9 MR. KLEIN: This is Morris County Plan-  
10 ning Board.

11 MR. BERNSTEIN: I understand that, but  
12 this is work that he did in connection with  
13 the Master Plan in assembling various  
14 documents.

15 MR. KLEIN: I'm just asking him if the  
16 document exists and what the document is.

17 MR. BERNSTEIN: That's what I'm objecting  
18 to.

19 MR. KLEIN: To him saying what the  
20 document is?

21 MR. BERNSTEIN: To him saying what the  
22 document is.

23 Q Was there more than one public hearing on  
24 the '72 Master Plan?

25 A I don't recall.

1 Q When the Master Plan was ultimately adopted,  
2 were you advised, either, to prepare or not to prepare  
3 a zoning ordinance?

4 A This is the 1972 Master Plan?

5 Q Right.

6 A My recollection is that only certain amendments,  
7 proposed amendments, to the existing zoning ordinance  
8 were prepared as a result of the Master Plan.

9 Q And were these prepared by your office?

10 A Yes.

11 Q And submitted to the Town through the Planning  
12 Board or to the Township Committee directly?

13 A We submitted them to the Planning Board.

14 Q To the best of your recollection, did the  
15 Planning Board act on them in any way?

16 A It's my understanding that the Planning Board had  
17 recommended the adoption of certain amendments to the  
18 Township Committee.

19 Q To the best of your recollection, did these  
20 amendments relate to the area that is now generally  
21 shown in the northern part of the Township as R-1A and  
22 R-3A, 3B and 3C?

23 A My recollection is that the amendments did not  
24 affect what is shown on the January, 1979 zoning map  
25 as R-1A. The amendments concerned areas generally

1 encompassed by R-3A, R-3B, R-3C and one area designated  
2 as R-4.

3 Q The R-4 that you have reference to, is that  
4 the more northerly one or the one less northerly or  
5 those in the southern part of the Township?

6 A It's one more in the southerly part.

7 Q Down along the board with the Borough of  
8 Chatham near the ---

9 A Yes, the one most central to the Township, commonly  
10 known as Mitchell Gates area.

11 Q Okay. Which abutts the swamp?

12 A In part.

13 Q In part?

14 A Yeah.

15 MR. KLEIN: Okay. Mr. Bernstein,  
16 Mr. Alpaugh was a little vague on this issue  
17 of the zoning ordinance in '72, and Miss Lundt  
18 provided us with some information about it at  
19 that time. In light of Mr. O'Grady's testi-  
20 mony, rather than ask him to go through his  
21 files and produce it, I presume this documen-  
22 tation still exists in the Planning Board  
23 files and would request that, consistent with  
24 your spirit of cooperation, that the same be  
25 made available.



1 MR. BERNSTEIN: I have no problem. If  
2 Mr. Alpaugh has copies of Mr. O'Grady's  
3 documentation, I have no problem with Mr.  
4 Alpaugh supplying it. I might add that there  
5 are certain documents with regard to the 1978  
6 Master Plan which I have which are Mr. O'Grady's  
7 preliminary studies that you may wish to pay  
8 to have copies reproduced. We have a xerox  
9 which we can give you of the pages that concern  
10 your client's property, but if you wish to,  
11 either, pay to have it totally reproduced or  
12 give it to the court reporter to make one  
13 copy for you, one copy for me and return the  
14 original to me, I have no problem with that,  
15 either. I just want to apprise you of that.

16 MR. KLEIN: Okay. But I would like to  
17 know that the zoning proposals that were  
18 submitted to the Township in or about 1972,  
19 maybe '73, arising out of the development of  
20 this Master Plan, will be made available to  
21 me.

22 MR. BERNSTEIN: If Mr. Alpaugh has that  
23 sort of thing, sure.

24 Q Okay. And if it turns out that Mr. Alpaugh  
25 does not have that sort of thing, if the same are

1 available in your files, Mr. O'Grady, will they be made  
2 available to us?

3 MR. BERNSTEIN: Wait. Whose files?

4 MR. KLEIN: Mr. O'Grady's.

5 MR. BERNSTEIN: You'll have to pay for  
6 anything Mr. O'Grady has. You'll have to pay  
7 to even have him search for it.

8 MR. KLEIN: Okay.

9 MR. BERNSTEIN: You're talking about  
10 zoning proposals after the 1972 Master Plan,  
11 as far as any documentation that was supplied  
12 by Mr. O'Grady or his outfit?

13 MR. KLEIN: Yes.

14 MR. BERNSTEIN: If Mr. Alpaugh has it,  
15 I have no problem, but I have the continuing  
16 objection to any outside work being done by  
17 Mr. O'Grady, any non-compensated work being  
18 done by Mr. O'Grady.

19 MR. KLEIN: I understand. I believe he  
20 should be compensated as well, but I think  
21 it's the obligation of the Town to do so.

22 MR. BERNSTEIN: That's where we disagree.

23 MR. KLEIN: Correct.

24 Q In the course of your development of the 1972  
25 Master Plan, did you become involved in any discussions

1 with the Department of Public Works of the Township,  
2 specifically, concerning availability of sanitary sewers?

3 A I don't know, specifically, if we had contact with  
4 or communication with the Department of Public Works  
5 concerning sanitary sewers. I know that we did collect  
6 and obtain ---

7 MR. BERNSTEIN: Wait. I'm going to  
8 interrupt you here. I'm not going to ask you  
9 what you did or didn't do. I have no objection  
10 if Mr. Klein wants to ask you about conversa-  
11 tions, but I'm objecting to what you did in  
12 your expert capacity being discussed.

13 Q Aside from the Master Plan, did you generate  
14 any documentation relating to sanitary sewer or waste  
15 disposal, generally, in the Township?

16 A Yes.

17 Q What was that?

18 A We obtained information concerning the location  
19 of sanitary sewers and sanitary sewers interceptor and  
20 I would assume the capacity of the sewer plan.

21 MR. KLEIN: I am going to ask, just for  
22 the record, I anticipate it will objected to,  
23 but I'll ask it in a very broad way so we'll,  
24 at least, have it on the record and one  
25 objection, and that will save us all a lot

1 of time.

2 Q Would you provide me with a list of the  
3 written material that you consulted in connection with  
4 the preparation of the 1972 Master Plan for the Township  
5 of Chatham?

6 MR. BERNSTEIN: I would object on two  
7 bases here: First, on the basis that as a  
8 consultant, he's entitled to be paid for  
9 whatever efforts he does and, obviously, you  
10 don't want to pay him, but more important, I  
11 don't think you can require anyone to make  
12 a list. You can ask them to supply documents,  
13 but to ---

14 MR. KLEIN: Well, okay, or in the  
15 alternative, supply the documents themselves.  
16 Obviously, a list is the less onerous way to  
17 do it, but I would take either.

18 MR. BERNSTEIN: Okay. Well, as long as  
19 you're willing to compensate Mr. O'Grady for  
20 his time, that would be provided.

21 If you want to put up money in escrow  
22 and, then, have the Court decide, I have no  
23 problem with that.

24 MR. KLEIN: We don't have to be that  
25 technical. If the Court decides one way or

1 the other, that's the way it will be and  
2 that's all.

3 MR. BERNSTEIN: Fine.

4 Q Between 1972 and 1978 -- strike that.

5 Let's say '76, were you consulted by the Planning  
6 Board with respect to amendments or modifications to  
7 the Master Plan?

8 A I don't recall any specific time that I may have  
9 been consulted by the Planning Board. Occasionally,  
10 there was a contact by way of telephone or something  
11 like that, but I don't recall any or rendering any  
12 specific service during that period.

13 Q You mean related to the Master Plan?

14 A Right, correct.

15 Q Were you consulted from time to time with  
16 respect to proposed amendments to the zoning ordinance?

17 A Not that I recall.

18 Q If, in fact, you were consulted with respect  
19 to, either, the Master Plan or the zoning ordinance,  
20 any report or document that you produced would be in  
21 your files, would it not?

22 A Yes.

23 MR. KLEIN: Okay. And I assume to my  
24 next question you have the same objection?

25 MR. BERNSTEIN: Same question, same

1 objection.

2 MR. KLEIN: Let's deem the question  
3 asked and the objection made.

4 MR. BERNSTEIN: Fine.

5 Q When was the first time that you became  
6 involved in the 1978 Master Plan, what is ultimately  
7 known as the 1978 Master Plan?

8 A As I recall, it was, either, in January of 1978  
9 or, possibly, December of 1977, but it was during that  
10 winter, December or January.

11 Q Of '77?

12 A December, '77, January, '78.

13 Q And in connection with that Master Plan, were  
14 there any -- well, strike that.

15 Did the 1978 Master Plan have its genesis in a  
16 recommendation from Catlin or did that, too, emanate  
17 from the Township?

18 A That emanated from the Township.

19 Q And do you recall how that was brought to  
20 your attention; when, actually? You said it was  
21 December, 1977. Was this at a meeting of the Planning  
22 Board?

23 A As I think back now, there may have been some  
24 contact or communication prior to December of 1977,  
25 contact with our firm expressing an interest on the

1 part of the Township in revising the Master Plan, and  
2 we were asked to submit proposals for the content of a  
3 Master Plan study.

4 Q Did you submit proposals for the contents of  
5 the Master Plan study?

6 A As I recall, we did.

7 MR. KLEIN: Again, Mr. Bernstein, if  
8 these proposals are in the files of the  
9 Planning Board ---

10 MR. BERNSTEIN: Would you just go over  
11 what that was?

12 MR. KLEIN: Proposals submitted by  
13 Catlin for the content of a Master Plan study.

14 MR. BERNSTEIN: These are contractual,  
15 I assume?

16 MR. KLEIN: Well, they would be con-  
17 tractual but they would, also, set forth the  
18 scope of the work.

19 MR. BERNSTEIN: If it's an official  
20 document, I suppose, that you're entitled  
21 to it.

22 Q Okay. And then, there came a time when the  
23 Township and Catlin agreed on the content or the study  
24 and the cost of it and some kind of formal agreement  
25 was executed?

1 A That's correct.

2 Q This was separate and apart from your usual  
3 retainer?

4 A Yes.

5 Q And I assume that is an official document  
6 in the records of the Planning Board?

7 MR. BERNSTEIN: Same question, same  
8 answer about the contract. If Mr. Alpaugh  
9 can find it with regard to the preparation of  
10 the Master Plan ---

11 Q Okay. What procedure was then followed by  
12 the Planning Board with your guidance relative to the  
13 development of the Master Plan, and let me refine that  
14 question somewhat.

15 MR. BERNSTEIN: Can you take out his  
16 guidance, Mr. Klein, so I don't have to  
17 object? If you can tell us, if you can ask  
18 him what procedure the Planning Board followed,  
19 I have no problem, but when you ask about his  
20 guidance, then, I have to object.

21 Q Okay. What procedure the Planning Board  
22 followed, and what I have reference to was did the  
23 Planning Board undertake a series of work sessions  
24 addressed to specific areas or specific problems in  
25 the Township?



1 A At one point in time, yes.

2 Q And when was that? Was that early in the  
3 process or later in the process?

4 A I would say that it was in the latter part of  
5 the first half of the process, almost midway through  
6 1978.

7 Q Okay. Between, let's say, December of '77  
8 and almost midway through '78, approximately, six  
9 months, what did the Planning Board do in regard to  
10 the Master Plan?

11 A Well, just to clarify one thing, I think the  
12 contract was executed in January of '78.

13 Q Okay. I didn't mean to hold you to a specific  
14 date.

15 A No, the Planning Board waited until we were ready  
16 to sit down and talk to them and present preliminary  
17 proposals and basic background studies that we had  
18 prepared.

19 Q Okay. So, in effect, the Planning Board,  
20 for the first six months, waited on your office to  
21 submit documentation to it?

22 A I would say probably, at least, four months.

23 Q Okay.

24 A Or about four months.

25 Q Okay. And could you tell me what the

1 documentation was that you submitted to the Planning  
2 Board at that time?

3 A Initially, we submitted the basic background  
4 studies. We performed, primarily, in the way of or,  
5 primarily, in a mapped form, existing development map,  
6 topography, soils, other mapped information or material  
7 concerning soil conditions in the Township. I'm trying  
8 to recall if there was any other specific mapped  
9 information that we had submitted, but I think most of  
10 it was in the way of conversation, discussion, concerning  
11 other aspects of the plan.

12 Q There were, aside from the maps, there were  
13 not or were there memoranda prepared analyzing a  
14 particular area or a particular subject, such as  
15 transportation or roads or population?

16 A Periodically, it slipped my mind for the moment,  
17 but periodically, we would submit to the Planning Board  
18 an interim report summarizing a specific subject or  
19 subjects of study, and I think there were, at least,  
20 four of those interim reports. Basically, they con-  
21 stituted what they called part one of the Master Plan,  
22 which was the background material for the development  
23 of the planning proposal.

24 MR. KLEIN: Okay. Again, Mr. Bernstein,

25 I would ask ---

1 MR. BERNSTEIN: I have copies of all  
2 the interim Master Plan studies, my own  
3 copies that were supplied to me by Mr. O'Grady.  
4 Now, if you wish to have the court reporter  
5 make copies of same, returning the original  
6 to me along with one copy with the depositions,  
7 and giving you a copy, I have no problem.  
8 If you wish to have the municipality make  
9 copies for you, and I would advise the Town  
10 that I feel a quarter a page is a fair price,  
11 you have that option. I do have a copy of  
12 the report dealing with the special study on  
13 the area under consideration, that is, your  
14 client's property, and you can have that  
15 gratuitously. If you want to tell me how  
16 you want these documents to be reproduced,  
17 either, by the Town or the court reporter,  
18 I'll leave it to your discretion, but if it's  
19 the court reporter, I would expect to get the  
20 same copy you're getting.

21 MR. KLEIN: There's no question that  
22 you're entitled to a copy of the deposition  
23 and of any exhibits annexed to the deposition  
24 and marked in that way.

25 Can I see what we're talking about?

1 MR. BERNSTEIN: Sure. No problem.

2 That's what I'm giving Mr. Klein are,  
3 in fact, the interim studies that you pre-  
4 pared. Correct?

5 THE WITNESS: Correct.

6 MR. KLEIN: Why don't we have the court  
7 reporter mark these and let's have them  
8 annexed as exhibits to the deposition, and  
9 why don't you call P-6 interim report No. 1  
10 dated April, 1978, prepared by Robert Catlin  
11 and Associates; P-7, interim report No. 2,  
12 dated May, 1978, prepared by Robert Catlin  
13 Associates; P-8, interim report No. 3,  
14 financial conditions, dated June, 1978,  
15 prepared by Robert Catlin and Associates;  
16 and P-9, interim report No. 4, Special Study  
17 Areas, that's the next exhibit, prepared by  
18 Robert Catlin and Associates, dated August of  
19 1978, and addenda to interim reports dated  
20 August, 1978, prepared by Robert Catlin and  
21 Associates.

22 MR. BERNSTEIN: I assume the addenda is  
23 marked P-10?

24 MR. KLEIN: Whatever the next P is.

25 (Exhibits P-6 through 10 were marked

1 for identification.)

2 Q Mr. O'Grady, would you, please, examine the  
3 documents marked P-6 through P-10, and advise me whether  
4 or not they represent all of the interim reports pre-  
5 pared by your office, and whether or not they are, in  
6 fact, complete?

7 MR. BERNSTEIN: This is going to the  
8 1978 Master Plan, of course?

9 MR. KLEIN: Yes, everything regarding  
10 1978.

11 A Yes, I believe these represent all of the interim  
12 reports submitted.

13 Q Okay. By the way, were there any interim  
14 reports submitted in connection with the 1972 Master  
15 Plan?

16 A As I recall, there were not.

17 Q There were not?

18 A There were not.

19 Q Would you examine your files and advise me  
20 if there were interim reports prepared in connection  
21 with the 1972 Master Plan?

22 MR. BERNSTEIN: Same objection.

23 Mr. O'Grady, at this point, I'm  
24 objecting to your having to do any work  
25 outside of this room, so that you won't have

1 to do that until we're notified by the Court  
2 one way or the other.

3 THE WITNESS: I understand. I was just  
4 noting the material that was requested.

5 Q In addition to these interim reports  
6 respecting the 1978 Master Plan, was there, also, other  
7 preliminary documentation generated by your office? I  
8 believe you had said before there was some maps or  
9 documents like that prepared?

10 A There were various maps which the Planning Board  
11 had seen. I don't recall if copies of those maps were  
12 actually submitted to the Planning Board. I don't  
13 recall of any other specific written or mapped material  
14 that may have been submitted to the Planning Board  
15 prior to the publication or the printing of a Master  
16 Plan report itself.

17 Q Were there, to your knowledge, any maps  
18 submitted to the Planning Board other than those con-  
19 tained in the Master Plan? If you would like to look  
20 at the Master Plan to refresh your recollection ---

21 MR. BERNSTEIN: Could I paraphrase it:  
22 Were there, Mr. O'Grady, maps that weren't  
23 incorporated in the Master Plan?

24 THE WITNESS: I think there were one or  
25 two maps that dealt with specific

1           interpretations of the various soils in the  
2           Township according to the Morris County Soil  
3           Survey. They dealt with septic affluent  
4           disposal limitations. Possibly, there were  
5           maps dealing with depth to bedrock and depth  
6           to water table. These would have been  
7           colored up worksheet-type of maps which were  
8           not included in the Master Plan report. We  
9           had a single map which was a composite of  
10          this information. I believe it was called  
11          "Critical Areas," which is contained in the  
12          Master Plan report.

13           Q     Were these maps and documents filed by you  
14           with the Planning Board or copies given to the Planning  
15           Board or were they retained by you?

16           A     They would have been retained by us because there  
17           would have been a single non-reproducible copy.

18           Q     And do these maps still exist?

19           A     I believe that they do still exist in my office.

20           Q     And you say non-reproducible copy. In what  
21           way are they non-reproducible?

22           A     It's a paper print with magic marker coloring and  
23           it's, really, they consist of in-office study material  
24           rather than being intended for official distribution  
25           or submission to the Planning Board. I just mentioned

1 before, I think, or intended to mention that we may  
2 have brought these to a meeting or two to have available,  
3 not only to show the Planning Board a given condition,  
4 but to be able to refer to them as we discussed a  
5 particular area or a particular property.

6 Q I presume, though, that someone could take  
7 a photograph of those maps with an ordinary camera or  
8 with a camera?

9 A Yes.

10 Q Subject to Mr. Bernstein, if someone were to  
11 come to your office with a camera, would you permit  
12 pictures to be taken of those maps?

13 MR. BERNSTEIN: Let me say this, Mr.  
14 Klein, I have no problem with someone coming,  
15 examining the maps, fondling it, taking  
16 pictures of it, making a copy of it, but  
17 someone is going to have to pay Catlin's  
18 office for the time in digging out the map  
19 and being with it while it's being photo-  
20 graphed, and unless your clients are willing  
21 to assume this cost, I would have to object.  
22 The Town's springing for Mr. O'Grady's cost  
23 during his deposition, but I don't believe  
24 it's proper to have the Town springing for  
25 additional costs.



1 MR. KLEIN: Well, okay. That will be  
2 determined in due course.

3 Q The Interim Reports which we referred to  
4 seem to be -- which were marked P-6 through 10, seemed  
5 to be presented to the Planning Board, I guess, sometime  
6 starting April, '78, through August of '78. What was  
7 the procedure of the Planning Board as these reports  
8 were presented? Did the Planning Board meet with you  
9 and review them?

10 A We did meet and we reviewed them. A copy was  
11 presented for each member of the Planning Board. They  
12 were instructed, I believe, by the chairman to study  
13 the reports and be prepared with any comments, questions  
14 or corrections that they would like to see made prior  
15 to their being incorporated into the final Master Plan  
16 report. I don't recall the precise date when a meeting  
17 or meetings may have been held for that purpose.

18 Q But, in fact, there were meetings for that  
19 purpose?

20 A Yes.

21 Q Do you recall if these were special meetings,  
22 so-called work sessions, or was this done at the  
23 regularly scheduled monthly meetings of the Planning  
24 Board?

25 A I believe it would have been done, either, at the

1 Planning Board's regularly scheduled executive agenda  
2 meeting, whatever they call it ---

3 Q Conference meeting?

4 A Conference meeting, or at an extra special meeting  
5 called strictly for the purpose of considering Master  
6 Plan matters. As far as I recall, we never met -- I  
7 don't say that there wasn't<sup>an</sup>/exception, but seldom, if  
8 ever, met at a regularly scheduled public monthly  
9 meeting for Master Plan purposes.

10 Q After the interim reports were submitted,  
11 were there additional reports submitted?

12 A As I recall, there were none until the final  
13 report itself.

14 Q And the final report, which is marked P-2,  
15 was that submitted initially in a draft?

16 A The only part of it that would -- it was submitted  
17 in a draft to this extent, that interim reports one  
18 through four and the addenda to those reports con-  
19 stituted, after corrections, part one of the report.  
20 There may have been, and I don't recall specifically,  
21 a preliminary draft of part two, which is the planning  
22 proposal section of that Master Plan report prior to  
23 the whole group of reports being combined or compiled  
24 into a single report.

25 Q Okay. If there were, they would exist in

1 your files?

2 A It should.

3 Q Okay.

4 MR. BERNSTEIN: Same question, same  
5 objection.

6 (A break was taken.)

7 Q There was a public hearing which the Planning  
8 Board held which, as you know, I attended. As a matter  
9 of fact, I attended both public hearings. You may  
10 recall that. If you don't, please, accept it as a fact  
11 because I did.

12 At those hearings or, at least, at one of them,  
13 I recall very specifically, there were a series of  
14 maps which were laid out along this wall (indicating).  
15 Are those the maps that you're referring to that are  
16 non-reproducible that were prepared and used as work  
17 products, or are those blow-ups of maps that are  
18 incorporated in the Master Plan or both?

19 A Those maps are, actually, maps that are included  
20 in the Master Plan, Master Plan maps having been  
21 reduced from those maps; the only difference being is  
22 that the maps that were here at the public hearings  
23 were colored up for the purposes of presentation at  
24 the hearings, as opposed to the maps in the report  
25 which are all black and white.

1 Q Okay. In connection with your preparation  
2 of the 1978 Master Plan, did you have any meetings with  
3 the Township Committee?

4 A I don't recall any meetings with the Township  
5 Committee.

6 Q Did you have meetings with any members of  
7 the Township Committee other than those two who are  
8 members of the Planning Board?

9 A None that I can recall.

10 Q Did you have meetings with any citizens of  
11 the Town or property owners in the Town in connection  
12 with the preparation of the 1978 Master Plan?

13 A I did not personally have any meetings with  
14 citizens of the Town.

15 Q Or property owners?

16 A Or property owners.

17 Q Aside from the public hearings, did the  
18 Planning Board have meetings with citizens or property  
19 owners of the Town to discuss the Master Plan or  
20 aspects of it?

21 A I don't know if the Planning Board did or not.

22 Q You were not in attendance at any such  
23 meetings, if they took place?

24 A If any took place, I don't recall being in  
25 attendance at any such meetings.

1 Q Well, when you say you don't recall ---

2 A I don't remember.

3 Q --- is it possible that there were and you  
4 just don't recall or ---

5 A My inclination is, from memory, that there were  
6 no meetings of the Planning Board at which the Master  
7 Plan was discussed with members of the public or  
8 property owners.

9 Q Okay. That is, of course, with the exception  
10 of the public hearings where comment was elicited from  
11 the public?

12 A That's with that exception, yes.

13 Q When did you start -- strike that.

14 In connection with your preparation of the Master  
15 Plan, did you receive any written proposals or recom-  
16 mendations from any citizens of the Town or property  
17 owners of the Town with respect to certain areas of  
18 the Town?

19 A None that I can recall.

20 Q Did Prudential, for example, submit any kind  
21 of proposals with respect to the land -- well, let me  
22 phrase that differently.

23 Prudential owns some land in the northern part of  
24 the Township, doesn't it, abutting Madison?

25 A That's correct, to my knowledge.

1 Q Okay. Did Prudential submit any written  
2 proposals concerning the zoning of its land?

3 A As I recall, Prudential did submit written material  
4 and, I believe, proposals or requests that certain  
5 considerations be given to their property or its  
6 property in the Master Plan.

7 Q Do you know when those proposals were  
8 submitted?

9 A No, I don't recall exactly when they were submitted.

10 Q Were they submitted prior to the preparation  
11 of the Master Plan document?

12 A I believe that the Planning Board did receive  
13 some written material documentation, possibly, proposals  
14 or requests from Prudential prior to the completion of  
15 the Master Plan, but I'm not absolutely certain or I  
16 just can't recall any dates.

17 MR. KLEIN: Okay. Mr. Bernstein, to  
18 the extent that the same exists in the Planning  
19 Board records ---

20 MR. BERNSTEIN: Documentation from Pru?

21 MR. KLEIN: From Pru or any other  
22 property owner relating to the proposed  
23 Master Plan prior to the preparation of P-2.

24 MR. BERNSTEIN: P-2, the Master Plan?

25 MR. KLEIN: The Master Plan.

1 MR. BERNSTEIN: What you're looking for  
2 is any documentation from property owners  
3 that was submitted to the Planning Board? I  
4 think we agreed to supply this before.

5 MR. KLEIN: You may have.

6 MR. BERNSTEIN: But I have no problem.

7 MR. KLEIN: They may be overlapping in  
8 this regard.

9 MR. BERNSTEIN: You're backing into it  
10 by way of Pru rather than asking it a different  
11 way.

12 MR. KLEIN: Right.

13 MR. BERNSTEIN: All right.

14 (There is a discussion off the record.)

15 Q Did you start working on the zoning proposal  
16 at the direction of the Planning Board or the Township  
17 Committee?

18 A Just a technical correction here before answering  
19 the question. It is not a zoning ordinance per se  
20 but land use ordinance. It is called the Land Use  
21 Ordinance of the Township of Chatham.

22 Q I stand corrected.

23 A With a zoning regulation section; and preparation  
24 of the original draft of the ordinance was part of the  
25 Master Plan agreement, so, it was at the direction of

1 the Planning Board.

2 Q Okay. And to your knowledge, when was the  
3 first time that the Master Plan was submitted to the  
4 Township Committee for its review?

5 MR. BERNSTEIN: Did you say the Master  
6 Plan?

7 Q Master Plan.

8 A I don't know whether it was or was not submitted  
9 to the Township Committee for review.

10 Q Mr. Alpaugh testified that a copy of it was  
11 transmitted to the Township Committee after it was  
12 adopted. Is that consistent with your recollection?

13 A I have no idea what may have transpired admin-  
14 istratively internally.

15 Q Okay. The Land Use Ordinance that you  
16 prepared, I presume, was based upon and consistent with  
17 the Master Plan adopted by the Planning Board. Is that  
18 correct, substantially consistent?

19 A In my opinion, it was substantially consistent  
20 with the Master Plan.

21 Q Okay. Was that submitted to the Planning  
22 Board and from the Planning Board to the Township  
23 Committee or did you forward that directly to the  
24 Township Committee?

25 A You're speaking, now, of the Master Plan?



1 Q Of the Land Use Ordinance.

2 A The Land Use Ordinance, that was submitted to  
3 the Planning Board.

4 Q Did the Planning Board take formal action on  
5 the Land Use Ordinance?

6 A I believe, and I don't recall the specific date,  
7 but I believe the Planning Board did, after reviewing  
8 the ordinance, transmit it to the Township Committee  
9 with a recommendation that it be adopted.

10 Q Did the Planning Board have specific meetings  
11 related to a review and discussion of this zoning  
12 ordinance?

13 A Yes, there were meetings.

14 Q Were these meetings running parallel to  
15 Master Plan meetings or did they follow the completion  
16 and approval of the Master Plan?

17 A As I recall, they followed the completion of the  
18 Master Plan. Whether or not they followed the adoption  
19 of the Master Plan or took place both before and after  
20 adoption of the Master Plan, I don't recall precisely.

21 Q Okay. Did you attend any meetings -- strike  
22 that.

23 As a result of the hearings held by the Planning  
24 Board on the Master Plan, were there proposals sub-  
25 mitted by citizens or property owners in writing,

1 orally and in writing, to the Planning Board concerning  
2 modifications in the Master Plan?

3 A I know there were oral recommendations from  
4 certain property owners. I don't recall exactly what  
5 written proposals or recommendations may have been made.

6 Q Okay. If I suggest to you that I had submitted  
7 a written proposal, does that refresh your recollection?

8 A Well, maybe it's power of suggestion, I can only  
9 say I seem to have a vague recollection of having seen  
10 a letter from you at one time.

11 Q Okay. In fact, didn't the owner of a good  
12 deal of the property in the R-1A zone submit a proposal  
13 through a planner and made a whole presentation to the  
14 Township at one time?

15 A Yes, however, I'm not sure that that was prior  
16 to the adoption of the Plan.

17 Q You're right. That may have been after.

18 A I think it may have followed the adoption of the  
19 Plan.

20 Q That's right.

21 I show you a photocopy of a letter from my office  
22 dated November 24, a copy of which was forwarded to  
23 you. You'll see your cc on the bottom. Do you have  
24 a recollection of that letter?

25 A Well, very frankly, I don't have any specific

1 recollection of this particular letter, which is not  
2 to say that I did not receive it and not read it, but  
3 I, you know, at this time, honestly do not have any  
4 recollection of ---

5 MR. KLEIN: Why don't we have it marked  
6 for identification.

7 (The letter above dated November 24,  
8 1978, was received for identification and  
9 marked Exhibit P-11.)

10 Q Do you recall that there was a Master Plan  
11 hearing on November 20, 1978?

12 A The specific date, I don't remember. About that  
13 time I recall a public hearing.

14 Q And was there a second hearing on November  
15 27, 1978, or a week after the other one?

16 A I believe there was some form of continuation of  
17 the hearing. You could, I guess, call it a second  
18 hearing in that regard.

19 Q Okay. Do you recall at the continuation or  
20 second hearing, this letter, P-11, was discussed?

21 A No, because as I indicated, I don't recall the  
22 letter specifically. I don't really recall.

23 Q Okay. Fine.

24 (There is a discussion off the record.)

25 Q After the zoning ordinance was transmitted to

1 the Township Committee by the Planning Board, do you  
2 recall it being submitted to the Planning Board by  
3 the Township Committee after first reading for review?

4 A I have a vague recollection of being aware of  
5 that, although, normally, these things don't necessarily  
6 come to my attention. Their internal operations don't  
7 come to my attention.

8 Q Do you recall seeing P-5 for identification  
9 or any of the documentation referred to in P-5?

10 A What was the question again concerning P-5?

11 (The last question was read back.)

12 A I do not recall having seen P-5. The names in  
13 connection with the communications noted in the letter  
14 in P-5 are all familiar to me as being people concerned  
15 or interested in the Master Plan, one way or another,  
16 and I may have seen these communications, but I can't  
17 recall, specifically, without having seen them or had  
18 a look at them.

19 MR. KLEIN: Could we mark this as P-12.

20 It's my letter of January 26, 1979, addressed  
21 to the mayor of Chatham Township with a letter  
22 of E. Eugene Cross Associates, dated January  
23 9, 1979 ---

24 MR. BERNSTEIN: You wouldn't want to  
25 mark that separate?

1 MR. KLEIN: We can mark them separately,  
2 but they came to the Town as one letter.  
3 Why not 12 and 12A?

4 (The letter above dated January 26,  
5 1979, was received for identification and  
6 marked Exhibit P-12.)

7 (The letter above dated January 9, 1979,  
8 was received for identification and marked  
9 Exhibit P-12A.)

10 Q Referring to P-12 and 12A for identification,  
11 have you seen those before, Mr. O'Grady?

12 A Yes, I have.

13 Q And were they submitted to you by the Planning  
14 Board for review and comment?

15 A They were submitted to me. I'm not sure whether  
16 it was by the Planning Board or by the Township clerk.

17 Q Okay.

18 A Someone from the Township did submit these to me.

19 Q And were you asked to review and comment on  
20 same?

21 A I believe I was, and I did.

22 Q In written form?

23 A Yes.

24 Q Were you given the letters of the other,  
25 I'll call them objectors for the sake of classification,

1 simultaneously with our letter?

2 A I don't recall.'

3 Q Were you asked to review and comment on  
4 the letters or proposals of other persons other than  
5 us?

6 A I don't believe I was specifically asked, except  
7 in connection with the letter from Dolan and Dolan, in  
8 which case I was authorized by the Planning Board to  
9 not ask for a written report but requested to meet  
10 with the planner for that particular property owner,  
11 primarily, for the purpose of confirming the accuracy  
12 of the information that he had developed.

13 Q And who was the planner for that property  
14 owner?

15 A That was Peter Dorram.

16 Q And did you, in fact, meet with Mr. Dorram?

17 A I did.

18 Q And did anyone ask you to meet with Mr.  
19 Chadwick?

20 A No.

21 Q Did anyone ask you to call Mr. Chadwick or  
22 to discuss his proposal with him at all?

23 A No.

24 Q Did Mr. Dorram and the property owner in  
25 question ultimately make a formal or a -- well, I

1 would say a formal presentation to the Planning Board  
2 at one of the Planning Board's meetings?

3 A Yes, there was a presentation made.

4 Q And that was after the zoning ordinance was  
5 adopted?

6 A Yes.

7 Q Did the Planning Board -- strike that.

8 Did you submit a written report with respect to  
9 that proposal?

10 A No.

11 Q Did you just -- did you comment at the time  
12 of the presentation to the Planning Board? Did you  
13 submit any opinion or comment to the Planning Board?

14 A As I recall, the only comments that I submitted  
15 to the Planning Board related to the accuracy of  
16 environmental data that had been prepared by Mr. Dorram  
17 in mapped form, and I had questioned that material  
18 because it seemed to be in contrast or disagreement  
19 with material we had used in connection with the  
20 Master Plan, and that was the sole purpose of my  
21 meeting with Mr. Dorram, to try and resolve the  
22 differences in that source material or how the results  
23 of his studies were different than ours.

24 Q Did you resolve that difference?

25 A I believe that we did resolve it, at least, to my

1 satisfaction.

2 Q Okay. Did you attend the meeting of the  
3 Planning Board at which the Dorram presentation was made?

4 A Yes.

5 Q And did the Planning Board act on that  
6 presentation?

7 A I don't recall an official action on the part of  
8 the Board. I think I recall a general reaction of the  
9 Board. I don't know what official action or don't  
10 recall any official action they may have taken.

11 Q Okay. Did the Board take an official action  
12 with respect to your report to it concerning P-12 and  
13 12A, which is my letter and Mr. Chadwick's letter?

14 A I would have to correct the statement I made  
15 earlier that I had responded by report to this letter.  
16 I think the only response that I may have given would  
17 have been to Mr. Bernstein concerning the report of  
18 Mr. Orros.

19 MR. BERNSTEIN: Was that after this  
20 litigation started?

21 THE WITNESS: Yes, it was.

22 MR. BERNSTEIN: Okay.

23 MR. KLEIN: Okay. Well, that's a  
24 privileged document. I won't waste anybody's  
25 time asking for it.



1 A No, it was, perhaps, a misunderstanding on my  
2 part.

3 MR. BERNSTEIN: You answered it  
4 correctly, Mr. O'Grady.

5 Q Okay. So, to the best of your recollection,  
6 let's back track for a minute, then, when you testi-  
7 fied before that you got a copy of the letter you  
8 thought, either, from the Planning Board or the  
9 Township clerk, was that a copy you got in connection  
10 with this pending litigation?

11 A Yes, it was.

12 Q Okay. Putting the pending litigation to  
13 one side, from the time from February 5th, 1979, until  
14 the time that Mr. Bernstein caused a copy of the  
15 letters to be forwarded to you or made available to  
16 you, did you, in the course of your functions as a  
17 consultant to the Planning Board, have occasion to have  
18 those letters presented to you for review and comment?

19 A As I recall, I was not presented with those  
20 letters for review and comment, except, possibly,  
21 within the past month, again, in connection with this  
22 litigation.

23 Q Okay. Fine. Did you participate in any  
24 discussions with -- let me back track.

25 I show you this document identified as Statement

1 Released by Mayor Dorothy B. Willis on March 12, 1979.

2 Have you seen this before?

3 A I can't say that I've seen this statement from  
4 the Mayor before. The subject matter is familiar to  
5 me and, either, I heard it read or the contents ex-  
6 pressed verbally or I saw the letter.

7 MR. KLEIN: Okay. Why don't we mark  
8 that.

9 (The Statement Released by Mayor Dorothy  
10 B. Willis on March 12, 1979, was received  
11 for identification and marked Exhibit P-13.)

12 Q Referring to P-13 for identification, did  
13 you participate in any discussions resulting in the  
14 release of this statement on March 12th?

15 A No, I did not participate in any discussions.

16 Q Referring to P-13 for identification, which  
17 is the statement of Mayor Willis, my recollection is  
18 you said you didn't have any discussions with anybody,  
19 you thought before, or you weren't involved in the  
20 preparation of the statement or in any discussions  
21 leading to the issuance of the statement. Is that  
22 correct?

23 A That's correct. I was only, I believe, at a  
24 meeting at which it was discussed, that this meeting  
25 with interested people was going to be held. This was

1 a Planning Board meeting.

2 Q Okay. Did you attend the meeting that was  
3 held on March 23rd, with the interested people?

4 A No.

5 Q Okay. Did you have any discussions since  
6 March 12, 1979, when this statement was issued, to  
7 date, with anyone in the Planning Board or the Township  
8 relating to the subject matter of this statement?

9 A Only participating in sort of general discussion  
10 and, really, not participating to a great degree, just  
11 hearing the matter discussed at a meeting and hearing  
12 that certain gallonages had been requested by various  
13 property owners.

14 Q What meeting was that? Was it a Planning  
15 Board meeting?

16 A I believe, I'm not certain and I can't remember  
17 the date, but it probably was the last Planning Board  
18 meeting I attended that there may have been some  
19 discussion.

20 MR. BERNSTEIN: Here's a letter from  
21 the Mayor to the D.E.P., and here's your  
22 response.

23 MR. KLEIN: Fine. Let's hold these to  
24 be marked when I examine Ms. Lundt, because  
25 I don't believe that Mr. O'Grady is familiar,

1 are you?

2 MR. BERNSTEIN: I object, anyway, since  
3 he's an expert and you'd be asking him about  
4 stuff that may come within his expertise.  
5 If you want to hold on to the documents I've  
6 just given you, Mr. Klein ---

7 MR. KLEIN: Yes, I would like to read  
8 them.

9 MR. BERNSTEIN: Fine. For the record,  
10 I've given Mr. Klein a letter which the Mayor  
11 sent to the D.E.P. in 1979 ---

12 MR. KLEIN: Dated May 3, '79.

13 MR. BERNSTEIN: --- and a response  
14 which she received which, I believe, looks  
15 like it's dated June 4, 1979.

16 MR. KLEIN: Yes.

17 Q I'm sorry, Mr. O'Grady, you believed that  
18 discussion was, that you just referred to, was at the  
19 last meeting of the Planning Board that you attended?

20 A That was what I had stated. I've been trying to  
21 remember when and if there was such a meeting and that  
22 I attended, and I think, as opposed to being a meeting  
23 of the Planning Board, there was just some general  
24 discussion on the subject during a meeting of certain  
25 township officials, and I believe Mr. Bernstein, in

1 connection with the public advocate suit, and there  
2 was just some general discussion concerning that subject  
3 of ---

4 Q Wait. Stop right here so we don't -- was  
5 this one of your work sessions? because if it is, I  
6 mean, it's privileged.

7 MR. BERNSTEIN: What was this with  
8 regard to, Mr. O'Grady?

9 THE WITNESS: We were having lunch  
10 after we had been doing the Interrogatories.

11 MR. BERNSTEIN: Yes, that would be --  
12 that was the last time that you and I and  
13 Mr. Miller and a few others who were in this  
14 room ---

15 THE WITNESS: Right.

16 MR. BERNSTEIN: That would be regarding  
17 the lawsuit.

18 Q Okay. Have you been asked by the Planning  
19 Board to review, since February of 1979, any proposed  
20 development plans or to discuss proposed development  
21 plans with any developer relating to the R-3B, 3A,  
22 3C, R-1A and R-4 zones in the Town?

23 A The only proposal I was asked to review in any  
24 of those zones was the proposal of Dr. Platt, which  
25 was more of a presentation for rezoning purposes in

1 the R-1A zone, and to repeat what I stated before, my  
2 review was limited to resolving the differences in  
3 environmental data which we prepared as part of the  
4 Master Plan and the environmental data prepared by  
5 Dr. Platt's planner, Peter Dorram.

6 Q But you have not had any contact with, let's  
7 say, a developer interested in presenting a development  
8 application to the Township in any of those zones since,  
9 let's say, January of '79?

10 A No.

11 Q To your knowledge, have any such applications  
12 come to the Town?

13 A Not to my knowledge.

14 Q Have you been asked to consider or to  
15 recommend any modifications of the Master Plan adopted  
16 in 1978, aside from by the Planning Board?

17 A No, I haven't.

18 Q By the Township Committee or any members  
19 thereof?

20 A No, I haven't.

21 Q How about zoning changes?

22 A No, I haven't.

23 Q Okay. That's all I really have for now.

24 MR. BERNSTEIN: I have no questions of  
25 this witness.

C E R T I F I C A T E

I. JACQUELINE AUGUSTO,

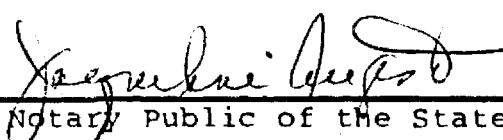
a Notary Public and Certified Shorthand Reporter of the  
State of New Jersey, do hereby certify that prior to the  
commencement of the examination

EDGAR A. ALPAUGH  
ROBERT J. O'GRADY

was duly sworn by me to testify the truth, the whole truth  
and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a  
true and accurate transcript of the testimony as taken  
stenographically by and before me at the time, place and  
on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither a  
relative nor employee of such attorney or counsel, and  
that I am not financially interested in the action.

  
Notary Public of the State of New Jersey

My Commission expires 4/4/84

Dated: July 23, 1979