

ML - Morris County Fair Housing Council  
v. Beenton

Jan. 30, 1980

Transcript of Deposition of Robert O'Grady

pg. 73

U L 0008305

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MORRIS COUNTY  
DOCKET NUMBER: L-6001-78-P.W.

ML000830S

MORRIS COUNTY FAIR  
HOUSING COUNCIL , et al,

Plaintiffs

vs.

BOONTON TOWNSHIP, et al,

Defendants

:  
:  
: DEPOSITION OF:

: ROBERT O'GRADY

:  
: January 30, 1980  
: Wednesday, 10:00 A.M.

:  
: 2 Valley Road  
: Denville, New Jersey

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

BY: STANLEY C. VAN NESS, Public Advocate  
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PENGAD CO., BAYONNE, N.J. 07002 FORM 2048

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I N D E X

<u>Witness</u>	<u>Direct</u>
ROBERT O'GRADY By Mr. Onsdorff	2

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>For Iden.</u>
ROB-1	Initial Master Plan of Boonton Township dated 1956	3
ROB-2	Master Plan of Boonton Township, 1979	6
ROB-3	Preliminary Draft Boonton Township Master Plan Revision, July 1979	7
ROB-4	Map of Boonton Township, prepared by Robert O'Grady showing vacant lands and critical areas associated with those lands	19
ROB-5	Map showing flood insurance administration delineation appearing on the Critical Areas Map	22
ROB-6	Larger copy of the Critical Areas Map with modifications and changes on it by an expert retained by the Public Advocate's office	46
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1 ROBERT O'GRADY, having been duly sworn,  
2 testified as follows:

3  
4 DIRECT EXAMINATION

5 BY MR. ONSDORFF:

6 Q Mr. O'Grady, today's deposition is going to  
7 involve the Township of Boonton, New Jersey, as it pertains  
8 to the litigation we've discussed on a number of prior  
9 occasions.

10 Would you briefly tell us what professional work  
11 you performed on behalf of the Township of Boonton?

12 A The first professional work I performed in Boonton  
13 Township was back in 1956 when the firm was at that time  
14 known as Scot Bagby and Robert Catlin. At that time,  
15 we prepared the Township's first master plan. I assisted  
16 in the preparation of the plan.

17 Since 1956 the firm has been engaged by Boonton  
18 Township periodically, and more recently in 1979 the firm  
19 was retained to prepare a comprehensive revision to the  
20 master plan. And, I was in charge of the development of  
21 that plan.

22 Q I would like to show you this document and  
23 ask if you can identify it?

24 A Yes.

25 This is the initial master plan prepared in 1956

1 which I just referred to.

2 MR. ONSDORFF: I would ask that this be  
3 marked for identification.

4 The code to identify this would be your  
5 initials and the first letter of the municipality.

6  
7 (ROB-1 for identification is the initial  
8 master plan of Boonton Township, dated 1956.)

9  
10 MR. BEDFORD: What is it? ROB-1?

11 MR. ONSDORFF: Yes.

12 Q You mentioned that your work for Boonton  
13 Township since the 1956 master plan has been on a periodic  
14 basis.

15 Do you remember what type of services you rendered  
16 prior to getting up to this last master plan revision in  
17 1979?

18 A Personally?

19 I don't recall having any involvement in Boonton  
20 Township directly between 19-- approximately, some time  
21 in 1957 when the master plan was adopted and the early  
22 part of 1979 when the planning board initiated studies  
23 for its current master plan.

24 The firm during that period of time, 1956 to 1979,  
25 was engaged by the planning board in many instances on an

1 on call basis rather than on a continuing consulting basis.

2 Q I'd like to show you a copy of this document  
3 and ask if you can identify it?

4 A Yes.

5 This is the master plan which was prepared by the  
6 firm under my direction in 1979.

7 MR. ONSDORFF: I would ask that this be--

8 MR. BEDFORD: Could I interject?

9 Is that the one that is finally adopted,  
10 Mr. O'Grady, or is this --

11 Maybe I should ask Mr. Onsdorff.

12 I think we submitted one just as soon as  
13 it came off the press either before it was finally  
14 adopted --

15 MR. ONSDORFF: That's what I was trying to  
16 ascertain.

17 MR. BEDFORD: The final draft -- a final  
18 form draft. And, I think Mr. O'Grady is prepared  
19 to submit the one --

20 MR. ONSDORFF: That's what I wanted to  
21 ascertain, whether or not this thing has been  
22 adopted.

23 THE WITNESS: The plan that you have was  
24 adopted, as I recall, without change.

25 Q Do you recall the date of the adoption by

1 the planning board?

2 A No, but it was either in the latter part of November  
3 or sometime in December of 1979.

4 MR. BEDFORD: May we stipulate that it was  
5 adopted on November 5, 1979 by the planning board?

6 Q Comparing these two copies, Mr. O'Grady, as  
7 far as what is reflected on Page 60, would that be the only  
8 change between the final draft that was submitted to our  
9 office and the one that is adopted -- the certification as  
10 to the adoption?

11 A The certification of Page 60 is the only change  
12 between the draft that you have and the one that Mr. Bedford  
13 just submitted.

14 MR. ONSDORFF: Thank you, Mr. Bedford.

15 We'll mark my draft as the exhibit for  
16 purposes of the substantive material stipulating  
17 that it was adopted on November 5, and that certi-  
18 fication appears on Page 60 after the body of the  
19 plan.

20 MR. BEDFORD: I'd like Mr. O'Grady to be  
21 absolutely positive that the plan is adopted.

22 I'd like him to submit a certified copy, if he has  
23 one.

24 THE WITNESS: I do not have --

25 MR. BEDFORD: You do not have one?

1 THE WITNESS: My recollection is that --

2 MR. BEDFORD: There was no change?

3 THE WITNESS: That there was no change.

4 The public hearing -- I attended the public  
5 hearing prior to its adoption. No one from the  
6 public raised any objection to the plan. And as I  
7 further recall, the planning board authorized its  
8 attorney that evening to draft a resolution for its  
9 adoption.

10 MR. BEDFORD: Okay.

11 Just so the contents are the same.

12 MR. ONSDORFF: I'm obviously concerned that  
13 we do have the final plan that was adopted. We  
14 don't want to take the time today to go page by  
15 page. But, I ask Mr. O'Grady if the occasion arises  
16 that he becomes aware of any changes between the  
17 plan that we've received and the final adopted one  
18 that he would notify us through you, of course,  
19 Mr. Bedford, to any changes that come to his  
20 attention.

21 MR. BEDFORD: We'll do that.

22  
23 (ROB-2 for identification is the master plan  
24 of Boonton Township, 1979.)

25

1 Q Mr. O'Grady, I'd like to show you this  
2 document and ask if you can identify it?

3 A Yes.

4 This was a preliminary draft of Part 2 of the master  
5 plan prepared by this firm and dated July 1979.

6 Q How does that interface with what we've marked  
7 as ROB-2?

8 Are these materials in the draft of July incorporated  
9 in the master plan as adopted in November, or is this an  
10 independent document?

11 A The preliminary draft of Part 2 was incorporated  
12 into the final master plan. The preliminary draft of Part 2  
13 was submitted to the planning board so that they would have  
14 the opportunity of reviewing the plan before it was published  
15 and made available to the public, and also to give them the  
16 opportunity of making any changes.

17 MR. ONSDORFF: I would ask that we mark this  
18 as ROB-3.

19  
20 (ROB-3 for identification is the preliminary  
21 draft - Boonton Township Master Plan Revision,  
22 July 1979.)

23  
24 MR. ONSDORFF: Off the record.

25 (An off the record discussion takes place.)

1 MR. BEDFORD: The text does not appear to be  
2 the same text, but changes may be purely editorial  
3 and unsubstantive, but the document speaks for  
4 itself.

5 MR. ONSDORFF: Certainly.

6 Q As you testified, I believe, Mr. O'Grady,  
7 you began work on the new master plan in early 1979.

8 Is that correct?

9 A That's correct.

10 I believe it was January 1979.

11 Q Your efforts took, approximately, from  
12 January through its adoption in November, ten months of  
13 work in the preparation of this updated master plan.

14 Is that correct?

15 A That's correct.

16 Q Over the ten month period, what did your  
17 efforts entail as far as the preparation of this document?

18 A My efforts entailed the preparation of -- or direct-  
19 ing the preparation of the various studies and conducting  
20 the various investigations forming the background for the  
21 plan.

22 My efforts included meeting periodically with the  
23 planning board, meeting with the planning board and members  
24 of the Township Committee and the Environmental Commission,  
25 working with various municipal officials in the development

1 of the plan, presenting our studies and our findings and  
2 our preliminary recommendations.

3 Q Do you recall when your preliminary recommen-  
4 dations were submitted to the planning board?

5 A I don't recall the precise date of those prelimin-  
6 ary recommendations. I would say, approximately, six  
7 months after the initiation of the studies, which would  
8 be June to July of 1979.

9 Q That would be somewhat contemporaneous of the  
10 draft of the Part 2 of the planning proposals which are  
11 dated in July.

12 Is that correct?

13 A That's correct.

14 Prior to that time we had had -- held meetings  
15 with the planning board and presented it in map form,  
16 preliminary recommendations.

17 Q Essentially, the period through its adoption  
18 in November was spent in the municipal reviewing phase of  
19 this master plan update in that your work was then evalua-  
20 ted and ultimately approved by the planning board.

21 Would that be correct?

22 A That would be correct.

23 Q You mentioned various studies that you  
24 prepared or supervised in preparation of this.

25 Could you list, specifically, what the studies were

1 that you did in the preparation of this master plan?

2 A Well, the studies are all contained in the master  
3 plan report. The plan is a two phased plan. Part 1, or  
4 Phase 1 being existing condition study or studies of --  
5 background studies of -- for the purpose of establishing  
6 a basis for master plan proposals. And these existing  
7 conditions studies included an evaluation of the Township  
8 in terms of regional considerations. That is, relating  
9 planning in the Township to Statewide development plan  
10 guides to the plans of the Morris County Planning Board,  
11 to the zoning and master plan -- master plans of surround-  
12 ing municipalities.

13 It included a study of existing development in the  
14 Township and the pattern that development had taken since  
15 the previous master plan.

16 It included extensive studies of physical and  
17 natural environmental conditions including geology, soil  
18 conditions, evaluation of flood plain data, ground water  
19 resource information from studies by others and included  
20 studies of population, housing conditions, evaluation or  
21 study of the traffic and circulation system of the Township,  
22 studies of community facilities and services including  
23 schools, parks and recreational facilities, municipal  
24 buildings and services and public utilities.

25 And then Part 2 of the master plan basically deals

1 with the master plan proposals. These were divided into  
2 three elements: the land use plan, a circulation plan and  
3 a community facilities and Open Space Plan.

4 Q As part of the housing study which you  
5 undertook, was there an evaluation done of the regional  
6 housing needs as far as low income persons, and what por-  
7 tions of that regional housing need could be met by the  
8 open vacant lands of Boonton Township?

9 A There was no study of the regional housing need.

10 Q Was any evaluation done of least cost housing  
11 provided presently within Boonton Township?

12 A There was no study included in the plan relating to  
13 least cost housing, per se.

14 Q As far as a study which may have been outside  
15 or not included within the plan, was such an analysis of  
16 least cost housing done?

17 A We did not perform any analysis as part of the  
18 master plan of least cost housing, per se.

19 Q The reason I ask that question is in answer  
20 to the previous one you had mentioned <sup>that</sup> no such study was  
21 included in the plan which has led to the inference to  
22 my mind that there was a study done of least cost housing.

23 So, I reiterate my question: Has any study been  
24 done by your firm of least cost housing as it pertains to  
25 Boonton Township for any purpose?

1 A No.

2 Q You mentioned that a study had been done on  
3 municipal facilities and utilities.

4 What was the scope of the analysis for that portion  
5 of the master plan?

6 A This included an investigation to determine existing  
7 public water and supply systems serving the Township and  
8 the potential for expansion of these water supply systems,  
9 and included an evaluation or investigation of existing  
10 sanitary sewer facilities in the Township, and the limita-  
11 tions in capacity of that system as well as the potential  
12 for providing additional sanitary sewerage services in the  
13 future.

14 Q My understanding of your answer is that your  
15 study included existing and potential public water and  
16 public sewer systems serving the Township.

17 Is that correct?

18 A That's correct.

19 Q Was any study performed of other options for  
20 providing these basic services: say, private water companies,  
21 private wells, package treatment plants, or were these out-  
22 side the scope of your analysis?

23 A These, I would say, were primarily outside the scope  
24 of our analysis.

25 Q Do you recall your conclusions as pertains

1 to the potential for additional public water and sewer  
2 services in Boonton Township?

3 A As to water supply?

4 As I recall, the basic conclusion was that there was  
5 very little opportunity for expansion of an existing system  
6 to serve additional areas of the Township.

7 The Township, itself, does not have its own water  
8 supply system and relies on others which serve limited areas  
9 of the Township.

10 And from all available information the conclusion  
11 drawn was that there would be very little opportunity for  
12 any significant expansion of those water systems to serve  
13 additional areas.

14 As to the sanitary sewer system, the Rockaway Valley  
15 Regional Sewer Authority trunk line or interceptor line  
16 extends through a portion of the Township. Limited areas  
17 of the Township are served by that sewer system.

18 At the time the master plan was developed and complet-  
19 ed the allocation of sewer capacity to the Township had been  
20 used up or consumed and any additional service to the Town-  
21 ship would depend upon the Rockaway Valley Regional Sewer  
22 Plant being expanded.

23 And, it was concluded, that this expansion if it  
24 were to occur would provide limited opportunity for areas -  
25 additional areas of the Township to be served by sewers.

1 Q If I direct your attention to Page 25 of  
2 ROB-2, there appears on that page of the master plan pro-  
3 jections for future growth in population in Boonton Town-  
4 ship.

5 Is that correct?

6 A That is correct.

7 Q Between the years 1980 and 2000, approximate-  
8 ly an additional 1,000 residents are envisioned coming into  
9 the community.

10 Is that correct?

11 A That's correct.

12 Q In what manner is this projection based upon  
13 sanitary sewer and potable water services?

14 A I believe that it's based upon the conclusion that  
15 areas of the Township which would have any liklihood of  
16 being served by sanitary sewers or water supply systems  
17 of the Township are basically areas of the Township that  
18 are already developed, and that the additional capacities  
19 for water and sewer that might become available would not  
20 apply to vacant areas that might generate a higher popu-  
21 lation growth.

22 Q In other words, this thousand additional  
23 residents are planned to be served by public water and  
24 sewer.

25 Is that correct?

1 A No.

2 There's no indication in the plan as to how the  
3 additional 1,000 residents would be served by those utilities.  
4 I believe, in all probability, that most of them will be  
5 served by individual wells and septic systems, barring any  
6 unforeseen development of additional utility systems.

7 MR. ONSDORFF: Just read that back, please?

8

9 (The Court Reporter reads the requested answer:  
10 No. There's no indication in the plan as to how  
11 the additional 1,000 residents would be served by  
12 those utilities. I believe, in all probability,  
13 that most of them will be served by individual wells  
14 and septic systems, barring any unforeseen develop-  
15 ment of additional utility systems.)

16

17 Q In other words, Mr. O'Grady, based upon your  
18 understanding of the present planning pertaining to public  
19 water and sewer, there would not be sufficient expansion  
20 of those systems to provide for those 1,000 additional  
21 residents projected in the master plan since you've indic-  
22 ated that this additional growth would come from wells and  
23 septic systems.

24 Is that correct?

25 A Yes.

1           Most of the thousand population growth, I believe,  
2 would be outside -- or beyond public water and sanitary  
3 sewer facilities.

4           MR. ONSDORFF: Please read that back, please?

5  
6           (The Court Reporter reads the requested answer:

7           Most of the thousand population growth, I  
8 believe, would be outside -- or beyond public water  
9 and sanitary sewer facilities.)

10  
11          Q           Does that sound like it?

12          A           Or sanitary sewer and water services.

13          Q           In respect to the present litigation beyond  
14 the work that you have performed in the adoption of this  
15 new master plan, have you done any future work as an expert  
16 in behalf of Boonton Township?

17          A           I have naturally read the allegations against the  
18 Township. I have not conducted any investigations that  
19 go beyond the present scope of the master plan with the  
20 exception of detailing, to some degree, the vacant lands  
21 of the Township in terms of the material that is found in  
22 the master plan.

23                 In other words, to clarify that: The master plan,  
24 as I recall, did not identify specifically the vacant lands  
25 in the municipality. And what we have done since the

1 development of the master plan is to identify those specifi-  
2 cally and relate some of the master plan information, and  
3 particularly the environmental data dealing with critical  
4 areas to those vacant lands.

5 MR. ONSDORFF: Off the record.

6  
7 (An off the record discussion takes place.)  
8

9 Q Would it be accurate to say, Mr. O'Grady,  
10 that the full extent of your additional work beyond the  
11 master plan is a preparation of a map which overlays the  
12 environmental data found within the master plan to the  
13 vacant parcels of land within the municipality to demonstrate  
14 or to delineate the manner in which these vacant lands are  
15 purportedly limited by their environmental characteristics  
16 as far as developments are concerned?

17 A The master plan does not identify specifically the  
18 vacant lands of the Township in map form in relationship  
19 to the critical, physical, and environmental conditions.  
20 And what I attempted to do, primarily for my own personal  
21 background in this litigation, was to show the information  
22 from the critical areas map as contained in the master plan  
23 in relationship to the vacant lands.

24 Q Let me ask you this question: I have reviewed  
25 the master plan on a number of occasions and I believe I

1 came across two maps contained within the master plan.  
2 One shows existing development and another one demonstrating  
3 or delineating the critical areas.

4 Would it not be possible to superimpose the map  
5 showing development which, of course, those areas not shown  
6 as developed would be the vacant lands with the critical  
7 areas map found in the master plan, to get the same informa-  
8 tion which you just indicated you did outside of that  
9 document?

10 A Yes.

11 Not only would it be possible, but this is essentially  
12 what I did. Not in an overlay form, but simply by taking  
13 those two maps and from them determining the vacant lands  
14 and the critical areas associated with those vacant lands.

15 Q In other words, you made a compilation of  
16 those two maps in the master plan?

17 A Correct.

18 Q Do we have that map available?

19 A Yes.

20 MR. ONSDORFF: Let us take about five minutes  
21 while you are getting that out.

22

23 (A short recess is taken.)

24

25 MR. ONSDORFF: Let's mark this as ROB-4.

1 (ROB-4 for identification is the map of Boonton  
2 Township, prepared by Robert O'Grady showing vacant  
3 lands and critical areas associated with those lands.)

4  
5 Q Mr. O'Grady, could you share with us the  
6 color code and delineation that appears on ROB-4?

7 A Yes.

8 The map shows in colors of brown and yellow the  
9 vacant lands in the Township. The areas colored in brown  
10 are the vacant lands that have critical dimensions based  
11 upon the Critical Areas Map and the master plan. The yellow  
12 areas are those areas that are not indicated as critical  
13 dimensions based upon the Critical Areas map and the  
14 master plan.

15 Q Could you tell me how you define vacant areas  
16 as far as those parcels which are deemed outside the  
17 developed category?

18 A Vacant areas were those properties in the Township  
19 which are in private ownership and not devoted to any use  
20 with the exception of possibly farmlands. Some properties  
21 which are shown as vacant may contain a residence or two,  
22 but because of their size has potential for future develop-  
23 ment, future subdivision under zoning requirements.

24 Therefore, we construed those as being vacant.

25 In some instances we may have excluded a portion of

1 the site or the property surrounding the existing residence,  
2 excluded that area from the vacant category.

3 Q If I understand your answer correctly, those  
4 lands which are actively being farmed are not deemed to be  
5 vacant lands?

6 A The areas being farmed are considered to be vacant  
7 lands and having potential for future development.

8 Q I see.

9 You mentioned those lands with a single dwelling  
10 if they had sufficient open spaces within them or as part  
11 of that parcel and they were suitable for future subdivision--  
12 at least that portion not occupied by the dwelling is open  
13 space and placed within the vacant properties category.

14 Is that correct?

15 A That's correct.

16 Q Did you do the same thing for commercial  
17 and industrial structures as far as future land which would  
18 be available for subdivision as you did with the lands that  
19 had a single dwelling unit on them?

20 A In the case of commercial, yes; in the case of  
21 industrial lands, no, not specifically.

22 Most of the industrial lands, however, that is  
23 vacant, is consumed by an airfield so that for all intents  
24 and purposes, the potential for future development of those  
25 properties was considered to be quite limited.

1 All of the properties actually within the industrial  
2 park zone are currently devoted to industrial use.

3 Q With respect to the lands which are vacant  
4 and colored yellow, did you make an acreage determination  
5 as to how much unimpacted lands we are talking about?

6 A We did not make a study of those lands as to being  
7 unimpacted. We made a study of those lands to determine  
8 their acreage as being the acreage that would be non-critical  
9 as shown on the Critical Areas Map.

10 Q How much non-critical areas acreagewise are  
11 they talking about?

12 A Approximately, 800 -- pardon me, 580 acres.

13 Q If I direct your attention to the master  
14 plan, ROB-2, there are a series of maps following Page 18.  
15 I believe the Critical Areas Map is the fourth diagram  
16 following that page.

17 Is that correct?

18 A That's correct.

19 Q The legend as shown there lists four separate  
20 categories of critical areas: flood hazard area, other  
21 wetland areas, rock outcrop and steep slope. And, finally,  
22 prime recharge area.

23 Is that correct?

24 A That's correct.

25 Q In what manner was the flood hazard area

1 as shown on this map delineated?

2 A The flood hazard area is based upon the flood hazard  
3 area as delineated on the Department of Housing and Urban  
4 Development Flood Insurance Maps.

5 Q I show you this HUD map. I would ask if that  
6 is the flood insurance administration delineation which  
7 appears on your Critical Areas Map?

8 A Yes, it is.

9 MR. ONSDORFF: I would ask that this be  
10 marked as ROB-5, at this time.

11 MR. BEDFORD: This is what they came out  
12 with in 1978.

13 But, I think that is the map that we used.

14  
15 (ROB-5 for identification is the map showing  
16 flood insurance administration delineation appear-  
17 ing on the Critical Areas Map.)

18  
19 Q Mr. O'Grady, based upon your knowledge of  
20 Boonton Township and those areas which are developed and  
21 those areas which are vacant and your mapping work of  
22 critical areas including the flood hazard areas of the  
23 Township, are you aware of any residential or commercial  
24 or industrial properties which are presently situated within  
25 the flood hazard area as delineated by the Department of

1 Housing and Urban Development?

2 A Properties within the flood hazard area that are  
3 developed for commercial or industrial uses?

4 Q Or residential?

5 A Or residential uses?

6 There are a number of properties within the flood  
7 hazard area as identified by the Department of Housing and  
8 Urban Development which contain some development.

9 There are properties, for example, along the flood  
10 hazard area of the Rockaway River that contain residences.  
11 Also, along what I believe is called Beaver Brook there may  
12 be a few residences.

13 I would say that, generally speaking, there are  
14 relatively few properties within the flood hazard area  
15 currently developed, most of the existing ones appearing  
16 to be along portions of the Rockaway River.

17 Q Are you aware of any flooding which has  
18 occurred within the Township over the period of your  
19 professional association with Boonton?

20 A I'm not personally familiar with areas that may have  
21 been subjected to flooding in terms of having actually  
22 seen flooding conditions right in Boonton Township.

23 Q Without having seen any flooding, are you  
24 aware of any damage or harm that has occurred to these  
25 structures, those residences located within the delineated

1 flood hazard area?

2 A I've no personal knowledge of any damage.

3 Q Are you aware of any municipal land use  
4 controls, ordinances or other limitations on development  
5 within the delineated flood hazard area of Boonton Township?

6 A The Township has adopted flood hazard area zoning  
7 regulations which are applicable to the flood hazard area.

8 Q In what manner do these zoning controls limit  
9 or otherwise regulate development in the delineated flood  
10 hazard area?

11 A The regulations essentially require that whenever  
12 an application for development is submitted, or whenever  
13 an application for building permit is filed, that the  
14 applicant submit either a separate plan or indicate on  
15 this plan the location of the flood hazard area, the ele-  
16 vations of the property, showing also existing conditions  
17 on the property indicating the floor levels -- lowest floor  
18 levels of structures that are to be erected, any measures  
19 that are proposed to protect existing structures -- or  
20 proposed structures, rather, from flood damage, how sewage  
21 disposal systems will be constructed so as not to be effect-  
22 ed by flooding conditions or create problems in terms of  
23 pollution of streams.

24 Q In essence, would it be fair to say that the  
25 municipal controls that have been adopted in this ordinance

1 are designed to regulate whatever construction takes  
2 place to insure that it is done in a manner which is  
3 consistent with the protection of the public health and  
4 safety?

5 A Yes.

6 The regulations do not preclude the development.  
7 They regulate the development in accordance with performance--  
8 performance on the part of the applicant.

9 Q Despite this being an environmentally critical  
10 area, the Township has envisioned development controls and  
11 mitigating measures that can allow building on these other-  
12 wise critical areas.

13 Is that correct?

14 A That's correct.

15 Q The next category of environmentally critical  
16 lands shown on the Critical Areas Map is designated as  
17 "other wetland areas."

18 What is the definition of "wetland area"?

19 A The wetland areas are based upon information from  
20 the Morris County Soil Survey prepared by the Soil Conser-  
21 vation Service, U.S. Department of Agriculture, and these  
22 are soils identified by the Soil Conservation Service as  
23 having seasonally high water tables from zero -- or at the  
24 surface to within a foot and a half of the ground surface.

25 Q Was any field verification work done or was

1 the mapping of the high water tables simply taken from the  
2 Morris County Soil Survey work?

3 A I would say a combination of both.

4 Many of the -- I had personally examined all of the  
5 properties in the Township at least by way of visual in-  
6 spection from adjoining streets. Many interior lands would  
7 not be possible to gain ready access to.

8 I would say that in a general way my inspection of  
9 the Township would indicate that many areas at least iden-  
10 tified as wetland areas would appear to have wetland char-  
11 acteristics.

12 Q Would it be true that unless soil borings  
13 were taken water below the surface would not be apparent  
14 or visible from a site inspection by the unaided eye.

15 Is that correct?

16 A That would be correct except in cases where surface  
17 water was evident.

18 Q If there was ponded water on top of the  
19 surface, that would be visible from a field inspection  
20 as opposed to drilling for water.

21 Is that correct?

22 A That's correct.

23 Q On how many occasions did you observe ponded  
24 water on the surface of vacant parcels which you examined?

25 MR. BEDFORD: May I interject?

1                   What do you mean by "ponded water"?

2                   MR. ONSDORFF: Well, let me ask the witness.

3                   Q           Is that a term that you can define, Mr.

4                   O'Grady?

5                   A           I would say that ponded water would be the appearance  
6                   of water actually resting on the surface in areas not delin-  
7                   eated as ponds or lakes.

8                   Q           We're talking about mushy areas as opposed  
9                   to areas which are normally either water courses -- a flow-  
10                  ing river or actual standing water of lakes or ponds which  
11                  are there all the time? We're talking about vacant lands?  
12                  We're actually talking about --

13                  MR. BEDFORD: In other words, we're speaking  
14                  regardless of depth?

15                  MR. ONSDORFF: That's correct.

16                  MR. BEDFORD: Okay.

17                  I just wanted to clarify it.

18                  MR. ONSDORFF: Sure, I appreciate that.

19                  Q           That's the context of your discussion as  
20                  to those lands which may be impacted as far as development  
21                  potential if a property is pond or lake that's not part of  
22                  the vacant land classification.

23                  The 500 acres that you mentioned before -- or all the  
24                  vacant lands, in fact, including the critical area.

25                  Is that not so, Mr. O'Grady?

1 A I'm sorry, maybe -- I hate to have that long question  
2 repeated.

3 MR. BEDFORD: I was about to ask the same  
4 thing.

5 MR. ONSDORFF: I'll clarify it.

6 Q When we're talking about vacant lands within  
7 Boonton Township, we are not talking about those portions  
8 of the municipality which all year round are water in the  
9 sense of either a river, a stream, a lake, or a permanent  
10 pond, if my understanding is correct?

11 A That's correct.

12 In fact, if you examine the exact --

13 What is the number?

14 Q Four.

15 A Exhibit 4, the existing lakes in the Township  
16 are not indicated as being vacant lands.

17 Q When we're talking about wetland areas we're  
18 talking about lands which are dry at times or have water  
19 below the surface at some shallow depth.

20 Is that correct?

21 A That would be correct.

22 Q I believe the line of questioning that we're  
23 endeavoring to pursue with those parcels which you examined  
24 and actually observed standing water were ponded water  
25 sitting on the ground surface?

1 A Yes.

2 Q Can you identify any such parcel?

3 A I don't know that I can identify any specific parcels.

4 I have observed ponded water from time to time --

5 Not necessarily in connection with the master plan, but  
6 having lived all my life in this area I have observed ponded  
7 water.

8 For example, on the easterly side -- pardon me, the  
9 westerly side of Powerville Road, north of Rockaway Road.

10 I have observed ponded water in the areas near some  
11 of the -- or adjacent to some of the existing streams.

12 For example, along Beaver Brook which parallels and  
13 runs easterly of Rockaway Valley Road.

14 Q Let me ask you --

15 A Those two areas, generally.

16 But, site specific, I don't know that I could give  
17 you any.

18 Q The lands along, I guess -- I believe, rather,  
19 you stated were along Beaver Brook that you saw ponded  
20 water --

21 A Yes.

22 Q -- are those lands delineated on the Critical  
23 Areas Map in the master plan as being wetland areas or  
24 are they delineated as any other in the flood hazard area?

25 A To a large degree, that would be in the flood hazard

1 area.

2 Q The other area which you have observed ponded  
3 water, I believe, was north of -- what was the name of that?

4 A That would be north of --

5 MR. BEDFORD: Powerville Road.

6 A Powerville Road, north of Rockaway Valley Road.

7 Q Generally, based upon that location as you  
8 would call it, and as delineated on the critical areas map  
9 in the master plan, are those areas shown on this map as  
10 being wetland areas?

11 A In part they are, yes.

12 Q The next category is rock outcrop and steep  
13 slope.

14 How were those areas delineated?

15 A Those areas were identified in a combination of  
16 two ways. The steep slope areas were first identified by  
17 calculating the slope of land using USGS mapping. Added  
18 to those steep slope areas --

19 And, incidentally, by steep slope I mean a grade  
20 of 15 percent or greater.

21 And added to those steep slopes we delineated the  
22 areas identified by the Soil Conservation Service as having  
23 potential rock outcrop or bedrock at a very shallow depth.

24 Q Was any field work done to verify those two  
25 map sources?

1 A There was no actual field work conducted to verify  
2 these sources.

3 In a general way from my personal observation of the  
4 various areas of the Township, I would conclude that the  
5 areas so delineated are generally correct.

6 Q Subsequent to whatever limitations that the  
7 mapping procedures had as far as its degree of accuracy,  
8 you would say they are generally correct, then?

9 A Yes.

10 Q Are you aware of any standard deviation  
11 associated with those two mapping procedures: the USGS  
12 and the Morris County Soil Service? To what extent are  
13 they deemed to be site specific accurate within the trade?

14 A Well, the USGS maps involve mapping at 20 foot con-  
15 tour intervals. At that interval there's, obviously,  
16 potential for error when calculating the actual grade of  
17 the land. At a 20 foot contour interval there could very  
18 well be land beyond a 15 percent grade as shown on those  
19 maps that would have a 15 percent grade or greater. And,  
20 there may be some lands -- minor land within those 20 foot  
21 contour intervals that might not have quite a 15 percent  
22 grade.

23 But, I would say overall, they would show probably  
24 a very close -- or give a very close indication of lands  
25 that would have grades of 15 percent or greater, with minor

1 variations either way.

2 Q Based upon your knowledge of development  
3 which has taken place in Boonton Township, are you aware  
4 of structures placed either within the wetland areas or  
5 the rock outcrop areas of the Township?

6 A Within the rock outcrop and steep slope areas, there  
7 has been development that has taken place. Likewise,  
8 within some of the wetland areas, there has been develop-  
9 ment that has taken place.

10 Q In those areas of rock outcrop and steep  
11 slope, are you aware of any environmental damage which has  
12 occurred as a result of that development?

13 A I have observed, at least as far as the rock outcrop  
14 and steep sloped areas, what I would construe to be unfavor-  
15 able conditions in that the development of the lands in a  
16 process of particularly constructing roads has resulted in  
17 considerable alteration of the topography, considerable  
18 removal of vegetation, considerable exposure of either  
19 bedrock or large boulders. And, the results of which would  
20 require considerable landscaping operation to put back into  
21 a -- an acceptable and suitable condition.

22 Q As far as this exposure of bedrock and removal  
23 of vegetation, have substantial environmental damages  
24 occurred as far as the ruination of any potable water  
25 sources or destruction of streams so that wildlife and

1 aquatic life are no longer living in these areas?

2 I mean, is there any type of demonstrative harm  
3 to the significant environmental interests that you're  
4 aware of?

5 A I'm not personally familiar with any adverse environ-  
6 mental impacts that may have resulted from the development  
7 of any specific properties, in terms of wildlife and the  
8 other items you mentioned.

9 Q On the wetland areas, are you aware of develop-  
10 ment which has taken place within the Township of Boonton  
11 on lands so impacted by high water table?

12 A Again, I'd say that I didn't have personal knowledge  
13 of any specific environmental impacts resulting from develop-  
14 ment of those wetlands.

15 Q You're anticipating my question.

16 I just want to find out whether development has,  
17 in fact, occurred on lands which are delineated as having  
18 high water table or wetland areas?

19 A I believe I answered that question previously and  
20 I answered in the affirmative.

21 Q You're not aware of any environmental damages  
22 that occurred as a result of that development, then?

23 A I'm not aware of any specific environmental damage.

24 Q How has the municipality taken any steps  
25 as far as adoption of land use controls or ordinances

1       pertaining to development of wetland areas or rock outcrop  
2       and steep slopes as was done in the flood hazard area to  
3       prevent any environmental harm that might occur from such  
4       development?

5       A       Yes.

6               I'd say that the zoning policies of the Township  
7       themselves in terms of density and lot size requirements  
8       were developed with the recognition of the environmental  
9       conditions that exist and the potential environmental  
10      conditions that may result from development.

11             Q       As far as the low density, large lot size  
12      zoning requirements, these zoning controls don't specific-  
13      ally direct or cluster development off of the portions of  
14      vacant areas which are delineated as environmentally criti-  
15      cal.

16             Do they?

17      A       They don't specifically require clustering or other  
18      techniques to avoid environmental impacts. But, they make  
19      provisions -- and by way of making provisions for, encourage  
20      the use of clustering, and including provisions for narrower  
21      roadways and similar approaches to development in those areas  
22      so that the least environmental impact will occur -- or the  
23      least possible environmental impact will occur.

24             Q       In other words, zoning control fostering  
25      clustering of residential development away from the

1 environmentally sensitive areas is appropriate and favor-  
2 able towards preserving the environmental interests which  
3 are so delineated.

4 Is that correct?

5 A That's correct.

6 Q On the final category of environmentally  
7 critical areas as shown on your March 1979 map, is a prime  
8 recharge area.

9 How is this area defined and delineated on the map?

10 A The prime recharge area, as in the case of the wet-  
11 land soils, was based on data from the Soil Survey of Morris  
12 County as being those soils that would have the probability  
13 of having capacity for recharging ground water supplies.

14 In a general way and for the most part, these soils  
15 so identified also correspond to the stratified drift forma-  
16 tion which is shown on the geological map in the master  
17 plan. The stratified drift area constituting an overburden  
18 of a deep sandy and gravely sand -- or, deep gravely and  
19 sandy soils usually associated with a ground water recharge.

20 Q Based upon your examination of the critical  
21 areas map in comparison with the developed areas map and  
22 your knowledge of development within Boonton Township,  
23 much of the area shown on the Critical Areas Map is a  
24 prime recharge area in fact developed in some manner or  
25 another?

1 A I have not made a specific calculation as to the  
2 percentage of acreage of the area shown as prime recharge  
3 that is developed. I would say that the vast majority of  
4 it is undeveloped, while there are many properties within  
5 the prime recharge area that do contain structures and  
6 development.

7 Again, the vast majority is undeveloped.

8 Q The center portion of the Critical Areas Map  
9 appears to show a large airport with numerous streets to  
10 the west. Are these areas developed either for industrial  
11 or residential purposes which are found within the prime  
12 recharge area?

13 MR. BEDFORD: Could I interject for a moment?

14 I understand you said "appears to show a  
15 large airport," and I don't think you visited the  
16 Township.

17 What it actually shows is a grass airstrip.

18 MR. ONSDORFF: I thank you for that clarifi-  
19 cation.

20 Why don't we check with Mr. O'Grady?

21 MR. BEDFORD: Please do.

22 Yes, I'm not the witness but I'd like to  
23 get the facts straight.

24 A Yes, having observed planes from time to time taking  
25 off and landing, it's a grass airstrip.

1 Q Is that airstrip served by various terminals  
2 or hangars and parking areas and other impervious covers --  
3 surface covers?

4 A There's some area in the property on which the  
5 airstrip is located that is developed. This development  
6 is mostly in the southwesterly section of the property.

7 Q In addition to the grass airstrip, are there  
8 taxiways from hangars and other appurtenances which are  
9 paved, or is it solely a ground surface facility?

10 A To the best of my knowledge, it's a ground surface  
11 facility. There may be some limited pavement around the  
12 hangar -- and I think there's only one building that is  
13 a hangar, not an exceptionally large building, either.

14 Q Are you aware of any mechanisms for the  
15 prevention of drips and spills and airline fuel and grease  
16 and other chemicals associated with the servicing of  
17 airplanes which prevent these chemicals from going through  
18 the bare ground surface into the aquifer situated below  
19 these lands?

20 A I do not have knowledge of any mechanisms that might  
21 be used to collect oil spills. I am aware of ground water  
22 pollution having been identified and associated with the  
23 industries in that vicinity.

24 Q In addition to this airstrip, how many indus-  
25 tries are located within this vicinity that would be found

1 within this prime recharge area, to your knowledge?

2 A There are three industrial operations that would be  
3 located with -- there would be at least two of the three  
4 located within the prime recharge area. These would include  
5 Aircraft Radio and Control which is the property on which is  
6 located the airstrip. The other one, I believe -- let me  
7 see now --

8 Off the record.

9 Let me think to myself for the name.

10 MR. ONSDORFF: Off the record.

11

12 (An off the record discussion takes place.)

13

14 A (Continuing) A smaller industrial use, at least on  
15 Rockaway Valley Road --

16 MR. ONSDORFF: Let's go off the record.

17

18 (An off the record discussion takes place.)

19

20 Q Mr. O'Grady, have you refreshed your memory  
21 as to the industries located in and around the airport?

22 A Yes.

23 Q Can you describe them?

24 A There are three industries, the largest one being  
25 Aircraft Radio and Control which is the property which

1 includes the airstrip. And, that is located within the  
2 prime recharge area.

3 There's R.F.L. Industries off Powerville Road, also  
4 located within the prime recharge area.

5 And, Johansen Manufacturing served from Rockaway  
6 Road, also in the prime recharge area.

7 All three are in the prime recharge area.

8 Q You mentioned that there has been some reports  
9 of ground water pollution emanating from these industries.

10 Can you be more specific as to the nature of those  
11 environmental problems which have occurred at these loca-  
12 tions?

13 A There has been identification of ground water pollu-  
14 tion and studies performed by a firm called Gerraghty &  
15 Miller and also by later studies by Gionics.

16 I do not know the precise location of where the  
17 pollution was identified and precisely how it was identi-  
18 fied.

19 Q These two studies: the Gerraghty & Miller  
20 and the Geonics' one, do you know where copies of those  
21 would be available?

22 A Well, I assume from either of the two firms, or  
23 perhaps through the Township offices.

24 MR. ONSDORFF: Mr. Bedford, do you know if  
25 those are available?

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MR. BEDFORD: I think I sent you one.

MR. ONSDORFF: We'll check on that.

MR. BEDFORD: I gave you one. I think it was the Gerraghty & Miller study, and the Geonics' study is an ongoing study.

I don't want to testify -- off the record.

(An off the record discussion takes place.)

MR. ONSDORFF: Let's plan to confirm the exact location of the study later on rather than burdening our record today and see if we can come up with them.

MR. BEDFORD: I'll put on the record that I'll furnish you studies.

MR. ONSDORFF: Fine.

MR. BEDFORD: To the extent that I can locate them.

MR. ONSDORFF: Certainly .

Q You testified previously, Mr. O'Grady, that the vast majority of the lands as delineated as within the confines of the prime recharge area are still vacant. What environmental controls or development controls has Boonton Township adopted to protect this environmentally critical area from adverse impacts through development of

1 these vacant areas?

2 A Are you referring to all of the critical areas or  
3 just to the --

4 Q No, just the prime recharge area?

5 A I would say, first of all, that the Township has  
6 either adopted or is expected to adopt through possible  
7 zoning revisions results from the master plan density  
8 controls in terms of development within the recharge area.  
9 Any application that would be presented to the municipality  
10 for development would have to be accompanied by an environ-  
11 mental impact statement addressing the environmental con-  
12 cerns of the area as to specific regulations establishing  
13 specific standards directed at the recharge condition.

14 I don't know that there are any such regulations.

15 Q In terms of types of development that would  
16 be, say, more hazardous to the purity of the ground water  
17 in this aquifer, you mentioned that there's been problems  
18 with ground water pollution emanating from the industrial  
19 development over these lands.

20 Are the remaining vacant lands within the prime  
21 recharge area zoned for additional commercial and industrial  
22 uses which might entail further risk of chemical pollution  
23 of these waters, or zoned solely for residential purposes?

24 A Well, a portion of the area involving the three  
25 industrial properties is zoned for industrial park

1 development.

2 Q I was just wondering as to future development.

3 In other words, your zoning recognizes the pre-exist-  
4 ing industrial structures. But, as far as any further  
5 vacant lands which have further development potential, is  
6 it envisioned that there will be further industrial and  
7 commercial uses over these prime aquifer recharge areas  
8 or are they zoned solely for residential development?

9 A There are solely for residential development.

10 Q So, it's not envisioned that there will be  
11 any further commercial or industrial development within  
12 these areas of Boonton Township?

13 A That's correct.

14 Q This Critical Areas Map has superimposed  
15 various shadings and other symbols of the critical areas  
16 we've just discussed: the flood hazard areas, wetlands,  
17 rock outcrop, steep slope and prime recharge.

18 What, essentially, was the purpose of the prepara-  
19 tion of this Critical Areas Map?

20 A The basic purpose was to present in composite form  
21 an overall picture of the major environmentally critical  
22 conditions that exist within the Township.

23 I would say that the planning proposals that were  
24 developed were developed both in line with each of these  
25 critical areas, or critical dimensions individually, as

1 well as collective where more than one of the critical  
2 dimensions might exist.

3 Q Based upon my reading of the master plan,  
4 ROB-2, and a number of different subheadings of this  
5 document, the statement appears as to the land being  
6 centered around the environmental conditions and the  
7 limitations for future development within the Township.

8 Is the critical areas the composite picture of the  
9 environmental restraints that the planning document incor-  
10 porated in guiding future development around these areas?

11 A I would say that the Critical Areas Map is a good  
12 summary of all of the environmental conditions that formed  
13 the basis for the planning policies proposed in the plan.

14 Q You indicated these are the major environ-  
15 mentally critical areas.

16 What environmentally critical -- be they minor or  
17 otherwise -- were deemed -- not for whatever reason -- not  
18 to be placed on this Critical Areas Map, if any?

19 A Well, I would say that while an area may not be  
20 shown on this Critical Areas Map as having a critical  
21 dimension, it is not necessarily an area without some  
22 limitation to development.

23 For example, there are areas which are shown as not  
24 being critical which may have topographic problems. There  
25 may be slopes which are less than 15 percent, but there

1 may be within those areas slopes of, we'll say, 10 up to  
2 15 percent. And, perhaps, even in part, greater than 15  
3 percent if not revealed by the 20 foot contours of the  
4 USGS maps.

5 Many of the non-critical areas, for example, adjoin  
6 areas shown as having steep slopes of 15 percent or greater,  
7 and it is logical to assume that portions of those non-cri-  
8 tical areas would have slopes which are close to 15 percent.

9 Q In essence, what you're talking about is the  
10 limitations of site specific knowledge that can be gained  
11 from a mapping planning document, in essence, to actually  
12 determine the comprehensive development potential of any  
13 specific parcel of land.

14 You would have to do an onsite evaluation.

15 Is that correct?

16 A I would certainly say that an onsite and site speci-  
17 fic and far more detailed evaluation of any given site  
18 should be made before it's developed.

19 Q As far as what you've testified to, you have  
20 limited your analysis to the categories so reflected on  
21 this Critical Areas Map, and I asked if there were any other  
22 considerations, and you indicated only those related to  
23 the limitations of the mapping of these categories of  
24 environmentally critical areas.

25 Is it correct, then, as far as environmental

1 characteristics of the land is concerned, you don't deem  
2 significant any categories not shown as those delineated  
3 on this critical areas map?

4 A Well, I would deem important, certainly, any  
5 conditions that might be revealed by actually onsite investi-  
6 gations, certainly as a general conclusion recognizing the  
7 fact that the areas shown in white on the map or areas  
8 which presumably are not critical -- these in many instances  
9 are located within and surrounded by areas with critical  
10 dimensions, and therefore, too --

11 For example, developing many of those non-critical  
12 areas involves extending roads, access ways, or what have  
13 you through critical areas in order to get to areas of the  
14 land that presumably have potential for development. So,  
15 even development of the non-critical areas can become  
16 critical.

17 Q In terms of additional environmental character-  
18 istics of the undelineated lands as shown on this Critical  
19 Areas Map, are there any categories of environmental con-  
20 straints that you have chosen not to show on this map?

21 A There are none that I have chosen not to show.

22 I believe that all of the major considerations from  
23 an environmental point of view that normally go into a  
24 master plan for the purpose of developing overall use plan-  
25 ing policies and zoning policies are reflected on this map.

1 MR. ONSDORFF: Let us take five minutes.

2

3 (A short break is taken.)

4

5 Q Mr. O'Grady, I'd like to show you this map  
6 which appears to be a larger copy of the Critical Areas Map  
7 within the master plan following Page 18 indicating a date  
8 of March 1979 and prepared by Robert Catlin and Associates.

9 Is that, in fact, such a larger reproduction of the  
10 same map, to your knowledge, with certain modifications  
11 which have been placed on there by an expert retained at  
12 that time by my office?

13 A The map print itself appears to be a duplication  
14 of the Critical Areas Map of the master plan.

15 MR. ONSDORFF: I ask that this be marked  
16 as ROB-6 for identification.

17

18 (ROB-6 for identification is a larger copy of  
19 the Critical Areas Map with modifications and changes  
20 on it by an expert retained by the Public Advocate's  
21 office.)

22

23 Q Briefly, I'll explain the additional work  
24 that has been done to this map.

25 In order to do so, we should mark as ROB-7 a copy

1 of the existing development map dated January 1979 which  
2 appears to be an enlarged copy of the existing development  
3 map found within the master plan following Page 10.

4 Would you be able to identify this map which is  
5 labelled as prepared by Robert Catlin and Associates as  
6 being an enlarged copy of the existing development map  
7 within the master plan?

8 A I can identify it as such.

9 MR. ONSDORFF: Mark this, please.

10  
11 (ROB-7 for identification is a larger copy  
12 of the existing Development Map.)

13  
14 Q I believe our consultant, Mr. Clark, endeavor-  
15 ed to perform the same analysis which appears on ROB-4  
16 in that he took the Existing Development Map and overlaid  
17 that on top of the Critical Areas Map to determine those  
18 areas or parcels of land within the municipality that are  
19 vacant which may have no more than one residential struc-  
20 ture and found to be substantially outside of the  
21 areas delineated as being critical.

22 Would you examine ROB-6 and compare it to ROB-4  
23 and determine whether or not these two maps, in essence,  
24 reflect the same depiction as to the nature of the vacant  
25 lands situated within Boonton Township?

U Grady - direct

1 A Well, a very quick examination indicates to me that  
2 there are differences between the areas colored by Mr. Clark  
3 in red versus the areas that we've identified as vacant.

4 In some instances they correspond, in others they  
5 do not.

6 Q Based upon a very brief comparison of these  
7 two documents, can you determine in what manner they are  
8 not the same?

9 A I can.

10 I note that Mr. Clark apparently has identified by  
11 number each of the vacant sites.

12 And, if you would like, I'll take them site by site  
13 and describe the differences.

14 Q Certainly.

15 Thank you.

16 A Area 1 appears to cover two sites on Mr. Clark's  
17 map as well as one existing lot. One of the two larger  
18 properties identified by Mr. Clark has received a subdivi-  
19 sion approval from the Township Planning Board and major  
20 grading work has already been accomplished on that property.  
21 We, therefore, excluded that as being a vacant tract of  
22 land.

23 Areas 2 and 4 correspond with the exception of one  
24 small finger extension to the north.

25 Area 3 is the property occupied by the Citizens

1 First National Bank. Mr. Clark has identified that as  
2 a vacant tract of land. That tract of land contains a  
3 bank and large parking area and drive-in facility. Physi-  
4 cal examination of that property indicates to me that it  
5 is virtually a developed tract of land with little or no  
6 opportunity for further development, with the possible  
7 exception of an extension or addition to the bank building  
8 itself.

9 MR. BEDFORD: Off the record.

10  
11 (An off the record discussion takes place.)

12  
13 A (Continuing) Proceeding with Area 5, Mr. Clark  
14 indicates that as vacant, we do not. That particular  
15 property is occupied by Sara Frances Nursing Home and  
16 Tally Ho Nursing Home, and the arrangement of existing  
17 structures on that building, paved areas and so forth,  
18 indicate that the entire property, with the possible  
19 exception of the very real portion, is quite fully developed.

20 Area 6 is indicated by Mr. Clark as being developed.  
21 We do not indicate it as -- pardon me, as being vacant.  
22 We indicate it as being a developed property. That, again,  
23 is another area of subdivision approval on <sup>the</sup> part of the  
24 planning board.

25 Q Do you know what has been approved by the

1 planning board for parcel 6?

2 A I believe it has received a preliminary subdivision  
3 approval.

4 Q For what purposes?

5 A Residential development.

6 MR. BEDFORD: Where is that, Bob?

7 THE WITNESS: That's this area in here off  
8 of Oak Road. (Indicating)

9 A (Continuing) Area 7 is identified as vacant, and  
10 we agree on that one.

11 Areas 8 and 9, 10, 11, 12, 13, we likewise concur  
12 that they are vacant.

13 Area 14 shown as vacant by Mr. Clark, we show that  
14 as a developed piece of property. I would have to further  
15 investigate that piece of property to determine the circum-  
16 stances or reasons why we considered it developed. I  
17 believe-- I know it contains at least one residence.  
18 Possibly the reason we considered it developed may have to  
19 do with the location of the residence on that tract of land.

20 MR. BEDFORD: It's not Katie's, is it?

21 THE WITNESS: No, but it may be Morfogan  
22 Estate.

23 A (Continuing) It seems to me that someone named  
24 Morfogan lived in that area.

25 Area 15, we concur.

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Area 16, we concur.

Area 17, we concur.

Area 18, we concur.

Area 19, we concur in a large measure.

Area 20, we concur with the exception that we have excluded the front portion of several lots on Hillcrest Road from the vacant category since there are residences located on the front portions of these properties along Hillcrest Road.

Area 21, we concur.

Area 22, we concur.

Q I'd like to show you the affidavit of Michael Clark submitted in the Summary Judgment Motion filed by Boonton Township which records the analysis he did in regards to these critical areas and vacant areas of Boonton Township.

MR. ONSDORFF: Let us mark that as ROB-8, please.

(ROB-8 for identification is the affidavit of Michael Clark.)

Q Directing your attention specifically to Paragraph 6 of ROB-8, it is stated by Mr. Clark, "I

1 identified at least 22 separate parcels ranging in size  
2 from five acres to 98 acres and comprising approximately  
3 485 acres as determined by planimeter measurement of the  
4 Catlin Critical Areas Map suitable for multi-family housing  
5 development subject to future site inspection."

6 In light of that acreage determination and <sup>the</sup> fact that  
7 your analysis of non-critical areas, I believe, was 580  
8 acres, would it be correct to say that you have identified  
9 additional lands not within the 22 parcels shown by  
10 Mr. Clark as being both vacant and not within the critical  
11 areas of delineation that was done as part of the master  
12 plan work?

13 A There are some additional areas mostly representing  
14 portions of large tracts of land that are identified as  
15 vacant on our map.

16 MR. BEDFORD: May I interject there?

17 That question was directed only to vacant  
18 lands, not to suitable for housing as stated by  
19 Mr. Clark.

20 MR. ONSDORFF: That's correct. The question  
21 was put in that context.

22 MR. BEDFORD: All right.

23 Q Additionally, in Paragraph 5 of Mr. Clark's  
24 affidavit he addressed the methodology for selecting parcels  
25 which we concluded were appropriate for multi-family housing

1 development. And in Subparagraph B of Paragraph 5,  
2 Mr. Clark states that he evaluated only sites which were  
3 in a, "generally undeveloped status with existing road  
4 frontage or access and of an ample size and suitable  
5 configuration."

6 I believe you testified that in determining whether  
7 or not those areas not within your critical areas delinea-  
8 tion were suitable for higher density development -- you  
9 were concerned about roadways going through critical areas  
10 and that might effect the development potential.

11 Is that correct?

12 A I don't recall whether I used the term "higher  
13 density development". I believe I had stated that certain  
14 lands, or portions of lands, were more suitable for develop-  
15 ment, but that access to those portions of the site more  
16 suitable for development involved going through critical  
17 areas with roadways.

18 Q That's quite correct.

19 Actually, your concern would be for development of  
20 any sort whether it be high density, residential develop-  
21 ment or any other development if access could only be  
22 achieved through roadway construction through critical  
23 areas.

24 That would raise environmental concerns to your  
25 mind.

1           Would it not?

2           A       Yes.

3           Q       Based upon the analysis that Mr. Clark did  
4           in regards to parcels he identified as having access with-  
5           out the need for roadway construction and through critical  
6           areas, do you have any different analyses as to whether or  
7           not these areas that we've gone through do not, in fact,  
8           have such roadway frontage which would obviate or eliminate  
9           the need for cutting roadways through critical areas?

10          A       Well, I found in a previous examination of certain  
11          of the sites identified by Mr. Clark, that he has identi-  
12          fied as we have identified, only portions of certain pro-  
13          perties as being vacant, while the portions that may be  
14          not critical -- or certain portions that may be non-critical  
15          may have road frontage. The non-critical portion is only  
16          a portion of the site and, perhaps, 50 percent or less of  
17          the site.

18          Q       Specifically, my question is: In examining  
19          these sites do you see any instances where non-critical  
20          areas do not have access to existing roadways?

21          A       The first site that I would identify that might not  
22          have road frontage would be Area 13 which appears to have  
23          access only from a right-of-way which extends from Montville  
24          Township off Boonton Avenue --

25                I don't know the precise -- recall the precise

1 nature of that right-of-way as far as its access is concern-  
2 ed.

3 I would say that the remaining properties other than  
4 Area 13 all appear to have road frontage.

5 Q I have another affidavit which was submitted  
6 by the plaintiffs in the Summary Judgment heard by Judge  
7 Muir in this litigation back in October of 1979 by Paul  
8 C. Kurisko, a supervising engineer in the Department of  
9 Environmental Protection, Division of Water Resources --

10 MR. ONSDORFF: I ask that we mark that as

11 ROB-9.

12  
13 (ROB-9 for identification is the affidavit  
14 of Paul C. Kurisko.)

15  
16 Q Directing your attention to the fifth para-  
17 graph in Mr. Kurisko's affidavit it's stated, "As<sup>a</sup> result  
18 of these planning efforts which have been incorporated into  
19 the Rockaway Valley Regional Sewage Authority's Clean Water  
20 Act, Section 201 Facility's Plan, approved and adopted by  
21 the New Jersey Department of Environmental Protection,  
22 Boonton Township has been allocated as part of the Authority's  
23 expansion 100,000 gallons per day of additional sewerage  
24 capacity from the completion of the expansion through 1987--  
25 a 100 percent increase from the average daily sewage flow

1 reported for the Township of Boonton in the 201 Facility's  
2 Plan dated June 1977. Pursuant to the Department's plan-  
3 ning methodology, this 100,000 gallons per day of additional  
4 sewerage flow from Boonton Township will provide sufficient  
5 capacity for, approximately, 1,000 additional residents  
6 in the Township by 1987, assuming timely completion of the  
7 expansion of the Rockaway Valley Regional Sewage Authority  
8 Treatment Plant."

9 Would you just examine that and see whether that's  
10 consistent with the utility's studies that were incorpor-  
11 ated in your 1979 update of the Boonton Township Master Plan?

12 A To the best of my knowledge, the information present-  
13 ed here by Mr. Kurisko -- assuming it to be accurate and  
14 correct, was not available at the time the master plan was  
15 completed. At least, I had no knowledge at the time of  
16 the completion of the master plan of the Township having  
17 been allocated an additional 100,000 gallons through 1987.

18 MR. BEDFORD: May I see that document, please?

19 MR. ONSDORFF: Certainly.

20 MR. BEDFORD: Mr. Kurisko in his final  
21 statement in paragraph five does not show how he  
22 arrived at the capacity for, approximately, 1,000  
23 additional residents.

24 Q Based upon your present knowledge of the  
25 utility planning in Boonton Township, would you have any

1 information that would contradict Mr. Kurisko's information  
2 as reflected in this affidavit?

3 A No.

4 Q Well --

5 A As reflected in Paragraph 5, I would not.

6 I have not read the -- I have seen that affidavit  
7 before but I don't recall precisely what's in the remainder  
8 of it.

9 Q Limiting our analysis, at this time, to  
10 Paragraph 5, based upon an allocation of 100,000 gallons  
11 per day of additional sewage capacity, would have you have  
12 any knowledge as to the calculations that Mr. Kurisko made  
13 in translating that allocation to sufficient capacity for,  
14 approximately, 1000 additional residents?

15 A It's my understanding that the Department of Environ-  
16 mental Protection requires that 100 gallons per person be  
17 assigned for purposes of calculating sewage treatment plant  
18 capacity.

19 Q Would it then result from a simple division  
20 of 100 into the 100,000 which would give you the figure  
21 of 1,000 additional residents?

22 Does that comport with the translation that Mr.  
23 Kurisko has done?

24 A Yes. And, I would assume that he used 100 gallons  
25 per person per day in arriving at the 1,000 families.

1 MR. BEDFORD: I think he says "residents."

2 THE WITNESS: I am sorry, residents.

3 MR. BEDFORD: Individuals.

4 He didn't indicate the number of family  
5 units.

6 MR. ONSDORFF: Correct.

7 THE WITNESS: Correct.

8 Q Directing your attention, Mr. O'Grady, to  
9 Page 11 of ROB-2, the 1979 master plan of Boonton Township,  
10 the first sentence at the top of the page, "Under maximum  
11 potential development, not more than 1,067 additional  
12 dwellings can be accommodated in the R-1 zone."

13 What type of dwellings are we talking about there?

14 A One family dwellings.

15 Q What would be the minimum lot size?

16 A The minimum lot size is, I believe, 81,000 square  
17 feet.

18 Q Are any of the lands within this R-1 zone  
19 situated over areas which have been delineated as environ-  
20 mentally critical areas of Boonton Township?

21 A Yes.

22 Q Have you ever performed any quantitative  
23 analyses of the environmental harm that would result from  
24 development within these critical areas pursuant to this  
25 current zoning scheme?

1 A I have not conducted a specific investigation, no.

2 Q Do you know what the utility services would  
3 be for these projected 1,067 additional dwellings in the  
4 R-1 zone?

5 A I don't know specifically what they would be.

6 I would assume, in all probability based on current  
7 utility conditions and anticipated utility conditions, that  
8 these residents would be served by individual wells and  
9 septic systems.

10 Q But in light of the new information you've  
11 seen in the Kurisko affidavit, you could not foreclose the  
12 possibility that public sewer might be available for at  
13 least a portion of these dwellings.

14 Could you?

15 A I would expect that most, if not all of the 1,067  
16 additional dwellings, would be excluded from the -- from  
17 availability to the 100,000 gallons mentioned by Mr. Kurisko.

18 Q The second zone discussed on Page 11 of the  
19 master plan is an R-2 zone which appears to be 35 percent  
20 developed and 65 percent undeveloped, comprising these 51  
21 acres available for development.

22 Is that correct?

23 A That's correct.

24 Q Do you know what portion, if any, of these  
25 351 acres are situated within areas delineated by you as

1 being environmentally critical?

2 A I have not made a specific evaluation. However,  
3 it is immediately evident by examining the existing zoning  
4 map as contained in the master plan and comparing that to  
5 the Critical Areas Map that the vast majority of the vacant  
6 lands in the R-2 zone is critical.

7 Q In what categories are these critical R-2  
8 lands found within?

9 A The R-2 lands are found predominantly in the steep  
10 slope, rock outcrop category.

11 Q Page 11 indicates that as many as 323 addi-  
12 tional residences could be constructed on these 351 acres.

13 Is that correct?

14 A That's correct.

15 Q These would be single family residences on  
16 lots of a minimum of 40,250 square feet lots?

17 A That's correct.

18 Q Have you done any analyses of the environment-  
19 al harm which would ensue from the construction of 323  
20 additional residences in and about these critical areas?

21 A I have not done a specific analysis.

22 I should, perhaps, point out that these would be  
23 maximum development potential simply applying size --  
24 minimum lot size requirement to the vacant properties.

25 Q The R-3 zone according to the information

1 on Page 11 has the potential for an additional 247 resi-  
2 dences.

3 Is that correct?

4 A That's correct.

5 Q What would be the nature of these dwelling  
6 units?

7 A Again, one family dwellings.

8 Q With a minimum lot size of 30,000 square  
9 feet?

10 A That is correct.

11 Q Are any lands which are found within the  
12 R-3 zone situated within critical environmental areas?

13 A Yes, they are.

14 Q Have you done any specific or quantitative  
15 analyses of the environmental harm that would ensue were  
16 these lands to be developed to their maximum potential  
17 authorized under the current zoning ordinance?

18 A Again, not specifically, only in a general way.

19 Q What general analysis have you done?

20 A Well, by cross referencing the areas within the  
21 R-3 residential zone with the critical areas map, we find  
22 that the entire R-3 zone is located within prime recharge  
23 area.

24 We concluded that because of the conditions within  
25 the prime recharge area and --

1           Incidentally, portions of that zone are also locat-  
2           ed in flood hazard areas and wetland areas, as well. And,  
3           we concluded that because of the potential harm with more  
4           intensive development of that zone, that a lower density  
5           in part should apply to that R-3 zone.

6           Q           As far as the environmental harm that would  
7           ensue as a result of the construction of 247 additional  
8           residences, what would you envision occurring to the  
9           environment of Boonton Township?

10          A           I would say, as far as the prime aquifer recharge  
11          area which is the major environmental restraint in this  
12          zone, that the R-3 zoning requirements would result in  
13          greater land coverage of buildings and other impervious  
14          surfaces, and thus further restricting to a greater degree  
15          the recharge capacity than if lower densities were applied  
16          to the area assuming the use of onsite septic systems which,  
17          again, recognizing that sanitary sewer facilities are not  
18          accessible to most of the zone, that lower densities would  
19          be more desirable since the R-3 would -- would result in  
20          a greater number of septic systems and, therefore, a greater  
21          potential for ground water pollution.

22          Q           You indicated that the greater majority of  
23          the lands within this R-3 zone are not accessible to public  
24          sewer.

25                    Is that correct?

1 A That is correct.

2 Q How about public water? Are these vacant  
3 lands accessible to connection to the public water system  
4 serving Boonton Township?

5 A None of the vacant lands in the R-3 zone are access-  
6 ible to the public water system.

7 Q In the case of the R-2 lands, I believe we  
8 overlooked asking about their accessibility to public water.

9 A There is some accessibility to existing water lines  
10 to portions of the R-2 zone.

11 Q How about the accessibility to public sewer  
12 to those lands found in the R-2 zone?

13 A No accessibility.

14 Q Then why is that?

15 A Distance from existing sanitary sewer facilities,  
16 distance between those facilities and the properties in  
17 the R-2 zone.

18 Q The next zone addressed on Page 11 of the  
19 master plan is the R-4 residential district, and has  
20 sufficient vacant lands according to this document for  
21 an additional 181 residential dwellings.

22 Is that correct?

23 A That is correct.

24 Q The residences that are authorized to be  
25 developed on these lands require a minimum lot size of

1 20,000 square feet.

2 Is that correct?

3 A That's correct.

4 Q Are these lands situated within portions of  
5 Boonton Township that have been delineated as within criti-  
6 cal environmental areas?

7 A The vacant lands within the R-4 zone?

8 Q Yes.

9 A Yes.

10 Portions of the vacant lands in the R-4 zone are  
11 indicated as being critical lands.

12 Q What are the categories of environmentally  
13 critical lands which are impacting the vacant portions of  
14 the R-4 zone?

15 A Predominantly, steep slope and rock outcrop.

16 Q That was the same environmental limitation  
17 on development in the R-2.

18 Was it not?

19 A That's correct.

20 Q In the R-2 zone the single family zones  
21 require a minimum lots size of 40,000. In the R-4 zone  
22 the minimum lots size is but 20,000 square feet.

23 What was the basis for these two different lot  
24 size requirements?

25 A I would say that -- I couldn't answer that question

1 specifically since the establishment of the R-4 zone goes  
2 back quite a few years and I don't recall a precise history--

3 My conclusion of examination of the zoning map  
4 indicates that the location of the vacant properties in  
5 the R-4 zone in relationship to adjoining development pro-  
6 perties had much to do with zoning them for 20,000 square  
7 foot lots.

8 My only general knowledge of the properties in the  
9 R-4 zone, vacant properties, indicates that the slope  
10 conditions -- while they are 15 percent and possibly  
11 greater -- are not quite as severe as some of the proper-  
12 ties in the R-2 zone.

13 Predominantly, I would say it had to do with the  
14 situation of those properties in terms of adjacent develop-  
15 ment properties or established lot size.

16 I should note that in part the master plan recommends  
17 reduction in the R-4 zone, and that reduction does effect  
18 some of the vacant lands in the R-4 zone because of the  
19 environmental conditions.

20 Q The next category of land discussed on Page  
21 11 is the I-P zone which comprises -- or zones 180 acres  
22 of which only 12.5 are not presently occupied by industrial  
23 use.

24 Is that correct?

25 A That's correct.

1 Q Are any environmental restraints applicable  
2 to those 12.5 acres which would preclude their use for  
3 high density residential development?

4 A Yes.

5 The vast majority of that 12 acres is located,  
6 number one, within a flood plain. A portion beyond the  
7 flood plain is in a wetland, and the entire property is  
8 a prime recharge area.

9 Q Presently, these lands are zoned for what  
10 type of development, these 12.5 acres?

11 A Primarily, for light industrial type of operations.

12 Q Under that zoning ordinance what would be  
13 the maximum land coverage that would be covered over either  
14 with buildings or other impervious surfaces?

15 A If I may have just a moment to refresh my recollec-  
16 tion by examining the zoning ordinance, I would -- if there  
17 was a provision of that nature --

18 MR. ONSDORFF: Certainly.

19 A (Continuing) There is no specific limitation as  
20 far as the amount of ground coverage that would be permitt-  
21 ed.

22 Certainly, the other requirements of the ordinance  
23 in terms of yard requirements and requirements from -- for  
24 set back from high water marks of rivers and streams would  
25 certainly present limitations to the amount of coverage.

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1 But, I could not really calculate exactly what coverage  
2 might be possible under those ordinances.

3 Q Would it be accurate to say in excess of  
4 40 percent of the vacant lands could be devoted to buildings  
5 and other impervious surfaces?

6 A I could really not make an estimate without more  
7 careful evaluation or analyses of the property.

8 Given the environmental limitations here, the flood  
9 plain, in particular, and not only where the high water  
10 mark of the stream -- Beaver Brook might be -- Beaver Brook  
11 flowing through the property.

12 Q The last zone discussed on Page 11 is the  
13 Professional District which the master plan indicates is  
14 totally developed.

15 Correct?

16 A That's correct.

17 Q In addition to these residential zones that  
18 we've discussed and the commercial-industrial, are there  
19 additional lands owned by private individuals within  
20 Boonton Township that are intentionally developable, or  
21 have we discussed all the lands that are within those  
22 categories as reflected on Page 11?

23 A Well, on Page 11 we've been discussing all of the  
24 various zones in the Township which cover the entire  
25 Township.

1 Perhaps, I didn't understand your question.

2 Q That's what I'm endeavoring to ascertain.

3 The zones that we've discussed cover the entire  
4 Township from boundary to boundary, so there shouldn't be  
5 any other lands that we haven't examined.

6 Is that correct?

7 A That's correct.

8 Q Directing your attention briefly to ROB-3  
9 for identification, on Pages 3 and 4 of the plan, the  
10 objectives of the plan are discussed with the first sentence  
11 indicating that these are the planning proposals for  
12 Chatham Township.

13 I would assume that was a typographical error and  
14 the planning objectives for Chatham Township have not been  
15 in toto superimposed on Boonton Township.

16 Is that correct?

17 A That is correct. That was an editorial error.

18 Q If you would just take a brief moment to  
19 review the objectives of the plan?

20 A As contained in ROB-3?

21 Q That's correct.

22 A (The witness complies.)

23 MR. BEDFORD: I don't see that on the final  
24 form of that. I think, maybe, the error was correct-  
25 ed.

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MR. ONSDORFF: I imagine so.

MR. BEDFORD: May I see your page?

MR. ONSDORFF: He's got it.

Q Have you completed your review, Mr. O'Grady?

A Yes.

MR. BEDFORD: Yes, that's the draft. That was corrected in the final form.

Q My question is: Would it be accurate to say that the objectives of the plan as reflected in ROB-3 do not provide for the provision of least cost housing within Boonton Township?

Is that correct?

A May I have a definition of "least cost housing"?

Q We've discussed this in terms of each of the municipalities that you have performed professional services with as being consistent with least cost housing as defined in the report of Allan Mallach in March of 1979 which you reviewed and which lists the number of densities and provides for housing that is at the minimum standard of expense for insuring the health and safety of the residents of these dwellings.

So, in the context of the definition, does this plan, as its objective, provide for the construction of such least cost housing within Boonton Township?

A The objectives of the plan make no provision for

1 development at densities recommended by Allan Mallach.

2 Q In addition, were any of the objectives to  
3 eliminate the cost generating futures as identified by  
4 Allan Mallach in his 1979 report --

5 A There's no specific reference made in the master  
6 plan or in the objectives of the plan as to development  
7 regulations which might be cost generating. These would  
8 be more likely found in planning and zoning regulations,  
9 ordinances.

10 Q Directing your attention to Page 18 or ROB-3,  
11 the first sentence under the category: Land Use Summary,  
12 the statement appears, "The foregoing land use recommendations  
13 are directed at maintaining and promoting the Township's  
14 low density and open character."

15 Is that, in essence, the objective as set forth  
16 in the land use recommendations of the master plan?

17 A I believe it is.

18 Q With the exception of the editorial changes  
19 which we discussed, were there recommendations as contained  
20 in ROB-3 incorporated in the final master plan as published  
21 in ROB-2?

22 A My recollection is that except for editorial changes,  
23 there were no substantive or significant changes as would  
24 relate to land use recommendations --

25 Q In order to maintain the low density and open

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spaces --

A -- item that would apply -- or futures that would apply to zoning, for example. There were no substantive changes.

I believe the major change between the preliminary draft, ROB-3, and the final master plan, ROB-2, was the elimination of a bike way plan.

Q Do you recall the reason for eliminating the bike way plan?

A Primarily, the bike way plan was related to a bike way plan that had been developed by the Morris County Planning Board, and most of the routes that were shown were county proposals. The Township Planning Board felt that it was a bit premature to include a bike way plan as part of the master plan, and that further study and investigation would be needed before that could be done.

MR. ONSDORFF: No further questions.

(The deposition adjourns at 1:10 p.m.)

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C E R T I F I C A T E

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

ROBERT 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,  
to the best of my ability.

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