

Transcript of proceedings: Direct and Cross-examination of  
John Chadwick.

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GREEN VILLAGE 139 CORPORATION,  
GERALD WEIR, JOSEPH GIOVANNOLI,

Plaintiffs,

-vs-

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

Defendants.

ML000831S

STENOGRAPHIC TRANSCRIPT

of

PROCEEDINGS.

Wednesday, March 12, 1980.

Morris County Courthouse  
Morristown, New Jersey 07860

B E F O R E :

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

TRANSCRIPT ORDERED BY:

JACQUES H. GASCOYNE, Superior Court Judge.

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

MESSRS. FISCHER, KAGAN, KLEIN, GIAMPAPA & MILLER,  
BY: NORMAN I. KLEIN, ESQUIRE,  
For the Plaintiffs.

MESSRS. SACHAR, BERNSTEIN, ROTHBERG, SIKORA & MONGELLO,  
BY: DANIEL S. BERNSTEIN, ESQUIRE,  
For the Defendants.

Earl C. Carlson, CSR  
Official Court Reporter  
Morris County Courthouse  
Morristown, New Jersey  
07960

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

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I N D E X      T O      W I T N E S S E S

Name	direct	cross
John Chadwick	3	22

I N D E X      T O      E X H I B I T S

Number	Description	Ident.
D-1	Zoning Map & Ordinance of Parsippany-Troy Hills	80
D-2	Zoning Mpa & Ordinance of Franklin Township	80
D-3	Zoning Map & Ordinance of Edison	81
D-4	Zoning Map and Ordinance of Sayreville (withdrawn)	81
D-4	Zoning Map and Ordinance of Sayreville	84

PENGAD CO., BAYONNE, N.J. 07002 · FORM 2048

1 MR. KLEIN: Your Honor, I have had the revised  
2 statewide housing allocation, which was marked  
3 as plaintiff's 14.

4 THE COURT: Okay.

5 MR. KLEIN: As an exhibit. It was marked  
6 for identification.

7 THE COURT: Yes.

8 MR. KLEIN: I have had a copy of that made  
9 for you, which I would like to hand you.

10 THE COURT: Okay. Thanks a lot.

11  
12 J O H N T. C H A D W I C K, previously sworn.

13 DIRECT EXAMINATION BY MR. KLEIN: (continued)

14 Q My recollection is that where we left off, we  
15 were discussing the zoning ordinance and had gone through  
16 the provisions relating to the townhouse and garden apart-  
17 ments.

18 Continuing, Mr. Chadwick, could you tell us those  
19 provisions of the ordinance relating to quadruplex houses  
20 which in your opinion are cost generating?

21 A Yes, I can. I am referring to the zoning ordinance of  
22 Chatham Township ordinance 2-79, Section 702.7.

23 Q What page does that appear on?

24 A That is 7-11.

25 Q Thank you.

A The regulation

1 density of four dwelling units to the acre, the requirement  
2 of a seventy-five foot setback and provision 702.7, paren-  
3 thesis E, close parenthesis, in my opinion are all cost  
4 generating.

5 THE COURT: 702 (E)?

6 THE WITNESS: 7 (E). Parenthesis E, close  
7 Parenthesis on the top of page 7-12 listed other  
8 requirements.

9 THE COURT: Okay.

10 THE WITNESS: Those provisions are carried  
11 through from the townhouses and the apartment  
12 regulations and I previously stated those pro-  
13 visions inclusive are the reference regs, in my  
14 opinion, are cost generating and/or have no, at  
15 least in my opinion, relevance to zoning regulations.

16 Q Could you, without going through the whole thing,  
17 again, just give us an example of one of those provisions  
18 covered by subsection E, other requirements?

19 THE COURT: I think, I recall them. I don't  
20 think he needs to do that.

21 MR. KLEIN: Okay, fine.

22 Q Based upon your review of the ordinance then, is  
23 it your opinion that least cost housing cannot be built in  
24 Chatham Township? A Yes.

25 Q Now, the section you were reading from is require-

1 ment for quadruplex dwelling in the R-3A district. Is that  
2 the district that have quadruplexes?

3 A Yes.

4 Q Now, could you tell us in your opinion what the  
5 township, what kind of zoning the township would need to  
6 develop in order to produce least cost housing?

7 A Two fundamental actions are required. One would be to  
8 expand the areas permitting the garden apartment, townhouse  
9 and quadruplex options, and, two, amend the standards to  
10 permit increase density and to reduce the site development  
11 regulations consistent with the limitations of the land  
12 itself.

13 For example, and I believe I testified previously.  
14 The setback requirements in my judgment should relate to  
15 the traffic activity on a roadway as opposed to being a  
16 simple standard relating to all roadways. High traffic  
17 roadways in the area that has been discussed at length. I  
18 testified to at length. The Green Village Road-Shunpike  
19 neighborhood, those two roadways are shown and proposed as  
20 major traffic roads in the municipality.

21 Setbacks of fifty and seventy-five feet are not  
22 unreasonable as you front those major roadways. Setbacks  
23 of fifty and seventy-five and a hundred or seventy-five,  
24 in excess of seventy-five feet, in my opinion, do nothing  
25 other than to restrict the development of the tract itself.

1           Setbacks of seventy-five feet on internal or local  
2           roads, either existing or in the future, in my  
3           opinion are unreasonable.

4           The common provisions listed under other  
5           requirements for townhouses and quadruplexes as  
6           are listed as other requirements in the garden  
7           apartment and the quadruplexes listed specifically  
8           under the townhouses, in my judgment, in many  
9           cases either are standards that are controlled  
10          by other ordinances or have no place within a  
11          zoning ordinance in the first instance.

12          THE COURT: Excuse me, okay? A judge needs  
13          to see me a moment. Sorry. Excuse me.

14          (The judge left the bench and returned shortly.)

15          THE COURT: Okay, Mr. Klein. I'm sorry.

16          MR. KLEIN: That is okay, Judge.

17          Q     Had you finished your last answer, Mr. Chadwick?

18          A     I don't recall. I believe so.

19          THE COURT: The question dealt with what you  
20          would suggest as amendments to the present ordinance,  
21          standards of the zoning ordinance. And your last  
22          comment referred to those common provisions which  
23          I will refer to as subparagraph E provisions that  
24          run through the garden apartment quadruplex and  
25          townhouses. And you said, you made the comment

1 that you made before that they really belong in  
2 other ordinances and that there should be changes  
3 there.

4 THE WITNESS: I don't believe that I was  
5 offering all adjustments that I would consider  
6 appropriate to eliminate cost generating factors.  
7 I believe, I already listed what I felt were cost  
8 generating factors as set forth in the ordinance.

9 I am really not prepared to set forth a  
10 basis for revision to Chatham Township's zoning  
11 ordinance in terms of adjustments, the specific  
12 standards or simply elimination of all of those  
13 standards completely. But as individual standards  
14 contained in the ordinance, I stand on the testimony  
15 given in court.

16 Q What about an increase in density though?

17 A The increase densities allowed in the R-3 A, B and C  
18 districts in my judgment is cost generating in the fact that  
19 they're relatively low densities in context with the type  
20 of housing permitted; townhouses, garden apartment and  
21 quadruplex.

22 Q And what kind of densities would you find appropriate  
23 to meet the needs for cost generating, least cost  
24 housing in this area? A I don't know  
25 that there is anyone standard that relates to the three

1 individual districts. I think, the standards in the case  
2 of Chatham Township and particularly in reference to the  
3 Green Village Road area, at least in my opinion, having  
4 reviewed both topographic maps, soil conditions, land used  
5 and made site inspections that there is no reason that the  
6 densities for townhouses in the eight to ten units per  
7 acre level cannot be accommodated within the R-3B areas.  
8 And considering the environmental controls with respect to  
9 garden apartment zone, or the R-3C zone, I think, there  
10 would have to be detailed soil surveys in that particular  
11 zone to determine what the density of that tract can be  
12 accomplished as there is indications within the Morris  
13 County Soil Survey that particular zone, although the  
14 highest density zone in the zoning scheme has severe limit-  
15 ations.

16 The rationale for designating that for the highest  
17 density zone, I have no idea.

18 With respect to the Green Village Road area to  
19 the Loantaka Brook, the westerly boundaryline, the R-2A  
20 categories with the limitation of forty acres and a minimum  
21 site size of five to the acre, there seems no rationale  
22 for the differentiation for the R-3B and R-3A in terms of  
23 density.

24 The limitations of the land are roughly equivalent.  
25 Therefore, following that logic would be a density again

1 in the eight to ten category, in my opinion, would reasonably  
2 accommodate on the land.

3 The other standards that have to be dealt with,  
4 however, in adjustment of standards harken back, or relate  
5 to all the other standards within the ordinance in terms  
6 of separation of buildings, peripheral yards, et cetera.  
7 As I stated before, the standards are standards contained  
8 in the ordinance as I view them would require a spreading  
9 of development across the entire tract, if a developer were  
10 subjected to reach at least the minimum densities as set  
11 forth in the ordinance. And it sort of flies in the face,  
12 I think, as I stated before of a plan which would be  
13 environmentally sensitive relating to various site features  
14 either man made or natural. Standards that do require  
15 basically uniform development across the site.

16 Conversely those standards could further lower the  
17 densities even as permitted in the ordinance, if it was  
18 determined a portion of the site should not be developed  
19 or became totally economically unfeasible for development,  
20 you will have a loss of density.

21 Q Now, with respect to the R-1A zone. Do your  
22 comments hold true, increase density in that area?

23 A Yes, I believe, I testified to the court previously  
24 the R-1A zone and the Green Village Road area and specific-  
25 ally dealing with the tracts of land having access to the

1 Green Village Road area, in my judgment, I see no rationale  
2 why the R-3 zone categories were not extended westerly to  
3 the, what I considered basic physical and man made demar-  
4 cation along Green Village Road, that being the generally  
5 described by the Loantaka Brook as it runs north and south.

6 The areas of the R-1A in the northerly area and, I  
7 believe, I have marked on a previous map to exhibit severe  
8 soil limitations.

9 Q This is, I have just put up P-1 for identification.  
10 Is this the map you are referring to?

11 A Yes, it is. My recollection was incorrect. I marked  
12 the rough alignment of Shunpike bypass, the sewer line,  
13 made other indications on that map. But the area I am  
14 referring to is that area roughly shown on -- I don't  
15 recall the exhibit number.

16 Q J-1. A J-1, with a notation  
17 "road" as shown in Chatham Township '78 master plan with  
18 my initials. That area were those areas shown on the map  
19 does exhibit soils types that has severe development limit-  
20 ations.

21 As I say, that using the soil survey, the soil survey  
22 is a general indication of soils types, but I consider it  
23 fairly accurate when you're dealing with large areas as  
24 opposed to very site specific considerations.

25 Q By the way, you made reference just a moment ago

1 to the existing sewer line. Does that at that point termin-  
2 ate in Nash Field?

3 THE COURT: In where?

4 MR. KLEIN: In the Nash Field area.

5 MR. BERNSTEIN: I am going to object to any  
6 leading questions about the sewer line. I didn't  
7 object to the others because, I think, I knew  
8 what Mr. Klein was getting to. But, I think, it  
9 is only fair -- the witness is not an expert. At  
10 least, I don't believe so in the area of sewers.  
11 I would like the questions not to be leading.

12 THE COURT: I don't know. Your master plan  
13 where the existing trunk line starts and stops  
14 and where the proposed trunk line starts and stops,  
15 we are dealing with nothing that is already before  
16 me as it now exists, isn't it?

17 MR. BERNSTEIN: It could be.

18 THE COURT: Well, check that map. That map  
19 shows you where the trunk line stops and starts.  
20 I don't have any problem with him leading him in  
21 that area.

22 MR. BERNSTEIN: Okay.

23 THE COURT: Okay. I don't know what the  
24 Nash -- N-a-s-h?

25 MR. KLEIN: Yes, sir.

1

THE COURT: Nash Field. Okay, tell us what Nash Field is so I know. What is Nash Field?

2

3

MR. KLEIN: Nash Field --

4

THE COURT: Stipulate what Nash Field is.

5

A recreation area?

6

MR. KLEIN: It is a recreation area.

7

THE COURT: All right.

8

MR. KLEIN: Which runs from Southern Boulevard toward the preserve and it is this area.

9

10

THE COURT: All right. Okay, I will let the record show that counsel is pointing to a designated area on J-1, which is to the right as you're looking at the map from Green Village Road.

11

12

13

14

MR. KLEIN: And which abuts the south --

15

THE COURT: The PQ

16

17

MR. KLEIN: The southeasterly portion. The most southeasterly portion of plaintiff's property.

18

19

THE COURT: Okay. You asked him about that sewer line. What do you want to know? The question that you asked him is already reflected in the master plan.

20

21

22

MR. KLEIN: Well, I just wanted him to highlight where the line ended at this point.

23

24

THE COURT: I think, it is reflected in the evidence.

25

1 MR. KLEIN: Yes, sir.

2 THE COURT: If you want to make a note on  
3 the record, refer to the map and then whoever is  
4 reading the record can look at it. That map.  
5 What is the map?

6 MR. KLEIN: Okay. It is the map opposite  
7 page 53 of the master plan. It is entitled  
8 "Sanitary Sewer System, April, 1978.)

9 THE COURT: Okay.

10 MR. KLEIN: And if my reading of that is  
11 correct, it seems to terminate, the entire sanitary  
12 system seems to terminate at Nash Field.

13 THE COURT: Is it Nash or Mash?

14 MR. KLEIN: Of course, it means that the  
15 sewer line is quite close to plaintiff's property.

16 Q At this point, Mr. Chadwick, in the context of  
17 all of your testimony, your various studies that you have  
18 done and reviewed, and as you understand the requirements  
19 of Mt. Laurel and its progeny, could you tell us the extent  
20 to which, if any, Chatham Township complies, in your opinion,  
21 with the requirement of the law as you understand it?

22 A In my opinion, the plan as set forth makes no provision  
23 for least cost housing.

24 The zoning ordinance, as I have stated to you, stated  
25 to the court, in my opinion, in general would perpetuate

1 a status quo of the economics, of the socio-economics of the  
2 municipality. The standards for development, in my opinion,  
3 are intended to at least equal the luxury apartment develop-  
4 ment in the vicinity of the Shunpike, Green Village Road  
5 area.

6 In that respect albeit, some provision has been made  
7 for attached housing. The limitations in terms of density  
8 or the extent of areas zoned or the requirements of develop-  
9 ment of least cost housing where private industry intended  
10 or didn't.

11 Q In your opinion, is Chatham Township a develop-  
12 ing community? A Yes.

13 Q In fact, does not the master plan and zoning  
14 ordinance contemplate the development of a substantial  
15 number of units in the future? A Yes,  
16 it does. The plans specifically set forth in its breakdown  
17 within the land use section of the '78 master plan expected  
18 or potential housing development under the zoning ordinance  
19 or under the land use plan as set forth. That potential  
20 is approximately, to the best of my recollection, I have  
21 calculated it and reported on it and reports are already  
22 on file with this court of seventy to seventy-five per cent  
23 of what now exists, or slightly less than a doubling of  
24 the total housing stock within the community.

25 That calculation appears to be made based on the zoning

1 regulations as set forth in the ordinance 279, which I have  
2 stated to you, in my opinion, are restrictive. In either  
3 case, I think, that the conclusion of facts as set forth  
4 in the township master plan is that the municipality is  
5 developing, albeit, the statement is contained that it is  
6 not.

7 Q Now, I would like to return for a moment to the  
8 revised statewide housing allocation report which has  
9 previously been marked plaintiff's 14 for identification.  
10 And am I correct that your testimony the last time we were  
11 here with respect to the twelve columns, the twelve column  
12 breakdown contained in the report to determine resulting  
13 housing allocation appears at page 827 insofar as it relates  
14 to Morris County and Chatham Township?

15 A There was a question as to -- I think, I understand  
16 your question. Does the allocation shown on that page,  
17 yes, it is.

18 Q Yes, that was my question. Sorry if it was a  
19 little obtuse.

20 Now, column 4 in that report entitled, "Allocation  
21 of perspective housing needs, 1970 to 1994, Chatham Township,  
22 shows the number 421, is that correct?

23 A Yes.

24 Q And is the derivation of that number identified  
25 on page C-17 of that appendix C?

1 THE COURT: What was the page?

2 MR. KLEIN: C-17, your Honor.

3 A Yes, it is.

4 Q Okay. Now, could you turn to page C-17 for a  
5 moment and reading across insofar as it relates to Chatham  
6 Township, explain the import -- well, I'm sorry -- explain  
7 first the source and then the import of each of the numbers  
8 shown applicable to Chatham Township.

9 A Yes, I can.

10 Q Would you, please? A There are seven  
11 columns. The first column is entitled "Present", and the  
12 number is 258. The number 258 is also that same number  
13 shown on A27, column 2, which is allocation of 1970 housing  
14 need.

15 The methodology for arriving at that allocation is  
16 shown in the same report beginning on page 15. The factors  
17 determining that allocation are taken from primary source  
18 data. Principally the United States Department of Housing.  
19 United States Department, Bureau of Census, 1970 publication.

20 The second number is a calculation of vacant land.  
21 Excuse me. Is the amount of vacant land within the com-  
22 munity. The third column is employment. That statistic  
23 is taken from the New Jersey Department of Labor and  
24 Industry. Ratables is from publications and, I believe,  
25 I can't refer the court specifically to the section on the

1 source for ratables and to save time, to the best of my  
2 recollection, is from the Bureau of Local Government  
3 Division of Taxation. Income, wealth, is a calculation  
4 explained again in the report, pages 26 through 19. And  
5 the base data is from the United States Bureau of Census,  
6 1970.

7 The sixth column is the caculation again explained in  
8 the previous pages, page 15 through 19 of the report as  
9 column A under adjusted financial allocations. The  
10 addition of present need and perspective total or sixth  
11 column, those numbers are respectively 259 and 421, which  
12 gives a total of 679.

13 The source data, therefore, to produce the numbers in  
14 the seven columns described are primarily, or primary,  
15 not primarily, are from the United States Census Bureau,  
16 the New Jersey Department of Labor and Industry, Division  
17 of Local Govern and the methodology of arriving at the  
18 numbers, as I previously testified, and again is set forth  
19 and described both by example and step by step basis in the  
20 front of the report beginning on page 35 and continuing  
21 through page 25.

22 Q Now, is the -- sorry. Okay.

23 Now, turning to appendix D for a moment. What is the  
24 purpose of that appendix? A That appendix  
25 is again setting forth the source data that are put forth.

1 Well, the source data, all the municipalities of the State  
2 of New Jersey that are factors in one or more of the columns  
3 of page 24, the appendix C or as set forth in the A27 or  
4 appendix A, we set forth the housing allocation in the  
5 contributing factor to take total need.

6 Q Okay. Are there any particular columns on A27  
7 that the housing allocation criteria data contained in  
8 appendix D would have reference to?

9 A Columns, I am referring to A27 and I am answering the  
10 question in reference, the factor as shown in appendix D  
11 and their reference to columns within A27.

12 Column 1, I don't want to belabor this. Appendix D  
13 is source data described as housing data. It describes  
14 the employment growth within the municipality. It  
15 describes personal income, wealth. Those factors are  
16 reflected in various columns within appendix 70 either as  
17 a factor singularly to determine the number or as a factor  
18 in the formula as shown on pages 5 through 23 to determine  
19 the number.

20 Q You said appendix 70. Do you mean column 7?

21 I thought I heard you say appendix 7?

22 A Couldn't be appendix 7. There is no appendix extension.

23 Q Right. That's why I'm asking.

24 A I was referring to A-27.

25 Q Okay. Is it fair then to say that the numbers

1 which appear on A27 applicable to Chatham Township are all  
2 with the exception of those in column 9 when you previously  
3 testified involve policy questions are all based upon  
4 standard source material, statistical source material  
5 compiled by various government bodies?

6 MR. BERNSTEIN: I am going to object to the  
7 phrase "standard source material." I think,  
8 that we should know what the source material is.  
9 The date of it, the year. To say it is standard  
10 is putting a lot of things under the rug.

11 THE COURT: Yes. Sustain the objection to  
12 the form of the question.

13 MR. KLEIN: All right.

14 Q Could you tell us the source material which was  
15 used in compilation of this report?

16 A U.S. census, 1970, New Jersey Department of Labor and  
17 Industry statistics. Actually the source material in the  
18 reports contributing to the housing allocation report  
19 revised, dated May, '78, as set forth in the introduction  
20 of the report, which is pages 1 through 4.

21 The methodology and the particular source data,  
22 Bureau of Census, New Jersey Department of Labor and  
23 Industry, are again set forth at page 5 through 23.

24 Q Okay. Now, having in that way defined the sources  
25 of the information upon which the report is based, with the

1 exception of column 9 on page A27, is it fair to say that  
2 all of the other columns on that page insofar as they  
3 relate to Chatham Township are either a calculation of  
4 another one or more columns on that page or are based upon  
5 that source material? A No, the column  
6 number 6 is a judgment. That's a determination of whether  
7 or not the available vacant land is adequate or not adequate  
8 to support calculated unadjusted housing allocation.

9 Q And am I correct, well, then, aside from column  
10 6 and column 9, would my statement then be a fair statement?

11 A Yes.

12 Q Okay. And insofar as column 6 was concerned, I  
13 believe you previously testified that you agreed with the  
14 conclusion in that column, is that right?

15 A The conclusion that there was adequate vacant land  
16 within the municipality to support the calculation of  
17 unadjusted housing allocation, yes. In my opinion, abso-  
18 lutely.

19 Q Okay. And am I correct that you disagree in  
20 part with the policy expressed in column 9?

21 A In part. You're correct.

22 Q And did that relate to the conflict between  
23 state and federal housing programs? Take on the one hand  
24 they're talking about people moving out from the urban  
25 areas on the other hand from fostering the development of

1 programs for redevelopment of housing within the urban  
2 area? A That's correct.

3 Q MR. KLEIN: Okay. If I may just have a  
4 moment, your Honor?

5 Q Mr. Chadwick, in your opinion. does this report,  
6 P-14 for Identification represent a source of reference  
7 material which is generally accepted by the planners?

8 A Yes.

9 Q And does it represent that to you?

10 A Yes, with all the qualifications that I have given  
11 before.

12 MR. KLEIN: Right. Okay. Your Honor, I  
13 have no further questions of Mr. Chadwick at this  
14 time. Excuse me I did want to --

15 THE COURT: You want some water?

16 MR. KLEIN: That's all right. I did want  
17 to though, and I don't know if you would want to  
18 do that now or at a later time. I did want to  
19 offer this report in evidence and make argument  
20 in support of that.

21 THE COURT: I am not going to let you both  
22 do that. Give me a short legal memo since we  
23 are going to have some time here on the admiss-  
24 ability of that document. All right?

25 MR. KLEIN: Okay.

1 THE COURT: Rather than argue it, and I  
2 will argue on it at a later point.

3 MR. KLEIN: Okay. Fine.

4 THE COURT: Give us those legal memos before  
5 we appear again.

6 MR. KLEIN: If you want, I can give you,  
7 everybody a starting point.

8 THE COURT: A starting point?

9 MR. KLEIN: Yes.

10 THE COURT: Okay.

11 MR. KLEIN: Okay. I will just save it for  
12 the legal memo.

13 THE COURT: Okay. All right, Mr. Bernstein.

14 MR. BERNSTEIN: Right.

15

16 CROSS EXAMINATION BY MR. BERNSTEIN:

17 Q Mr. Chadwick, you would admit that the different  
18 municipalities in the State of New Jersey have different  
19 housing needs? A To answer the  
20 question, Mr. Bernstein, municipalities shown in the  
21 residual allocation report have different total housing  
22 needs, yes.

23 Q I am asking you as a planner, disregarding the  
24 1979 study. Is it your opinion that each municipality  
25 should be treated individually and separately in determin-



1 cation plan?

2 MR. KLEIN: Your Honor, I believe that  
3 question was asked and answered.

4 THE COURT: I think, he did.

5 MR. BERNSTEIN: I don't think he answered  
6 it directly. He said he recommended the 1978  
7 plan, but I wanted to know from him if there is  
8 another formula which he is recommending to the  
9 court today. I think, that one can infer that  
10 the answer is no. But Mr. Chadwick said it. I  
11 want to pin down, your Honor, about a lot of  
12 allegations.

13 THE COURT: There is another formula plan  
14 that you recommend?

15 THE WITNESS: Using the word "formula",  
16 your Honor, is a statistical formula. No, there  
17 is not. I think, what I have stated to the  
18 court is that it gives the basis for, in terms  
19 of magnitude of need and in context with other  
20 municipalities, the same region in context with  
21 the state at large.

22 But I believe I have stated the qualifications  
23 to those policies that are placed into the  
24 statistical methodology to come up with those  
25 numbers.

1 Q Now, Mr. Chadwick, would you admit that there  
2 are probably communities in the State of New Jersey that  
3 would be justified in having all large lot zoning and no  
4 small lot or multi-family development?

5 A Yes.

6 Q And doesn't a municipality's zoning depend on  
7 the location of the municipality, its history of development,  
8 its capacity to serve capabilities, to serve development?  
9 Aren't these factors that should be taken into account by  
10 a municipality when zoning?

11 A Yes, they are factors to be taken into account.

12 Q What are the HUD flood maps?

13 A They're maps. They delineate areas that are in the  
14 collations of the Department of Housing and Urban Develop-  
15 ment and in consultation with the New Jersey Department  
16 of Environmental Protection of the potential for flooding.  
17 They indicate both the ratings of A, B and C category and  
18 they provided delineation for the requirement of flood  
19 hazard insurance or the ability to purchase flood hazard  
20 insurance based upon municipal governing bodies' adoption  
21 of a flood hazard ordinance as promulgated by the Department  
22 of Housing and Urban Development.

23 Q And can you tell us what are the different cate-  
24 gories that one would find while looking at the HUD flood  
25 map?

A There is A categories and

1 C categories and there are other special districts.

2 Q There is one category that is the floodway,

3 isn't that right?

4 maps, no.

A Delineated on the

5 Q Where would you find the floodway designation?

6 A It is described in the ordinance.

7 Q Are there any maps that you could turn to for

8 any community in the State of New Jersey and find a flood-

9 way designation?

A Yes.

10 Q What maps are they?

A The

11 Department of Environmental Protection.

12 Q And can you explain to the court what the flood-

13 way is?

A Where water flows or

14 frequently flows. Basically, if you have a stream, there

15 is a fine channel, the water surfaces the floodway.

16 Q Could you tell us what the flood hazard fringe

17 areas are?

A Areas that are calcu-

18 lated overflow area during times of twenty-five/hundred

19 year period flood.

20 Q And can you tell us where you would find on,

21 what maps you would find these designations?

22 A The New Jersey Department of Environmental Protection.

23 Q Could you tell us if in your opinion the DEP

24 maps on flooding have any relevance to zoning?

25 A There is an input.

1 Q And would you explain what input they are?

2 A I can explain that in terms of a specific zoning  
3 question within a municipality. Knowledge of flooding of  
4 an area using whatever source material is available. If  
5 the only source material is the Department of Environmental  
6 Protection that gives a general knowledge. If there are  
7 local studies or knowledge that's better information, and  
8 it will have, in my opinion, should have a consideration  
9 with respect to zoning regulations.

10 It does not preclude development of land, but should  
11 be at least known in terms of determination of development  
12 of whatever piece of property.

13 Q Mr. Chadwick, I believe, you testified on direct  
14 examination that you're the municipal planner of the  
15 Township of Parsippany-Troy Hills?

16 A Correct.

17 Q And I assume in your capacity as the municipal  
18 planner that you are familiar with the Morris County Master  
19 Plan? A Yes.

20 Q I am going to show you a document which purports  
21 to be the Morris County Master Plan and ask if you can  
22 identify it as such? A Yes.

23 MR. KLEIN: May we have the year of that  
24 plan?

25 THE COURT: What?

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MR. KLEIN: The year.

THE WITNESS: It is dated April, 1975, the inside cover of which has a stamp contained adopted Morris County Planning Board, December 4, 1975 and has a certification of Mr. Dudley Woodbridge dated May 25, '76. Mr. Woodbridge being the County Planning Director.

Q I am going to read a statement, Mr. Chadwick, from the Morris County Master Plan entitled "Drainage", and I'm going to ask you whether or not you agree with this statement. Let me stand in front of you so that you can follow me reading. "Finally, within the broader categories of the topography and geology, the drainage characteristics which negatively influence the development have been isolated and mapped. Within this area are included most flood plains associated generally with major water courses, even of areas where soil types do not allow the percolation of normal storm water (i.e., areas of ponding, and retention of storm water at or near the surface), and areas with a seasonally high water table. As with other categories, cases can be made that a water table at six feet could be a severe developmental limitation, but adopting the conservative approach, only those having a water table at two feet or less have been mapped.

"It need hardly be stated why drainage conditions

1 ought to be considered of paramount importance in assessing  
2 the development potential of a given area. Morris County  
3 in the past has been all too familiar with the hazards of  
4 building on the flood plain. Furthermore, the inability of  
5 saturated soils to accept effluent, or else to discharge it  
6 by seepage as a pollutant into the ground aquifers is so  
7 obvious as to require no comment. Finally, the instability  
8 of saturated soils for foundations and roadbeds makes almost  
9 every intense use of wetlands quite unacceptable."

10 I would ask whether or not you agree with this state-  
11 ment that I read from the Morris County Master Plan?

12 THE COURT: Before you ask him that, you  
13 just read that rather quickly.

14 MR. BERNSTEIN: The first two paragraphs.

15 THE COURT: At least let him read it over.

16 MR. BERNSTEIN: Oh, certainly.

17 MR. KLEIN: Well, your Honor --

18 THE COURT: I don't expect, I don't profess  
19 to be an expert in the area. I couldn't have kept  
20 up with you on it.

21 MR. KLEIN: Your Honor, I would like to voice  
22 a further objection. I would like him to read the  
23 section of which that segment is a part.

24 THE COURT: You can do that on rebuttal.

25 MR. KLEIN: In context.

1 THE COURT: You can do that on rebuttal, if  
2 you wish. But the witness has to be given an  
3 opportunity to answer the question. I think, he  
4 should have an opportunity to read that.

5 MR. KLEIN: Okay. What page were you reading  
6 from?

7 MR. BERNSTEIN: Page 19.

8 THE WITNESS: I read it, your Honor.

9 THE COURT: Now, what is your question?

10 Q The question is whether or not the witness agrees  
11 with the statement from the Morris County Master Plan found  
12 on page 19.

13 MR. KLEIN: Well, which statement? That con-  
14 sists of about a dozen sentences.

15 THE COURT: Well --

16 MR. KLEIN: Maybe we ought to take it line by  
17 line, if he is going to --

18 THE COURT: No, I will let him answer it. He  
19 can handle it by qualifying it. However he feels  
20 it should be qualified.

21 A In context with the Morris County Master Plan, page  
22 19 comes from a subsection within that plan entitled section  
23 2 background.

24 The general statements are considered on a countywide  
25 basis and a county as large as Morris County are reasonable

1 planning statements. They're not statements that can be  
2 applied specifically or site specific by a general guideline  
3 for local planning boards, individual planners, et cetera.  
4 They are no more or no less than that, in my opinion.

5 Q All right. Now, I show you a document which  
6 purports to be the Warren Township Master Plan and ask you  
7 if you can identify that?

8 MR. KLEIN: Your Honor, I would object to  
9 any introduction at this point of the Warren Town-  
10 ship Master Plan. I don't know what the relevance  
11 of that is.

12 THE COURT: The only relevance, I assume, is  
13 that he drew it.

14 MR. BERNSTEIN: The relevance, your Honor, is  
15 as to cross examination. Obviously since we are  
16 still in the plaintiff's case, I will not be intro-  
17 ducing any document into evidence, but since the  
18 witness has made a number of opinions and offered  
19 a number of opinions about the Chatham Township  
20 Ordinance, it is my obligation to interrogate his  
21 beliefs. And I can do it based on what he has  
22 previously done.

23 MR. KLEIN: But not by introducing another  
24 master plan in a community a good distance from  
25 Chatham Township with very substantial differences,

1 which even a layman can see.

2 MR. BERNSTEIN: Your Honor, I would think --

3 THE COURT: Wait a moment. At this point  
4 there are not to be some more question before I  
5 know where we are going with that Warren Township  
6 Master Plan.

7 MR. KLEIN: Okay.

8 THE COURT: He has shown it to him. All right,  
9 he has seen it. Let's ask the question and let's  
10 see where we are going to go.

11 THE WITNESS: Yes.

12 Q That is the Warren Township Master Plan, right?

13 A The answer is yes.

14 Q And you prepared this master plan, didn't you?

15 A Yes.

16 Q And, I believe, that you proposed the creation of  
17 an environmental critical rural conservation area, is that  
18 correct, Mr. Chadwick? A Classification.

19 Q Classification. And would you explain, and you  
20 can refer to the master plan, what that classification would  
21 include. A If you refer, includes

22 areas of steeply sloped areas and land delineated as flood  
23 hazard areas within the township. Flood hazard maps and  
24 considerations, soil types within the area.

25 Q And why did you as a planner recommend the creation

1 of this new area or zone? A Warren Township  
2 features extremely diverse physiographic condition. Some  
3 very steeply sloped areas and some areas that are flood  
4 plains as you would refer to the refuge areas or the county  
5 park land within Chatham Township. Basically standing water  
6 all of the time.

7 Q Did you make the following recommendations with  
8 regard to wetland, Mr. Chadwick, found on page 17 of the  
9 master plan?

10 MR. KLEIN: Your Honor, a master plan is the  
11 product of a planning board. It is adopted by a  
12 planning board. It is not adopted by a planner.  
13 That which it contains is the end result of re-  
14 view and study, including recommendations by a  
15 planner.

16 It just seems to me to take this master plan  
17 the way Mr. Bernstein seems to be doing and go  
18 through it page by page, did you recommend this,  
19 what you're saying, I don't believe that is either  
20 proper cross examination generally or specifically  
21 relating to this case. If he wants to probe the  
22 statement made by Mr. Chadwick, I think, that  
23 what he ought to do it is by dealing specifically  
24 with those statements.

25 THE COURT: I once remember a planner saying

1 to a planning board that I represented, "I either  
2 leadeth or guideth. I prefer to guideth."

3 He can tell us whether he, that's his product  
4 or the planning board's product. I think, it is  
5 legitimate cross examination.

6 MR. KLEIN: Could we have the question asked  
7 and answered as to whether he leadeth or guideth  
8 or either?

9 THE COURT: Let the question be asked and  
10 let him answer. I think, it is fair cross examin-  
11 ing. The question was, again?

12 MR. BERNSTEIN: Yes.

13 Q Did you make the following recommendations which  
14 is contained in the master plan? And again, I will be  
15 reading from wetlands on page 17. This designation generally  
16 indicates those areas in the township which are flood hazard  
17 and/or flood plain areas. Portions of these areas are  
18 recommended to be preserved for environmental and conser-  
19 vation purposes.

20 The question is, did you make that recommendation to  
21 the planning board, Mr. Chadwick?

22 A I have no idea. I am not being evasive, Mr. Bernstein.  
23 The plan contains the firm's name. It is also dated when  
24 it is adopted right at the bottom. Excuse me. Adopted May  
25 18, 1977. This plan was adopted after a series of hearings

1 that took approximately sixteen months of public hearings  
2 on the master plan. There was a draft document presented  
3 by myself or under my supervision to the board. There  
4 was word by word examination of those documents by the  
5 planning board. So when I say I'm not certain, that's the  
6 reason for it. Do I think the --

7 Q The second question --

8 A The fundamental, okay?

9 Q The second question is whether you agree with  
10 the statement.

A Legally it is not  
11 a question of whether I agree, that is what the plan does.

12 Q No. I'm asking you secondly, Mr. Chadwick, do  
13 you agree with this statement which I just read indicating  
14 a need to preserve areas that are within the flood hazard  
15 and flood plain area?

A In general context,  
16 yes, Mr. Bernstein. I say that generally, meaning many  
17 occasions the flood hazard area, there are municipalities,  
18 yes, there are municipalities in Morris County which are  
19 almost 95 per cent flood hazard. That means the municipality  
20 effectively would have to be vacated if you complied with  
21 that statement.

22 Q I show you a document, Mr. Chadwick, which  
23 purports to be the state development guide plan and ask if  
24 you can identify it? A Yes, that is a  
25 state development guide.

1 Q And I believe you testified concerning the state  
2 development guide on direct examination?

3 A Yes.

4 Q Was it your testimony that Chatham Township was  
5 in a growth area? A Yes.

6 Q And do you as a planner attach any significance  
7 to this document entitled, "State Development Guide Plan"?

8 A I don't. I am not certain what you mean by significant.

9 Q Okay. As a planner you consider this document  
10 to be a standard reference source?

11 A I believe I understand what you mean by standard  
12 reference source. And, yes, it is a reference source.

13 Q Is this one of the tools that you use when doing  
14 your planning work? A Required to  
15 have knowledge of the designation of the municipality and  
16 the municipality under the municipal land use act. There-  
17 fore, yes, we comply with the law.

18 Q And when you prepare a master plan you consider  
19 this state development guide, don't you?

20 A It is a reference source.

21 Q And it is your testimony that by law a municipality  
22 planning board must consider the state development guide  
23 in preparing its master plan?

24 A In my opinion, yes, they must.

25 Q Now, I would like to read --

1 MR. KLEIN: Excuse me. May we have the date  
2 on that?

3 MR. BERNSTEIN: The state development guide  
4 plan.

5 The witness tells me he doesn't think it is  
6 dated.

7 THE COURT: Off the record. I think, that  
8 question was asked in a prior proceeding.

9 (Discussion had off the record.)

10 MR. BERNSTEIN: There is a date, your Honor.

11 THE COURT: No date on the cover.

12 THE WITNESS: September, 1977. Hidden  
13 away.

14 THE COURT: Okay.

15 MR. BERNSTEIN: Thank you.

16 THE COURT: For, just for my future reference,  
17 where is it?

18 MR. BERNSTEIN: This one you want to be  
19 concerned in the future, September.

20 Q Mr. Chadwick, are you familiar with the guidelines  
21 for planning which contains ten characteristics which are  
22 found on pages 36 and 37 of the plan?

23 A If you're asking me can I recite them? No. If I'm  
24 familiar with the document, yes.

25 Q And I'd ask you if one of the ten characteristics

1 is slopes twelve per cent and greater?

2 A That's what it says.

3 Q And another of the ten characteristics is wetlands,

4 Coastal and inland? A Yes, they're as

5 shown on page 36.

6 Q Thank you. I'm going to ask you now --

7 MR. KLEIN: Excuse me. I know that you're  
8 moving these into evidence, but as long as you're  
9 using them, wouldn't it be well, your Honor, if  
10 these documents were marked for identification  
11 at this point?

12 MR. BERNSTEIN: Most of these, in fact, most  
13 of these I am going to put in evidence, if Mr.  
14 Klein wishes to look at these documents today,  
15 those documents that I cross examine Mr. Chadwick  
16 on, I will be happy to place on the bench in the  
17 back of his chair so they won't be lost and if  
18 he wishes to makes notes or make copies of what  
19 he considers pertinent pages, fine. But I won't  
20 be introducing these in evidence.

21 They're strictly for cross examination and  
22 I probably won't be bringing them next time be-  
23 cause I just, I can't bring all my papers on this  
24 case as it is. There is one file left in the  
25 office and I have to lighten up, but I will be

1 happy today to make, to give Mr. Klein an  
2 opportunity to review every document that I  
3 show Mr. Chadwick. I think, it is only fair.

4 MR. KLEIN: That is not the thrust of my  
5 comment. I have access to those documents and  
6 have read them from time to time, as well as you,  
7 Mr. Bernstein. What I'm suggesting is that you're  
8 referring to documents, I think, in an orderly  
9 way they ought to be marked for identification,  
10 and if having been marked, at some point it is  
11 appropriate to show them either because I deter-  
12 mine that subsequently, then the vehicle has  
13 been established to do that.

14 MR. BERNSTEIN: Isn't that my prerogative,  
15 your Honor? If I want to mark them, I could  
16 just.

17 THE COURT: This is his prerogative.

18 MR. KLEIN: Okay.

19 THE COURT: It is permissible.

20 Q First I would like to ask you, Mr. Chadwick, if  
21 you agree with the state development guide that steep  
22 slopes would be twelve per cent or greater or do you as a  
23 planner have a different opinion as to what you consider  
24 steep slopes today? A If I was try-

25 ing to explain in a booklet that is to circulate in the

1 State of New Jersey, a standard of twelve per cent or  
2 greater steep slopes, I would say in that context, yes.  
3 But there are many municipalities in which I am very  
4 familiar have a twelve per cent grade is not considered  
5 inhibiting development.

6 Q In Morris County would you consider steep slopes  
7 to be twelve per cent or more or a different number?

8 A A twelve per cent or greater slope is a steep slope  
9 in Morris County, Bergen County, Sussex County.

10 Q And does that percentage, does the twelve per  
11 cent figure have an inhibiting effect on development?

12 A It has an inhibiting effect, yes.

13 Q I am going to read from page 42 of the state  
14 development guide where it talks about steep slopes and  
15 wetlands. And I'm going to ask you if you agree or dis-  
16 agree with the statement that I am reading from. "Steep  
17 slopes and wetlands, these areas serve an important  
18 function: in flood control and water resource protection.  
19 Development in such areas is possible, although site  
20 preparation and construction costs maybe high. If left  
21 undeveloped, however, they provide benefits which cannot  
22 be obtained elsewhere. The vegetation of steep slopes  
23 serves to retard the flow of storm water runoff and soil  
24 erosion and can thereby reduce the threats of major flood-  
25 ing in river valleys. The state's undeveloped hillsides

1 also protect the quality of water flowing into major water  
2 supply storage areas. These benefits would be lost if  
3 intensive development is encouraged in such areas. In  
4 addition, the attraction of such areas for hiking and other  
5 forms of outdoor recreation would be diminished.

6 "Wetlands are perhaps less attractive for recreational  
7 uses, but they are equally important for retarding storm-  
8 water run-off, for protecting water supply resources and for  
9 fish and wildlife maintenance. Again, development of such  
10 areas involves major site preparation and construction costs.  
11 The environmental costs of development are even greater."

12 Let me give you this document and I would ask again  
13 whether you agree or disagree with the statement which I  
14 just read. I believe, it is on page 42. And I ask you to  
15 explain your answer.

16 A I do not disagree with the general statement. In my  
17 opinion, the general statements are very similar in language  
18 to a text book originally published by the predecessor to  
19 the Department of Community Affairs, which was the Department  
20 of Conservation and Economic Development. And, I believe,  
21 there are, certain sentences are verbatim of land use and  
22 steep slopes and wetlands. They are guidelines. It is  
23 almost like a primer for the general public.

24 Q I show you a document, Mr. Chadwick, entitled  
25 "Parsippany-Troy Hills Township Master Plan, 1976," and ask

1 if you can identify it? A Yes.

2 Q And what is it? A The Parsippany-  
3 Troy Hills Master Plan published in 1976.

4 MR. KLEIN: Your Honor, I would have the same  
5 objection I had to the Warren Township Master  
6 Plan.

7 THE COURT: Okay. The same ruling.

8 Q You were the planner who aided the planning board  
9 in adopting this master plan?

10 A Yes.

11 Q I am going to show you a statement from this  
12 master plan found on page 11 and I would ask if you agree  
13 or disagree with it. "The Township is characterized by a  
14 varied and complex physiographic environment. The Township  
15 features expansive natural wetlands and wildlife areas as  
16 well as numerous scenic escarpments along ridge lines. The  
17 long-term maintenance and preservation of all of these exist-  
18 ing natural features is highly suspect under the present land  
19 development policy considered in association with the fore-  
20 cast for continued land development of the community."

21 And I would ask you if you agree with that statement,  
22 Mr. Chadwick. A I agree with it in  
23 context when it was made. Development regulations have since  
24 changed.

25 Q And were they changed at your recommendation?

1 A Yes.

2 Q And would, were they changed in order to protect  
3 the natural features that exist in the town such as natural  
4 wetlands and wildlife areas?

5 A In Part.

6 THE COURT: I'm sorry. I didn't get the  
7 answer.

8 THE WITNESS: In part.

9 Q You would agree as a planner that it is important  
10 to take into account steep slopes and wetland areas when  
11 preparing a master plan and a zoning ordinance?

12 A Yes.

13 Q You would also agree that it is important to take  
14 cognizance of the soil conditions in a municipality?

15 A Yes.

16 Q Mr. Chadwick, are there any environmental con-  
17 straints to the development of the northern portion of the  
18 subject property on Green Village Road?

19 MR. KLEIN: Could you be a little more pre-  
20 cise?

21 MR. BERNSTEIN: I think, the witness is a  
22 competent professional planner can tell us whether  
23 or not there are any environmental constraints,  
24 your Honor.

25 MR. KLEIN: Is it limited to the plaintiff's

1 property on the northern portion or is it the  
2 whole area of the township?

3 THE COURT: Talking about the northern  
4 portion north of Green Village Road?

5 MR. BERNSTEIN: Right.

6 THE COURT: Okay. All right. He is talking  
7 about the one parcel. I will allow the question  
8 just as long as it is defined that way.

9 A Yes, Mr. Bernstein. I believe, I have testified prev-  
10 iously that the land areas that are in Green Village Road  
11 and having direct access to Green Village Road, in my opinion,  
12 can support considerable development and also have environ-  
13 mental constraints utilizing the soil information and/or  
14 topographic maps of the municipality.

15 You can see various areas to the rear of the land,  
16 rear of the lots that would have either, in my judgment, a  
17 constraint with respect to soil type in terms of its bearing  
18 capacity. Also high water table or a flooding condition  
19 that would be periodic. It would not be infrequent.

20 Q Do you know whether or not the existing sanitary  
21 sewers which serve the area north of Green Village Road?

22 A To my knowlege, there are no sanitary sewers on Green  
23 Village Road west of the apartment complex. That's to my  
24 knowledge.

25 Q Do you know if there is any existing unused sewer

1 capacity in the Chatham Township system?

2 MR. KLEIN: I don't know, your Honor, that  
3 that was part of the direct examination.

4 MR. BERNSTEIN: There was a lot of testimony  
5 that this witness gave on the sewers, where the  
6 sewers were located. Whether or not they are  
7 tangential as to the subject property, and it  
8 seems to me, once Mr. Klein opens the door, I have  
9 a right to explore these areas.

10 THE COURT: I will allow the question.

11 A No, I do not know.

12 Q Did you make any inquiries to determine if there  
13 was any unused sewer capacity in the Chatham Township plant?

14 A No, I personally did not. I reviewed the materials  
15 that were readily available, and those being the 1978 master  
16 plan and the letters to which I referred to in direct  
17 testimony.

18 Q Do you have an opinion as to whether or not there  
19 is any unused sewer capacity in the present Chatham Township  
20 facility?

21 MR. KLEIN: I think, that has been answered,  
22 your Honor.

23 THE COURT: I will sustain the objection.

24 Q Do you consider the lack of sanitary sewer capacity  
25 to serve the subject property as a development limitation?

1 MR. KLEIN: There is an assumption in that  
2 question that there is a lack of sanitary sewers.

3 THE COURT: All right. There is no question  
4 about it, but he can ask that question of an  
5 expert.

6 A Mr. Bernstein, I hesitate to answer the question be-  
7 cause I am not certain that you used the term development  
8 limitation the same as I used the term development limit-  
9 ation. If you could explain yourself?

10 Q Okay. I will ask another question. Fair enough.

11 Without sanitary sewers, without public sanitary sewers,  
12 do you know whether or not it would be feasible to construct  
13 multi-family development on the northern portion of the  
14 PQ? A No, I do not. I do not know.

15 Q Do you have an opinion as to whether or not it  
16 would be feasible to construct multi-family development on  
17 the northern portion of this site without public sanitary  
18 sewers? A Is it feasible? Yes, Would

19 it be permitted under other regulations? I don't know.

20 Q You are testifying then that as a planner you see  
21 no necessity for public sewers as a condition precedent to  
22 development of a multi-family development on the northern  
23 portion of the PQ, correct?

24 A I didn't say without -- when you use the term public  
25 sewer, I'm assuming you're connecting to the Chatham Town-

1 ship system.

2 Q That's right. A What I'm referring  
3 to it, it is feasible, but whether or not all permits would  
4 be granted, that being a package plant to serve such a  
5 use, no, it is not a public sewer. It is not a septic tank.  
6 It is a treatment facility similar to Chatham Township's  
7 facility.

8 Q Is it your testimony that the package plant would  
9 be feasible if one could get DEP approval for it?

10 A To multi-family development?

11 Q Yes. A Yes.

12 Q Would your testimony be the same with regard to  
13 the southern portion of the property in question?

14 A In this case I hesitate. I'm not hesitating to answer  
15 it. It seems, in my opinion, in knowing where the existing  
16 trunk line is, approximately two or three hundred feet from  
17 the southerly portion, the connection to the public system  
18 is readily available, but if a public system were not  
19 permitted or connection to the public system were not per-  
20 mitted, a package plan from my knowledge, the Federal  
21 Environmental Agency will not permit any outflow of a  
22 package plant into a refuge area.

23 That condition is not the same as going into the  
24 County Park to the north of Green Village Road. And I can't  
25 answer the question, Mr. Bernstein.

1 I do believe, Mr. Bernstein, that they would  
2 there would be any permit, but that's my specu-  
3 lation, so I can't answer the question.

4 Q Well -- A That's the reason  
5 I can't answer it because it is my belief, being not, not  
6 necessarily be accurate or not.

7 Q Do you know the reason for the Federal government's  
8 policy of not allowing effluent from a package plant to flow  
9 into a refuge area? A No.

10 THE COURT: Can we stop there. Can we take  
11 a break. Okay, quarter after.

12 (A short recess was taken.)

13 Q Mr. Chadwick, do you know if any portion of the  
14 southern parcel of the PQ is in the flood plain?

15 A The flood plain is divided by the Department of Housing  
16 and Urban Development of Environmental Protection.

17 Q First start with HUD. Is any portion of this  
18 southern parcel within the flood plain as delineated by  
19 HUD? A Yes, I believe so.

20 Q And can you tell us what portion of the parcel is  
21 in the Flood plain as the HUD maps disclose it?

22 A No, I couldn't.

23 Q Do you have any idea as to the percentage of the  
24 parcel that's in the flood plain?

25 A I could offer a rough approximation.

1 Q Give us a rough approximation.

2 A The rear portion abuts Nash Field and also lands which  
3 would be along the northside boundary. And I would estimate  
4 a third.

5 Q And do you know if any of the northern parcel is  
6 in the flood plain and delineated on the HUD maps?

7 A Yes.

8 Q What portion of the northern parcel is in the  
9 flood plain? A The rear of the parcel  
10 as it abuts the county park. And I couldn't approximate an  
11 area. I just don't have the mental recollection.

12 Q And do you know if any of the southern parcel is  
13 in the -- excuse me -- the flood plain as delineated on the  
14 DEP maps? A No, I don't. I don't know.

15 Q You don't know. Do you know if any of the northern  
16 parcel is in the flood plain as delineated on the DEP maps?

17 A No.

18 Q Can you tell us where you obtained a copy of the  
19 HUD map? A The township's clerk's office.

20 Q Would you say that planning is an art or a science?

21 A A combination of both.

22 Q Would you say there are issues where reasonable  
23 planners disagree? A Yes.

24 Q Mr. Chadwick, can you tell us where the Great  
25 Swamp is located with respect to the southern parcel?

1 A It's to the south.

2 Q I have a scale ruler. I'd like you to tell us  
3 in feet how far, scaling it out on the map the southern  
4 parcel is from the Great Swamp.

5 A The scale on P-1 is five -- one inch to five hundred  
6 feet. According to our scale, in the neighborhood of five  
7 hundred, seven hundred feet from the southerly most corner  
8 of the tract of land marked in, which is owned by the  
9 plaintiffs in this cause.

10 THE COURT: You say seven hundred feet?

11 THE WITNESS: Five hundred to seven hundred  
12 feet.

13 Q In fact, the subject property is separated from  
14 the Great Swamp by Nash Field, isn't that correct?

15 A Yes.

16 Q And could you tell us in feet how far the northern  
17 parcel is from the Great Swamp?

18 A Approximately a third of a mile.

19 Q In feet, how far would that be?

20 A Eighteen hundred feet, two thousand feet.

21 Q Two thousand feet? A Eighteen to  
22 two thousand feet.

23 Q And can you tell us where the sewer line present-  
24 ly ends? Showing it to us on this map which was marked?

25 I'm not sure what it was marked. A J-1.

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1 THE COURT: It is J-1.

2 Q J-1. Can you tell us, how far the existing sewer  
3 is from the southern parcel first and then the northern  
4 parcel?

5 A To respond to your  
6 question, I'm referring to the sanitary sewer system map  
7 contained in the master plan. And borrowing Mr. Bernstein's  
8 pen I am marking the location of the trunk line as it comes  
9 to Nash Field. As I perceive the location with a star and  
10 I have initialed it and I have noted on the approximate  
11 location of the trunk sewer line. And utilizing that as  
12 the location device, approximately five hundred feet would  
13 be my estimate of the trunk sewer line from the southerly  
14 corner from the property, the southerly side of Green Village  
15 Road.

16 Q And the northerly side?

17 A The northerly side would be on a diagonal basis eighteen  
18 hundred, fifteen to eighteen hundred feet from that location.

19 Q Now, I would like you to tell us how far the  
20 southern parcel is from the existing apartment units.

21 A Eight hundred to nine hundred feet.

22 Q And I'd like to know how far the northern parcel  
23 is from the existing apartment units.

24 A Fifteen to sixteen hundred feet.

25 Q Thank you. You can resume your seat in the witness  
stand.

1 Can you tell us who presently owns the great swamp?

2 A The Federal Government.

3 Q Do you know how large the Great Swamp is?

4 A No.

5 Q Do you know how many acres are located in Chatham  
6 Township? A Contained in the

7 master plan, but I don't recall the exact number.

8 Q Do you know why the Federal Government purchased  
9 the Great Swamp?

10 MR. KLEIN: Do we know why the Federal  
11 Government purchased it?

12 THE COURT: He said the Federal Government  
13 owns it.

14 MR. KLEIN: Well, that doesn't mean they  
15 purchased it.

16 THE COURT: Acquired it.

17 Q Acquired it. A No, I have  
18 never researched the stated reasons for the Federal Government.  
19 I could speculate, but I do not know precisely why.

20 Q Do you know if there are any environmental con-  
21 straints to development on the property known as the Great  
22 Swamp? A Yes.

23 Q And what are those constraints?

24 A High water table and flooding conditions.

25 Q Do you know if the Great Swamp serves as a drain-

1 age basin for a portion of Chatham Township?

2 A I think, what you mean, Mr. Bernstein, is a drainage  
3 basin is described as an area which water flows from. What  
4 I think what you're really asking me is, does it serve as  
5 an impoundment area.

6 Q Okay. I will accept that.

7 A And that is the same thing as a flooding area and I  
8 have already stated yes.

9 Q And do you know what area drains on to the Great  
10 Swamp? A It is the entire watershed.

11 No, I do not.

12 Q Do you know whether or not water from the subject  
13 property on both the northern and southern portion of Green  
14 Village Road, if water from those parcels is within the  
15 drainage basin of the Great Swamp?

16 A Yes, I know.

17 Q And are they within the drainage basin?

18 A Yes. The property is within the same drainage basin.  
19 The Great Swamp and the land of the plaintiff on either  
20 side of Green Village Road.

21 Q And would you agree that water from the subject  
22 properties flows from the subject properties to the Great  
23 Swamp? A Eventually would arrive

24 within the Great Swamp area, yes. Whether it would be  
25 within Chatham Township and west, I have no idea.

1 Q But water would flow from the PQ's through the  
2 Great Swamp? A Through the Great  
3 Swamp, yes.

4 Q Would you characterize the Great Swamp as an  
5 environmentally sensitive area?

6 A Partially, yes.

7 Q Would you say that the Great Swamp is environment-  
8 ally sensitive as the Troy Meadows in Parsippany-Troy Hills?

9 MR. KLEIN: Can we have some foundation for  
10 that question as to Troy Meadows?

11 MR. BERNSTEIN: Fine.

12 Q You're the planner in Parsippany-Troy Hills,  
13 aren't you?

14 THE COURT: I know where he is going..

15 MR. KLEIN: Well --

16 THE COURT: You know where Troy Meadows is?

17 MR. KLEIN: Oh, yes.

18 THE COURT: Okay. Then, you know, for him  
19 to lay the foundation, everybody knows where he  
20 is going. Go ahead. You knew he was going to get  
21 around to it, or I knew he was going to get around  
22 to it, put it that way.

23 All right, go ahead. Is the Great Swamp as  
24 environmentally sensitive as the Troy Meadows?

25 Let the record show the Troy Meadows is in

1 Parsippany-Troy Hills.

2 THE WITNESS: Partially.

3 Q When you say partially, you indicating that one  
4 drainage area is more sensitive than the other or are you  
5 indicating you don't know? A No, I was  
6 commenting that the Troy Meadows is not totally within  
7 Parsippany-Troy Hills.

8 Q You could answer the question, Mr. Chadwick.

9 A The answer is I can't. And the question as to whether  
10 one is more environmentally sensitive than the other because  
11 the term "environmentally sensitive" is a jargon term that  
12 encompasses many, many different facets of consideration.

13 If you could be more precise, I possibly could answer  
14 your question.

15 Q You recall on cross examination that I had you  
16 read from page 11 of the master plan of Parsippany-Troy  
17 Hills which indicated that certain land use policies would  
18 have a negative impact on the existing natural features of  
19 the municipality? A That's correct.

20 Q And wasn't it your testimony that these land  
21 use policies were changed so as to be more compatible with  
22 the sensitive environmental areas?

23 A Yes.

24 Q And was one of these sensitive environmental areas  
25 the Troy Meadows? A No.

1           Q     With the Troy Meadows?                   A     I will  
2 answer the question so you're not confused. The development  
3 regulations that were in place, the adoption of that master  
4 plan addressing the Troy Meadows are basically the same  
5 development regulations in place today so those development  
6 regulations were not changed.

7           Q     And could you tell us what areas, in what areas  
8 the zoning was changed so as to comport with the natural  
9 wetlands and wild life areas?

10          A     Referring to the Township of Parsippany-Troy Hills  
11 master plan, referring specifically to a map labeled,  
12 "Land Use Plan," which follows page 10 of that report, and  
13 there are four major areas labeled as mixed land use.  
14 Those four areas in Par-Troy Hills are approximately 2200  
15 acres in size. So the development regulations in those  
16 particular areas were changed and I will read from right to  
17 left.

18                 It is the area in the Forge Pond area of Parsippany-  
19 Troy Hills which was zoned for thirty thousand square foot  
20 residential lots. It was rezoned to permit a planned  
21 residential development which approximately increased the  
22 density by two hundred fifty per cent. The regulations  
23 would permit the total preservation of the Eastman and  
24 Forge and Troy Brooks which run through the tracts of land  
25 and the ponds are itself and several historical sites

1 within the district.

2 The second tract of land is a mixed use option, which  
3 is referred to locally as the Dodge Tract. The regulations  
4 were changed to permit a combination of office, commercial  
5 and townhouse residential development. The change was from  
6 a regional shopping center district which had a standard  
7 that must have a lot size of 6.25 acres in size and that  
8 no building could be within fifty feet of a property boundary  
9 line. That is the sum total of the previous regulations.

10 Q If we could just stop there. What was the use  
11 in the previous regulations. You gave the lot area. What  
12 was the use?

13 A It allowed for all forms  
14 of commercial development. Effectively it was a district  
15 for shopping centers. The tract of land is 132.4 acres in  
16 size. It is under various types of litigation.

17 The municipality has as a result of this decision  
18 of the Supreme Court is required to re-examine and act  
19 upon the decision of the Supreme Court with respect to  
20 zoning for that tract of land. Primarily a procedural  
21 question.

22 MR. KLEIN: Just for clarification, I think,  
23 for the record, protests sections of the munic-  
24 ipal planning act was tested. In that particular  
25 case there was a decision that came down within  
the past two weeks. Maybe three weeks.

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THE COURT: Give or take.

MR. KLEIN: Yes.

THE COURT: And it applies.

MR. KLEIN: Yes.

THE WITNESS: Moving across the page is an additional mixed land use option, an area in an industrial district. It was a ten acre industrial zone.

The ordinance was amended to permit one variations of lot sizes to create common or public open space within industrial areas as well as to permit various types of commercial uses within that district.

It was designed to address drainage conditions and to address an area that had basically a single use category, that being industrial, and to introduce uses that would have a lesser impact in terms of the traffic facilities. And the area most westerly in the township or on the left hand side of the page listed as mixed use option was an area zoned for one acre residential development. It is now zoned for a planned residential development.

The density increase was approximately two hundred per cent. It allows for single family and

1 townhouse uses. And under the standards approximately  
2 fifty per cent of the area could be retained in its  
3 natural state. The characteristic topography of that  
4 area ranges from ten per cent grade to twenty-five per  
5 cent grade.

6 Q Now, were there changes designed to protect the  
7 environmental character of the sensitive areas?

8 A Yes.

9 Q And is one of those areas the Dodge Tract?

10 A Yes.

11 Q Is one of those areas the Forge Pond Mazdabrook  
12 area?

A Yes.

13 Q One of those areas the Prudential Bellmeade  
14 Tract?

A Yes.

15 Q One of those areas the Route 10 Mountain Way  
16 area?

A Yes.

17 Q I'd ask you, Mr. Chadwick, first what is a patio  
18 home?

19 A A patio home could include --  
20 it is generally considered as an attached dwelling unit.  
21 The patio feature of the dwelling unit is the architectural  
22 connection of the different units.

23 It has different designs and different parts. It  
24 primarily originated in southern California in the mid 60's.  
25 And it was a type of single family dwelling unit generally  
on a relatively small lot thirty-five hundred, five thous-

1 and square feet in size where you clustered the units very  
2 close together or attached them. Sometimes it is referred  
3 to as zero lot line development.

4 It is a variation of townhouse development. A variation  
5 of low housing development, in my opinion.

6 Q Yes, sir. I would ask you whether or not you  
7 prepared the chart which is shown on page 28 of the master  
8 plan? A Yes.

9 Q I'd ask what is the proposed density, that is,  
10 the density for townhouses on the Dodge Tract?

11 A Six.

12 Q And the proposed density for patio homes on the  
13 Dodge tract? A Four.

14 Q What is the proposed density for townhouses on  
15 the Forge Pond Mazdabrook area?

16 A Six.

17 THE COURT: Hold it. Four, six per what?

18 THE WITNESS: Units per acre. I'm sorry,  
19 your Honor.

20 THE COURT: All right.

21 Q What is the proposed density of patio homes on  
22 the Forge Pond Mazdabrook area?

23 A Four.

24 Q So that the densities of the Dodge Tract and the  
25 Forge Pond Mazdabrook area were recommended to be the same,

1 is that correct, as to townhouses and patio homes?

2 A Yes.

3 Q Are there any townhouses or patio homes recommended  
4 for the Prudential Bellmeade tract?

5 A No.

6 Q What is the proposed density of townhouses on the  
7 Route 10 Mountain way area? A Four and  
8 two respective.

9 Q Two for patio homes on that tract, correct, sir?

10 A What I said, respectively.

11 Q Thank you. And the minimum percentage of required  
12 open space for the Dodge Tract was twenty per cent?

13 A Correct.

14 Q For the Forge Pond Mazdabrook area was twenty-five  
15 per cent? A Correct.

16 Q For the Prudential Bellmeade Tract was twenty per  
17 cent? A Correct.

18 Q For the Route 10 Mountain Way area was twenty-five  
19 per cent? A Correct.

20 Q The gross residential density that the residential  
21 density -- strike that.

22 Why don't you tell the court what gross density means.

23 A It means the total number of dwelling units on the  
24 tract of land divided by the area of that tract.

25 Q That would be including the open space, is that

1 correct, in computing your gross density?

2 A Exactly. What I said, Mr. Bernstein, is that the total  
3 number of dwelling units on the tract of land and divide  
4 them by the total area, regardless of what the assignment  
5 of the land uses within the tract may be.

6 Q Now, if you had a tract with some non-residential  
7 uses, would you divide the number of dwelling units into  
8 the entire tract or into only that portion of the tract which  
9 was used for open space and residential use in coming up  
10 with the gross density?

11 A The entire tract. Simply put, if the density was  
12 stipulated at one and the tract of land is one hundred, the  
13 gross density would be one hundred units. If it was allowed  
14 to use seventy per cent of the tract, the land for the non-  
15 residential purposes or open space or what have you, those  
16 seventy units would still be allowed on thirty acres of land  
17 or you would have the net density something between 2.5,  
18 2. -- yes, approximately 2.5 units to the acre.

19 Q Now, I would like to know, Mr. Chadwick, if in  
20 your opinion the densities which are provided -- strike that.

21 I would like to know if in your opinion as a professional  
22 planner if the densities which are recommended for these  
23 three tracts which allow townhouses and patio homes, if  
24 these densities would preclude the construction of least  
25 cost housing on these tracts? A No.

1 Q And could you explain to the court why the densities  
2 would not preclude the construction of least cost housing?

3 A All of the tracts of land have water facilities running  
4 through the tracts of land and there is no need to consider  
5 off-site improvement in terms of bring water and sewers  
6 from various locations to those areas.

7 Q And you as a professional planner feel that the  
8 recommendations for density for the three tracts are reason-  
9 able recommendations? A In the context  
10 with the Par-Troy Hills master plan, absolutely.

11 Q You would not believe that these recommendations  
12 if implemented would be exclusionary?

13 A In the context with the Parsippany Troy Hills master  
14 plan, absolutely not.

15 Q And I assume that one of the factors that you took  
16 into account was that each of these tracts had some --

17 A No constraints, correct, as stated in the plan. That's  
18 correct.

19 Q I show you, Mr. Chadwick, what purports to be the  
20 generalized zoning map of the Township of Par-Troy Hills  
21 and ask you if that in fact is the document that I am showing  
22 you? A Yes.

23 Q There appears to be a zone which is titled DRCW  
24 recreation conservation wildlife district. And I would ask  
25 you if you can tell us in a general way what uses are

1 permitted in that district? You can refer to the zoning  
2 map, zoning ordinance which is attached or you can give us  
3 a general explanation, whichever you prefer.

4 A I refer yourself to section 19-28, recreation conser-  
5 vation wildlife district, subsection 19-28.1, which sets  
6 forth the permitted uses.

7 To summarize those uses, they are farming, commercial,  
8 recreation uses, ecology nature classes in a very skippy  
9 outline of those uses.

10 Q Would you agree that these uses are all what  
11 could be characterized as very low density type uses?

12 A Indeed, the district, yes, I would agree. In general  
13 there are some uses that could be less than what you call  
14 low density.

15 Q Which would those be, if you could tell me?

16 A They're various uses allowed for private commercialized  
17 recreation and commercial which could be quite intensive.

18 Q Could you tell us if residential uses are permitted  
19 in this zone? A In context with other  
20 uses, yes.

21 Q In other words, in context with the farm or a  
22 commercial recreational use? A Yes.

23 Q One couldn't put up a development though of homes  
24 or apartments or townhouses? A Correct.

25 Q And I assume one couldn't put up commercial uses

1 other than recreational uses?

2 A Mr. Bernstein --

3 Q Refer you to the ordinance?

4 A Your Honor, I apologize to the court for fumbling  
5 around the Par-Troy Hills ordinance, but I hadn't come  
6 prepared to testify in Par-Troy Hills.

7 THE COURT: Mr. Bernstein, do you have many  
8 more questions on Par-Troy Hills?

9 MR. BERNSTEIN: Not right now. I probably  
10 will later. This is probably the last question  
11 in this series about the RCW.

12 A The outdoor commercial -- so that I don't answer the  
13 question, could you possibly read back the question to me?

14 Q I'm sorry, I didn't hear what you said.

15 A I was --

16 THE COURT: Read back the question.

17 (Last question read by the reporter.)

18 MR. KLEIN: Actually that has been asked and  
19 answered, your Honor. I think, he said that  
20 farming, commercial farming of some sort.

21 THE COURT: He can answer. He said in context  
22 with it you could have residential uses, but you  
23 had to have them together. I think, he answered  
24 the question.

25 MR. BERNSTEIN: I didn't ask him about the



1 control proposals from the State of New Jersey.

2 Q Is it your testimony that the reason for the  
3 zoning is to depress the value of the property so that it  
4 is easier to acquire?

5 MR. KLEIN: Objection.

6 THE COURT: He didn't say that. I will  
7 sustain the objection.

8 MR. BERNSTEIN: Okay.

9 Q Is it your testimony that the purpose of the  
10 ordinance is to impede development in the Troy Meadows  
11 because of its environmental features?

12 MR. KLEIN: Objection.

13 THE COURT: I will allow it.

14 A No.

15 Q What is the reason for the zoning which appears  
16 to me as a layman to be low intensive in nature?

17 A It is zoning that is consistent with the findings of  
18 the Department of Conservation and Economic Development.  
19 Repeated under the Department of Community Affairs studies  
20 and local planning. State and national area is one. An  
21 area delineated as a flood hazard area within a municipality.  
22 Has an extremely high water table and is an area owned  
23 almost without exception by the State of New Jersey, the  
24 Township of Par-Troy Hills and the Wildlife, Inc., which  
25 is a chartered non-profit wildlife preservation conservation

1 group within the State of New Jersey and internationally  
2 and those context the ownership and physical condition,  
3 the zoning has been approximately as it is today in the  
4 current ordinance beginning back in 1959.

5 Q What is a planimeter?

6 A A tool used to measure areas.

7 Q I assume that you as a planner have a planimeter  
8 in your office?

9 MR. KLEIN: What is the relevancy, your  
10 Honor?

11 A Yes, I think, I still have them.

12 MR. KLEIN: What is the relevance?

13 THE COURT: He said yes. Go ahead.

14 Q And if one had a planimeter one could measure  
15 the amount of acreage in each of the zones in Chatham  
16 Townshp, could one not?

17 A You could take  
18 a measurement.

19 Q And it is a relatively simple matter by using a  
20 planimeter to go through the edge of each zone and deter-  
21 mine the amount of acreage of each zone, is that correct?

22 A You can make the measurement, Mr. Bernstein, and you  
23 could make the calculations. The accuracy of that plan-  
24 imeter needs to be checked against some standard source  
25 of accuracy, being the tax maps of the municipality. But  
it is a way of measuring areas.

Chadwick - cross

1 Q Now, Mr. Chadwick, did you prepare any maps or  
2 any diagrams of the subject property showing the environ-  
3 mental limitations on those maps?

4 A No.

5 Q Did you prepare any maps showing the environmental  
6 limitations of the vacant land in Chatham Township?

7 A No.

8 Q Have you made any measurements for any purpose  
9 for this law suit with regard to amounts of acreage?

10 A I don't understand the question.

11 Q Have you made any measurements for the purpose  
12 of this law suit in presenting your testimony and going  
13 over it with Mr. Klein, examining any documents? Were  
14 there any measurements either with rulers or planimeters  
15 which you personally did?

16 A Yes.

17 Q And could you tell us what measurements they  
18 were? A Made an examination of the  
19 statistics provided within the R-78 land use plan relevant  
20 to the areas of housing types potential within the zoning  
21 districts as set forth in the zoning ordinance. And the  
22 measurements were not measured. They were simply taking  
23 the areas from the tax map facility. I don't use a plan-  
24 imeter.

25 Q Did you make any measurement after looking at

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1 the statistics that were in the master plan?

2 A Yes.

3 Q What measurements? A Just stated  
4 that.

5 Q What measurements did you make?

6 A The measurements were in terms of the areas, the  
7 individual districts as compared to the proposed or the  
8 proposed, the potential housing development as shown in  
9 the 1978 master plan.

10 Q Were there any other measurements that you made?

11 A No.

12 Q Can you tell us if your measurements differ from  
13 those in the 1978 master plan?

14 A The conclusion was it was very difficult to determine  
15 whether there was a deduction made for areas that would be  
16 shown in the soils maps as high water table or if a de-  
17 duction was made for areas within the R-3C and ABC zones  
18 that were already developed for single family or commercial  
19 purposes, or that there was a rule of thumb deduction that  
20 total density couldn't be achieved in any case discounting  
21 development of the lands within the district.

22 As I viewed the numbers, I couldn't conclude whether  
23 or not they were conservative or not.

24 Q Can you give us -- A I never reached  
25 a conclusion.

1 Q Can you give us any of the numbers that you  
2 arrived at by making your measurements?

3 A No, I don't have them.

4 Q So it is your testimony today that you can't  
5 give us a single number that you arrived at through any  
6 calculations for this case?

7 MR. KLEIN: I don't think that was the  
8 testimony, your Honor. He said he didn't have  
9 them.

10 THE COURT: It is argumentative, Mr. Bern-  
11 stein. I will sustain the objection to the form  
12 of the question.

13 Q Did you give a copy of these numbers to Mr.  
14 Klein? A No, I did not.

15 Q Are any of these numbers included within the  
16 two reports which you submitted to Mr. Klein, copies of  
17 which I have? A No.

18 Q Did you consider your calculations to be signifi-  
19 cant for the purposes of this litigation?

20 A Yes, I do.

21 Q Was there any reason why they weren't supplied to  
22 Mr. Klein or put in your reports?

23 A Yes.

24 Q And what was that reason?

25 A The uncertainty as to what the calculations were

1 actually based on. These calculations are shown on table  
2 19.

3 Q I'm asking you --

4 MR. KLEIN: Why don't you let him finish the  
5 question?

6 MR. BERNSTEIN: Why don't you let me make  
7 my objection, Mr. Klein?

8 THE COURT: Gentlemen, gentlemen.

9 MR. BERNSTEIN: I would ask the witness  
10 about his calculations. I am not going to ask  
11 him about what's in the 1978 master plan. I  
12 asked him if his calculations were significant.

13 I'm not asking about the master plan calcu-  
14 lations. I think, I'm entitled to an answer on  
15 my question.

16 MR. KLEIN: I think, that question is --

17 THE COURT: You asked him why it was not  
18 put in the report. I don't know whether you  
19 didn't like the answer you were getting, but that  
20 question you asked him precipitated the donny-  
21 brook you two had and the -- he was giving you  
22 an answer. Because you don't like the answer,  
23 you have to live with it, Mr. Bernstein.

24 MR. BERNSTEIN: Okay.

25 THE COURT: All right. The point that I

1 stopped, I had the uncertainty as to and you  
2 had gotten a few words and my opinion is a  
3 little slower than your speaking, but you were  
4 referring to the factors that went into --

5 THE WITNESS: As I said, the uncertainty  
6 of the exact methodology how the calculations  
7 were arrived at as shown on table 19 was the  
8 fundamental reason why I did not report really  
9 conclusions in the two documents or letters to  
10 Mr. Klein, which Mr. Bernstein has copies of.

11 The 1935 total number of dwelling units  
12 under the zoning regulations and possibly, I  
13 can't say whether that amount of dwelling units  
14 is possible or not. I speculate that it is on  
15 the high side and that's the proper use of the  
16 word, it would be speculation. But it is extreme-  
17 ly difficult to know exactly and I wouldn't  
18 expect actually the parameters of the calculations  
19 to be contained in the master plan.

20 As a professional, I don't generally con-  
21 clude all of the work thought processes into  
22 conclusions of a master plan, nor do I expect  
23 others to do the same. But it helps when you  
24 get into litigation the inquiries as to how  
25 calculations were actually made.

1 I can't comment further than that, your  
2 Honor. I am trying to be as candid as I possibly  
3 can.

4 Q Is it your testimony that you did not calculate  
5 the total number of multi-family units which could be  
6 built in Chatham Township today given the zoning ordinance  
7 and the environmental constraints?

8 A In all of the districts. That's correct.

9 Q In any of the districts?

10 A That isn't correct.

11 Q Can you give us your computations on the number  
12 of multi-family units which could be constructed in any  
13 of the zoning districts in Chatham Township today?

14 A As I stated to you previously, Mr. Bernstein, I did  
15 not bring those figures. I do not recall them. I am not  
16 certain whether those figures were developed sometime  
17 probably in November of 1979.

18 Q Would it be a fair statement that those statistics  
19 were not in neither of your reports?

20 A I stated that, yes.

21 Q Mr. Chadwick, would you agree that most of the  
22 easily developable land in Chatham Township has already  
23 been developed?

24 MR. KLEIN: Could we have, get a definition  
25 of easily developable land?

1 THE COURT: Yes.

2 Q Mr. Chadwick, do you understand what is meant by  
3 the term "easily developable land"?

4 A I believe so, Mr. Bernstein. So that I am not answering  
5 a question that, so I'm answering your question, if you could  
6 be a little more precise?

7 Q Mr. Chadwick, since you're the professional, you  
8 tell me what you mean by the term "easily developable land".

9 A Relatively flat and having no ground strata problems  
10 requiring sand piling or any what you would call excessively  
11 or construction techniques for footings beyond the normal.

12 Q Would you agree with my original statement that  
13 most of the easily developable land in Chatham Township  
14 has been developed?

15 A When I answer the  
16 question, I am only defining what I -- yes, you say most is  
17 more than half of what you would call the flat land in the  
18 township be developed. Yes, I would say more than half have  
19 been developed.

20 If you're using the term "most" there is an insignificant  
21 amount left, then I disagree.

22 Q Okay. Would you regard the plaintiff's property  
23 as being -- strike that.

24 Okay. Do you regard the plaintiff's property as  
25 being easily developable as you have used the term?

A Partially, yes, sir.

1 Q When you say partially, do you mean part of the  
2 property is easily developable and part of the property  
3 isn't easily developable?

4 A Correct.

5 Q Now, Mr. Chadwick, how many years have you been  
6 a planner?

A Licensed in the State of  
7 New Jersey since 1968. I have been working in the planning  
8 profession since 1965.

9 Q And what is your capacity with E. Eugene Cross  
10 Associates?

11 MR. KLEIN: Is that relevant at this point,  
12 your Honor? I mean..

13 THE COURT: You inquired of him on it. I  
14 think, he answered the question, but Mr. Bernstein  
15 wants to hear it again. All right, go ahead.

16 A Planning director.

17 Q And can you tell us whether or not you prepared  
18 the master plan, the latest master plan for Warren Township?

19 A Yes.

20 Q The latest zoning ordinance?

21 A Yes.

22 Q The latest master plan for Watchung?

23 A Yes.

24 Q The latest zoning ordinance?

25 A Yes.

1 Q How about Sayreville master plan?

2 A Yes.

3 Q And when did you start as the planner for Sayre-  
4 ville? A The firm began in 1960.

5 I have represented Sayreville for lack of a better term,  
6 since the late 1960's. Precisely, I don't recall.

7 Q Middlesex Borough, did you prepare the master  
8 plan, the latest master plan and zoning ordinance?

9 A Yes.

10 Q And when did you become the planner for Middlesex  
11 Borough? You personally doing the work, that is?

12 A I don't recall. The early 1970's, I believe.

13 Q And City of Linden, did you prepare the zoning  
14 ordinance and master plan?

15 A Yes.

16 Q And you personally assumed responsibility with  
17 that city in what year?

18 A Early 1970's.

19 Q Is it a fair statement that your firm is no longer  
20 the planners for Dover Township?

21 A Yes.

22 Q When did you prepare the master plan for Par-Troy  
23 Hills? A It was adopted in 1976 and I

24 believe in direct --

25 Q And you prepared it?

1 A -- direct testimony I -- well, I with draw that. The  
2 plan was begun under a contract with the municipality and  
3 ment  
Federal Govern/in 1972, fiscal 1972.

4 Q And when did you become first involved with Par-  
5 Troy? I'm interested in you, Mr. Chadwick, rather than  
6 the firm. A 1968.

7 Q And are you the present planner for Edison Town-  
8 ship? A Yes.

9 Q On a consulting basis? A Yes.

10 Q And when did you first become involved with Edison  
11 Township? A July, 1977.

12 Q And you prepared the latest master plan and  
13 zoning ordinance? A Yes. I maybe wrong.  
14 Maybe July, 1978. I don't recall.

15 Q Fair enough. When was your tenure as planner for  
16 Franklin Township and in Somerset or Somerset as it is now  
17 called, although they refer to it as Franklin for the purpose  
18 of this litigation? A I don't understand  
19 the question.

20 Q When was your tenure for Franklin Township in  
21 Somerset County as the planner?

22 A 1967 to the best of my recollection through 1976 or  
23 '77.

24 Q And, I believe, you testified the last time you  
25 were here that you are still working in some capacity for

1 Franklin Township? A Yes.

2 Q And in what capacity is that, Mr. Chadwick?

3 A Involved in litigation of Franklin Field versus Franklin  
4 Township.

5 Q And does your testimony concern the validity of  
6 the zoning ordinance of Franklin Township?

7 A Yes.

8 Q And are you, I assume you're taking the position  
9 that the zoning ordinance of Franklin Township is valid  
10 and non-exclusionary?

11 MR. KLEIN: Why don't you ask him instead of  
12 assuming?

13 THE COURT: Is that a question?

14 MR. BERNSTEIN: That is a question.

15 THE COURT: Okay. All right.

16 Is it? Are you taking the position that it  
17 is not exclusionary?

18 THE WITNESS: I am conducting studies on  
19 behalf of the municipality, your Honor, and I am  
20 not prepared to give a position on that case.

21 Q Are there any other cases you are working for  
22 on behalf of Franklin Township?

23 A Yes.

24 Q And what are their names? A Mr.  
25 Bernstein, in all honesty I really don't recall. It is

1 involved with Middle Bush Center area and the historic  
2 site commission and also a case involved with the Board of  
3 Adjustment in Franklin Township. Conduit housing and the  
4 Jewish Home for the Aged. Somerset Home for the Aged. The  
5 Board of Adjustment case is not scheduled until late in  
6 April.

7 The historic site commission is being conducted through  
8 a landscape architect and an environmental scientist in our  
9 office.

10 Q Do any of the other cases other than the first one  
11 that you described have to do with exclusionary zoning?

12 A I don't believe so, no.

13 MR. BERNSTEIN: I would like to have four  
14 documents marked for identification and then  
15 identified, your Honor.

16 THE COURT: Okay.

17 MR. BERNSTEIN: The first is the zoning map  
18 and ordinance of Par-Troy Hills.

19 MR. KLEIN: Which year?

20 MR. BERNSTEIN: The latest.

21 (The document referred to was marked D-1 for Identification.)

22 MR. BERNSTEIN: As being the latest zoning  
23 map and ordinance of Franklin Township in Somerset  
24 County.

25 (The document referred to was marked D-2 for Identification.)

1 MR. BERNSTEIN: The third document is the  
2 latest zoning ordinance and map of Edison Town-  
3 ship.

4 (The document referred to was marked D-3 for Identification.)

5 MR. BERNSTEIN: The fourth is a proposed  
6 zoning ordinance of the Borough of Sayreville  
7 dated May, 1975, revised July 30, 1975.

8 THE COURT: D-4 for Identification.

9 (The document referred to was marked D-4 for Identification.)

10 THE COURT: We will break for lunch.

11 MR. BERNSTEIN: Could we just have them  
12 identified?

13 THE COURT: Oh.

14 Q I show you what has been marked D-1 for Identifi-  
15 cation, the zoning map and ordinance of the Parsippany-Troy  
16 Hills Township and ask if you can identify it?

17 A Yes, I can.

18 Q Is that in fact the zoning map and ordinance,  
19 correct?

A It appears to be. This appears  
20 to be. This is the zoning ordinance of the Township of  
21 Parsippany currently with all the amendments stapled thereto.

22 Q And who is the drafter of that ordinance?

23 A Myself.

24 Q I ask you what has been marked D-2 for Identifi-  
25 cation and ask you if you can identify that?

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A This is the zoning ordinance of Franklin Township and containing some of the amendments since the adoption of that ordinance.

Q And can you tell us whether or not you drafted that ordinance? A Substantially, yes.

MR. KLEIN: What was the answer?

THE WITNESS: Substantially.

MR. KLEIN: No --

THE COURT: Some amendments.

MR. KLEIN: Contains only some of the amendments?

THE WITNESS: Some of the amendments.

MR. KLEIN: Not all of the amendments?

THE WITNESS: Correct.

MR. KLEIN: All the amendments he doesn't, correct?

MR. BERNSTEIN: I'm very familiar. Known as article 9:40-42, which are the PUD?

A The one relevant to PUD, their both relevant to PUD amendments.

Q I show you what has been marked D-3 and ask you if you can identify what it is?

A The Edison Township zoning ordinance. Chapter 36 does not contain any amendments. There have been two minor amendments.

1 Q Who is the principal drafter of this ordinance?

2 A Myself.

3 Q I show you what has been marked D-4, proposed  
4 zoning ordinance of the Borough of Sayreville dated May,  
5 1973 and revised July 30, 1973 and ask you if you can  
6 identify it?

7 A It was prepared for the  
8 Borough of Sayreville by E. Eugene Cross Associates. I  
9 have been the consultant involved with all the zoning  
10 ordinances. I would identify it as documents produced by  
11 our office.

12 Q Do you know whether or not you prepared it?

13 A I, without looking at it, I could not tell you whether  
14 it is the zoning ordinance or any variation of the zoning  
15 ordinance. It is dated July 30, 1973.

16 Q Did you prepare the zoning ordinance which was  
17 adopted in 19 -- between 1973 and 1975 for the Borough of  
18 Sayreville? A Yes, I did. It was  
19 zone amended.

20 Q Let me ask you if I can --

21 THE COURT: Let's break for lunch now. Come  
22 back after lunch. Thank you. You can step down.  
23 (The noon recess was taken.)

24 THE COURT: All right.

25 MR. BERNSTEIN: Your Honor, I would like to  
have marked for identification --

1 THE COURT: Let me ask you something. You  
2 had D-4, the zoning ordinance of Sayreville, '73  
3 marked.

4 MR. BERNSTEIN: I am not going to use it so  
5 I can take that out.

6 THE COURT: This one marked D-4.

7 MR. BERNSTEIN: Thank you, your Honor. I  
8 appreciate that.

9 THE COURT: Is that Sayreville '75?

10 MR. BERNSTEIN: Sayreville -- let's check  
11 that. '74.

12 THE COURT: '74.

13 MR. BERNSTEIN: I didn't think you could  
14 do that, pull them in and out. It makes sense.

15 THE COURT: Yes, I could do it.

16 (The document was marked D-4 for Identification.)

17 Q I want to show you the zoning ordinance of the  
18 Township of Sayreville and ask you to identify it. Is  
19 that the 1974 ordinance, Mr. Chadwick?

20 A Yes. This was the ordinance that was in effect until  
21 1976 of the Borough of Sayreville.

22 Q Prepared by whom, sir?

23 A Myself.

24 Q Thank you.

25 THE COURT: Could I see both of you for a

1 minute before we get started?

2 (Discussion had at side bar.)

3 Q The ordinances that you have prepared and the  
4 master plans that you have prepared while working for E.  
5 Eugene Cross, those plans were made by you, is that correct,  
6 rather than the organization?

7 A They're made by the organization under my supervision.

8 Q You were the principal planner for each of the  
9 zoning ordinances and the master plans that we have discussed  
10 before the luncheon break?

11 A Correct.

12 Q You weren't working under someone else's super-  
13 vision in your organization?

14 A Correct.

15 Q Have you prepared any subdivision or site plan  
16 layouts for either of the plaintiff's parcels?

17 A No.

18 Q Do you know whether or not public sanitary sewers  
19 would be necessary for the development of either of the  
20 subject parcels?

21 MR. KLEIN: Your Honor, I think, we were --

22 THE COURT: I'm sorry. Read the question.

23 Let him read the question back.

24 (Last question read by the reporter.)

25 THE COURT: I think, you asked that.

1 MR. BERNSTEIN: I may have.

2 THE COURT: Well, may be not in those precise  
3 words, but hold it a second. Well, go ahead. Ask  
4 again rather than spending time looking for it.

5 A I could only speculate, Mr. Bernstein.

6 Q Fair enough. Do you know whether or not one could  
7 use septic systems or any of the alternative systems for  
8 effluent disposal in order to construct multi-family develop-  
9 ment on either of the subject parcels?

10 MR. KLEIN: Alternative to what?

11 MR. BERNSTEIN: I think, I would hope that,  
12 Mr. Klein that chapter 199 speaks of alternative  
13 systems of sanitary disposal and if Mr. Chadwick  
14 isn't familiar with this term, I would be surprised.

15 THE COURT: He can answer, but that is a  
16 term of art.

17 MR. KLEIN: Then you're limiting it to the  
18 term as it is applied in chapter 199?

19 MR. BERNSTEIN: It is septic systems or the  
20 alternative systems as spelled out in the state  
21 statute.

22 THE COURT: All right.

23 A I do not know.

24 Q Do you know if the subject property has enough  
25 percolation for septic systems?

1 A I don't know.

2 Q Did you testify that there was a reduction in the  
3 amount of acreage that was designated for multi-family  
4 development between the 1972 and the 1978 master plans?

5 A No, I don't believe so. I testified that I couldn't  
6 make a precise determination because of the substituting of  
7 the areas in the most southerly part of the township from  
8 an office research to a, I believe, it is your 2B zone.

9 Q Do you know how many acres were designated in the  
10 1972 master plan for multi-family development?

11 A No.

12 Q Do you know how many acres was designated in the  
13 1978 plan for multi-family development?

14 A It is shown in table 19 of the master plan, and, yes, I  
15 do.

16 Q Do you know how many multi-family units could be  
17 built if the 1972 master plan was implemented?

18 A No.

19 Q Is it your -- strike that.

20 Do you know whether or not the master plan of 1978 and  
21 the zoning ordinance showed the same areas as designated for  
22 multi-family development? A I didn't under-  
23 stand the question.

24 Q You know the areas in the 1979 master plan where  
25 multi-family development is recommended?

1 A Yes.

2 Q Do you know the areas in the 1973 zoning ordinance  
3 where multi-family development is permitted?

4 A Yes.

5 Q Those are the same areas, aren't they?

6 A Approximately.

7 Q And was it your testimony that you could not tell  
8 if the densities proposed in table 19 -- strike that --  
9 whether or not the number of multi-family dwelling units  
10 shown in table 19 of the master plan was or was not correct?

11 A Correct, dwelling units.

12 Q I suppose it would be your testimony that in some  
13 instances it is understood plain lands would be developable  
14 and in other instances they would be not developable, is  
15 that correct?

A The supposition is correct.

16 Q Is it not a fact, Mr. Chadwick, that in preparing  
17 a master plan and a zoning ordinance a municipality is  
18 required to take into account the zoning of its neighborhood  
19 municipalities?

A Yes.

20 Q And, I believe, that's a requirement for the land  
21 use element of the master plan?

22 A It is required to consider it.

23 Q Now, Mr. Chadwick, can you tell us on which map  
24 you located the Dodge Estate, which is located in Chatham  
25 Township and, I believe, Madison Borough?

1 A J-1.

2 Q And, I believe, it is the circle at the top of  
3 J-1 that indicates the Dodge Estate?

4 A Yes.

5 Q Can you tell us, sir, what the zoning is for that  
6 portion of the Dodge Estate, which is in Madison Borough?

7 A I don't recall the precise zoning district designation  
8 in terms of letters or numbers. It is essentially an office  
9 park type of zoning. I do not recall the letter designations  
10 of the district.

11 Q Do you know when the Dodge Estate was first zoned  
12 for an office park designation?

13 A No.

14 Q Do you know whether or not the office designation  
15 for the Dodge Estate in Madison Borough came before or after  
16 the zoning which permitted bi-conditional use office develop-  
17 ment in Chatham Township?

18 MR. KLEIN: What zoning permits office bi-  
19 conditional use in Chatham Township?

20 MR. BERNSTEIN: I thought we had that testi-  
21 mony on direct examination, your Honor, way back  
22 when Mr. Chadwick testified about the permitted  
23 uses and the residential zones and there was one  
24 use which was conditional uses.

25 THE COURT: I don't recall specifically.

1 MR. KLEIN: I don't recall.

2 MR. BERNSTEIN: Okay. I will spell it out.

3 THE COURT: All right.

4 MR. KLEIN: Okay.

5 THE COURT: Why don't you show the, him the  
6 zoning ordinance?

7 MR. BERNSTEIN: I will do it a different way,  
8 your Honor.

9 Q Do you know whether or not the Dodge Estate in  
10 Chatham Township permits any non-residential uses?

11 A Yes.

12 Q And one of the uses is an office type of use,  
13 bi-conditional use?

A Yes. It is my  
14 recollection, I have not made an examination of the final  
15 zoning amendments from Madison Borough as it affected the  
16 Dodge tract.

17 Q Would you say as a planner that permitting office  
18 use on the Dodge tract in Chatham Township would be an un-  
19 reasonable use?

A I haven't made a  
20 specific evaluation of the office use on the Dodge tract in  
21 Madison Borough.

22 Q With regard to Chatham Township, sir, would you  
23 say that would be a reasonable or unreasonable use based  
24 on the zoning in the adjoining municipality?

25 A Again, I haven't made any examination of the tract of

1 land in context with Chatham Township. I have made an exam-  
2 ination and reviewed the material contained in your master  
3 plan which addresses various facets of office development of  
4 that tract of land.

5 Q Do you know if any application has been made?

6 A I have no opinion to offer.

7 Q No opinion. Fair enough.

8 Do you know if any application has been made with regard  
9 to the Dodge Tract in Madison Borough?

10 A No, I do not.

11 Q Do you know if any application has been made with  
12 regard to any development of the Dodge tract in Chatham  
13 Township? A No.

14 Q Were there any environmental maps in the 1972  
15 master plan? A Not that I recall.

16 Q I believe, we have the 1972 master plan in  
17 evidence. A I have it.

18 Q You have a copy, Mr. Chadwick. I would like you  
19 to look through that master plan and tell me if there are  
20 any soils maps or environmental maps of sorts in the 1972  
21 master plan?

22 MR. KLEIN: I believe, that was P-13 in  
23 Evidence, your Honor.

24 THE COURT: Yes, I know it is.

25 THE WITNESS: I have P-13 in front of me,

1 THE COURT: Okay. Get it back from him  
2 before he leaves.

3 MR. KLEIN: I will get it back.

4 A Mr. Bernstein, I have reviewed the 1972 master plan,  
5 P-13, and reviewed it from the standpoint of maps contained  
6 within the document and there is a single map entitled,  
7 "Master Plan, 1972", and there is reference to studies and  
8 information relevant to soil, but no other maps. The only  
9 map within that document is the map following page 8 of the  
10 report.

11 Q And in either of these maps gives soil information  
12 to the municipality?

13 A There is only a map.

14 Q And that map does not give soil information?

15 A Does not.

16 Q And there are no environmental or soils maps in  
17 the report itself, correct?

18 A No reference studies of soils and topography, but not  
19 include maps of soils or topography.

20 Q And how many pages are devoted to the discussion  
21 of the environment or soils or any of those other environ-  
22 mental features? A I briefly scanned

23 the report, Mr. Bernstein, so the only thing I can respond  
24 to is on page 2. It refers to a series of studies that had  
25 taken place of the discussion, on page 1 and it recites

1 major emphasis was placed on the following, and it lists  
2 the  
3 on item D on/page, which is subpart of 2, states, "Analyze  
4 the topography and other physical characteristics in  
5 developed areas."

6 Q Would it be a fair statement that those are only  
7 environmental references in the 1972 master plan?

8 A That's what I see, Mr. Bernstein. Only one that I can  
9 point to is the, that item, but I have scanned the booklet  
10 quite briefly. I wouldn't doubt it if you told me that was  
11 the only one.

12 Q I believe it is.

13 Now, Mr. Chadwick --

14 MR. KLEIN: Your Honor, I would say that the  
15 master plan is evidence of what is contained,  
16 about environmental matters it contains.

17 MR. BERNSTEIN: I think that is a quaint  
18 comment in view of the fact that over a third  
19 of Mr. Chadwick's testimony, direct testimony was  
20 a complete recitation --

21 THE COURT: Okay. Let's go.

22 MR. BERNSTEIN: Okay.

23 Q Now, Mr. Chadwick, looking at the 1972 master  
24 plan from the prospective of 1980, would you say that the  
25 1972 master plan was deficient with regard to environmental  
studies information and maps, or would you as a planner

1 say that the 1972 master plan if presented to a planning  
2 board today would be an acceptable job from an environmental  
3 standpoing?

4 MR. KLEIN: Your Honor, I really don't under-  
5 stand the question.

6 MR. BERNSTEIN: The problem is, if it does,  
7 the master plan has eighty-three pretty different  
8 colored maps in it for the P. R. effect that it  
9 has on planning boards and the public in general,  
10 or does it have the basic substantive information,  
11 the studies that were required to go into a  
12 master plan. That is the thrust of the question.

13 THE COURT: He is saying from the prospective  
14 of 1980. You know, I hate to put words in the  
15 witness' mouth. If he said yes, I would be  
16 significantly surprised because Mt. Laurel and  
17 Oakwood have come out --

18 MR. BERNSTEIN: I am just looking at the  
19 environmental issues, your Honor.

20 THE COURT: Okay. Okay, but still Oakwood  
21 has come out, but any way, I will allow the  
22 question.

23 Q I am talking from prospective 1980, the 1972  
24 master plan proper insofar as environmental studies and  
25 environmental information?

1 A It is obvious it is not because the soil studies ,  
2 published by Morris County and the conservation studies  
3 in Trenton weren't available until the mid 1970's. And I  
4 ing  
5 am answer/the question, the report was to present exactly  
6 what was done in 1972 not having in hand all of the refer-  
7 ence material that is referred to at page 1, was simply,  
8 oh, hand it to the planning board in 1980, would be one  
9 major resource material that cannot possibly be addressed  
10 to the 1972 plan, that is, the soil information.

10 Q Does the 1978 master plan address itself to  
11 soils in Chatham Township?

12 A Yes.

13 Q Does it address itself to topography?

14 A Yes.

15 Q Does it address itself to development limitations?

16 A Yes.

17 Q Does it address itself to steep slopes and wetlands?

18 A It refers to all of those subjects.

19 Q Would you agree that the 1978 master plan is  
20 superior to the 1972 master plan insofar as environmental  
21 information is concerned?

22 A I don't know. I can't conclude that because the 1972  
23 plan refers to a lot of studies, analysis absent the soils  
24 information analysis of one plan versus another.

25 I would assume, yes, the state of the art progressed,

1 but I can only, I could only really give a definitive  
2 statement knowing exactly what was done in 1972 and to  
3 what depth.

4 Q You're saying that looking at both of these  
5 documents you can't tell me which is superior from an  
6 environmental standpoint? A The  
7 document marked P-13 references all of the study material  
8 done prior to the publication of the conclusion in that  
9 report.

10 The 1978 plan, the 1978 plan marked J-2 in evidence  
11 carries with it a great deal of the background study  
12 material that the 1972 plan simply does not contain.  
13 The first 62 pages are background information. Up through  
14 page 97 of the report, which is 117 pages long is back-  
15 ground studies and conclusions and the last 17 pages is  
16 recommendations.

17 If you tear off the 17 pages of this booklet and the  
18 booklet, I don't know how many pages the other one has,  
19 and you want to weigh the two, the 1978 plan would weigh  
20 more than the 1972 plan. But other than that, I can't offer  
21 you any comment opinion.

22 I am not trying to be evasive. I do not know precise-  
23 ly the analysis that is referred to in the 1972 plan. I  
24 do state to you and stated it to the court already that the  
25 availability of the soils survey was not there. It is a

1 major input as reference in the 1978 plan. But to what  
2 you're asking me to give you a professional opinion which  
3 is --

4 Q Superior? A A better plan  
5 from the standpoint of the environmental considerations  
6 as it affects future plan uses.

7 Q Then you couldn't -- A No,  
8 with the materials at hand the opinion is worthless.

9 Q Fine. Now, when was the soils survey from  
10 Morris County initially published?

11 A Preliminarily 1974, I believe. That is the best  
12 recollection.

13 Q That means the 1972 master plan could not  
14 possibly have taken that into account, correct?

15 A I don't see how.

16 Q Now, do you know of anything contained in this  
17 master plan on either the environment or any other issue  
18 that you can tell us definitively is false and untrue?

19 MR. KLEIN: What? I don't understand the  
20 question, your Honor.

21 MR. BERNSTEIN: The question is simple,  
22 Mr. Klein. For whatever reason, he has challenged  
23 the 1978 master plan and claims it is invalid.  
24 I raise an issue that shouldn't be before the  
25 court. But here he is challenging the 1978

1 master plan.

2 I want to know if Mr. Chadwick can point to  
3 anything that is untrue that is contained in this  
4 master plan. I think it is a totally valid  
5 question.

6 THE COURT: I will allow it.

7 MR. KLEIN: Your Honor, while Mr. Chadwick  
8 is reviewing it, just for clarification. My  
9 recollection of our challenge to the validity of  
10 the master plan is to the effect that the con-  
11 clusions are not supported by the data therein  
12 contained. And if that's the question that Mr.  
13 Bernstein is driving at, I think, that's the  
14 question he ought to ask.

15 MR. BERNSTEIN: I think, I can ask the  
16 question. If he wants to ask -- excuse me, your  
17 Honor, but I would --

18 THE COURT: I will allow the question.

19 MR. BERNSTEIN: I will point out to the court,  
20 I will accept a stipulation from Mr. Klein that  
21 he has no argument with any of the statistics or  
22 any of the maps or any of the charts in the master  
23 plan, and he has no proof that any of that stat-  
24 istical or data information is untrue, then I will  
25 with draw the question.

1 MR. KLEIN: I am not going to stipulate.

2 A I was waiting. I thought you were in conference.

3 THE COURT: The question is, is there anything  
4 in the master plan that is definitively untrue?

5 THE WITNESS: In terms of the factual state-  
6 ments or the presentation of the factual data,  
7 population for the 1970 census, acreages within  
8 existing residential zone categories, acreage  
9 within various land use types statistics of that  
10 sort, I don't disagree with. I have no reason to  
11 disagree with them.

12 Q How about the environmental information as to  
13 steep slopes, wetlands, flood plain and soil types?

14 A The environmental maps I consider beginning with exist-  
15 ing development, which is a plan entitled, "Existing develop-  
16 ment, February, 1978," following page 17 of the '78 master  
17 plan, I have no reason to doubt the extent of development  
18 as indicated on that plan.

19 The map entitled "Topography, March, 1978," is a gen-  
20 eralized topographic survey of the town. Its source to the  
21 United States Geological USGS maps. There are, as I said,  
22 a generalized topographic survey of the township which is  
23 available in more detail from the township's own aerial  
24 survey maps, topo survey maps.

25 The accuracy of the map is dependent upon the accuracy

1 of the USGS maps. My experience is they give general indi-  
2 cations of topographic conditions within a community and  
3 can only be relied upon as to that degree.

4 The soils map, which is entitled, "Development Limit-  
5 ations," is following page 15. Its source to the USGA soil  
6 survey service. It appears to be a reasonably accurate  
7 reflection of what is contained in the source material.

8 I would say that there are some generalizations or  
9 consolidations of soil districts because of the very fine  
10 details that's required. But I would say it is a reasonably  
11 accurate indication from a planning standpoint to give a  
12 municipality, the planning board a feel for soil types, one  
13 area versus another.

14 Q So would it be fair to say that there are no areas,  
15 factual areas of the master plan that you as a professional  
16 planner have found to be inaccurate or untrue?

17 A In their general sense I have no dispute with the  
18 factual information contained in the '78 plan.

19 Q I would like to ask you whether or not you as a  
20 professional planner agree or disagree with the following  
21 statement, which is found on page 46 of the state development  
22 guide plan. It is entitled, "Sensitive areas."

23 "Development should be avoided adjacent to the Great  
24 Swamp, Pierce Meadows and Troy Meadows."

25 Do you agree or disagree with that statement?

1 A I both agree and disagree. I agree from the standpoint  
2 of most general context. I disagree that it is not reason-  
3 able.

4 Q Well, I don't understand what you're saying, Mr.  
5 Chadwick, when you say you agree and disagree. Could you  
6 explain it?

7 A If conditions were such  
8 that there was not a considerable and substantial develop-  
9 ment within and about those locations and considerable  
10 development pressure within those areas, I think, the state-  
11 ment could be made unqualified that they should be preserved  
12 to the maximum extent feasible.

13 The conditions aren't those that I describe. There is  
14 considerable development about and encroaching upon and has  
15 been historically. My experience specifically within Par-  
16 Troy Hills, of which you have questioned me considerably,  
17 is that the State of New Jersey would not support the town-  
18 ship's position in the entire preservation of the Troy  
19 Meadows.

20 My experience in the Borough of Fairfield, which is  
21 involved, the Big Piece Meadows which the report shows a  
22 typographical error, they propose to relocate the Passaic  
23 River through the Big Piece Meadows. It has also been plan  
24 C. It still stays as Plan C, and it is yet to be approved  
25 and budgeted in any form and support an office industrial  
type of zoning in context with that relocation.

1           So the circumstances, one in generalities, I support  
2           the basic statement that the meadow land areas should be  
3           preserved to the extent feasible. But the development be-  
4           cause of the meadowlands doesn't seem reasonable to say  
5           unqualified to support the statement in the context with  
6           the testimony I have given to this court relevant to the  
7           issues of Chatham Township.

8           Q       Would you agree that municipalities should care-  
9           fully regulate the development which occurs adjacent or  
10          in close proximity to either the Great Swamp or to the  
11          meadows area in Par-Troy Hills?

12          A       If you mean regulate from the standpoint of specific  
13          development standards for, relevant to runoff or a type of  
14          use that has a high hazard material that could contaminate  
15          water, yes. All three areas have the common denominator,  
16          that being a surface water and ground water feature.

17          Q       As a planner would you have any problem in support-  
18          ing high density housing adjacent to Troy Meadows?

19          A       In a specific location or any place about Troy Meadows?

20          Q       Any parcel adjacent to Troy Meadows?

21                   THE COURT: What do you mean by adjacent?

22                   Right next to it?

23                   MR. BERNSTEIN: Next to it.

24                   MR. KLEIN: Considering other environmental  
25                   factors as well? Because the environmental con-

1                    ditions affecting Troy Meadows and the Great  
2                    Swamp are vastly different in terms of surrounding  
3                    uses.

4                    THE COURT: He is asking the question.

5                    MR. KLEIN: Traffic plans.

6                    THE COURT: He is answering. If he can  
7                    answer, he can answer.

8                    MR. KLEIN: Well --

9                    A     If the question is intended to be any place on any of  
10                   the peripheral areas to the Troy Meadows, I could not answer  
11                   the question. I do not have knowledge of the entire periph-  
12                   ery of Troy Meadows. I have a detailed knowledge of it  
13                   within Parsippany-Troy Hills.

14                   Q     I am talking within Parsippany Troy-Hills. I am  
15                   not interested in the Troy Meadows in other communities.  
16                   Are there sites where you would recommend high density  
17                   housing along the periphery of Troy Meadows?

18                   A     In Parsippany-Troy Hills I would not recommend it.  
19                   The areas that adjoin the Troy Meadows have had a non-  
20                   residential character on their westerly side. They are  
21                   cut off on the northerly side by Route 80 and on the --  
22                   excuse me -- on the easterly side have had non-residential  
23                   character, the land fill areas. The northerly side is the  
24                   boundary line of Route 80 and the westerly side land owned  
25                   by the New Jersey Department of Conservation and Economic

1 Development are areas that have been proposed to be develop-  
2 ed for third acre lots were abandoned because of the peat  
3 bogs.

4 Whether I support high density development on the most  
5 westerly side, I think, becomes academic because of the  
6 knowledge know that the lands probably are undevelopable  
7 without extremely costly subfoundations.

8 Q Isn't it a fact that for large amounts of Troy  
9 Meadows it is adjacent to residentially zoned lands?

10 A Yes, it borders with/<sup>a</sup>residential zone.

11 Q R-1 is that? A Yes.

12 Q And R-1 is forty thousand square foot lots?

13 A Yes.

14 Q And the balance is R-2 and R-3 zones?

15 A Yes.

16 Q Being to the west of the Troy Meadows?

17 A Yes.

18 Q And you would be against putting any multi-family  
19 development in either the R-1 or R-2 or 3 districts?

20 A R-3 permits a form of multi-family. R-2 permits, also  
21 permits multi-family.

22 Q The R-2 is adjacent, isn't it, to the Troy  
23 Meadows? A It is not adjacent to it.

24 Not that adjacent to it. The R-1 does not permit any form  
25 of multi-family dwellings.

1 Q How about the R-2? A It does not  
2 either.

3 Q Was it your testimony on direct examination that  
4 you received background material which was used in the  
5 preparation of the 1972 master plan?

6 A We have background material of Chatham Township on  
7 file in the office. I am not certain that those background  
8 studies aren't in support of the 1972 plan refer to the  
9 previous plan. I don't know if it was 1968 or '69, which  
10 I had reviewed.

11 Q And did you receive them from Mr. Klein?

12 A No. They had been on file with our office for what-  
13 ever amount of time.

14 Q Could you be any more specific in describing these  
15 background studies? A There is a series

16 of studies dealing with existing land use housing, traffic,  
17 et cetera. I reviewed them very briefly, considering them  
18 historical in the year 1980.

19 Q And I show you what are background studies for the  
20 1979 master plan and ask you if these are the studies that  
21 you referred to?

22 THE COURT: The '78 master plan?

23 MR. BERNSTEIN: The only background studies  
24 I am aware of. That's why I'm asking the witness  
25 if these were the studies.

1 A In context with previous statements, no, these are not  
2 the studies.

3 Q Do you know who prepared the background studies  
4 for the 1972 master plan or the prior master plan that you  
5 just referred to? A One is, I believe,  
6 Catlett Associates, but I am not positive.

7 Q Do you have it with you? A No,  
8 you took it away from me. '72 master plan.

9 Q I am talking about the, do you have the background  
10 reports with you? A To that plan?

11 Q Yes. A No, I do not.

12 Q Now, you mentioned that the 1972 master plan  
13 referred to extensive environmental studies?

14 A That's correct.

15 Q Would you tell us what the extensive environmental  
16 studies are that are referred to in the 1972 master plan?

17 A On page 1 of P-13, the master plan studies were pri-  
18 marily concerned with an analysis of the township's growth  
19 and the direction and type of development which has occurred  
20 since the last revision of the plans in 1967, which answers  
21 my further previous question in terms of certainty. I  
22 couldn't remember if it was '67 or '68. So the studies  
23 that I have are probably mid 1960's to a master plan booklet.  
24 And as I said before, I look at them in a cursory or  
25 historical context with primary consideration to undeveloped

1 areas.

2 Major emphasis was placed on the following. One,  
3 continuing the basic residential character of the township.  
4 Two, examination of the non-single family residential uses  
5 for the purpose of determining the need for and the  
6 appropriateness of such uses. This involved looking close-  
7 ly at present zoning for business office buildings,  
8 professional-institutional and garden apartment areas.

9 The board decided what has been happening in non-  
10 single family zones by the way of development shall be  
11 considered research producers for non-single family develop-  
12 ment and request for variances or rezoning which will  
13 allow non-single family uses of various parts of the town-  
14 ship.

15 C, consider the depth and need for additional multi-  
16 family dwelling units in the township.

17 D, analyze the topography and/or physical character-  
18 istics on undeveloped areas. Evaluate plans and needs for  
19 expansion of municipal facilities, particularly regarding  
20 expansion of the sewerage treatment plan.

21 3, analyze street and traffic patterns and probable  
22 need for future street improvements.

23 4, consideration of local needs for additional parking  
24 and public land in general.

25 5, particularly attention to residential area because

1 of unusual problems in that area.

2 The last statement following extensive deliberations  
3 and discussion of the above studies a proposed master plan  
4 was developed and a public hearing on the plan was conducted  
5 on June 26, '72. Comments made at the public hearing were  
6 carefully considered by the board and then determined that  
7 the plan as proposed should remain unchanged.

8 The master plan presented herein was adopted by  
9 resolution of the planning board September 18, 1972. And  
10 those are the statements preceding the '72 plan. And that  
11 is the basis of my conclusions and studies.

12 Q Isn't it a fact, Mr. Chadwick, that the only  
13 environmental study which was referred to is D, analyze  
14 the topography and other physical characteristics in  
15 undeveloped areas? A Yes.

16 Q Isn't it a fact that you don't see discussion  
17 of topography and other physical characteristics other than  
18 a very cursory sense in the balance of this 1972 master  
19 plan? A No, the report specific-  
20 ally states these are the areas of emphasis and that's the  
21 one, the point of emphasis.

22 Q Okay. A It is a few words. I  
23 do agree with that.

24 Q What I am asking secondly is, where in the master  
25 plan does it refer in detail to topography and physical

1 characteristics of the undeveloped areas?

2 A I don't believe I stated to you, I referred you to  
3 that section and I stated, if you told me that there was  
4 no other reference and your answer was, "I say that to  
5 you," and I agreed with you, then I don't doubt it.

6 Q And it was based on the language, "Analyzed  
7 topography and other physical characteristics in undeveloped  
8 areas," that you believed that there had been extensive  
9 environmental studies preceding the 1972 master plan?

10 A Correct.

11 Q Can you tell us what information on Chatham  
12 Township that you obtained in presentation of your testi-  
13 mony today?

14 A The master plan of the  
15 Township, 1972, the background studies that you have  
16 referred to that are, as I classify them, as a historical  
17 development and filed with our office. They precede the  
18 1976 master plan revised statewide showing the allocation  
19 report for New Jersey, a series of letters which are  
20 identified. I don't recall the reference, but they're  
21 before the court and they are relevant to the soil capacities  
22 within the township.

23 The zoning ordinance of the municipality, ordinance  
24 79-2, ordinance 2-79. The Morris County Soils Conservation  
25 Survey, the natural resource inventory report number one,  
topographic maps purchased from the township's engineers

1 office for the Green Village Road area, from the Loantaka  
2 Creek or county park east and northerly to Shunpike. The  
3 previous zoning map of the township, the allegations presented  
4 to the court by Mr. Klein on behalf of the clients, a report  
5 entitled, "Analysis of the Relationship of Environmental  
6 Characteristics and land development of the township prepared  
7 for Chatham Township by Dresner Associates, Summit, June,  
8 '78.

9 Q Supplied by Mr. Klein, I assume?

10 A Yes. I am listing the materials that I have reviewed.

11 Q I appreciate that. I just wanted to identify that  
12 particular document. Proceed.

13 A And a memoranda to yourself from Robert Catlin &  
14 Associates dated 10/79 by Mr. O'Grady.

15 Q That was supplied by Mr. Klein as well?

16 A I believe so, yes. And a report, planning report in  
17 the matter of Green Village Corporation versus Chatham  
18 Township prepared for Daniel Bernstein, Esquire, dated,  
19 11/79 by Malcolm Casler Associates, unsigned.

20 Q I assume that was provided by Mr. Klein as well  
21 to yourself?

22 A I believe so, Mr. Bern-  
23 stein. I have no reason to believe otherwise. That's a  
24 list of the basic material that I reviewed or scrutinized  
prior to offering an opinion to this court.

25 Q Have you made any calculations or computations of

1 the amount of land north of Green Village Road which is in  
2 the flood plain? A No.

3 Q Have you made any computations or calculations for  
4 the amount of land which is south of Green Village Road  
5 which is in the flood plain?

6 A No.

7 Q Have you made any computations or calculations on  
8 the amount of environmentally -- strike that. On the  
9 amount of soil with severe limitations either north or south  
10 of Green Village Road? A No.

11 Q With regard to the proposed Shunpike bypass shown  
12 in the 1978 master plan, do you have any idea when it is  
13 expected to be constructed? A No.

14 Q Do you know whether or not the municipality has  
15 made any plans for its construction?

16 A No.

17 Q Do you know whether or not the municipality has  
18 either acquired the land for the bypass or started condem-  
19 nation proceedings? A No, I do not.

20 Q Do you have any idea of the traffic volume which  
21 would exist on the bypass when and if it were constructed?

22 A The reason for the bypass, Mr. Bernstein, I believe  
23 there were specifications given relevant to traffic volumes  
24 and a specific section on this, what I referred to as the  
25 Shunpike bypass, but I do not have a recollection of an

1 estimate of traffic flow on that road, no. And I can't say  
2 <sup>a</sup> for/certainty whether it is contained in the '78 master  
3 plan.

4 Q I'd ask you to turn to the land use plan in the  
5 1978 master plan just before page 100. You have the page,  
6 Mr. Chadwick? A Page 100?

7 Q Just preceding page 100.

8 A Yes.

9 Q Doesn't that show that the Shunpike extension  
10 follows the easement to the east of the subject property?

11 MR. KLEIN: In its entire course?

12 MR. BERNSTEIN: To the east of the subject  
13 property.

14 MR. KLEIN: Your Honor, the map doesn't  
15 appear to show that.

16 MR. BERNSTEIN: The map does show it and I  
17 would object, your Honor, to Mr. Klein testifying  
18 here. I would be very happy to cross examine him.

19 THE COURT: Look, both of you have done the  
20 same thing, but you're right, let Mr. Chadwick  
21 tell us.

22 A The easement to the east of the subject property is  
23 the subject property, being the subject property.

24 Q The southern portion of it. I will clarify it.  
25 Let me show you what I am referring to, Mr. Chadwick.

1 There is an easement to the east of the southern property.  
2 Does not the land use map show that the proposed Shunpike  
3 bypass would be along that easement rather than to the west  
4 as you have shown on the map?

5 A I'm sorry, Mr. Bernstein. Are you referring to the  
6 line that I drew on J-1?

7 Q That's right. A As compared to  
8 the line shown on the land use plan of 1978?

9 Q True. A And that they are  
10 not exactly the same location?

11 Q No. What I'm asking you is whether or not the  
12 bypass would be farther to the east from the southern  
13 portion of the subject property. I am asking whether or not  
14 that is true. A Again you have lost me.

15 Q Doesn't the land -- A Could  
16 you rephrase the question? Maybe I can answer the question.

17 Q Okay. A Are you saying that the  
18 dotted line showing the bypass in the '78 plan, okay? Is  
19 not exactly or is different than the blue line that I have  
20 drawn on J-1, and the difference being that the blue line  
21 should have been right on that lot line shown as the ease-  
22 ment and it would be moved about a quarter of an inch  
23 slightly to the east, yes.

24 Q When you say a quarter of a inch, that is a hundred  
25 or a hundred twenty-five feet to the east?

1 A I guess. Approximately, yes. If I recall correctly,  
2 that map is, would be to five hundred.

3 Q Right. A We were scaling  
4 something before.

5 Q So you would agree with me that the line should  
6 have been placed where the easement is shown, is that  
7 correct?

8 A It should follow the  
9 dotted line, if you like to make a correction.

10 Q Yes, I would like you to make the correction on  
11 that. A I think, that may be so that we

12 don't have complete confusion, if you let me borrow --

13 THE COURT: Let him do it with the red pen.

14 A Fine

15 MR. BERNSTEIN: A red pen.

16 THE COURT: I have a red crayon. All right.

17 A Mr. Bernstein, if you would help by holding the map  
18 and so we don't have too much lines, I'm starting with this  
19 star that was an indication I made previously where my  
20 interpretation of the sewer line stopped.

21 Q Right. A Would you agree  
22 that this is the alignment of Shunpike?

23 Q Yes, sir. A Follows in a fashion  
24 like this and proceed northerly.

25 Q Very good. Thank you. A Proceed south-  
erly through that star. And again, I will initial it J.C.

1 Would you like that?

2 Q That is all right. Thank you. The record will  
3 reflect it was done with a red crayon.

4 A To describe it, I have drawn a red line on J-1 which  
5 begins where a previous blue line drawn by myself, a cross-  
6 hatched field and follows a dotted parallel lines showing  
7 the base line which has been referred to, Mr. Bernstein, as  
8 an easement and then comes back to the blue line as it  
9 crosses Green Village Road and contains my initials.

10 Q Yes. Now, what's the relevance of the proposed  
11 bypass for an apartment zoning?

12 A The bypass of Shunpike and Green Village Road inter-  
13 section, in my opinion, is a significant planning proposal  
14 within the context of the master plan of Chatham Township.  
15 It proposes to be accountable to the traffic flow as a  
16 result of development within and without the municipality.

17 It also, in my opinion, creates s shifting of the act-  
18 ivity centers within what I have called the Green Village  
19 Road neighborhood area and affords access to the lands on  
20 the north south direction from Green Village Road to the  
21 major traffic routes as identified in the master plan. The  
22 Green Village Road area being an area in close proximity  
23 to existing and planned sewer facilities, having major multi-  
24 family development to the east, in my opinion, having a  
25 physical limitation in terms of the westward expansion of

1 higher density residential population being the county park  
2 along Loantaka Brook for the reasons stated previously to  
3 the direct question and I stated them in response to your  
4 question.

5 Q Well, what's the matter with putting one family  
6 homes -- strike that.

7 First, we are, I believe, from your testimony roughly  
8 a thousand, between five hundred and a thousand feet from  
9 the Shunpike extension? A No, I don't

10 believe we measured that one. I thought we were measuring  
11 sewer lines and we were measuring approximate distances from  
12 the apartments. If we did Shunpike, Shunpike represents --

13 Q I don't remember, Mr. Chadwick. I'd have you  
14 measure that now. It is one I forgot. If you could measure  
15 first from the northern parcel to Shunpike at the road, at  
16 Green Village Road. A Being the bypass.

17 Now, you have been interchangeably using bypass and Shunpike.

18 Q Yes, sir.

19 THE COURT: All right.

20 A I guess it is -- wait a minute -- what have we got?  
21 Two inches. There is about a thousand feet on the thousand.  
22 Somewhat less than a thousand on the parcel north of Green  
23 Village Road to the Shunpike bypass and we got less than an  
24 inch --

25 Q Yes. A Something less than five hundred

1 feet and more than four hundred feet from the bypass to the  
2 traffic, the land on the southerly side.

3 Mr. Bernstein assisted me in determining the measurements.

4 Q True. The fact that the bypass is going to be  
5 constructed does not in and of itself mandate multi-family  
6 development on either of the parcels, does it, Mr. Chadwick?

7 A I told you, in my opinion, it was one of the components  
8 that led to my conclusion that that area possesses significant  
9 development potential in this context with the master plan  
10 of this township, Chatham Township it was completely compat-  
11 ible in terms of the findings both as I reviewed them,  
12 natural constraints as well as man made facilities to serving  
13 the area.

14 No, itself does not mandate anything. In context with  
15 all of the findings that I believe you questioned me on and  
16 agreed the findings, particularly of the base data, my  
17 conclusions differ than the conclusion of the municipality.

18 Q The existence of a major road in and of itself does  
19 not require that a municipality zone for something other than  
20 one family homes, isn't that true?

21 A Practically, Mr. Bernstein, I would agree with you.  
22 Theoretically I would agree with you. Practically the cir-  
23 cumstance in many, many cases is the reverse. And if you  
24 recall, I stated to Mr. Klein in response to whatever question,  
25 an analysis between the freeway system as it crisscrosses

1 New Jersey and the following development both in terms of  
2 residential, commercial industrial and new road systems  
3 within municipalities and the following development that  
4 takes place.

5 Q You wouldn't expect that if the subject parcels  
6 were rezoned to multi-family uses, that it would buffer the  
7 adjoining parcels to the west from any of the effects of  
8 the Shunpike, would you? A I didn't under-  
9 stand the question.--

10 Q I will phrase it again.

11 A -- at all.

12 Q You wouldn't suggest as a planner, would you, Mr  
13 Chadwick, that if the subject parcels were rezoned to a  
14 multi-family use that that multi-family use would buffer the  
15 parcels to the west of the subject property from the Shunpike?

16 A Buffer? I don't know how you are using the term "buffer"?  
17 How do you mean buffer?

18 Q Well, as a professional planner, I'm sure you could  
19 give a good definition of the term.

20 A I certainly can. I don't understand in what context  
21 in your question.

22 THE COURT: Buffer in use.

23 Q Buffer in use, of course.

24 A Buffer from what?

25 Q You wouldn't be making that argument then, is that

1 correct? A I don't understand it in  
2 the question. I couldn't make the argument, if I don't  
3 understand the question. Certainly I agree with that question.

4 Q Now, you testified on behalf of Bernards Township  
5 in the case of the Austin Company versus Bernards Township,  
6 didn't you? You want me to refresh your recollection?

7 A Yes.

8 Q All right. Did you testify in 1978 in a case for  
9 a Mr. Richard McMannis who at the time was the municipal  
10 attorney for the Township of Bernards in a case in which  
11 he represented the plaintiffs, the Austin Company, Red Devil  
12 and others? A I remember the case, yes.

13 Q And you testified? A I remember  
14 testifying.

15 Q One of the reasons that you testified was because  
16 you were the planner of the community which was adjacent to  
17 the property my client owned in Bernards Township, namely,  
18 the Warren Township Municipal Planner, correct?

19 A Correct.

20 Q And I ask you if you remember making the following  
21 statement or something similar thereto. Page 116 of the  
22 transcript of June 7, 1978.

23 "QUESTION From a planning point-of-view is the presence  
24 of a gasoline filling station incompatible with large-lot  
25 residential zone?

1 "ANSWER Not in consideration of the comprehensive plan  
2 in question in dealing with the area. The gasoline station  
3 would be a non-conforming use.

4 "In terms of the residential development the fact  
5 that is there and it is non-conforming and adjoining the  
6 highway in my judgment is not a prerequisite that the area  
7 is no longer suited for residential development. Because  
8 in itself, its magnitude or its extensive development in  
9 context with this area of both Warren Township and Bernards  
10 Township would mean that the ripple effect of one single  
11 use at the intersection of a major highway and an accessory  
12 road would require all lands both immediate and to the inter-  
13 land to be consistent with the gasoline station, in my  
14 opinion, that logic doesn't follow.

15 "The area has a rural-residential character established  
16 in Warren Township and it has a rural-residential character  
17 in my opinion, in Bernards Township. That is the character  
18 of the area.

19 "The gasoline station is an exception to that general  
20 statement."

21 Then the question, "QUESTION Does the rural-residential  
22 zone in Warren Township abut Interstate 78 at any point?"

23 And your answer, "ANSWER Rural-residential zone is on  
24 both sides of Route 78, approximately to 85% of its alignment  
25 through the municipality."

1 "ANSWER Not in consideration of the comprehensive plan  
2 in question in dealing with the area. The gasoline station  
3 would be a non-conforming use.

4 "In terms of the residential development the fact  
5 that is there and it is non-conforming and adjoining the  
6 highway in my judgment is not a prerequisite that the area  
7 is no longer suited for residential development. Because  
8 in itself, its magnitude or its extensive development in  
9 context with this area of both Warren Township and Bernards  
10 Township would mean that the ripple effect of one single  
11 use at the intersection of a major highway and an accessory  
12 road would require all lands both immediate and to the inter-  
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22 zone in Warren Township abut Interstate 78 at any point?"

23 And your answer, "ANSWER Rural-residential zone is on  
24 both sides of Route 78, approximately to 85% of its alignment  
25 through the municipality."

1 I'd ask if you made these statements or similar state-  
2 ments in the Austin Company case?

3 MR. KLEIN: Your Honor, before that question  
4 is answered, I think, it is necessary for your  
5 Honor, who I assume did not, was not involved in  
6 this case and myself, to understand something more  
7 about the nature of the case.

8 The thrust of the question, the plan that  
9 was in issue and all other factors which would  
10 make any kind of an answer to those questions in  
11 the context in which they were asked and answered  
12 meaningful to anybody aside from Mr. Bernstein,  
13 who apparently read the transcript.

14 THE COURT: If he asks a question that doesn't  
15 mean anything to me, I'm not going to pay any  
16 attention to it regardless of the answer.

17 I take it it has some relationship to the  
18 concept of the word buffer.

19 MR. BERNSTEIN: More than buffer, the road,  
20 your Honor. We are talking about a parcel that is  
21 adjacent to I-78, that the witness recommended  
22 for residential development on an acre, actually  
23 on a three acre lot.

24 THE COURT: You left the subject matter of  
25 the buffer for the bypass or --

1 MR. BERNSTEIN: I left that into the area  
2 of whether or not highways mandate something other  
3 than residential construction.

4 THE COURT: Well, you know, as long as it is  
5 going to be tied in later on so it makes some  
6 sense.

7 MR. BERNSTEIN: Okay.

8 THE COURT: I will allow it. We have gone  
9 past three o'clock. Are you going to be long?

10 MR. BERNSTEIN: I will just finish on this  
11 transcript of the one last thing, your Honor.

12 THE COURT: It is kind of difficulty, you  
13 know, I like to be fair to these planners. They're  
14 in a difficult situation.

15 MR. BERNSTEIN: There is no question about  
16 the problem we attorneys have is when a planner  
17 testifies. It is very difficult in a vacuum to  
18 get anyone to say.

19 THE COURT: I think, Mr. Bernstein is trying  
20 to play Perry Mason.

21 MR. BERNSTEIN: You're right. It is not only  
22 difficult, you hopefully try to get prior incon-  
23 sistent statements.

24 THE COURT: To get an attorney to admit he  
25 is wrong too is probably equally or more so than

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a planner. If a planner is wrong and the attorney are wrong, I know more about the former than the latter.

Let's do this. Let's stop and let him refresh his recollection as to what happened in the Austin versus Bernards case and we will start again. I have the next date as April 1st.

MR. BERNSTEIN: Right.

MR. KLEIN: That's correct.

THE COURT: Okay. All right, thank you.

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I, Earl C. Carlson, certify to the foregoing.

*Earl C. Carlson*  
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*1/10/71*

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