

Transcript of proceedings: Direct examination of John Chadwick

pg. 113

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GREEN VILLAGE 139 CORPORATION,
GERALD WEIR, JOSEPH GIOVANNOLI,)

ML000832S

Plaintiffs,) STENOGRAPHIC TRANSCRIPT

-vs-) of

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

PROCEEDINGS.

Defendants.)

Wednesday, March 5, 1980.

Morris County Courthouse
Morristown, New Jersey 07960

B E F O R E:

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

TRANSCRIPT ORDERED BY:

JADQUES 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 Township of Chatham.

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

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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	-

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

Number	1978	Master Plan	Ident	Evid.
P-14	1978	Master Plan	76	-

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

1 THE COURT: All right. Mr. Chadwick is still
2 under oath. The last question that we had last
3 night was, dealt with the -- you asked him if is
4 aware of a sewer interceptor running up to Green
5 Village Road. He was aware of it and he was look-
6 ing at a document to try to find its location and
7 we stopped at that point yesterday.

8
9 J O H N C H A D W I C K, Previous sworn.

10 DIRECT EXAMINATION BY MR. KLEIN: (continued)

11 A The answer to the question is that the sewer intercept-
12 or running in a northerly portion of the township approx-
13 imately follows the alignment of/the Shunpike bypass as I had
14 indicated on J-1.

15 Q And it, what is its proposed terminus in the
16 northern area of the township?

17 A In the area that I have outlined as the Dodge tract,
18 which extends from the township into Madison Borough.

19 Q Okay.

20 THE COURT: Hold it just a second. Is this
21 an existing interceptor or is it one that is
22 proposed?

23 THE WITNESS: This is proposed, your Honor.

24 THE COURT: Oh. Okay. Where does it now,
25 where would that interceptor start insofar as --

1 well, maybe I should ask it this way: Where does
2 it end right now? Where is the last section of
3 the interceptor now? Just so I get a picture of
4 where it is going to come from and to.

5 THE WITNESS: On the follow/^{ing}page 51 in the
6 1978 master plan.

7 THE COURT: Okay. Hold it. Page 51?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 THE WITNESS: Shows the existing sewer --
11 excuse me -- water system.

12 THE COURT: That is the water distribution
13 system. Here it is. Follows on page 53?

14 THE WITNESS: Page 53. That map shows both
15 existing and planned facilities.

16 THE COURT: All right.

17 THE WITNESS: And the interceptor sewer
18 shows in a heavy dark line coming up to approx-
19 imately the Nash Field area and up to the apart-
20 ments in the, located in the southwesterly corner
21 of Green Village Road and Shunpike intersection.
22 And then see a different pattern, an extension
23 up and terminating in the Dodge tract area.

24 THE COURT: For the record, it is J-2 in
25 Evidence, and it is a map following page 53

1 entitled, "Sanitary Sewer System, April, 1970"
2 showing existing and proposed interceptors and
3 the interceptor is what we are talking about.

4 The interceptor stops then east of Green
5 Village Road. North of the plaintiffs' property.
6 Northeast, I guess, it would be of the plaintiffs'
7 property. Is that correct?

8 MR. KLEIN: Except that, your Honor, I be-
9 lieve that those apartments which are at one end
10 on Green Village Road and the Hickory Hill
11 Shopping Center are serviced by that sewer line.

12 THE COURT: I am speaking at the interceptor
13 as opposed to collectors, as I read, if as I read
14 in the flap correctly, the interceptor stops just
15 northeast, or in a northeasterly direction from
16 the plaintiffs' property.

17 It then becomes a collector line and goes up
18 to the area where the -- Mr. Chadwick can correct
19 me if I am wrong. I am just looking at the map,
20 but the interceptor is picked up and then he says
21 it roughly follows that bypass road running up
22 to the Dodge tract.

23 I am just talking about the interceptor as
24 opposed to the collector sewer line. Is that
25 correct?

1 THE WITNESS: Right.

2 THE COURT: Okay, fine.

3 THE WITNESS: You're correct.

4 THE COURT: All right.

5 Q But am I also correct, Mr. Chadwick, that the
6 garden apartment complex is serviced by sewers?

7 A Yes.

8 Q Okay. A To the best of my know-
9 ledge.

10 Q And that complex, in fact, is in a relative close
11 proximity to the plaintiffs' property along Green Village
12 Road? A In my opinion, yes.

13 MR. KLEIN: Now, your Honor, may I have
14 plaintiffs' exhibit 10, A,B,C and D?

15 THE COURT: Which one?

16 MR. KLEIN: That's the letter on the sewer
17 expansion.

18 THE COURT: 10, A, B, C.

19 MR. KLEIN: Do you have D there?

20 THE COURT: Yes. Didn't hear you ask for D.
21 I'm sorry.

22 MR. KLEIN: Okay.

23 Q Mr. Chadwick, I show you plaintiffs' 10A through
24 D, which have been admitted into evidence previously. Do
25 you recognize that correspondence?

1 A Yes.

2 Q And could you describe to us what aspects of the
3 extension of the sewer system that relates to?

4 MR. BERNSTEIN: I am going to object to the
5 witness describing any correspondence that he had
6 not authorized. I am not sure it would be rele-
7 vant or not, if he authorized it, but I assume
8 that the letters, I assume that these are various
9 letters that either Mr. Klein wrote or were
10 written by the Department of Environmental
11 Protection and I don't think that this is a proper
12 witness to describe documentation that was written
13 by others.

14 Also, I don't think he is qualified as an
15 expert in sewers.

16 THE COURT: I don't know what he is going to
17 ask. If he has seen the letters before, I think,
18 it is there in evidence so we know what they
19 refer to. I don't think it is necessary to ask
20 him what they refer to. I don't know where you're
21 going to go with this area of questioning.

22 MR. KLEIN: Well, where I was going to go
23 with this, your Honor, as previously noted, the
24 town has been talking about an interim expansion
25 of its sewer plan and has gotten apparently a

1 limited authorization with respect to an expansion
2 of the plant. I just want Mr. Chadwick to, for
3 the purpose of tying up this question of sewers,
4 location of sewers and the possible expansion.

5 The fact that the town has presently an
6 authorization for limited expansion of its plant.

7 MR. BERNSTEIN: I don't know if, why it
8 would be more relevant to ask what he knows about
9 any proposed expansion rather than to describe
10 letters. The letters speak for themselves. If
11 he has any knowledge, he can testify to that, but
12 to regurgitate what the evidence is, I have to
13 object.

14 MR. KLEIN: Well, I hope Mr. Chadwick won't
15 regurgitate what is in the letters, but be that
16 as it may --

17 THE COURT: Let's be fair to the witness too.
18 We don't want him answering questions that are
19 unnecessary. Let him read the letters and then
20 you can ask him the questions with respect to
21 this limited purpose that you are referring to.

22 MR. KLEIN: Okay.

23 Q Mr. Chadwick, are you aware of any proposed
24 expansion of the sewer plan in Chatham Township?

25 A Yes.

1 Q And are you aware of the extent of this proposed
2 expansion? A Yes.

3 Q And could you tell us what that is?

4 A First the reference to the 1978 master plan and shown
5 on the map entitled "Existing and Future Sewer Service,"
6 following page 3 of the 1978 Master Plan and also referenced
7 in Exhibit P-10A, B, C and D and in the letter of December
8 4, 1979, from Mr. Bruce Fletcher -- excuse me -- from Mr.
9 Paul C. Kerisko, Manager, Passaic-Hackensack River Basin
10 to Mr. Bruce Fletcher, stating the municipality would be
11 required to go into a level four effluent treatment facility
12 if the plant were to be expanded in excess of a million
13 gallons, but that additions, modifications to the plant
14 could be made to increase the capacity to no more than a
15 million gallons.

16 Essentially my reading of the correspondence and in
17 context with the master plan that the plan can increase its
18 capacity by approximately a third with additions and modifi-
19 cations.

20 Q And do you know, is it proposed that this be
21 funded by the municipality or by developers who would be,
22 and others who would be serviced or benefitted by the
23 expansion? A None of the exhibits I
24 have previously referred to indicate the method of financing.
25 The master plan does not itself refer to methods of financ-

1 ing. My conclusion could be one or the other.

2 If the availability of either state, federal funds
3 were not there, then the facilities can be financed either
4 through off site improvement charged to municipalities or
5 agreement with property owners and by the municipalities
6 by expanding the facilities.

7 Q And the charge to adjoining property owners,
8 would the property owners benefit by the off site improve-
9 ment charge, would not be an unusual way of funding this
10 kind of project, would it?

11 A No, specifically authorized within the municipality
12 land use law.

13 THE COURT: I'm sorry. Would you read that
14 question and answer back?

15 A (Last question and answer read by the reporter.)

16 THE COURT: A special assessment?

17 MR. KLEIN: Either a special assessment,
18 your Honor, or the specific authority in the
19 land use act based upon the Divan Builders case,
20 which was incorporated in the municipal land use
21 law authorizing off tract improvement charges to
22 developers.

23 Q One further thing in this area, Mr. Chadwick.
24 After a review of the material as to which you have testified
25 yesterday and today, in your opinion, is the placement of

1 plaintiffs' property in the zoning in which it was placed
2 a reasonable exercise of the zoning powers by the munici-
3 pality? A In my opinion, it is not.

4 THE COURT: Hold it just a second. Okay.

5 A Repeat, my opinion, it is not. And I base that
6 opinion on all of the testimony given previously relevant
7 to the land use plan, my examination of that plan and the
8 issues and facts presented in formulation of that plan.

9 Q Okay. Now, turning to another subject. You
10 are familiar, are you not, with the Mt. Laurel and Oakwood
11 at Madison case? A Yes, I am.

12 Q In the context of those cases and their progeny,
13 would you tell us first of all what region would you say
14 that Chatham Township is located in --

15 MR. BERNSTEIN: I am going to object here,
16 your Honor. There have been two reports which
17 have been submitted by Mr. Klein and there has
18 been a paucity of documentation on the so called
19 Mt. Laurel issue. There has been no comments in
20 any of the reports on region that I am aware of.
21 In fact, I stand corrected if Mr. Klein could
22 point out to me in either of the reports that
23 Mr. Chadwick had done a regional study. And the
24 reason I am objecting here is when we get to the
25 Mt. Laurel issue, I had a right to know ahead

1 of time what the gentleman's testimony would be.

2 Now, it is true that testimony is often
3 fuzzy and can't be precise, but, I believe, that
4 region has a specific meaning and if the witness
5 is going to testify in any specific way as to
6 region or regional analysis, I feel I have to
7 object at this point.

8 MR. KLEIN: Your Honor, there was not only
9 the report, but at Mr. Bernstein's insistence
10 we have had, we made Mr. Chadwick available for
11 depositions by Mr. Bernstein and Mr. Bernstein
12 was free to ask Mr. Chadwick any questions, and
13 with respect to this issue, the deposition.

14 There were two depositions of Mr. Chadwick,
15 in fact. One was with respect to the general
16 zoning questions and the other specifically deal-
17 ing with his or based upon his report of December
18 26, 1979.

19 With respect to the Mt. Laurel issue, I
20 know no impediment was put in Mr. Bernstein's
21 way asking any question that he wanted to on any
22 relevant subject. I think, at this point when
23 the report he got involves the Mt. Laurel issue
24 and when and it is clear that it involves the
25 Mt. Laurel issue and question of region and least

1 cost housing, et cetera, are all involved.
2 That is for him at this point to say, "Well, I
3 am surprised." Mr. Bernstein is too good a lawyer
4 to be surprised at this point by that question
5 coming up now.

6 THE COURT: Well, as I understand it, the
7 objection he is saying it is not specifically
8 identified in the reports, that expert's reports
9 that you forwarded to him from Mr. Chadwick.

10 Could you show me where they are or where
11 this issue is raised in the report?

12 MR. BERNSTEIN: I could give your Honor a
13 copy. It is in evidence. It is the --

14 THE COURT: Let Mr. Klein do it.

15 MR. BERNSTEIN: I'm sorry.

16 THE COURT: He can tell me where. He can
17 show in the report where it is raised. If it
18 hasn't been raised, we have one problem. If it
19 has been raised, then we got another one.

20 MR. KLEIN: If you will just give me a
21 moment, your Honor?

22 THE COURT: Yes.

23 MR. KLEIN: O^Kay. I think it is very, I think
24 at the very least, your Honor, it is raised in
25 the intervening amendment on page 3, starting in

1 paragraph five where they talk about housing
2 needs and the --

3 THE COURT: All right, let me see the
4 report. Paragraph five on what page?

5 MR. KLEIN: Page 3.

6 THE COURT: Well, certainly that paragraph
7 refers to the Oakwood at Madison and Mt. Laurel
8 decision. It talks about housing need. Talks
9 about the Department of Community Affairs report
10 with respect to housing units as to low and mod-
11 erate income households for Chatham.

12 It does not talk about the region or how
13 the housing needs are arrived at. I can read
14 that two ways. One, it is criticizing the
15 absence of a housing element in the Chatham
16 master plan. And the master plan's reliance on
17 the 1976 Department of Community Affairs report
18 which was subsequently amended. Or I can read --
19 I don't know that I can read it any other way.

20 I mean, paragraph 5 or section 5 starts out
21 with the paragraph and the enunciation of the
22 status of court decisions. Then the next para-
23 graph relates to the housing element issue that
24 I have just noted.

25 The next paragraph relates to the Department

1 of Community Affairs change in position with
2 respect to housing needs. And then the last
3 statement is, in my opinion, the township hous-
4 ing needs. Conclusion, that the township housing
5 needs is minimal as unsupported by available
6 data. Nothing about region.

7 I don't know where we are going on that.
8 If you're going to relate it to that, I would
9 say fine. If you're going to tie it into, if
10 you're going to start going into how the region
11 is arrived at, then I don't think that is in the
12 report.

13 MR. KLEIN: Well, your Honor --

14 THE COURT: I don't think it is broad enough
15 to get out to, you know, the various and sundry
16 regions that exist around the state.

17 MR. KLEIN: That was not my intention to
18 get into that, your Honor. The region, first of
19 all the region that Chatham Township is in is
20 to a large extent described in the 1978 Master
21 Plan itself. There is a discussion of it.

22 THE COURT: Okay.

23 MR. KLEIN: Of the region in which it is.

24 THE COURT: If that is in there.

25 MR. KLEIN: I think, in those paragraphs, I

1 think in those paragraphs in that letter there
2 is enough to put Mr. Bernstein on notice that
3 that is the kind of question that you know of
4 necessity is going to have to be discussed in
5 connection with this aspect of the law suit.
6 Obviously I am not going to get into the, you
7 know, the kind of questions that are going to
8 involve the Morris 27, 25, 22, whatever it is,
9 this particular moment.

10 THE COURT: Okay. If all you are going to
11 do is have him identify what the region that
12 comes out of the master, what the master plan
13 says the region that the Township of Chatham is
14 in, I have no problem with that, if that is what
15 you're saying.

16 MR. KLEIN: Okay. Essentially, yes.

17 THE COURT: Okay. I will allow you to do
18 that because that is in the master plan. It is
19 already in evidence. If the question is limited
20 to that, what the region is demarcated in the
21 master plan, I wouldn't object.

22 MR. BERNSTEIN: And I have no objection,
23 your Honor, to the general spiel on Mt. Laurel
24 to say Chatham Township satisfies its need. It
25 is the word "region" and what you perceive to be

1 region and I object.

2 THE COURT: Let's see where he goes and if
3 he goes -- here, Mr. Klein -- we will take it
4 question by question. I think, that is the best
5 way. I will allow that question.

6 What region would you say Chatham Township
7 is in, Mr. Chadwick?

8 THE WITNESS: Quite obviously it is the
9 New York metropolitan region. And on page 4 of
10 the 1978 master plan P-22: No, whatever it is.

11 MR. KLEIN: J-1.

12 THE WITNESS: J-1.

13 Q The 1978 master plan is J-1.

14 A It discusses the region and what the various regions
15 have been historically, the term region is historically
16 referred to.

17 Not be be evasive, your Honor, but I think, I have
18 already stated my opinion, lies within an area as identified
19 in the statewide master plan as a growth area. It is quite
20 obvious the Morris County, Essex County area in terms of
21 its geographic location, but the term region is, in my
22 opinion, very difficult thing to define and if you're
23 attempting, as was referenced to the Morris 27, 25, 22
24 case, which I am also involved in, the size of Morris
25 County to define a region is going to encompass all twenty

1 some odd municipalities. It is going to be your Honor's
2 problem.

3 THE COURT: Good answer. You're right.
4 Okay. I think, that answers it as far as what
5 you were after.

6 Does it answer as far as what you were
7 after?

8 MR. KLEIN: Yes, to some extent.

9 THE COURT: Okay.

10 MR. KLEIN: In terms of, well, let's say,
11 for example, Morristown.

12 THE COURT: Say for example, Morristown?

13 MR. KLEIN: Morristown.

14 THE COURT: Yes.

15 Q Would you say that Morristown was in the region
16 of, in the same region as Chatham Township?

17 MR. BERNSTEIN: Objection.

18 THE COURT: Where are we going to go with
19 that?

20 MR. KLEIN: Well, your Honor, the master
21 plan.

22 THE COURT: Well, what is the relevancy of
23 it? You know, maybe he might say yes. Maybe he
24 might say no. If he says, "No", of course, it
25 is all over. But if he says, "Yes," then are

1 you going to go on and say, well, is Dover in
2 the same or --

3 MR. KLEIN: No, I am going to try to define
4 the region.

5 THE COURT: Where is the pertinence to
6 this case?

7 MR. KLEIN: I think, it is pertinent, your
8 Honor, because the master plan talks about the
9 areas in which people living in Chatham Township
10 work and the percentage of employment of people
11 employed in Chatham Township with respect to where
12 they work, Essex County, Union County, to some
13 extent Somerset County and Morris County.

14 I think, that is a further definition of
15 the, quote, "region", close quote, in which, of
16 which Chatham Township is a part.

17 THE COURT: Well, if what you're getting at
18 is where do the people of Chatham Township work
19 and how do they get transported to and from
20 those places of work, okay. But the way you asked
21 the question, I don't see what it is relevant to
22 because then you got to ask it to all. You know,
23 you know, my own knowledge of the area is there
24 are a lot of geographical regions, but it seems
25 to me the point you're aiming at or should be

1 aiming at is the region insofar as, or where
2 your employment is and where your transportation
3 is to and from. All right. Isn't that what you're
4 after?

5 MR. KLEIN: Really what he was headed --

6 THE COURT: Then the question in the form
7 it is is not going to get you where you want to
8 go.

9 MR. KLEIN: Okay. I will rephrase the
10 question then.

11 THE COURT: Okay.

12 Q Could you tell us, Mr. Chadwick, where do the
13 the
14 employment statistics of/Township indicate that people
15 employed in Chatham Township, people living in Chatham
16 Township are employed?

17 THE COURT: Page 26.

18 A 28? 26.

19 THE COURT: Mr. Chadwick, page 26 is what
20 you're looking for.

21 A On pages 25 through 26, including tables 8, 9 and 10
22 is both a discussion of and specific statistics provided
23 relevant to employment status and places of work within
24 the township.

25 Q Okay. A Those tables, to answer
 the question specifically as to where covered employment

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works.

Q Would it be fair, Mr. Chadwick, in reading those tables to say that sixty-five per cent of the residents of the township who are employed in the Essex, Morris and Union County areas?

THE COURT: Read the question back again, please?

(Last question read by the reporter.)

A Table 9 indicates that the Chatham covered employment works within the SMSA and sixty-five point nine per cent. The reason for the long hesitation is the term "covered employment" covers or includes labor force and may or may not be reflected. Really the full circumstances, when you're dealing with a base as large as the community base of Chatham, it is generally accurate to use those data, and that data indicates 65.9 per cent.

THE COURT: Excuse me. Can I ask a question?

MR. KLEIN: Sure.

THE COURT: The SMSA standard, standard metropolitan area, I know what it is defined as here, Essex, Morris and Union Counties. But what, quote, "a standard metropolitan statistical area," how did they decide that it is a standard statistical area? There are some characteristics that an area has to make it such?

1 THE WITNESS: The designation of the Newark
2 SMSA was made back at least as far back at
3 1930. Who decided those boundaries obviously
4 preceded my life span. The boundaries have
5 been re-established in New Jersey for the 1980
6 census and there is a great deal of publication
7 by the Bureau of the Census as to the factors
8 present to establish regions or the reasons why
9 statistical regions are modified.

10 They are statistical regions. The Census
11 is redefining those regions as to functional
12 relationships, employment, transportation systems,
13 kinds of facilities that go beyond municipal
14 boundary lines or kinds of activity or factors
15 that go beyond municipal boundary lines, but
16 is that/the Bureau of Census designation. And
17 there have been many appeals by areas to the
18 changes of those designations

19 THE COURT: Thank you.

20 Q And of that 65.9 per cent, am I correct that
21 approximately fifty per cent are employed in the Morris
22 and Union County areas?

23 A Correct.

24 Q Now, in terms of the major roads which run near
25 or through Chatham, for the purpose of providing people

1 access to their employment, could you starting at the north
2 and coming around in an easterly direction tell us what
3 roadways service Chatham Township?

4 MR. BERNSTEIN: Wait. I object. I would like
5 to know the breadth of the question. Is it framed
6 all roadways that service Chatham Township?

7 MR. KLEIN: I said major roadways.

8 THE COURT: Let me ask you a question.
9 Obviously every major road -- it is a question we
10 always seem to get into in these zoning cases.
11 Every major roadway runs into every other roadway
12 ultimately. Okay?

13 Now, when you say major roadway, major roadway
14 within five miles of the town? Two miles of the
15 town, because if I go out here and get on 280,
16 ultimately I can get on the main turnpike, okay?

17 MR. KLEIN: That's true.

18 THE COURT: Then directly the main turnpike
19 services Chatham Township, if they want to go that
20 far.

21 MR. KLEIN: I am proposing to limit it to
22 five miles.

23 THE COURT: All right. Okay.

24 MR. KLEIN: I mean, there is no question, for
25 example, in your example that 280 is a major

1 roadway which services people in Morristown.

2 THE COURT: Yes, I am just trying to get an
3 idea of what your, the radius of your circle.

4 MR. KLEIN: With an approximate of five miles.

5 THE COURT: Okay.

6 A In my opinion, you have already referred to 280, Route
7 24, I think, Route 22 provides access, all roughly east/
8 west highways to the municipality and there is within the
9 master plan it shows the feeder network, within the master
10 plan shows the feeder network leading to the interstate
11 system.

12 Q What about north/south roadways?

13 A They're within the municipality themselves in terms of
14 feeder roads.

15 Q Any major roadways within that five mile proximity?

16 A I just referred to the major freeway facilities. You
17 asking me to --

18 Q I thought you say they were east/west major freeway
19 facilities?

A I classify them roughly
20 east/west. In the case of 280, it is actually going north/
21 south. In the case of 24, it is going east/west in that case.
22 22 is going south coming into an almost a spoke and a wheel
23 kind of relationship to the township.

24 Q What about Route 287?

25 MR. BERNSTEIN: I am going to object here.

1 You know, if Mr. Klein wants to ask questions
2 what are major roadways, what about 287? What
3 about 202? Basically, I think, he is telling the
4 witness what he is looking for as far as testimony
5 goes and at this point I have to object.

6 THE COURT: Isn't there a map in the master
7 plan that identifies them?

8 THE WITNESS: Your Honor, there is a map
9 that identifies the classification major streets
10 within the town.

11 THE COURT: Oh! Is there reference to --

12 THE WITNESS: I don't believe there is any
13 map showing the township relationship to other
14 municipality highway systems in the state.

15 THE COURT: Within five miles. I could look
16 at a map, you know, and take every road that ends
17 in even numbers and say that is a north/south
18 highway and every road that ends on odd numbers
19 and say that is an east/west, no?

20 THE WITNESS: Yes, east/west highway isn't the
21 way. It goes --

22 A VOICE: The other way.

23 THE COURT: The other way around? I also
24 figure, in any event, that seven, east and west
25 twenty-eight north/south is the even. Okay, so

1 we know that, what ever.

2 MR. KLEIN: Okay. Well --

3 THE COURT: I don't know that it is. I mean,
4 are you -- he has forgotten -- are you objecting
5 to him refreshing his recollection as to what he
6 has forgotten?

7 MR. BERNSTEIN: Yes, Yes. I don't want to
8 be petty about it.

9 THE COURT: I will let him refresh his
10 recollection to 287, to 202.

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Okay.

13 MR. KLEIN: I won't ask about 78.

14 Q Let me ask you, Mr. Chadwick, in your professional
15 opinion, what is the term "developing community" mean?

16 A In my opinion, developing community is one that is in
17 an area -- when I use the term "area" that is more than a
18 municipality and may or may not exceed what would be a
19 statistical region as defined by the Bureau of Census that
20 host communities that have featured residential and
21 commercial/industrial development. The infrastructure that
22 is supportive of development is either there or is planned
23 to be there, such as highways, sewer systems, water systems,
24 fundamental services necessary for development.

25 The State of New Jersey's general guide for development

1 indicates areas that they classify as developing, areas
2 that they classify as not developing or conservation or
3 limited growth areas is a general description of their
4 classification of development are developing.

5 I am familiar with the judgments from the Supreme
6 Court in the Mt. Laurel and Oakwood at Madison case. There
7 is a lengthy description of developing and developed
8 municipalities contained therein. What I am saying to you,
9 from my discipline, the municipalities that are host
10 residential development have remaining vacant land of
11 facilities such as water and sewer facilities, employment
12 opportunities within or without shopping, road facilities
13 are developing.

14 I would classify the City of New Brunswick as developing.

15 Q Developing? A Developing. I
16 would classify it in a different stage of development than
17 the Township of Chatham.

18 MR. BERNSTEIN: Your Honor, I missed something.

19 Did the witness say that New Brunswick was
20 developed or developing?

21 THE WITNESS: Developing.

22 MR. BERNSTEIN: Ing. Thank you.

23 A I would even classify the most outer reaches of Warren
24 County or Cape May County as developing.

25 Q All right. With respect to the outer reaches of

1 Cape May County or Warren County is based upon the fact
2 that they haven't reached that stage yet?

3 A There is no proposals whatsoever to improve the infra-
4 structures such as regional highway access, sewer and water
5 facilities. The cumulative legislative intent runs contrary
6 to forms of development. Legislative being what land legis-
7 lates various CAFRA review requirements as they affect Cape
8 May County and Warren County. You have the circumstances
9 of topographic conditions relevant to development as well as
10 the absence of support facilities.

11 Q You used the term CAFRA before. Could you tell
12 us what that is? A It is Critical Area of
13 Facilities Review Act.

14 Q Now, turning to Chatham Township, specifically
15 in the context of its being a developing community. Does
16 the Township have vacant land suitable for development?

17 A Yes.

18 Q Could you tell us what per centage of the total
19 land area of the township is vacant and -- well, first is
20 vacant land?

21 MR. KLEIN: I think, there is a discussion of
22 that on page 16 of the master plan.

23 THE COURT: Table 2 of the land use summary
24 which follows page 18 in the section after the map
25 talks about private vacant land.

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MR. KLEIN: I would amend --

THE COURT: Are you looking for the total acreage of the entire township that's vacant?

MR. KLEIN: Yes.

THE COURT: Okay.

MR. KLEIN: Actually aside --

THE COURT: Private.

MR. KLEIN: Private.

THE COURT: Private.

MR. KLEIN: Aside from the swamp.

A Table 2, land use summary. Master Plan report dated January, 1978, indicates total private vacant land as 1900 acres or 31, or approximately a third of the total township privately owned land is undeveloped.

Q Now, of the third of the town that is privately owned land and is undeveloped, in your opinion, what percentage of that is developable?

MR. BERNSTEIN: I am going to object here. I think, we ought to have parameters, your Honor, to know what the witness believes is developable since that's not a critical clear concept. And then if he can give us the figures as to it rather than his opinion, I think, his opinion as to what is a percentage is pretty moot.

His opinion as to criteria for being develop-

1 able land maybe important, but, and that's the
2 first half of the question. But, I think, the
3 second half then is what percentage falls in each
4 of these slots rather than a question that calls
5 for an opinion which statistics are off.

6 MR. KLEIN: Your Honor, I think, what in
7 terms of developable land we have testified.

8 THE COURT: Well, I will let him answer the
9 question. I think, it is subject to cross
10 examination, or 2, to further exploration.

11 A In my opinion, of the total vacant land the -- well,
12 first of all, the criteria for development, I believe, is
13 the question.

14 Obviously land areas that are within a soil classifi-
15 cation of what is referred to as the muck soil type and
16 also having an elevation below any possibility of sewer
17 service are undevelopable.

18 Land areas that have extremely steep topography and
19 extremely steep topography can be overcome with design.
20 But when you deal with an escarpment of a mountain or the
21 steep side of a mountainside in excess of twenty per cent
22 becomes, in my opinion, land areas unless there is an
23 unusual type of development or form of development undevelop-
24 able under the traditional use of the term.

25 I do not consider land shown by HUD insurance maps as

1 being undevelopable in total or even significantly. For
2 example, all the Passaic River basin is shown as a flood
3 hazard area under the flood HUD FIA or flood insurance
4 maps.

5 There are a number of municipalities that are class-
6 ified completely as flood hazard areas that are nevertheless
7 developed, to my knowledge. The designation of areas by
8 the New Jersey Department of Environmental Protection as
9 to water course areas and flood hazard areas are areas,
10 in my opinion, water course areas cannot be developed by
11 law and flood hazard areas have severe restrictions.

12 In my judgment, those are the primary factors that
13 pre-empt development. The obvious exceptions to those
14 types of development criteria when applying them to one
15 area as to another, applying to a municipality, "Chatham
16 Township," in general, I think they're applicable. They're
17 not applicable to the Hackensack Meadow lands area. They
18 are not applicable to portions of Atlantic City for reasons
19 that, I think, are, which will just drag this testimony
20 out ad infinitum for no reason. But in terms of applying
21 the term "developable in Chatham Township," either steep
22 sloped areas or areas having very, very severe limitations
23 with soils where the limitations cannot be overcome because
24 through public facilities, because of elevation, are un-
25 developable. No other lands, in my opinion, are.

1 Q Pardon me. A No other land
2 areas, in my opinion, are. Using those criteria in terms
3 of the 1900 acres of land shown in table 2 following of the
4 1978 master plan, I made an examination utilizing the
5 information within the master plan, the soil survey data
6 through the Morris County Soils Conservation Service and,
7 in my opinion, the majority of the 1900 acres is develop-
8 able.

9 Now, the majority. I am not saying using the majority
10 because our preparation of the case was to focus upon the
11 area along Green Village Road. However, we did examine
12 all, or I did examine the master plan at large. And, in
13 my opinion, at least two thirds of the 1900 acres is
14 developable and that is a conservative statement in my
15 opinion.

16 Q And in what areas of the township is this
17 developable land located?

18 A The majority of all the developable land is located
19 in the northern portion of the municipality.

20 Q Would that be in the area north of the Great
21 Swamp and up to what might be called the northern quadrant
22 of the town? In this general area?

23 A Yes, as you are referring to the map.

24 Q J-3 -- A J-3.

25 Q -- in Evidence?

1 And that would include the area in which the plaintiffs'
2 property is located? A That's correct.

3 Q Now, you mentioned that the HUD FIA maps are
4 not determinative in your opinion developable or non-
5 developable land. Would you tell us why?

6 A The maps are designed or intended by legislative
7 review to, one, provide for property owners with the
8 ability to obtain subsidies, insurance for damage to
9 properties by flooding.

10 The second aspect of that legislation was to determine
11 the elevation for future development within flood hazard
12 areas as defined by HUD. It would minimize, hopefully,
13 preclude future damage to future development by flooding
14 by setting a minimum elevation of floor level so the
15 government was saying one part we will designate areas as
16 flood hazard and provide insurance on a subsidized basis
17 to property owners within those locations, but we don't
18 intend to do this and simply have future development of
19 the same elevation and just subsidize more and more people
20 who will require any future development to be higher than
21 what is recorded flood elevation.

22 Q And that recorded flood elevation varies from
23 place to place? A Absolutely. It is
24 based on studies by HUD utilizing information available
25 from where ever, municipalities, the State of New Jersey,

1 et cetera.

2 There have been continuous modifications of the
3 Department of Housing and Urban Development flood hazard
4 reports. They were originally issued in the early 1970's
5 Their latest issues state no instances, July, 1976, and
6 these maps are under further study and modification. But
7 they are not, as you use the term, floodway, flood hazard
8 areas which came into being with the Department of Environ-
9 mental Protection, flood hazard protection act, which
10 dealt with a restriction as to development. It had nothing
11 to do with an insurance policy.

12 Q Okay. Are there any areas in your opinion, in
13 Chatham Township which are affected by steep slopes?

14 A Yes.

15 Q Could you tell where they are?

16 A Primarily along the R-3 zone which would sit between
17 Berkeley Heights, New Providence and the area designated
18 by, with a zone on J-3?

19 Q J-3. A J-3. That's a general
20 demarcation. There are, there is a map contained within
21 the 1978 master plan which shows the general topographic
22 conditions present within the township.

23 THE COURT: Where is that?

24 THE WITNESS: That map follows page 13 of
25 the master plan. It is entitled, "Department of

1 Topography, March, 1978.

2 THE COURT: For the record, steep slope areas
3 that he refers to on J-3 is in the very southern
4 portion of the township and at the very bottom of
5 J-3.

6 THE WITNESS: Absent that general area
7 described, and I use the R-3 zone designation as
8 the rough location to be more precise, really
9 R-1B zone. The most R-1B as well as the R-2 zones
10 are the most steeply sloped areas as compared to
11 the map F showing topography referenced before.

12 The remainder of the township, in my opinion,
13 do not have a topographic condition that in
14 general that pre-empts or precludes development.

15 Q Now, another kind of constraint on development
16 that you referred to was muck soil type. Are there any areas
17 of Chatham Township which are affected with that kind of soil
18 type? A The refuge area is one area
19 that has soil types that I have used in general terms muck
20 classification to encompass, not completely, but substantially.
21 The areas that are within the Loantaka Park and areas north
22 and east zoned R-1A, also exhibit some severe soil types.
23 Areas to the southerly end have lots fronting and having
24 access to Green Village Road do show severe soil types in
25 terms of high ground water table, support capabilities as

1 rated by the Morris County Soil Conservation Service as well
2 as lots to the north, as I have testified before.

3 Q But does soil restrictions do not in your opinion
4 preclude development? A No, they do not.

5 Q As opposed to a muck soil type?

6 A That's correct.

7 Q What about the area designated as the R-3C zone?
8 That is north of Green Village Road and east of Shunpike.
9 Does that exhibit muck soil types?

10 A It exhibits soil types that have severe development
11 constraints as indicated by the County Soil Conservation
12 Service examination of topography maps indicates there is a
13 pond on the, on that general area and in general having a
14 restriction with respect to development. I don't think it
15 precludes development. It will require substantial site
16 preparation based on the indication from the soils map. And
17 in my experience having viewed development in similar types
18 of soil areas and the process of development at the site.

19 Q Off the record for a moment. Are you experiencing
20 some back discomfort? A Stand up once in a
21 while.

22 THE COURT: Off the record.

23 (Discussion had off the record.)

24 Q Another element you had mentioned was areas having
25 an elevation below that level sufficient to support a sewer

1 system?

2 THE COURT: Serviced by sewers?

3 MR. KLEIN: Serviced by a sewer system.

4 A Below what would be practical to be served by a sewer
5 system. This is stated specifically relevant to Chatham
6 Township. Chatham Township has a notation of the two forty
7 contour line on the map entitled, "Sewer, Sanitary Sewer
8 System."

9 Q What page is that map? A That
10 follows page 53.

11 THE COURT: Could I ask a question?
12 If it gets into the area of expertise, I think,
13 it is general knowledge that a planner would have.

14 MR. BERNSTEIN: Yes, I wasn't going to jump
15 down the throat on that particular question, your
16 Honor.

17 THE COURT: Okay. If you're talking about the
18 two forty contour line, you're talking about a
19 gravity sewer system?

20 THE WITNESS: That's correct. That's correct,
21 your Honor.

22 THE COURT: Okay.

23 THE WITNESS: I think, when you get into a
24 situations where you have force mains, for example,
25 from individual developments as opposed to force

1 mains which may serve an area of a municipality for
2 years, which is not uncommon in the Morris County
3 area.

4 Force mains to an area type of development
5 is planned to service that kind of facility where
6 you have jet ejector and some coupling of force
7 mains that are a non-public facility requiring
8 either the individual home owner or landlord as
9 the maintenance force, in my opinion, from a plan-
10 ning standpoint, it is undesirable. But that,
11 as I sort of answered your question to the Judge,
12 well, the two forty contour roughly describes the
13 existing trunk line coming up to and crossing Nash
14 Field and the examination of topography thereafter
15 is that the elevation of land exceeds two forty.

16 In the majority of cases that elevation,
17 therefore, only would affect, as I view the plan,
18 those areas that are in the R-1A zone roughly
19 coinciding with the powerlines along the southerly
20 end of the refuge. North side of the mountain.

21 Q That's the southerly side of the refuge, not the
22 northside, in other words? A The southerly.

23 Q The southerly side of the refuge.

24 A Not near Green Village.

25 Q Now, excuse me. Could you tell us what, in your

1 opinion, the term housing need means?

2 A Housing need is differentiated from housing demand is
3 need for households who generally do not have the ability to
4 pay what would be the highest level of profit that could
5 be realized from the development of a piece of property, or
6 the highest market level that could be supported in an area.
7 That's one feature of basically an economic factor is present
8 within the term housing need.

9 Housing need describes a segment of the population that
10 are living within substandard dwelling units. Substandard
11 in term of, because of their construction or maintenance or
12 substandard in that the dwelling units that they reside in
13 is not big enough for their needs.

14 A two bedroom apartment lived in by a family of eight
15 is overcrowded. From a planning standpoint, from the
16 definition of the Census, from your state health laws, that
17 unit is substandard. That is a feature within the phrase
18 housing need.

19 Housing need relates to a population growth factor of
20 the expected population within the municipality, if all
21 things were equal. All things being equal, that zoning laws
22 have no consequence within the municipality that you could
23 expect a certain amount of young adults. You could expect
24 a certain amount of family raising. Units of a wide spectrum
25 of economic well being. That's a feature within the term

1 housing need.

2 Those features are contained within the Department of
3 Community Affairs statewide housing allocation plan, for
4 example.

5 Q Now, has that statewide housing allocation plan
6 indicated a housing need with respect to Chatham Township?

7 A Yes, it indicates a housing need for --

8 MR. BERNSTEIN: I am going to object, if the
9 figure is given without the basis for the comput-
10 ations to come to it. It may or may not have some
11 relevance, but I want a basis before that number
12 comes out, your Honor. And I also want -- well, I
13 will stop there.

14 THE COURT: How the state arrived at that com-
15 putation?

16 MR. BERNSTEIN: That's right.

17 Q Are you familiar with the state study?

18 A Yes, I am.

19 Q And are you familiar with how it was prepared?

20 A Yes.

21 Q All right. Could you tell us how it was prepared
22 and how the figures were arrived at?

23 A Yes, I can.

24 MR. BERNSTEIN: My objection, your Honor, is
25 not in general terms. I am sure Mr. Chadwick is

1 aware in a general way with how the statewide plan
2 was arrived at. Albeit I could give a general
3 idea.

4 I want to know physically if he is going to
5 give a number for Chatham Township, how that number
6 was arrived at. I think, I have a right to know
7 that.

8 MR. KLEIN: I think, we have to take it a
9 step at a time.

10 MR. BERNSTEIN: I just want my position clear.

11 THE COURT: The bottom line he is getting to
12 is none of these planners did it. Somebody in
13 the Department of Community Affairs did it. Pro-
14 duce him so he can be cross examined how he arrived
15 at it.

16 It does have a certain amount of merit. It
17 is a problem we get into all, in all of these zon-
18 ing cases. Can we rely upon for the truth of what
19 is set forth therein? It is a figure in a theor-
20 etical sense arrived at by some underlying comput-
21 ation.

22 Now, he can tell us generally, yes, but can he
23 tell us the specific data that was used? Every-
24 thing that was done and how it was arrived at?

25 I will allow you to explore it. I am not going to

1 preclude that, but without the real foundation
2 evidence, I may disregard it or consider it not
3 because he is saying it and telling me what he
4 knows about it, but because we don't have the guy
5 who came up with the figure to tell us and be
6 subject to cross examination, because, it seems
7 to me it is a very critical figure.

8 MR. KLEIN: Well, I agree, your Honor. And,
9 I think, that perhaps depending upon what Mr.
10 Chadwick's testimony is, it is really a question
11 of weight rather than of hearsay. I mean, this
12 was a publicly funded study statewide.

13 THE COURT: Yes, I know all that. You know,
14 the whole, if the whole foundation of a housing
15 need in a municipality is based upon a figure, I
16 think, that figure should be subject to extensive
17 cross examination, if it can be. And because it
18 was funded publicly, and, you know, Mr. Klein, you
19 are in the same boat as every other plaintiff who
20 comes into this court or into a court and wants to
21 rely on a state figure, how did they arrive at it?
22 It is always subject, its got to be subject to
23 some kind of review, some kind of cross examination.

24 Go ahead, search it out with him, but be
25 warned that your right, the weight that I give it,

1 if I don't know the foundation for it, I may say
2 how this figure is arrived at, I don't know. And
3 because the state says it, does not make it so.

4 MR. KLEIN: Okay.

5 THE COURT: The state is like a planner. A
6 planner says it does not make it so and so because
7 I say it is so and so -- we will put us all in the
8 same category, okay? You know, it is a major
9 problem. It is a real big problem and I can see
10 it coming up in another case.

11 Q Would another chair help you?

12 THE WITNESS: A new back would help.

13 Q All right, Mr. Chadwick, would you tell us from
14 your knowledge how the state study was prepared?

15 A Yes. And for the sake of brevity, I am referring to
16 the report entitled "Revised Statewide Housing Allocation
17 Report For New Jersey, May, 1978."

18 That report itself spells out the methodology of how the
19 housing need was determined by both for the State of New
20 Jersey and individual counties and all the municipal sub-
21 divisions thereof. If the factors are one, population
22 existing within the municipality in 1970 and the projected
23 population through 1990, an analysis of the housing resources
24 in the municipality as they existed in 1970 to determine a
25 a need based on a degree of substandardness.

1 Essentially a prediction of replacement of existing
2 occupied units. Pumped into that set of facts is a multi-
3 plication expected total household units, which is simply
4 a translation of population in 1970 to population in 1990,
5 multiplied times was prevailing economic well being. That
6 term is low and moderate income households, which arrives
7 at a number.

8 There is an adjustment in terms of overlap and state-
9 ments of adjustment within the overlap of what would be
10 replacement housing also occupied by low income households.
11 Their adjustment in terms of need for housing in areas that
12 are developed and, therefore, the state assigned or allocated
13 new housing outside that municipality to within what their
14 designation areas for regions are primarily to counties
15 which filter down to municipalities.

16 Those are the steps or the fundamental reasoning of how
17 the allocation was developed.

18 Q Now, before you go on, let me just ask you: these
19 steps as you have described them for determining housing
20 need, are they generally accepted in your discipline as a
21 proper way of making this determination?

22 A Yes. There are various weighting factors provided the
23 larger the district the larger the area, you narrow making
24 analysis the problem and chance of error in terms of statist-
25 ical computation becomes much less because simply the sheer

1 fact of quantities dealt with.

2 The smaller the area, the smallest areas addressed by
3 the state plan, of course, the municipal boundary becomes
4 greater because one of the accuracies is the base data, and
5 two, in terms of assumptions that are made on a statewide
6 plan, may have substantial effect on a local allocation.
7 But in any event, the question, the state statement is, yes,
8 it is a methodology. No one person, I think, accepts com-
9 pletely all of the rationale.

10 I have a serious dispute as to an overlap formula that
11 the state plugged into the allocation.

12 THE COURT: What?

13 A They have a long discussion of how they arrived at
14 basically a standard to avoid double counting of units that
15 they felt would be replaced in the twenty year projection
16 period and were also occupied by low income households.
17 Because they plug these two factors into their formula
18 individually, but they put a fudge factor in for a more
19 precise term.

20 Q We understand you correctly when they were making
21 these adjustments that you described, they were also making
22 weighting evaluations? A Yes, they were.

23 THE COURT: And in that weighting there is a
24 certain amount of choice, I take it?

25 THE WITNESS: Yes.

1 THE COURT: Okay. And the, you as a planner
2 could give it somewhat different weight than they
3 as a planner?

4 THE WITNESS: That's correct.

5 THE COURT: Okay.

6 THE WITNESS: But I think, what I emphasized
7 in my description, the fundamental factors, I think,
8 that is most important to appreciate is one's
9 analysis of what would be, what is the population
10 today and what is the projected population to be
11 in 1990. That total population growth applied to
12 what is the economic characteristics, the per cent
13 of low income, middle income, high income in a
14 region that use county statistics for this, gives
15 you a number of lower and moderate income house-
16 holds you could expect in the future, and apply
17 those to the individual municipalities they did for
18 the entire state and then took it back down to
19 county, back down to the municipalities.

20 There were other factors, your Honor, that
21 were introduced. The municipality had provided
22 for need in terms of public housing or seeks a
23 farmer home loan, be as it may or whatever type,
24 it was given credit. But you're getting into, I
25 think, the kind of question that you would ask the

1 author of this report from the State of New Jersey.

2 Q You were continuing with your answer to the prior
3 question before I interrupted.

4 A I have no recollection what the question was.

5 THE COURT: I think, the last question that
6 you asked him was, the steps for arriving at a
7 formula, are they generally accepted as a proper
8 way for making a determination? And he said, "yes."
9 And then he talked about the weighting factors as
10 he described it, funneling factors and the variety
11 of choices that you might make. That's my words,
12 not his.

13 MR. KLEIN: Right.

14 THE COURT: But the disagreement that you might
15 have.

16 MR. KLEIN: Right. I thought he was in the
17 middle of answering the prior question when I asked
18 him that.

19 THE COURT: No, I think, that was it.

20 MR. KLEIN: Okay.

21 Q With respect to this overlap formula concerning
22 Chatham Township in particular, do you think the overlap
23 formula was a significant ingredient in arriving at the hous-
24 ing need? A No.

25 Q Why is that? A The master plan

1 specifically states that the township housing supply is in
2 very good condition and that the degree of substandard is
3 extremely low, therefore a developing base from existing
4 need would be a minor input in terms of generated from this
5 municipality, in terms of low and moderate household needs
6 through 1990.

7 Q Now, having told us in general how the formula or
8 how the report was prepared, could you be somewhat more
9 particular with respect to Chatham Township?

10 A The State of New Jersey published, as stated before, in
11 May, 1978, the allocation plan with respect to Chatham
12 Township specifically.

13 MR. BERNSTEIN: I am going to object to
14 numbers, if a number is given without the comput-
15 ations, your Honor. The number sounds very impress-
16 ive. It sounds like it is precise and it is
17 chiseled in granite, but unless we know the basis
18 for it, I submit, the numbers are totally worthless
19 and we don't have Mr. Chadwick/us ^{giving} this song and
20 dance about in general how you come up with a
21 number and the weighting factor. But we still
22 don't know how it was arrived at. We don't know
23 the mathematics. In fact, I would like to know
24 what the figures are for substandard housing in
25 the formula for Chatham Township because despite

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his last answer,

I would suspect there is a factor for sub-standard deteriorating in the formula despite what is existing there today. So I just have to object to the relevance of this number, A, if we don't get the computations, and, B, Mr. Chadwick hasn't said that this is a recognized study that he and other planners accept, and these numbers are accepted in the planning fraternity, So my objection is, really is two pronged.

THE COURT: You want to deal with acceptance of the figures he said?

MR. KLEIN: Yes.

MR. BERNSTEIN: He had approached the unacceptable. He didn't take the last step. He says that this study is recognized by me and other planners as a fine example of allocation schemes.

MR. KLEIN: Well, I will ask the question, your Honor.

THE COURT: That is a loaded question.

MR. BERNSTEIN: Double loaded. He will taste it later too.

THE COURT: Wait a moment. As to part of what you're objecting to, I am going to allow him to testify to figures. You can excoriate the

1 figures, if you will, on cross examination. Do
2 whatever you want to do to it to get me to discard
3 it as a factor, significant factor.

4 MR. KLEIN: If he can.

5 MR. BERNSTEIN: How about the second objection,
6 your Honor?

7 THE COURT: The second objection, I think, is
8 significant. He said it is an acceptable way of
9 arriving at it, but it is accepted. I mean, he is,
10 if he is going to quote it, it got certainly to
11 be acceptable to him as a planner.

12 MR. KLEIN: Well, I will ask the questions,
13 if I may?

14 Q Mr. Chadwick, is this housing allocation report
15 generally accepted by planners in the State of New Jersey?

16 THE COURT: In what way?

17 MR. KLEIN: In, as being a tool that you would
18 use and rely on in connection with your work in the area?

19 A It is reference material. We do not use the word rely.
20 You make an examination of the sections of that report to
21 either confirm or reject in your mind the accuracy of those
22 figures because the report does publish numbers for all of
23 the municipalities of the State of New Jersey. And the
24 state, in the state and their original hearing, which I
25 attended, claimed themselves that they felt they were bat-

1 ting better than fifty per cent. They realized there were
2 modifications. So if you say fifty per cent was the number
3 you could say one would be right on the button and one you
4 wouldn't accept.

5 Q All right. A You're going to take
6 the report provided the methodology provides an enormous
7 amount of statistical information for all of the municipalities
8 and counties in the State of New Jersey, provides their
9 rationale and how they went about arriving at a formula.
10 You can then take those numbers and re-examine them yourself
11 knowing exactly what the formula was used, what the overlap
12 factor was, what the unallocated housing supply was and
13 then agree or disagree with their conclusions on a municipal
14 basis or county basis.

15 Q Could you in fact sit down with the information
16 contained in that report and reconstruct it mathematically
17 to arrive at the number, for example, for Chatham?

18 A Could I? Yes, I could. I would premise that answer
19 that if we are attempting to do it in this court, it requires
20 a lot more time than, I think, anyone was really, would like
21 to spend here.

22 Q But it is possible by going through the report to
23 do that? A Yes, it is.

24 Q Now, you have indicated previously in stating your
25 qualifications that you represent or are involved in any

1 number of municipalities throughout the state. Would you
2 say in your opinion that by and large with respect to most
3 of those municipalities that the report tends to be reason-
4 ably accurate?

5 MR. BERNSTEIN: I am going to object here.
6 I think, the question, your Honor, is not whether
7 it is reasonably accurate for most municipalities,
8 but Mr. Chadwick still hasn't said that he
9 accepted the report as a reasonable allocation
10 scheme. He said it is a first step that you're
11 free to accept or reject and we are back to square
12 one.

13 Does he accept this as generally an accurate
14 allocation scheme? If he accepts it, that
15 satisfies my objection, number 2. But if he says
16 it is a reference point, it may or may not be
17 valid. He isn't answering the question. If he
18 doesn't accept it, how can they put it in evidence?
19 He hasn't, the witness has not said he accepted
20 it. He said as a reference point you can accept
21 it or reject it.

22 THE COURT: We'll let you ask him that on
23 cross examination.

24 MR. KLEIN: I will ask the question.

25 THE COURT: Well, before you ask that question,

1 the last question that lead up to it as to, it is
2 too tentative a question. It is not firm enough.
3 You use the word tends as to most to be reasonably
4 accurate. It is not concrete enough in the form
5 for me to say that it has any that I am going to
6 accept his answer because you're giving him, first
7 of all, you're making it a difficult question to
8 ask, I think, to answer rather. But when you
9 say it is reasonable, I know these are, I'd rather
10 have a little more concrete, if it can be done
11 so if it can't be, well, okay, fine.

12 Let's stop there. You will ask that question
13 then when we come back.

14 MR. KLEIN: Okay.

15 THE COURT: So you get up out of that chair.

16 It is going to be a reasonably long break. Say
17 twenty-five after.

18 (A recess was taken.)

19 THE COURT: Okay, Mr. Klein, go ahead.

20 MR. KLEIN: Why don't we go ahead and have
21 Mr. Bernstein's question asked and answered.

22 Q Referring to the statewide housing allocation
23 report of May, 1978, do you recognize that report as being
24 valid? A Valid from the standpoint
25 of its general methodology and valid from the standpoint of

1 providing research material for municipalities as a deter-
2 mination of low and moderate income housing need.

3 Valid from the standpoing of all municipalities, at
4 least that I am familiar with, as to the accuracy of those
5 projections, no.

6 Q Now, you said all municipalities?

7 A That's correct.

8 Q Would you say that it is valid as to a majority
9 of the municipalities? A Yes.

10 Q Would you say that it is valid as to Chatham
11 Township? A Yes.

12 Q All right. Could you tell us why?

13 A The plan published by the DCA for the, a relatively
14 low number of replacement units as an existing need factor
15 and sets forth the majority of the need both generated from
16 future population growth, which is predicted in the 1978
17 master plan as well as unmet housing needs from the counties
18 of which Chatham basically adjoins.

19 The input factors as to existing need is factual through
20 the census. The projection of population growth within
21 the Department of Community Affairs projection is actually
22 on the low side as related to the 1978 master plan.

23 The area of question or allocation would be the
24 unmet needs beyond the municipality boundary lines and be-
25 yond the plan of population growth. But even with that

1 factor of the total need, I consider the allocation general-
2 ly valid.

3 I think, you could dispute whether or not seven hundred
4 more or less was statistically valid, but if you take the
5 number and said that a hundred were a more accurate figure,
6 I consider seven hundred much more accurate than a hundred.

7 Q Okay. Now, do you have the break -- well, first
8 of all, what is the total allocation for Chatham Township?

9 MR. BERNSTEIN: I am going to object here,
10 your Honor.

11 THE COURT: I already know what it is. He
12 already told me at least twice I can recall.

13 MR. BERNSTEIN: I know he said it, but just
14 want to state my objection. I don't think that
15 if you got a report that you're accepting as a
16 standard in the trade that you can say, yes, it
17 a standard as to Chatham Township, but there
18 are towns it is not a standard to, it seems to
19 me.

20 THE COURT: You can cross examine him on it.
21 I think, it is admissible subject to cross examin-
22 ation.

23 All right, go ahead. Tell us what is the
24 figure?

25 MR. KLEIN: I would just like to say, your

1 Honor, I think, you know, we are not dealing with
2 biology or chemistry. We are dealing with a
3 social science and, I think, there are --

4 THE COURT: Mr. Klein, I think, a more
5 obvious and more profound statement I haven't
6 heard in a long time.. You are right. I think,
7 everyone here realizes that.. That's what the
8 whole thing is all about.

9 Okay, what is the allocation?

10 While he is looking, I don't know whether
11 it would be objectionable to either party, but I
12 am going to ask any way. To have the departments
13 housing allocation report marked.

14 MR. BERNSTEIN: Yes, it would be objection-
15 able to me because I would like to have who
16 prepared it. Here I don't think it is proper,
17 even if for Mr. Chadwick to give the figure. But
18 it has ^{an} aura of respectability because it is
19 prepared by the State of New Jersey and a so
20 called neutral party. And this witness isn't
21 willing to accept all its contents. In fact, he
22 is not willing to accept them at least to one
23 other community, so I have violent objections to
24 it.

25 THE COURT: Okay. What I am looking at it

1 for it is not to rely on it, but to understand
2 the testimony with respect to it.

3 MR. BERNSTEIN: Unless the plaintiffs can
4 present that testimony to the court and all the
5 computations, I would object to the court on its
6 own finding it out.

7 THE COURT: Okay.

8 MR. KLEIN: Well, I would like to state,
9 your Honor, I don't see any reason why it shouldn't
10 be marked. I think, there has been enough testi-
11 mony to indicate that it is not only generally
12 accepted work in the area, but that the particular
13 witness finds that it is substantially a document
14 that he is prepared to rely on in connection with
15 this.

16 THE COURT: I don't know whether it is gen-
17 erally accepted or not. I guess, I will have to
18 wait for the next couple of cases that I try.
19 But really what I wanted to look at it for was
20 not the numbers in it, but the explanation of
21 what they were trying to do to arrive at the
22 numbers so I could understand the procedure for
23 how they arrived at this formula that they apply.

24 I have seen Dick Goodman, who is the head
25 of what is it? The office of State Regional

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Planning of DCA and he was questioned as to the methodology and I couldn't follow him. See, I didn't completely follow what Mr. Chadwick said.

MR. BERNSTEIN: But that's one of the reasons I had objected and I have heard --

THE COURT: You don't want me to understand it?

MR. BERNSTEIN: No. If he can present either witness. I have heard the county planner from Middlesex, who is an erudite county planner, and he was asked to explain the county figures and the county allocation scheme and he couldn't explain it. And I would just fear that your Honor might, you know, without guidance might jump to wrong results.

THE COURT: I get your message. Okay, all right. Let's leave it at that.

All right, do you have the allocation?

THE WITNESS: Yes, contained in the appendix A of the report reference before revised state-wide housing allocation plan shown in the region 2, Morris County, Column 12.

MR. BERNSTEIN: I can't hear this, your Honor.

THE WITNESS: Column 12 resulting housing

1 allocation, Chatham Township, 903.

2 Q And is that number broken down in any way?

3 A Yes.

4 Q Would you tell us what the components of that
5 number are? A There are 11 components.

6 I read the sequence of heading and the number one through
7 eleven, 1970 housing need 88.

8 Q Okay. Do you know the source of that number?

9 MR. BERNSTEIN: Can we have this a little
10 louder?

11 THE COURT: 1970 housing need. 88, did you
12 say?

13 THE WITNESS: Correct, your Honor.

14 THE COURT: Okay.

15 THE WITNESS: That column is asterisked and
16 the asterisked includes dilapidated, overcrowded
17 and needed vacant units only. Two --

18 THE COURT: Wait a minute. Hold it.

19 Dilapidated, overcrowded --

20 THE WITNESS: And needed vacant units only.

21 THE COURT: Okay.

22 THE WITNESS: Column 2, allocation of 1970
23 housing need, 258.

24 The difference of columns one and two, 170.

25 Q One hundred seventy represents what?

1 A The subtraction of 258, 88 subtracted from 258

2 Q I know that, but 170 units of what is that 170
3 units of need for replacement of housing?

4 A That's applying both an existing need formula as
5 described by the methodology of projecting in 1990 need
6 applying that to a 1970 condition.

7 Q Okay.

8 MR. BERNSTEIN: I am going to object again,
9 your Honor. We are coming out with numbers all
10 over the lot and we don't know where these
11 numbers are derived from. What the based numbers
12 are. It would be impossible to reconstruct it.
13 He is just giving results that DCA show arrived
14 at. And I fail to see the relevance of it and,
15 I think, it is improper to be regurgitating
16 volumes that I can't recapitulate.

17 MR. KLEIN: Your Honor, if we are given an
18 opportunity, we will provide the source of these
19 numbers. I go back again to the fact that --

20 THE COURT: All right. I will give you the
21 opportunity. Go ahead.

22 A Column 4 is entitled "Allocation --

23 THE COURT: Column, what is 88, 12, was 258
24 column is 170?

25 THE WITNESS: Correct, your Honor.

1 THE COURT: Okay.

2 THE WITNESS: Column 3 is entitled "Allo-
3 cation of Prospective Housing Needs, 1970-1990."
4 Unadjusted housing allocation, column 3, plus
5 column 4, which is 170 plus 421, equals 591.

6 There is a column 6 entitled, "Development
7 Limit, and the rating is adequate.

8 Q What does that mean? A The land
9 is available for the development as projected by the
10 Department of Community Affairs.

11 Column 7, allocation based on development limit, 591.
12 Column 8, units not allocated. That is column 5 minus
13 column 7, there is no number.

14 Redistribution of units not allocated, 224. It is
15 column 9. Column 10 --

16 THE COURT: What was that number again?

17 THE WITNESS: 224.

18 A Column 10, adjusted housing allocation. Column 7
19 plus column 9, which will be 951 plus 224 equals 851.
20 Indigenous share 1970 housing needs.

21 Column 1 or column 2, 88 with an asterisk. The asterisk
22 reads from the municipality's share of the 1970 hous-
23 ing need originating within the municipality itself.
24 Column 12, resulting allocation. Column 10 plus column 11,
25 total 903.

1 Q That's 815 plus 88? A Correct.

2 There was one other asterisk I neglected to read and it goes
3 with column 5. That's the unadjusted housing allocation,
4 which is the sum of columns 3 and 4. And that reads negative
5 numbers in column 3 are treated as zeros.

6 For example, some municipalities have an existing hous-
7 ing need. Housing need as replacement of substandard,
8 dilapidated, overcrowding units in excess of a calculated
9 allocation of 1970 housing need.

10 To put that in a general statement. What the formula
11 does, the methodology, the Department of Community Affairs
12 says that a municipality has a very high per cent of low
13 income households are actually -- no, excuse me, incorrect.
14 It is a very high per cent of deteriorated dwelling units.
15 They then calculate what its share of the lower income
16 population should be with the statistical calculation.

17 The methodology I described before, applying what is
18 the area in this case, county percentages of lower income
19 households to all population, we then have a redistribution
20 under statistics of what you would find of low income house-
21 holds by municipality. Take three municipalities and they
22 constitute a county. Each one has a hundred thousand people
23 in it. A, municipality has no low income, moderate income
24 households, B, fifty per cent of them are low and moderate
25 income and C, municipalities, the entire population is low

1 and moderate income households.

2 Under the state formula you would have a distribution
3 or all community A, B and C would have one-third low and
4 moderate income households.

5 That is the number in column 2 and the, in a very,
6 very general sense that is only applying the economic factor.

7 There are job factors. There are other factors that
8 go into that number. I am explaining asterisks 2 to column
9 5.

10 Q With reference to column 1, do you know how the
11 number 88 was arrived at? A Yes.

12 Q Would you tell us, please?

13 A Principally based upon the 1960 census of population.
14 However, there is within the 1970 census of population factors
15 recorded, not census of population, but census of housing
16 statistics relating to each municipality in the country that
17 shows overcrowding, that shows lack of plumbing and also
18 shows age of dwelling units.

19 The housing need is the Department of Community Affairs
20 total substandard and dilapidated units in 1960, minus
21 demolitions occurring as recorded with the state plus a
22 factored total of overcrowding and units without substandard
23 housing, or without complete plumbing.

24 It is described in the outset of the report how each of
25 the factors are arrived at. I am giving you my working

1 knowledge of that figure. The description is slightly
2 different. I could read to you each one of the column
3 headings and the specific statements to describe or set
4 forth in the housing allocation report. However, both the
5 methodology and what they are runs 38 pages. I don't
6 believe anyone is interested.

7 Q Well, to save time and to try and deal with some
8 of Mr. Bernstein's objections, could you tell us to the
9 extent that you can the source of whether it is municipal,
10 county, state, whatever, of the figures in each of the
11 columns that you have that you previously described?

12 MR. BERNSTEIN: I'd object to the prefix,
13 your Honor. I am interested in the computations
14 essentially and I have no problem with Mr. Klein
15 asking any questions he wants to, but when he says
16 well, now, to answer Mr. Bernstein's question I would
17 like --

18 THE COURT: Yes, I didn't understand that
19 to be --

20 MR. KLEIN: Okay, I will strike --

21 THE COURT: Okay.

22 MR. KLEIN: -- the preface.

23 THE COURT: All right.

24 MR. KLEIN: So as to not offend. Remove the
25 previous comment. Tell us the source of the

1 figures in each column as to the extent that he
2 can.

3 THE COURT: Yes.

4 MR. KLEIN: Some of the columns it is just a
5 mathematical. I think, column 5.

6 THE COURT: Those add up.

7 THE WITNESS: The majority of the columns
8 are mathematical. Column 1 is principally the
9 Department of Bureau of Census, 1970 census of
10 housing. Research done by the Department of
11 Community Affairs. Each column it is a calcu-
12 lation, DCA, column 3 is arithmetic. Column 4 is
13 a calculation DCA. Column 5 is arithmetic.
14 Column 6 is research DCA and their opinion.
15 Column 6 is the worth. Column 7 is really a
16 repeat of column 5 if column 6 considers that.
17 Column 8 there is no figure for Chatham.

18 Column 9 is DCA research and policy. Column
19 10 is arithmetic. Column 11 is identical to
20 column 1 and reflects the DCA formula. And
21 column 12 is arithmetic.

22 Q Okay. Starting with column 2. In your opinion,
23 if you can tell us, is the DCA calculation correct so far
24 as it relates to Chatham Township?

25 MR. BERNSTEIN: Wait. I am going to object

1 here, your Honor. It seems to me you need a
2 basis to ask a man if the calculation is correct.
3 Without asking him to go over the base figures,
4 the figures for the entire region, how the com-
5 putation was made, how can you have an opinion as
6 to whether a figure is correct unless you go
7 through that total methodology? I just don't
8 understand it.

9 MR. KLEIN: He already testified to the
10 figure as to how the figure was arrived at.

11 MR. BERNSTEIN: Your Honor, he has given a
12 a soft core answer. He said in general they do
13 this and this and this, but they're too soft
14 core when we talk about mathematics, it is black
15 and white. And if the witness has an opinion as
16 to whether the figure is correct, then he has got
17 to know how they got that very figure. He has
18 got to know the mathematical process. He has got
19 to supply the numbers. He has got to give us the
20 hypothesis on which the numbers were based.

21 He doesn't have to calculate or if he can
22 tell us the steps they took, the numbers they
23 used, multiplied the numbers. And I submit, only
24 then can you give us an opinion as to whether
25 that number is accurate, period.

1 MR. KLEIN: I think, he already testified
2 that in his opinion the gross number was more
3 correct than less correct. There was no absolute
4 statement that 903 is immutable and that's not
5 our position, your Honor. As I said, this is
6 not chemistry. This is social science.

7 The fact that the state tried to translate
8 these into very exact numbers serves not to
9 necessarily say that it is 903 units. It is not
10 904. It is not 902. But that is a general
11 parameter and, I think, he has testified that he
12 thinks this general parameter is more correct
13 than less correct. And I think, he can give us
14 some information as to how he arrived at that
15 without sitting there with a computer and, you
16 know, stacks and stacks of statistical data and
17 pulling it out.

18 For example, the 88 figure comes from the
19 Bureau of Census figures. Well, how do we know
20 that one of these people taking these census
21 didn't make a mistake in adding or missing a
22 house, or sizes of houses in its interviews, or
23 what not? But there are certain general loose
24 parameters that you can accept from these kind
25 of statistics.

1 THE COURT: The census is an accepted
2 document. Case law makes it such. I don't know
3 whether calculations by the DCA rise to the level
4 of the census, if that is the analogy you are
5 making. I am not too sure about that at all.

6 I would say that they do not, as far as I
7 know. You're asking if the calculation is
8 correct?

9 MR. BERNSTEIN: I have no problems with
10 that, Judge. If he can tell us what the calcu-
11 lation is and all the hypothesis and gives us
12 the real numbers, cut out the B S and tell us,
13 yes, for column 1, they used 183 on a statewide
14 level, Chatham Township is .035 per cent of it
15 and the land area was all based on land area,
16 multiply out the land area times the total we
17 come up with a number.

18 If he can give us the numbers that were used
19 for Chatham Township and go over it as to each
20 of them, maybe he can have an opinion. But how
21 can he have an opinion when he hasn't done that?

22 THE COURT: Mr. Bernstein, I spent a lot of
23 time discussing it, and let you cross examine on
24 that and how he arrived at that conclusion. The
25 weight that I give to it would depend upon how

1 he concludes the calculation is correct.

2 This is a very difficult area. We spent a
3 lot of time discussing the matter of this document.
4 Go ahead, I will allow you to answer the question.

5 Is the DCA calculation correct as it applies
6 to Chatham Township as far as with column 2?

7 THE WITNESS: In my opinion, substantially.

8 Q Could you tell us --

9 A The reason I say substantially is that the Department
10 of Community Affairs has within their formula, as I have
11 just stated to the court previously, made certain judgments
12 in terms of overlap on various factors contributing to
13 need and made certain judgments in terms of weighting
14 factors for housing need.

15 I have stated that I do not agree completely with
16 those judgments. If the number were 58, my opinion would
17 be it is valid. If the number were 500, my opinion would
18 be is invalid. If the number were 300, my opinion would
19 be still that it is substantially accurate.

20 If the numbers were in the other case 200, my opinion
21 would still be, it would be substantially accurate.

22 Q What about the calculations with respect to
23 column 4?

24 A Consider the number
25 again substantially accurate. However, now you are beginning
to get into the larger framework. The example I gave you

1 on column 2, no. An example selected a number off the top
2 of my head. If you notice, the 200 to 300 range is exactly
3 in the middle, between zero and 500, which is a twenty per
4 cent range. But in terms of prediction, I consider that
5 statistically acceptable.

6 When you're into the 400 and 500 level the statistical
7 level in terms of prediction given the variable variables
8 that go into the prediction, expand that, what I would con-
9 sider acceptable. But my opinion from 421 is substantially
10 accurate.

11 Q Now, do you agree with the determination by the
12 DCA in column 6?

13 A The statement of
14 adequacy of available land for development to accommodate
15 591 units, yes.

16 Q What about column 9? A I disagree.

17 Q You disagree with column 9? A Yes.

18 Q Okay. Would you tell us the basis of your disagree-
19 ment?

20 A Redistribution of units not
21 allocated.

22 THE COURT: Redistribution of not, what?

23 THE WITNESS: The column is entitled redistrib-
24 tion of units not allocated. This is a policy
25 question for the Department of Community Affairs.
a
In my opinion, it is/fundamental inconsistency of
policy of continuous statement for urban aid and

1 redistribution, rehabilitation of urban areas where
2 reallocation of population from those urban areas.

3 I do not disagree with the concept of some
4 reallocation will take place, but statistically the
5 substance of reallocation which is reflected in
6 the number 224, I disagree with.

7 THE COURT: So what you're saying to me is,
8 if they're going to give urban aid to the city,
9 then they will relocate the people outside in the
10 suburbs?

11 THE WITNESS: Your Honor, it has some relo-
12 cation in any case, your Honor, and, but the
13 major shift of population predicted within this
14 formula under this particular input, and it is an
15 opinion, in my opinion, there is just totally
16 inconsistency.

17 THE COURT: But that basically --

18 THE WITNESS: That is my opinion.

19 THE COURT: Okay, it is your opinion. But
20 that basically what you're saying to me, don't
21 relocate when you're going to have some relocation,
22 but aside from that actual relocation don't, if
23 you're going to spend money in the urban area,
24 don't claim a greater allocation or relocation
25 for these purposes.

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THE WITNESS: Absolutely.

THE COURT: In the suburban area.

THE WITNESS: Absolutely.

THE COURT: Okay. Okay, let's stop at this point. We will come back at 1:30.

MR. KLEIN: Okay. And, I think, that would conclude that aspect of it.

THE COURT: All right.

MR. KLEIN: Maybe we can go on to something else.

THE COURT: I had a question. Whether he agrees with the figure 903?

THE WITNESS: No, I do not. I think, the 903 is inflated and it is inflated by the comment I made with respect to column 9. Principally I would give it in the same context that I did on the 9th column of the 9th range. I could consider the 903 the very high side. I would consider something in the area of 700 as a more accurate prediction using this formula with the modification that I have made on the relevant statement to the DCA policy as it applies to column 9.

THE COURT: Okay. Step down, Mr. Chadwick. See you at 1:30.

(The noon recess was taken.)

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THE COURT: Okay, let's go.

MR. KLEIN: Your Honor, I would like to ask at this time that the statewide housing allocation report of May, 1978, be marked as an exhibit.

THE COURT: We mark it for identification?

MR. BERNSTEIN: I have problems with it. He has explained it to me as he sees it, but there is that underlying information, those underlying figures unless he can show how they reach out and grab at some of those figures -- I am not using the word "grab" critically -- I'm, you know, how do they do it? It is one of those reports that is very difficult for me to say, is this reliable as the soil survey, the census statistics? I have a problem with it.

But I will mark it for identification.

MR. KLEIN: Okay. I would just like to point out, your Honor, because you had mentioned the census statistics a couple of times. I remember not too long ago that a town in Morris County went screaming to the census bureau. As a matter of fact, two towns in Morris County went screaming because in one instance they thought they were ten thousand undercounted. And in the other instance, I think, it was five or six thousand

1 undercounted and it had an affect on their
2 eligibility for certain kinds of Federal aid.
3 And, you know, when you're talking about the census
4 in a town in Morris County, it is, you know, all
5 of these things are subject to some reasonable
6 variation. And that's why, I think, the way our
7 testimony came in, it didn't come in as 913, 903,
8 not 902, but came in as you know, talking in the
9 ball park.

10 THE COURT: Okay. But given, as I understand
11 the census, we are required to answer and given
12 that, and given the reliability that it is given --
13 repeating myself -- that it is given in the court
14 system, I think, it is different from the calcu-
15 lation. I think, it is substantially different
16 and whether a Morris County municipality went
17 complaining, I don't know.

18 MR. KLEIN: Well, in one instance, I think,
19 they were successful. I am not sure, but I think
20 they were.

21 THE COURT: I don't know. They maybe.

22 MR. KLEIN: Mr. Chadwick is shaking his head
23 yes, because we are thinking of the same town and
24 he says we were successful.

25 THE COURT: Okay, that may be.

Chadwick - direct

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MR. KLEIN: Is that P-14 for Identification?

THE COURT: Yes, it will be P-14 for Identification.

The 1978 trial law treatise as a presumption of correctness, I don't know whether I could say I give the same presumption to the calculations.

Mark it for identification and keep it up here and you will be responsible for getting it back from Mr. Klein. You will be responsible for getting it back to him.

MR. KLEIN: I will get it back to him. Within the next day or two I will make a copy of it.

THE COURT: You want to take it now and make a photostatic copy of it for our next appearance and get it back?

MR. KLEIN: Well, what I can do, your Honor, is I can take it and copy it and I can, I will see Mr. Chadwick on Thursday and give him his copy and I can have a copy dropped off here.

THE COURT: Okay. You don't have to bring, you can bring it back with you the next time you come.

MR. KLEIN: Okay.

THE COURT: That will be all right. Here, I will give it to you now.

1 MR. KLEIN: Okay, thank you.

2 (The document referred to was marked P-14 for Identification.)

3 Q By the way, does the 1978 master plan of Chatham
4 Township in any way address low and moderate income housing
5 needs? A Yes.

6 Q And how does it do that?

7 A It contains a specific section referring to a specific
8 section in the master plan beginning on page 27 entitled
9 Housing. Page 27. Excuse me, entitled housing through
10 page 30 and a subsection within that, those four pages is
11 entitled "Existing housing need". And within that section
12 it quotes a figure of the township had a need for only 148
13 dwelling units based on either the physical condition of
14 housing units or that the cost of housing was not affordable
15 by occupants. And that statement is made in context with
16 the New Jersey Division of State and Regional Planning's
17 1975 report.

18 Q And what page is that again?

19 A That is page 27 and 28.

20 Q And what is the need for low and moderate income
21 housing? What is the figure used there?

22 A 148.

23 Q Am I correct that you previously defined low and
24 moderate income housing as generally subsidized housing, is
25 that correct? A Yes.

Chadwick - direct

1 Q Could you tell us what the term least cost housing
2 means?

3 A In a general fashion it
4 is a housing type that is taken in context with all forms
5 of housing and the development regulations in the municipality.
6 If development regulations of a municipality are cost
7 cost generating for no fundamental reason, it precludes
8 least cost housing.

9 An example would be an offset required in attached
10 housing that no front of a dwelling unit within a structure
11 can have the same front line as any other dwelling unit.
12 The purpose of the standard is generally to break up a wall
13 of the building. But it is cost generating.

14 If the municipalities required airconditioning, if they
15 required types of improvements for property that had really
16 no basis from a zoning standpoint that are cost generating,
17 then getting again a least cost development regulation.
18 There isn't -- I'm describing it as opposed to defining it.

19 Many municipalities have adopted standards for example
20 that require paved driveways for any type of residential
21 development. It adds to the cost of a house. It is a
22 necessity? It would depend on the circumstances.

23 There is not, at least that I am aware of, a specific
24 definition of what would be least cost housing. You really
25 measure the development regulations or assess the development
regulations as to, are they designed to pre-empt basic con-

1 struction of housing. The amenities either to be
2 provided by the owners over a time or at their pleasure.

3 Q Okay. Based upon your understanding of the --
4 strike that.

5 Let's turn for a minute to some general aspect of
6 relating to Chatham Township. What is the general housing
7 stock in Chatham Township as reflected in the 1978 master
8 plan?

9 A Single family residential
10 homes on lots of a half acre or larger. There is garden
11 apartment development on Hickory Lane that we referred to
12 previously in the RC-3 zone on the south side of Green
13 Village Road.

14 Q And would you in any way classify this garden
15 apartment as a complex as accommodating a low and moderate
16 income need?

17 MR. BERNSTEIN: I am going to object here,
18 your Honor. This goes beyond the scope of the
19 witness's report. In fact, I don't think he even
20 mentioned either of the garden apartment complexes.
21 He makes about four comments as to why in his
22 opinion the Chatham Township ordinances are exclus-
23 ionary and as to them, of course, he has a right
24 to testify when I ask for an opinion going outside
25 his report. I don't think it is proper and I might
add, your Honor, this case was originally listed

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much earlier.

Mr. Klein asked me if it could be adjourned and I said as long as I get your expert's reports on the Mt. Laurel aspect before January 1st. And I got the report. Of course, it was sent out December 28. My office received it December 28th as well, identifies the letter was sent out the day before it was dated. But the point, and I did depose him as to this report. But, I think, I am entitled to know what his position was before the report was, once the report was sent to me.

There is no mention of any of the existing garden apartment development in Chatham Township.

MR. KLEIN: Your Honor, in the first place, I really resent Mr. Bernstein's comments because he knows full well that I had another expert on tap. Allen Malik to be specific. That at the last minute the Public Advocate objected to Mr. Malik testifying because of the pendency of the other suit. And for that reason I needed an adjournment of the trial.

THE COURT: Don't worry about that. Let's go into another area.

MR. KLEIN: Okay.

In terms of the other thing. Frankly, I

1 don't know if there is an exact sentence in his
2 letter which says the garden apartments is this
3 or that or the other thing. That is not the
4 function and purpose of an expert's report. An
5 expert's report is to give you the parameters of
6 the areas of testimony. In addition to that,
7 there was a deposition here in which, as I stated
8 before, Mr. Bernstein had a freehand. Housing
9 and housing needs are obviously discussed through-
10 out this report.

11 MR. BERNSTEIN: I will even go further, your
12 Honor. I don't see any mention of apartments.
13 We are not talking about townhouses. We are talk-
14 ing about existing apartments. I don't know if
15 he mentioned apartments anywhere in the report.

16 THE COURT: Page 6, examination of zoning
17 which permit multi-family housing. There is a
18 mention of it, if you're looking for a mention.
19 Paragraph 7 on page 4. Exact restriction of low
20 densities regulation of multi-family option.

21 MR. BERNSTEIN: Which page is this, your
22 Honor.

23 THE COURT: Page 4.

24 MR. BERN STEIN: Right.

25 THE COURT: I say, if you're looking for a

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mention.

MR. BERNSTEIN: I am not even sure that covers the apartment zones. Where is the apartment zone?

MR. KLEIN: It covers the apartment.

MR. BERNSTEIN: Okay. That is talking about zoning. Then he doesn't even talk about existing structures. But to make this clear, he doesn't tell me which after they're going.

He can say the ordinance is exclusionary and I can't formulate enough questions, your Honor, to find out each area that he thinks the ordinance is exclusionary. Seems to put me to an impossible burden when I say, "Hey, all your multi-family zones are exclusionary and leaves it. But the question here is even similar. We are talking about an existing project. An existing garden apartment project. There is no mention of that in this report.

THE COURT: Well, Mr. Bernstein, in the pre-trial order, I looked back at it because I did not prepare it, as you know. It talks about the applicability of Mt. Laurel. And while I realize that doesn't supercede the expert's report, certainly you have been on notice that there is

1 a contention with respect to the housing in Chatham
2 township as to whether or not it provides the
3 fair share of the low or middle income housing
4 and the need for, however you want to define Mt.
5 Laurel. It hasn't been amended or if it has been
6 amended.

7 I grant you I see nothing in the expert's
8 report that specifically covers the answer to
9 that question. However, if that's the one and
10 only question that is going to be asked, it
11 certainly is defensible without too much difficulty,
12 it would seem to me, pointing to another area
13 where there is. I am going to allow that question.
14 If it gets too heavy in that area, then I will.

15 MR. BERNSTEIN: Thank you.

16 MR. KLEIN: Thank you, sir.

17 THE COURT: I don't think it is a surprise
18 problem in that regard. Okay.

19 Do you clarify the garden apartments, what
20 is it, Hickory Lane as accommodating low and
21 moderate income housing needs?

22 MR. BERNSTEIN: I object there, your Honor.
23 I think, it is irrelevant. The question is, what
24 was the zoning when the apartments were built.
25 This town has no control over the developer and

Chadwick - direct

1 what he chose to construct.

2 THE COURT: He got it by variance.

3 MR. BERNSTEIN: I don't know whether he got
4 it by variance or not.

5 THE COURT: I do because I sat in the court-
6 house when he got it, approval of the variance
7 or part of it.

8 MR. BERNSTEIN: There were two apartments.

9 THE COURT: I don't know whether --

10 A VOICE: You're thinking of Chatham Hills
11 over in the R along the Passaic River off River
12 Road.

13 THE COURT: Okay, a different area.

14 A VOICE: Yes, Cardinal Hills.

15 MR. KLEIN: And Chatham Hills was zoned for
16 it.

17 THE COURT: Oh, it was?

18 MR. KLEIN: But to say that the townhouse
19 has no control over it, your Honor, is ludicrous.
20 The zoning and development regulations establish
21 control over the kind of cost figures that are
22 going to go into and ultimately to profitability
23 and renting that is going to be required. And
24 to say otherwise is just not reality.

25 MR. BERNSTEIN: The problem I have, your

1 Honor, I would contend anything built in Chatham
2 Township is not going to have low rents because
3 they're in high demand. But do we lose credit
4 for the existing apartment because they have high
5 rents or do we lose credit because the densities
6 that the town originally allowed were reasonable,
7 but due to the vagaries of the market place a
8 developer chose to put in a higher, a more expens-
9 ive project. So that to chide us because we
10 zoned apartments unlike most of the towns in
11 Morris County, Somerset County but the developer
12 decided to put in a different brand of development
13 doesn't seem to be fair to me.

not

14 MR. KLEIN: I am/sure that is the case.

15 THE COURT: That is the whole problem. All
16 the cases, you know, we can't answer. It doesn't
17 make it irrelevant. Doesn't make it inadmissible.

18 Yours is an argument against the logic of
19 the question that he is asking, but it doesn't
20 make it an irrelevant question. Okay.

21 As I recall the question, would you classify
22 the garden apartment at Hickory Lane as accommod-
23 ating low and moderate income needs?

24 THE WITNESS: No, I wouldn't, your Honor.
25 I classify them as luxury apartments based upon

1 both exterior observation and having known
2 individuals who lived there. Not personal individ-
3 uals and the rents charged.

4 Q Would you classify -- strike that.

5 Most of the single family development in Chatham Town-
6 ship is located in what zone?

7 A R-3.

8 Q And would you classify that development as
9 accommodating a low income -- I'm sorry -- a low and moderate
10 income housing need?

11 THE COURT: Where is this now?

12 MR. KLEIN: The single family development in
13 the township most of which is in the R-3 zone.

14 MR. BERNSTEIN: I would object. I don't
15 understand the question. Is he saying that the
16 R-3 zoning standard, the existing zoning stock,
17 existing housing stock? I don't think it is
18 clear, what the question is being asked.

19 MR. KLEIN: The question relates to the
20 existing housing stock.

21 THE COURT: You're asking is the existing
22 housing stock within the reach, financial reach
23 of low and moderate income families?

24 MR. KLEIN: Yes.

25 MR. BERNSTEIN: Then I would object. We

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

1 would have to know if this witness knew the
2 housing that was in Chatham, the income -- not
3 income, the price distribution of the housing in
4 order to give an answer because unless he is
5 Superman, he can't make, whish, one quick trip
6 through the township and know the pricing of all
7 the housing in the market.

8 MR. KLEIN: I think, if he is allowed to
9 answer, the answer may satisfy Mr. Bernstein's
10 objections.

11 THE COURT: All right. Let's hear it. Then
12 we will see if I decide it should be stricken on
13 the basis of the objection, I will. Okay, go
14 ahead.

15 Is the single family residential, existing
16 structures, are they within the grasp of, financially
17 of low and moderate income housing, low, moderate
18 income families?

19 THE WITNESS: Considering what I would class-
20 ify as the average house, and I have been through
21 and about Chatham Township many times, in my
22 opinion, they are not. They are housing types
23 which are reflected with the upper income level
24 characteristics as reflected in the population
25 statistics of the municipality.

1 MR. BERNSTEIN: I ask the answer be stricken.
2 He is a planner, but I don't think, unless he
3 knows what the housing values are.

4 THE COURT: I will give it the weight it is
5 entitled to.

6 Q Does the 1978 master plan provide us with any
7 information as to the average or, I am not sure if it is
8 average or median income in Chatham Township.

9 A Yes, it does on table 8, which follows table 7, which
10 follows page 25.

11 Q And what does it tell us the median income in
12 Chatham Township is? A It is estimated at
13 \$20,000 in 1969.

14 Q And how does -- strike that.
15 Does the master plan also contain median income figures
16 for Morris County? A Yes.

17 Q And at that same time, what does it indicate was
18 the median income for Morris County?

19 A \$13,221. That is shown on table 8.

20 Q Based upon your familiarity with the master plan
21 as implemented by the zoning ordinance, can the DCA estimate
22 of lower and moderate income housing need as modified by
23 your testimony for Chatham Township be accommodated?

24 MR. BERNSTEIN: I am going to object. I
25 don't know where we are going. We have heard

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various statistics, but I don't think they lead up to that question.

THE COURT: Since I am the trier of the facts, he may understand the question, but I don't insofar as how we are going or to where we are going.

MR. KLEIN: Okay.

THE COURT: I am not saying it is unintelligible. It may be very intelligible to him, but as to our ultimate goal, I don't know where it fits.

If you want to have him read the question back, would you read the question back?

(Last question read by the reporter.)

THE COURT: I'm trying to think how to modify the low and moderate income.

MR. KLEIN: I think, he modified it when he said he thought the 903 was on the high side.

THE COURT: Substantially thought 700 was the more realistic figure.

MR. KLEIN: Right. That was the modification.

THE COURT: That is what you're talking about, that modification?

MR. KLEIN: Yes. that's what I was referring to.

MR. BERNSTEIN: Don't we have a big step,

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1 your Honor, between the DCA allocation and the
2 present zoning ordinance? It seems to me Mr.
3 Klein, he just asked the question, must low and
4 moderate income housing in order to be built be
5 subsidized housing? The answer is no.

6 Now, if you take that answer as true, and
7 certainly the plaintiffs have to accept what their
8 own witness says is true, it doesn't matter what
9 the zone is unless it is subsidized housing. It
10 can't be built, , so I would say the question is
11 totally irrelevant and meaningless.

12 MR. KLEIN: Well, I don't think that is so.
13 Subsidized in may ways.

14 THE COURT: All right. Within that framework
15 now that I understand what you mean by modified,
16 I will allow it.

17 A No.

18 MR. BERNSTEIN: No?

19 THE COURT: No.

20 Q Can you tell us why? A I have
21 examined the master plan of the municipality and the zoning
22 ordinance of the municipality and the zoning regulations of
23 the municipality as I have reviewed all the documentation
24 either places the single family or available land for single
25 family development in the 2 acre residential zone. Excuse

1 me. Twenty thousand square foot lot in the R-3 zone on up to
2 two or two and a half acre lots. In my opinion, that type
3 of single family residential zoning precludes modest cost
4 single family residential development. And I base that
5 opinion primarily with all of the conclusions of the Supreme
6 Court of New Jersey pertaining to first the Mt. Laurel case,
7 and secondly, the Oakwood at Madison case.

8 With respect to the zoning district that permits forms
9 of multi-family housing, whether that is garden apartments,
10 townhouses or quadrplexes, it is the standards that are
11 permitted. The standards that are required for development.
12 Either the land cannot comply with the regulations and that
13 there is not enough acreage available, particularly on the
14 southerly side of Green Village Road to comply with the
15 option, or that the development regulations pre-empts really
16 clustering on the land areas of the tracts zoned for some
17 form of multi-family housing.

18 For example, to avoid one substantial improvement cost
19 if required owing to soil conditions or simply to achieve
20 a savings in terms of total site improvement, be it driveways,
21 parking areas, water lines, et cetera.

22 The fundamental question becomes the, as well as the
23 density of development allowed when compared to the cost of
24 land within the municipality. I cannot state to the court
25 that there is a precise number, nor is it within my area of

1 expertise to offer a number as to a reasonable cost per
2 dwelling unit of this type of housing that would meet these
3 costs.

4 As I view the regulations of the municipality, the
5 zoning plan, in my opinion, is designed to follow really
6 the finding of fact in the master plan, that being that the
7 area is principally a single family residential community,
8 a claim that it is not a developing municipality, and that
9 it is an upper and high income residential community. And
10 those zoning regulations that are in place would insure
11 that characteristic or statement of finding of fact.

12 Q With respect to the garden apartments and town-
13 houses, could you point to some particular examples in the
14 development regulations which preclude, in your opinion, the
15 same being constructed for low and moderate income housing?

16 MR. BERNSTEIN: I am objecting here, your
17 Honor. We had a few examples given on page 5 of
18 the report with regard to the townhouses and with
19 regard to the examples that I was given. And I
20 had the opportunity to depose this witness on it
21 to prepare my witnesses.

22 I have no objections, but if he is to testify
23 as to the provisions of our ordinance, which he
24 claims are exclusionary, that we had no notice of
25 it, seems to me it is not fair.

1 Now, Mr. Klein would have you believe I had
2 a right to depose him on the entire ordinance. I
3 certainly don't want to depose him beyond the scope
4 of his report and try to build up his case and
5 point to him where he should be preparing his
6 testimony. But to allow him to testify on the
7 garden apartment zone when his report gives us
8 no examples, and to allow him to testify carte
9 blanche as to townhouses when I had no knowledge
10 other than a few areas of where he was going, seems
11 to me to be very unfair.

12 MR. KLEIN: Well --

13 MR. BERNSTEIN: If he wants to get into
14 depositions, I would like to read to your Honor
15 the second time where we had depositions, he was
16 precluded, not by Mr. Klein, but his partner or
17 his associate from asking questions by objecting
18 continually to the scope of the question. In
19 fact, it was, I knew it was the last day we were
20 going to have depositions so I didn't have too
21 much of a chance. But I raise the objections on
22 those grounds.

23 MR. KLEIN: I suggest you don't get into
24 that first set of depositions because if you were
25 ever as obnoxious outside to me --

1 THE COURT: Wait a minute. Let's take it
2 easy.

3 MR. KLEIN: That was some deposition, your
4 Honor.

5 THE COURT: Hold it just a second, please.
6 All right. Okay.

7 Now, look. You know, we are trying a case.
8 It is heavy and if it is meeting its purpose,
9 but let's just keep it down and easy as far as
10 the rest of it is concerned.

11 All right, dealing with -- can you point out
12 some examples in the development regulations which
13 preclude housing for low and moderate income
14 families? Would you deal with his objection in
15 so far as it relates to the scope of the report?
16 What did you tell him in the report as to standards
17 such as that?

18 MR. KLEIN: All right.

19 THE WITNESS: Page 5 of the December report,
20 your Honor, I concede that there are standards
21 for townhouses. I have my copy, if your Honor
22 doesn't.

23 MR. KLEIN: Here, I have a copy.

24 MR. BERNSTEIN: As to the items on page 5
25 I have no objection because I knew about them.

1 MR. KLEIN: The items on page 5 are examples.
2 In addition to which the paragraph really starts
3 on page 4 in paragraph number 7. And prior to
4 that in paragraph number 6, there is a discussion
5 of the zoning which permits multi-family housing
6 generally.

7 THE COURT: Did you say paragraph 6?

8 MR. KLEIN: Page 4 of paragraph 7.

9 THE COURT: Certainly he can testify, Mr.
10 Bernstein, to those sections of paragraph 8, page
11 5.

12 MR. BERNSTEIN: No problem, your Honor.

13 THE COURT: Okay. Now, so far some of those
14 I haven't heard about. I don't know where he is
15 going to go beyond that. But let's get into that
16 and let's see.

17 You're on notice that he is challenging your
18 land use ordinance as far as it is cost producing
19 factors and let's see, let's get into it. Let's
20 see where, what he is talking about.

21 Here is your copy.

22 MR. KLEIN: Your Honor, I would also like to
23 point out that on the deposition.

24 THE COURT: Let's get to the question.

25 MR. KLEIN: Okay.

1 THE COURT: All right.

2 MR. KLEIN: I'm sorry, could we have the
3 last question?

4 THE COURT: Can you point to some examples
5 in the development regulations which preclude
6 housing for low and moderate income families?
7 I paraphrased it a little bit.

8 When you mean development regulations, you
9 mean planning and zoning in building codes, et
10 cetera?

11 MR. KLEIN: Well, not building codes as such.
12 Development regulations.

13 THE COURT: Talking about the land use
14 regulations?

15 MR. KLEIN: Land use regulations.

16 MR. BERNSTEIN: I think, that is a perfect
17 example of my objection. He could bring in, you
18 know, when you don't specify, and I don't suppose
19 Mr. Chadwick has done it. He could go into
20 subdivision ordinance, the site plan ordinance.
21 They are development regulations.

22 THE COURT: Let's find out where he goes
23 first before we do, okay? Let's take, let's
24 limit the question to the land use regulations,
25 if you would, please, Mr. Chadwick.

1 THE WITNESS: I am referring to the Township
2 of Chatham, Morris County ordinance 279, land use
3 ordinance of the Township of Chatham.

4 THE COURT: That is J-1 in evidence.

5 MR. KLEIN: I think, I had them reversed.
6 That is J-1 and the master plan is J-2.

7 THE COURT: The master plan is, yes, J-2.
8 The zoning map is J-3.

9 THE WITNESS: Refers to section 702.6.

10 Q 702.6 of what? A Point 6. Excuse me.

11 THE COURT: Point 6.

12 THE WITNESS: Requirements for townhouses
13 in the R-2 and R-3B districts. The R-2 is in the
14 southeasterly corner of the municipality from
15 where I am sitting, I can point to it.

16 Q Is that abutting Summit?

17 A Yes. And the R-3B districts, R-3B district is in the
18 area that we have discussed continuously. Green Village
19 Road, Shunpike Village area.

20 The standards of a ten acre minimum lot size in the
21 R-3B district would require assemblage not for initial
22 projects. I have reviewed their tax maps. There are ten
23 acre tracts within the R-3B zone, but not all. I have not
24 looked whatsoever at ownership. In my opinion, ownership
25 is something that changes on a daily basis. Lot lines, a

1 function of subdivision, and in my judgment somewhat perm-
2 enant.

3 The density allowed is six dwelling units to the acre.
4 The six dwelling units to the acre, in my judgment, is
5 restrictive. It is restrictive in context with its
6 location adjacent to one, the 2-R, 3C zones, which are
7 multi-family and intersection it abuts being professional,
8 institutional zones, which is a non-residential zone.

9 The building coverage of fifteen per cent is a standard
10 internally correct with the density. It may be viewed,
11 however, as a way of precluding the development of large
12 units or multi-bedroom units by simply restricting the
13 total coverage, or effectively requiring all of the units
14 to be two story as opposed to one story.

15 MR. BERNSTEIN: Your Honor, right now I have
16 to object. Your Honor, I may have missed it, but
17 I don't believe there is any comment about the
18 fifteen per cent lot coverage.

19 THE COURT: I don't think he has to specific-
20 ally cover each and every item. In the report
21 he brings to your attention the restrictions
22 since they relate to the townhouses, quadra-
23 plexes and the garden apartments as being cost
24 producing.

25 MR. BERNSTEIN: As I recall, he makes one

1 broad statement, but if that's enough to put me
2 on notice that he is going to go down the line
3 as to each provision of the ordinance, I would
4 be surprised.

5 THE COURT: I will allow it.

6 THE WITNESS: Subparagraph B, parenthesis
7 setback requirements, in my opinion, one hundred
8 foot set back all around the property is not
9 relevant to the location of the R-3B zones.
10 However, within the context of a six unit
11 limitation in terms of density, it is consistent.
12 It could be achieved and could be developed.

13 It precludes, I think, any design flexibility
14 that may be warranted either because of site
15 conditions or features on the site.

16 THE COURT: Or what on the site?

17 THE WITNESS: Features. Hardwood stands,
18 maybe a stream, maybe various types of features,
19 that is, amenities to the site and simply should
20 be preserved on the site. But by requiring a
21 hundred foot peripheral boundary to a ten acre
22 tract of land, the flexibility that could be
23 afforded on the site development, I think, is
24 pre-empted.

25 Parenthesis 2, actually it is section 702.6,

1 parenthesis B, close parenthesis, parenthesis 2,
2 close parenthesis, have no more than two contin-
3 uous dwellings have the same front is cost
4 generating.

5 The standards within parenthesis, C on page
6 7-6 require the units to be spread, in my opinion,
7 across the lot or a clustering of ends or rear
8 corners of the buildings. Applying these
9 standards, it again takes away from the design
10 flexibility of a site and create a regimentation
11 to the development that, I think, the standards
12 were intended not to achieve.

13 By spreading the development across the
14 tract, it will be cost generating.

15 The standards contained under section 702.6
16 parenthesis E, close parenthesis are all --

17 THE COURT: E through what? I'm sorry.

18 THE WITNESS: Parenthesis E.

19 THE COURT: Yes.

20 THE WITNESS: Inclusive, one, in my opinion,
21 as a professional planner, I question whether
22 the zoning regulations in many cases, and two,
23 collectively are cost generating.

24 Q I'm sorry. I wasn't clear in your last answer.
25 Are you saying that you question whether they're cost

1 generating? A Yes, they're appropriate
2 zoning regulations in the first instance considered collect-
3 ively, in my opinion, are cost generating.

4 Q Okay. A If you wish, Mr. Klein,
5 I could go through them individually, but for the sake of
6 brevity I have --

7 THE COURT: You're saying that everything in
8 subsection E?

9 THE WITNESS: That's correct, your Honor.

10 THE COURT: Okay.

11 Q Would there be one particular example in subsection
12 E that you could mention just to highlight it rather than
13 to go through all of them? A Subsection 2
14 on page 7-7, which has a ^{minimum} floor area, each townhouse
15 shall have a minimum floor area as floor area is defined in
16 article 2 of this ordinance in accordance with the following
17 schedule. And it says one bedroom, 900 square feet. Two
18 bedroom, 1550 square feet.

19 MR. BERNSTEIN: I would like that number read
20 back, your Honor.

21 THE COURT: Two bedroom, 1550 square feet.

22 MR. BERNSTEIN: Thank you.

23 A For each additional bedroom, 200 square feet.

24 The comparison of those unit sizes to a standard Cape
25 Cod dwelling constructed in New Jersey in the 40's and 50's,

1 which was basically 24 By 28, which provided four bedrooms,
2 a living room, and a kitchen and a bathroom, was 650 square
3 feet.

4 The requirements contained in subsection parenthesis
5 F, close parenthesis, G, all contained on page 7-8 and
6 extending on to page 7-9, 7-10, through page 7-11, either
7 in my opinion, are so discretionary that they are simply a
8 function of site plan review that need not be stated in the
9 first instance, or give such a wide latitude to a municipal
10 planning board or a board of adjustment that many things
11 could either be requested or required that really go beyond
12 zoning regulations.

13 These regulations really contained within 7-7 through
14 7-11, at least in my opinion, begin to extend beyond what
15 the height, bulk regulations and the use regulations and
16 attitude regulations of a municipality in terms of what
17 would be the appearance of these structures, I think,
18 accumulatively they fly in the face of what the intent, as I
19 perceive it of the municipality was to allow for some
20 flexibility of site design to comply with the, all the
21 regulations that would have to be forfeited.

22 That deals with townhouses, Mr. Klein. If you wish, I
23 will find the sections relevant to quadraplex and apartments.

24 Q I would like you to do that.

25 MR. BERNSTEIN: Your Honor, I have to make

1 another objection here. If you look at the report
2 there are about three or four comments on town-
3 houses. May be the court feels -- I guess
4 evidently the court feels that the witness
5 was entitled to testify on townhouses.

6 I would submit that there are other general
7 comments about quadraplexes and apartments. There
8 is not a single comment as to a specific provision
9 of any townhouse, of any quadraplex or any garden
10 apartment standards in the entire report. And,
11 indeed, I would ask permission that we would be
12 entitled -- well, first I'd ask he be precluded
13 from testifying to these other types of development.

14 MR. KLEIN: Your Honor, I think --

15 THE COURT: May I see the report? May I see
16 the report?

17 MR. KLEIN: Oh, yes. I'm sorry.

18 THE COURT: He starts out, Mr. Bernstein,
19 by saying the standards for development of town-
20 houses, quadraplexes and apartments are cost
21 generating, in my opinion.

22 MR. BERNSTEIN: But that puts me -- first I
23 got this report after interrogatories had been
24 submitted.

25 THE COURT: Okay.

1 MR. BERNSTEIN: But secondly, it puts me at
2 a real quandary. Usually I don't like to inter-
3 rogate witnesses on depositions on areas that
4 they haven't specifically mentioned in the reports
5 because then if I question them, I will really
6 have waived any objection I feel at the time of
7 trial.

8 Now, he is dealing in a general way that he
9 thinks it is cost generating, but he doesn't
10 mention any specifics. We go on the next page
11 and he talks about townhouses and he gets down
12 to the four or five specifics I had actual notice
13 of about a third of Mr. Chadwick's testimony as to
14 townhouses.

15 As an example, he talks about the width of
16 the lots, and there are some other areas that
17 he is getting specific with regard to the town-
18 houses, but when you look for specifics as to
19 garden apartments --

20 THE COURT: All right, so he is not specific.
21 He told you that there was cost generating by
22 the standard of the development.

23 Now, how specific does he have to get before
24 you would feel -- I guess this is a rhetorical
25 question. How specific does he have to get in an

1 expert's report? I feel you are on proper notice.
2 Do you think he has to meet each one? If that is
3 the case, I'm going to have to disagree with you.

4 MR. BERNSTEIN: I think, he would have to
5 give me some idea such as in terms of density,
6 in terms of side yards, in terms of lot coverage,
7 parking, site plan regulations, in my opinion,
8 are excessive. Section such and such of the
9 ordinance.

10 It seems to me that's a pretty specific one
11 and yet would only take one or two instances and
12 I would know where he is aiming. But I would
13 submit, your Honor, looking at what he says here,
14 he has mentioned every multi-family zone. Is
15 that enough? Could a witness say in a report all
16 standards for development are excessive?

17 THE COURT: If he said that, I would figure
18 that you're on enough notice.

19 MR. BERNSTEIN: Well, if he only makes a
20 generalized statement because if that were enough,
21 your Honor, a man could come out with a report as
22 to each standard and go down it in detail and
23 give examples.

24 It seems to me that as the defendant really
25 doesn't know how to defend something like that

1 unless there is some specificity.

2 THE COURT: Well, if he says that, if he said
3 that all the development standards for quadraplexes,
4 townhouses and apartments were cost generating in
5 his opinion, you would have to defend against all
6 the standards.

7 MR. BERNSTEIN: It would seem to me though,
8 as a matter of the way things run, I have to know
9 something about what he is going to testify about
10 now.

11 THE COURT: Well, okay, therein lies your
12 quandary. You do not want to open up a door on
13 depositions, but if, when he said that he stated
14 the standards for development of townhouses,
15 quadraplexes and apartments are cost generating,
16 in my opinion, you didn't want to open it up
17 because what you're telling me, you didn't want
18 to point it out because you didn't want to at the
19 time of trial be prevented from raising an
20 objection. But you had the opportunity to find
21 out what happened. You had the opportunity to
22 find out.

23 MR. BERNSTEIN: I'm sorry.

24 THE COURT: You didn't like to do it. Now
25 the question that I say to you the expert's

1 report does not have to write down in toto to
2 the last detail. It's got to be generally given
3 what he is going to testify to. It does here
4 and I grant you that maybe it is not specific
5 enough. Maybe in another case where we are deal-
6 ing with twenty-five municipalities I am going to
7 say you should be more specific. But here, you
8 have only got one ordinance.

9 You have only got, you understand, what have
10 you got? Ten pages of zoning ordinances to deal
11 with. You got competent planners who can say,
12 yes, no; yes, no; yes, no. Go through those ten
13 pages just like that.

14 You're not talking about a quantity that's
15 unfair, insurmountable. You didn't -- what you're
16 saying, you didn't want to get, you didn't want
17 to open any doors. You wanted to be careful,
18 and I respect you for that. But don't then say
19 to me, "Hey, Judge, I didn't get enough notice and
20 he can't list them. He can't tell me because he
21 didn't list them specifically."

22 MR. BERNSTEIN: Let me attack it a different
23 way. On page 5 why isn't there any mention of
24 any cost generating features for townhouses?
25 Because absent the first six lines, everything on

1 page 5 pertains to townhouses.

2 Now, could I assume that Mr. Chadwick was
3 just talking about townhouses, but when we got
4 to trial, quadraplexes and apartment houses
5 would stick their head up. In other words, is
6 all of page 5 gratuitous? He really didn't have
7 to tell me anything about townhouses as well.

8 THE COURT: I don't understand what you mean.

9 MR. BERN STEIN: Okay. Page 5 deals exclus-
10 ively with townhouses.

11 THE COURT: Yes, paragraph 8.

12 MR. BERNSTEIN: Paragraph 8. In fact, ahead
13 of that, in my opinion, the only realistic method
14 of reasonably producing, et cetera.

15 THE COURT: Okay.

16 MR. BERNSTEIN: And Mr. Chadwick talks about
17 townhouses for almost an entire page, and since
18 he has only got a six page report, he spent
19 whatever time, he has spent a considerable amount
20 of time on the townhouses. Now, would it be
21 logical for me, as counsel, to assume, hey, all
22 we got in this report are townhouse features.
23 Why open up the door on something other than
24 townhouses since he spent eight pages on town-
25 houses.

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THE COURT: No, he doesn't. He also refers to quadraplexes and apartments.

MR. BERNSTEIN: He talks about quadraplexes merely as to density in the one paragraph, but that's it.

THE COURT: No, he says the standards for development of townhouses, quadraplexes and apartments, and I assume there is supposed to be a comma after townhouses. I am not that familiar with the zoning ordinance because I'm just seeing it for the first time, are cost generating in my opinion.

So he is telling the standards for everything are cost generating. Then he says further, okay, saying that plus are cost generating factors.

Now, no, I can't agree with your argument. Yeah, it is not probably as specific as it should have been insofar as notifying you of all the complaints he has about cost generating. But, I think, when you're dealing with ten pages, I can't say that you should be surprised or weren't able to defend against it. And, I think, that sentence number 8 with the way it is written would allow him to go through these, and I will allow it.

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MR. BERNSTEIN: Okay.

THE COURT: You said something before I didn't follow. You said something flew in the face of -- you want to read back the last portion of his testimony?

(Portion requested was read by the reporter.)

THE COURT: By that are you saying by these are all cumulative allows for no flexibility that has to be there?

THE WITNESS: Yes. The areas I have already testified describing both the soil conditions in the area in a general fashion, and the town-house units themselves, if there is simply a density standard and standards relevant to a public street set back or a non-residential use considerations.

THE COURT: Okay.

THE WITNESS: The other standards begin to get into the design of the building, the amenities that will have to be a part of the building, the standards accumulatively take away from what a site design or a reasonable site designer could put on the property.

It begins to become a regimentated, when he begins to get regimentated, they are forced into

1 the portions of the site that are heavily wooded
2 and could remain as part of the site features.
3 A portion of the site that the ground soil
4 conditions are not as good as others and it
5 requires added site construction costs just be-
6 cause things are spread across the land and/or
7 have to be equally separated one from the other,
8 which is the fifty foot standard.

9 Townhouses are six to the acre. It is low
10 density in terms of townhouses, in my opinion,
11 and a list of standards that runs on for seven
12 pages? Seven pages is onerous.

13 THE COURT: All right, go ahead.

14 Q In addition to being onerous, do you feel it is
15 cost generating? A Yes.

16 Q Now, why don't you turn to --

17 MR. BERNSTEIN: Objection have the witness,
18 telling him what page to turn to this. I think,
19 he can ask a question without turning, saying,
20 "turning to page blank."

21 THE COURT: All right, go ahead.

22 MR. BERNSTEIN: If he wants to direct his
23 attention to something, why don't you turn to
24 garden apartments.

25 Q Well, why don't you turn to the garden apartments.

1 A Standards for garden apartments? As set forth in
2 section 702.8 requirements for apartments in the R-3 zone,
3 R-3 district, excuse me. There are two large tracts of land
4 located in the RC -- excuse me -- R-3C district. One com-
5 plies with the ten acre standard and the other does not as
6 well as some small lots fronting on Southern Boulevard.
7 No. Is it? Yes. Extending across from -- excuse me.

8 Q This is Southern Boulevard you mean?

9 A No, Green Village Road. Green Village Road extends
10 to the eastside of Shunpike.

11 Q That's this tract? A Yes.

12 Q On J-3. A The ten acre restrict-
13 ion is reasonable. I don't think it is a cost generating
14 factor.

15 Twelve dwelling units to the acre is a low density
16 standard for garden apartment development. The maximum
17 coverage of twenty per cent, I repeat the comment relevant
18 to townhouse development in that that standard pretty much
19 precludes development of multi-bedroom units.

20 The standard of a seventy-five foot setback from a
21 public street is not unreasonable. I think, in the case of
22 a major street, it may be minimal. In the case of a side
23 street, it may be excessive. And the fact that there is
24 a master plan with a street classification, I think, a far
25 better standard. It relates to setbacks from the function

1 of the street.

2 The section dealing with front building jogs, and I
3 referred to them as zigzags is an unreasonable cost gen-
4 erating -- I have been using the word "reasonable and the
5 reason is as to it is or it is not cost generating.

6 The requirement that no more than twelve units maybe
7 contained in a structure is cost generating, parenthesis
8 3 on page 7-13 is a building code regulation.

9 Q Would you tell us what that is?

10 A Parenthesis 4 is a building code regulation. Excuse
11 me. The standards contained on page 7-13, beginning with
12 parenthesis 3, continuing through the beginning of sub-
13 section, parenthesis E, close parenthesis, in my opinion
14 are all beyond the scope of the zoning ordinance and then
15 the reference back to parenthesis F, close parenthesis, are
16 the requirements harken back to all the sections that I
17 had discussed previously with respect to the townhouses,
18 which, again, in my opinion, accumulatively are cost
19 generating and, in my opinion, really have no place in the
20 zoning regulations.

21 They're either contained in other codes or should be
22 contained in other codes.

23 Example, your Honor, I am not advocating basement
24 apartments in an area that has a high water table. What
25 you have are both health codes, uniform construction codes

