

Transcript of Proceedings: examination of John Chadwick

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notes: pages missing

UL 000834S

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

GREEN VILLAGE 139 CPRPORATION,  
GERALD WEIR, JOSEPH GIOVANNOLI,

ML000834S

Plaintiffs,

-vs-

STENOGRAPHIC TRANSCRIPT

of

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

PROCEEDINGS.

Defendants.

Tuesday, April 1, 1980  
Wednesday, April 2, 1980.

Morris County Courthouse  
Morristown, New Jersey

B E F O R E:

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

TRANSCRIPT ORDERED BY:

JACQUES H. GASCOYNE, Superior Court Judge.

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

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

MESSRS. SACHAR, BERNSTEIN, ROTHERG, SIKORA & MONGELLO,  
BY: DANIEL S. BERNSTEIN, ESQUIRE,  
For the defendants.

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

1 J O H N C H A D W I C K, previously sworn.

2 CROSS EXAMINATION BY MR. BERNSTEIN: (continued)

3 Q Mr. Chadwick, the last time you testified, I be-  
4 lieve, you talked about the proposed Shunpike bypass?

5 A Yes.

6 Q Is that correct? A Yes.

7 Q Do you have any idea when that is expected to be  
8 completed? A No.

9 Q Do you have any idea as to whether or not the  
10 town has acquired the easements or rights-of-way for that  
11 proposed roadway? A No.

12 Q Do you have any knowledge that the town has done  
13 anything with regard to the proposed bypass?

14 A They designated on the master plan as a specific traffic  
15 improvement within their comprehensive plans.

16 Q Other than the designation on the master plan, do  
17 you know if the town has taken any steps to make the bypass  
18 a reality? A No, I do not.

19 Q Do you have any knowledge that would lead you to  
20 believe that the bypass would be constructed in the next  
21 six years? A No, I have no knowledge  
22 as to whether or not it is proposed in the Cap budget. If  
23 is not in the Cap budget I suspect it will result from private  
24 development of the Dodge tract.

25 Q Is there any significance which is attached to a

1 six year term with regard to planning in the State of New  
2 Jersey? A Yes.

3 Q And what is that significance?

4 A the Municipality Land Use laws requires municipalities  
5 to re-examine their land use laws every six years. And the  
6 State of New Jersey Division of Tax and local finance re-  
7 quires municipalities to submit annually a six year cap  
8 cap improvements program.

9 Q Now, why was it relevant that the -- strike that.

10 Is my recollection correct that the bypass would be  
11 about eight hundred feet to a thousand feet from the subject  
12 property, if you remember? If you don't --

13 A I wouldn't. I think, your recollection is correct.

14 Q Okay. Now, why was that relevant, Mr. Chadwick,  
15 to the issue of whether or not the subject property should  
16 be zoned for multi-family development?

17 A I believe, I described it previously.

18 Q You may have, but I'm entitled fortunately as the  
19 attorney for the defendant to ask you again. And I would  
20 like to know what is the nexus between having a bypass  
21 eventually built, what is the nexus between having a major  
22 road within eight hundred feet and the requirement that the  
23 property in question be zoned for multi-family development?

24 A In my judgment there is no fundamental reason for  
25 stopping the provision for townhouse and quadruplex uses

1 at the point of Green Village Road as shown in the master  
2 plan. The infrastructure proposed within the plan is  
3 roughly, extends, in my opinion, the planned activity  
4 centers of the municipality both in terms of to support  
5 development and in terms of traffic flow and it moves  
6 westerly along Green Village Road.

7 I am summarizing the testimony previously. I think,  
8 that would jar your recollection in terms of the fundamental  
9 reasons that I had given on the direct testimony.

10 Q Is it your testimony that traffic access would  
11 be easier that the principal nexus between the proposed  
12 Shunpike bypass and the requirement in your mind that the  
13 subject property be zoned for multi-family development?

14 A It is a combination of developments, Mr. Bernstein.

15 Q I'm just looking at the roadway and I would like  
16 to know how the roadway fits in the picture. I'm not  
17 interested in any other factors at this time.

18 A The roadway fits in that it provides additional access  
19 to the area and a major traffic route in roughly a north  
20 south direction within the municipality.

21 Q But you would agree that not every property which  
22 is on a major roadway should have a multi-family zone, isn't  
23 that right? A Yes.

24 Q In fact, in Warren Township over sixty per cent  
25 of the land which is adjacent to I-78 is zoned rural-

1 residential, isn't that right?

2 A No.

3 Q What percentage of the land in Warren Township  
4 adjacent to I-78 is zoned rural-residential?

5 A In 19, December 1978, the municipality adopted a new  
6 zoning ordinance and the new zoning ordinance establishes  
7 an environmental critical zone. It establishes an R-20  
8 zones and it establishes ROL, research, office, laboratory  
9 zone. It establishes industrial zoning.

10 The exact allocation of residential, smaller lot  
11 residential research, office laboratory, I do not have off  
12 the top of my head.

13 Q Could you tell us what, could you tell us the  
14 percentage of diminution in the rural-residential zone  
15 along I-78? A No.

16 Q Is it/<sup>a</sup>fair statement that in 1978 approximately  
17 eighty-five per cent of the land in Warren Township along  
18 I-78 was zoned rural-residential?

19 A When?

20 Q June of 1978. A I believe so.

21 Q I would like to know if you gave the following  
22 answer in a case entitled Austin Company versus Bernards  
23 Township, and in this case could you tell us, the court on  
24 which side you testified?

25 A On behalf of Bernards Township.

1 Q And you were testifying as the planner of Warren  
2 Township, is that correct? A Yes.

3 Q You were recommending that the property along  
4 I-78, which was owned by my clients at the interchange of  
5 Martinsville Road be retained in an R-3 zone which required  
6 minimum lot sizes of three acres and clustered lots of  
7 one half acre, isn't that correct?

8 A I believe so, although I don't remember the exact  
9 regulation of the zoning district, But I believe, they're  
10 fairly well described the way you put them.

11 Q Thank you. Was this your testimony? Page 116,  
12 line 10. "In terms of the residential development, the  
13 fact that there is and it is non-conforming and adjoining  
14 the highway in my judgment is not a prerequisite that the  
15 area is no longer suited for residential development.  
16 Because in itself, its magnitude or its extensive develop-  
17 ment in context with this area of both Warren Township and  
18 Bernards Township would mean that the ripple effect of one  
19 single use at the intersection of a major highway and an  
20 accessory road would require all lands both immediate and  
21 to the interland to be consistent with the gasoline  
22 station, in my opinion, that logic doesn't follow."

23 Is that your testimony? A That's reported  
24 in the transcript. It is under my name.

25 Q Fine. You don't recollect anything different

1 that you said or -- A Of course not.

2 Q And I believe you testified on behalf of Watchung  
3 in a case involving townhouses at the Watchung Circle?

4 A Yes.

5 Q And the Watchung Circle is one of the major,  
6 probably has one of the highest volumes of traffic other  
7 than Route 22 of any other area in Watchung?

8 A I disagree.

9 Q Route 22 is a high volume road?

10 A Yes.

11 Q You testified against townhouses at that location,  
12 correct? A The specific application, yes.

13 Do you want me to describe the application?

14 Q No, sir.

15 Now, I believe you testified previously to the state  
16 development guide? A Yes, sir.

17 Q And was it your testimony that Chatham Township  
18 was in a growth area? A Yes.

19 Q And you felt that was relevant?

20 A Yes.

21 Q Does the state development guide give any proposed  
22 densities which should be followed in residential areas in

23 a growth area? A It describes the  
24 densities within the document. Off the top of my head I  
25 don't recall them.

1 Q But you're sure there are proposed densities in  
2 the state development guide?

3 A Yes, sir. My recollection is that the guide, develop-  
4 ment guide of the State of New Jersey describes growth areas  
5 and it describes population densities within those growth  
6 areas. Wide ranges.

7 Q Now, you wouldn't happen to remember what the  
8 recommended densities are? A No.

9 Q I assume that they would include multi-family  
10 development in a growth area?

11 A Speaks to various types of housing. Doesn't recommend  
12 one type versus another.

13 Q What types of housing does it speak to in the  
14 growth areas? A Speaks to housing in  
15 general. And it speaks to various types of needs for hous-  
16 ing.

17 Q Well -- A Within areas.

18 Q Do you remember what it recommends?

19 A I can't quote to you specific paragraphs, Mr. Bernstein.  
20 I believe, I have the document.

21 Q If you have it, could you show us the densities  
22 that it recommends in the growth areas?

23 A If I am not mistaken, I do not have a copy of the  
24 development guide.

25 Q Fair enough. A With me today. And,

1 no, I could not quote them from recollection.

2 Q What is recommended with regard to the housing  
3 types for growth areas? A I'm not certain.

4 I understand your question, if it's asking the question, is  
5 there a specific recommendation for Chatham Township? No,  
6 there isn't.

7 Q No, that wasn't the question.

8 A If there is a recommendation of a housing type in  
9 growth areas in general, it speaks to various housing types  
10 within the document ranging from apartments to townhouses,  
11 et cetera.

12 Q Well, specifically, what, is it a, does it recom-  
13 mend for growth areas, if you know?

14 A No, I cannot cite the specifics.

15 Q And in general terms can you tell us what it  
16 recommends? A I just did.

17 Q What does it recommend for housing types in growth  
18 areas, if you can tell us? A It states that  
19 various types of housing, including single family and smaller  
20 lot townhouses, apartments, et cetera, would constitute  
21 types of housing within the growth areas.

22 It does not specifically recommend anyone form.

23 Q Now, you are the town planner for Warren Township,  
24 aren't you? A Yes.

25 Q You were the author of that town's master plan,

1 weren't you? A Yes, I was.

2 Q Isn't it a fact, Mr. Chadwick, that the highest  
3 density housing that was recommended in Warren Township was  
4 one family homes on ten thousand square foot lots?

5 MR. KLEIN: Your Honor, I think, we need a  
6 foundation for this kind of cross examination in  
7 terms of whether or not the circumstances of  
8 Warren Township is as compared to Chatham Township  
9 are such that the two in any way are analogous.  
10 Assuming that this is relevant to start with,  
11 which your Honor has already said he will allow  
12 Mr. Bernstein to probe to some extent. But, I  
13 think, if he is going to do this, that at some  
14 point he has got to put in some kind of foundation.

15 THE COURT: Well, he is using it for cross  
16 examination so you got that breadth and latitude  
17 in cross examination of credibility that doesn't  
18 always require relevancy.

19 You have the right on redirect to establish  
20 the credibility by establishing the foundation  
21 of disparity.

22 MR. KLEIN: Okay.

23 THE COURT: But I have to say that would be  
24 your problem on redirect.

25 MR. BERNSTEIN: If you could read the last

1 question, Earl?

2 THE COURT: I can paraphrase it, I think,  
3 Warren Township's highest density proposed was  
4 one family homes on ten thousand square foot lots.

5 THE WITNESS: My answer --

6 THE COURT: Is that correct?

7 THE WITNESS: My answer was yes.

8 THE COURT: Okay.

9 Q And Warren Township is in a growth area on the  
10 state development guide? A Correct.

11 Q In fact, the last application for townhouses  
12 before the board of adjustment was a case where you testified  
13 in favor of the town and against the application, wasn't it?

14 A That's correct.

15 Q And one of the reasons you gave in testifying  
16 against the application was that it was in a flood plain?

17 A That's correct. The reasons were based on the cir-  
18 cumstances of the case. Your firm representing the zoning  
19 board of adjustment knows full well that the property was  
20 ninety-five per cent below water.

21 Q And you obviously felt that the environmental  
22 features were something that the board should consider?

23 A The plan proposed six units to the acre on a piece of  
24 property that ninety-five per cent of the land is below  
25 water, in my opinion, made little sense whatsoever.

1           If you also recall the testimony, that the piece of  
2 property was one of the most remote areas of the municipality.

3           Q     How many miles was it from I-78?

4           A     From I-78?

5           Q     Yes.                           A     I don't know. I don't  
6 think I said I-78 contributed whatsoever in terms of its  
7 relationship to the sport facility of the municipality,  
8 be it police protection, shopping facilities, et cetera.

9           Q     Do you know how close the subject property is to  
10 any major interstate or any major state highway in terms  
11 of miles?                           A     The particular site

12 that we are referring to in Warren Township?

13           Q     No, in Chatham Township in our case today?

14           A     No, I do not.

15           Q     Could we have a definition of a major state high-  
16 way?

17                   THE COURT: Is that an interstate highway,  
18 Mr. Bernstein, an I designation?

19                   MR. BERNSTEIN: Well, I will be happy, if  
20 your Honor requires it.

21                   THE COURT: No, no. I'm just probing.

22                   MR. BERNSTEIN: Okay. I will ask a question  
23 then.

24           Q     How far is the PQ from 287?

25           A     I do not know.

1 Q Pardon? A I do not know.

2 Q From 78? A I do not know.

3 Q From Route 24? A I have not  
4 made a measurement from Route 24 or any other major traffic  
5 route of this property in terms of traveling distance.  
6 I have examined the property in context with the master  
7 plan of the municipality and its relationship to the zoning  
8 ordinance as adopted and all other activity shown in the  
9 master plan.

10 Q Do you know how close the PQ in Chatham Township  
11 is to Route 22? A I do not.

12 Q Do you know if the PQ in Chatham Township is  
13 closer or farther to the highway that I have mentioned  
14 than the PQ in Warren Township was to Route 78?

15 A Yes.

16 Q And what is the answer?

17 A The PQ would be further away from the highway  
18 that you recited than would the property in Warren Township  
19 from Route 78.

20 THE COURT: Are you talking about the prop-  
21 erty involved in the variance?

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

23 Q Now, you prepared the master plan of Watchung  
24 as well, didn't you? A Yes.

25 Q No multi-family development was recommended in

1 Watchung either, was it? A No multi-family  
2 development is contained in the master plan.

3 Q Did you make any recommendations in writing to the  
4 town where you suggested multi-family development?

5 A Yes.

6 Q You have copies of them you could forward to me?

7 A Yes.

8 Q I would request that you do that or bring it with  
9 you tomorrow. A I don't know if --

10 THE COURT: Just let's find out just writing  
11 down the question first.

12 MR. KLEIN: It occurs to me, your Honor, as  
13 to whether or not there was, there would be some  
14 condition of thinking out loud. Confidentiality  
15 or privilege relative to work papers that may have  
16 been submitted.

17 THE COURT: A little discovery too, isn't it?

18 MR. KLEIN: That's what --

19 MR. BERNSTEIN: It might and it might not be.  
20 I think, it is more a might than a might not.  
21 Well, if your Honor says he doesn't have to bring  
22 it, that's your Honor's ruling.

23 THE COURT: I think it is a little discovery.  
24 I think, it is a little too late for that.

25 MR. BERNSTEIN: Okay.

1 THE COURT: If you have got something you're  
2 prepared to deal with him on, fine. But, I think,  
3 it is a little too late.

4 MR. BERNSTEIN: Your Honor's the boss.

5 THE COURT: Okay. Well, not all the time.

6 THE WITNESS: I am a little confused. Am I  
7 still instructed --

8 MR. BERNSTEIN: No.

9 THE COURT: Not, you're not.

10 Q I will ask you if you agree with the following  
11 comment that appears in the Watchung master plan, and this  
12 is the last Watchung master plan, is that right?

13 A Yes.

14 Q I want to know if you agree with this statement.  
15 "Presently all of the available existing and new housing is  
16 single-family homes on large lots. Due to severe topography,  
17 limited accessibility, and in most instances an established  
18 land use character of the remaining vacant land, future  
19 land development should be restricted to low density residential  
20 use. Furthermore, in order to better provide for the protection  
21 of the natural terrain and water courses and to prohibit  
22 further encroachment upon flood hazard areas, flood plain  
23 encroachment and steep slope erosion controls will be re-  
24 quired." A Yes.

25 Q You agree with that? A Yes.

1 Q And would you agree, sir, that flood plain en-  
2 croachment and steep slope erosion controls should also be  
3 required in Chatham Township?

4 A Yes.

5 Q And would you agree that development in Watchung  
6 should be restricted to the low density residential use  
7 category? A For the reasons given.

8 Q Which were severe topography limited accessibility  
9 and established land use character?

10 A Also a description of the available vacant land repre-  
11 sents about ten per cent of the entire municipality in most  
12 cases all available vacant land is surrounded on all sides  
13 by large lot single-family homes.

14 Q And you would feel that it would be wrong to put  
15 even low density multi-family development in these large  
16 lot zones? A In context with the facts

17 set forth in the master plan of Watchung, yes.

18 Q You would even be opposed to townhouses at a  
19 density of three or four to the acre?

20 A We recommend townhouses to three or four acres in  
21 Watchung, the Borough of Watchung and Warren.

22 Q But not in the master plan.

23 A It was recommended and it had thorough public hearings  
24 of the fact of the matter was that private industry of hous-  
an and a  
25 ing build the land/acre/half residential lots, despite the

1 fact that it was higher densities allowed.

2 Q What do you recommend today in Watchung? Are you,  
3 sir, stating to us that Watchung today should have multi-  
4 family development. A It is academic.

5 There are three parcels of land left in Watchung.

6 Q I'm asking you though as an expert planner and  
7 the planner for Watchung. Is it your recommendation today  
8 that Watchung should have multi-family development consider-  
9 ing the fact that it is in/<sup>a</sup>growth designated area on the  
10 state development guide considering it is traversed by  
11 Route 22, considering it has substantial amounts of commerce  
12 along Route 22 and considering the fact that it has no legal  
13 multi-family dwellings. I want to know what your recom-  
14 mendation is to day for Watchung.

15 A I think, I just answered.

16 MR. KLEIN: Your Honor, Mr. Chadwick testified  
17 that recommendations from multi-family housing  
18 was made. The planning board had hearings on the  
19 matter. The planning board adopted a master plan after  
20 those hearings which excluded multi-family housing.  
21 It seems to me that's an answer to the question.

22 MR. BERNSTEIN: I would like to --

23 THE COURT: Wait a minute. He is asking him  
24 as an expert. Not what the planning board did.  
25 What he recommends.

1 MR. KLEIN: He testified that he recommended  
2 multi-family housing.

3 MR. BERNSTEIN: I am interested in what he  
4 recommends today, your Honor.

5 MR. KLEIN: What is the date of the master  
6 plan?

7 MR. BERNSTEIN: The date given was September  
8 18, 1979 and the witness agreed with what I have  
9 read

10 MR. KLEIN: That was six months ago.

11 MR. BERNSTEIN: I would like to know what  
12 he is recommending today.

13 THE COURT: It is a different question. I  
14 will allow it.

15 A It is on the, it is not the recommendation. It is the  
16 master plan in your hand dated 1979, Borough of Watchung.  
17 I reaffirmed the multi-family recommendation for the town-  
18 ship. Those lands, in my opinion, my professional opinion,  
19 was suited for multi-family development now are developed  
20 for single-family homes. In my opinion, those were the  
21 only lands suited for that type of development, therefore,  
22 I do not recommend any other locations because the few  
23 locations that remain are tracts of land completely sur-  
24 rounded by single family homes and many cases the only  
25 access is by a private lane having slopes in excess of

1 twenty per cent.

2 Q And what density did you recommend for the multi-  
3 family in Watchung? A I don't recall,

4 Mr. Bernstein. I don't recall.

5 Q Did you recommend any garden apartments?

6 A The recommendation was in the form of multi-family,  
7 whether townhouses or apartments, there wasn't a specific  
8 distinction between the two is my best recollection now  
9 going back and testing my recall, 1974 through 1976.

10 Q And you recommended, I assume, low density multi-  
11 family use? A I don't recall.

12 Q No recollection at all?

13 A None at all.

14 Q With regard to Warren Township. Are you recommend-  
15 ing today any multi-family development for Warren Township?

16 A We are studying the question. I am not prepared to  
17 make a recommendation.

18 Q That's in the state development guide as a growth  
19 area, isn't it? A Yes, it is.

20 Q And how many years have you been the town planner?

21 A The firm has represented the Township of Warren since  
22 1965 and I have represented the firm in Warren Township as  
23 the principal since 1968, I believe.

24 Q And, I believe, Warren Township is traversed by  
25 I-78? A Correct.

Chadwick - cross

1 Q And there is more industry in Warren Township  
2 at the present time than there is in Chatham Township?

3 A I believe so.

4 Q And you would admit, sir, that Warren Township is  
5 a developing community? A Yes.

6 Q And you can't today tell us whether or not you  
7 recommend multi-family development?

8 A I am not stating to you we can't make a recommendation  
9 for one form of housing or another. The study as to multi-  
10 family housing in Warren has been ongoing for a number of  
11 years and I am not prepared to give an answer to this court  
12 as to a recommendation to the Township of Warren as to a  
13 location or a density in terms of a question of need for  
14 multi-family housing or forms of housing suited to various  
15 income levels, family sizes specifically stated in the master  
16 plan, that there is a need and further studies necessary in  
17 that matter.

18 Q Now, how long have you studied the multi-family  
19 issue in Warren Township? A As recently as  
20 yesterday and beginning back with the master plan that be-  
21 gan in 1974.

22 Q And can you approximate how many man hours have  
23 been spent in studying the issue of multi-family development  
24 in Warren Township? A No.

25 Q I assume it is at least a hundred hours?

1 A I can't approximate it.

2 Q But you have testified that you have studied the  
3 issue was it since 1972? A '74.

4 Q Since '74. So that would be approximately five  
5 years you spent off and on studying the problem?

6 A That would be appropriate. Put off and on, yes.

7 Q And you can't give us a conclusion today, correct?

8 A That's correct.

9 Q When did you, when were you first retained to  
10 study the situation surrounding the plaintiffs' property in  
11 the present law suit, that is, the land that was owned by  
12 Green Village 139 Corp.? A The fall of  
13 1978.

14 Q How many hours did you put in that study?

15 A I think, it is approximately -- I'm going from recall  
16 again. We are going back in, several years in time. I  
17 think, it is approximately a week of my personal investi-  
18 gation and staff time of approximately a week and a half.

19 Q And, Mr. Chadwick, isn't it a fact that you were  
20 hired in December of 1979, to study whether or not the over-  
21 all Chatham Township ordinance was exclusionary?

22 A Yes.

23 Q And, I believe, you probably studied that ordinance  
24 for approximately a month. Is that correct?

25 A I wouldn't disagree. I don't keep mental records of

1 exactly how long I studied things, Mr. Bernstein, but I  
2 wouldn't disagree.

3 Q And, I assume that you hadn't other than the  
4 present law suit, you had no previous experience as far as  
5 cases were concerned in Chatham Township?

6 A That's correct.

7 Q Now, you're testifying based on your study of  
8 the zoning ordinance for approximately one month. You're  
9 confident to state that Chatham Township does not have  
10 enough multi-family development, is that correct?

11 A Yes.

12 Q And based on your one month study you can state  
13 with confidence that the densities allowed in the zoning  
14 ordinance are improper, is that correct?

15 A I think, I understand your question, Mr. Bernstein,  
16 but the word "improper" is confusing to me.

17 Q Unreasonably exclusionary illegal. Isn't it  
18 your testimony, Mr. Chadwick, that as a planner you find  
19 the densities in Chatham Township's zoning ordinance to be  
20 illegal, improper and exclusionary based on your one month's  
21 study? Isn't that correct?

22 A Wouldn't cover all of those words.

23 Q What is it then, whatever the densities, are  
24 they illegal? A I am not a lawyer.

25 Q Are they unreasonable? A I believe

1 so.

2 Q Are they exclusionary? A Yes.

3 Q That's based on your one month study, correct?

4 A Correct.

5 Q Yet today you can't give us recommended densities  
6 for multi-family development after five years of off and  
7 study in Warren Township, correct?

8 THE COURT: That is argumentative.

9 MR. BERNSTEIN: Fair enough.

10 Q Now, I believe, you testified about the interior  
11 of the existing apartments in Chatham Township, correct?

12 A The interior?

13 Q Yes, have you ever been --

14 A I don't recall.

15 Q -- Inside necessity of the apartments?

16 A No.

17 Q You have any knowledge about the interior of the  
18 apartments? A No. No, sir.

19 Q Do you know the densities of existing apartments?

20 A No, I have never reviewed the specific site plan.

21 Q Do you know the square footage of the existing  
22 apartments? A I never reviewed the

23 specific site plan. I have not been in there, nor attempted  
24 to measure them.

25 Q Well, didn't you testify that they were not least

1 cost apartments? A In my observation  
2 of the apartments from the roadway, they are not least  
3 cost apartments.

4 Q You could make that statement without knowing  
5 the density, the square footage of the apartments, the  
6 number of bedrooms, the number of storage spaces, the  
7 improvements that were required for the property and the  
8 zoning that was in effect? Is that what you're telling us?

9 A From an exterior observation, I believe, I can give  
10 at least more than a layman's opinion as to what the  
11 probable rental costs are. And in addition, if you recall  
12 my testimony, a member of my staff resided in the apartment  
13 for a short period of time.

14 Q Did he give you any of the information that I  
15 just went over, such as density, square footage, number of  
16 bedrooms in the units, the existing zoning when they were  
17 built? Did he give you any of that information?

18 A No.

19 Q You would admit then that your opinion as to  
20 whether or not these were least cost units would be super-  
21 ficial at best?

22 MR. KLEIN: I object, your Honor.

23 THE COURT: Argumentative.

24 Q Would you admit that you hadn't made a thorough  
25 study in determining whether or not the apartments were

1 least cost housing?

2 MR. KLEIN: Objection.

3 THE COURT: I will allow it.

4 A No.

5 Q You would admit it would not admit?

6 A I would not admit it.

7 Q You say you made a thorough study in order to de-  
8 termine --

9 A One, the fundamental issues,  
10 Mr. Bernstein, would be the rent cost.

11 Q You feel that reason is the primary factor in  
12 determining whether or not multi-family units are least  
13 cost --

14 MR. KLEIN: Your Honor, I think, Mr. Chadwick  
15 had said one of the fundamentals, and, I think, the  
16 way the question was worded was the primary. I  
17 don't think that was a proper restatement of Mr.  
18 Chadwick's testimony. I object to the form of the  
19 question.

20 THE COURT: He did not say --

21 MR. BERNSTEIN: Well, what --

22 THE COURT: If you rephrase the question  
23 question. Just the way you phrased it. The  
24 emphasis -- read the question back.

25 (Last question read by the reporter.)

MR. BERNSTEIN: That was the question.

1 THE COURT: Okay.

2 Q Do you feel that the rental that's charged is the  
3 primary factor in determining least cost housing?

4 A The question is not a simple question to answer, Mr.  
5 Bernstein. If you have private rental housing with no sub-  
6 sidies available whatsoever in the municipality either  
7 through section 8 or that the development was funded through  
8 some form of subsidy program to provide for reductions in  
9 rent, that's one circumstance. But when you have private  
10 housing that is privately financed and rented with no sub-  
11 sidy available whatsoever, then rent cost does give an  
12 indication of what the market will bear and also gives an  
13 indication of whether or not you can classify it as moderate  
14 cost or luxury apartments based on exterior observation.

15 Obviously an interior inspection survey of tenants,  
16 et cetera would be necessary to make a definitive categor-  
17 ization. It is moderate cost within this range as compared  
18 to other apartments in the area. It is high cost apartments  
19 compared to other apartments in the area, et cetera.

20 Any observation of the apartments at the easterly end  
21 of Green Village Road that they are not least cost, that  
22 they are moderate to high cost apartments based on the exter-  
23 ior observation in very good condition and well maintained  
24 area and in terms of previous knowledge of rent costs.

25 Q You would admit that being in good condition doesn't

1 take something out of the least cost category?

2 A I agree with you.

3 Q Yes. Now, one of the primary factors that you  
4 would use in determining if something is least cost housing,  
5 we come to multi-family development. What is the criteria  
6 you look for?

7 A Are you asking for an  
8 answer'--

9 Q Generally -- A -- relevant to exist-  
10 ing development or are you asking for an answer relevant to  
11 development regulations?

12 Q Development regulations.

13 A Density would be a factor. The types of development  
14 regulations set forth in yard areas, architectural controls,  
15 unit size, various types of amenities that may be required,  
16 types of improvements that may be required by the municipality,  
17 the thickness of pavement for driveways. The requirement of  
18 curbing. Requirements of landscaping. Requirements that  
19 all services must be provided by the developer.

20 Q Such as what? A Garbage collection,  
21 snow removal, et cetera.

22 An examination would always be made in context with  
23 serving facilities such as road access, utilities, what have  
24 you. For example, if a municipality zoned a piece of property  
25 that was one that had no road frontage whatsoever and was  
under water and zoned it for twenty-five units to the acre

1 with no other regulations, the probability of least cost  
2 housing is highly remote.

3 If the land is, in my opinion, using the term developable  
4 and has a reasonable expectation of utility services or they  
5 are available, in my opinion, the potential for least cost  
6 housing would be significant. Again, using the same example  
7 twenty-five to the acre.

8 Q You would admit that you could answer these criteria  
9 as to the existing multi-family development in Chatham Town-  
10 ship? A I don't understand your question  
11 at all.

12 Q Okay. You can't tell us whether or not the exist-  
13 ing apartments meet the criteria that you just described for  
14 examining an ordinance and determining if it is exclusionary?

15 A I believe, I have already answer<sup>ed</sup>/the question, Mr.  
16 Bernstein. In my opinion, the apartments as they are, are  
17 not least cost housing.

18 Q You can't tell us, Mr. Chadwick -- strike that.

19 You can't relate the existing apartments in Chatham  
20 Township to any of the criteria that you just described, can  
21 you?

22 MR. KLEIN: I don't understand the question.

23 MR. BERNSTEIN: I think, it is a pretty  
24 simple question.

25 THE COURT: What he is saying is, you just

1 gave me a list of criteria. Can you tell us the  
2 relationship of those criteria to the existing  
3 apartments or how do, does the existing apartments  
4 fit into those criteria. Tell me what the factors  
5 are that are there or, if you can.

6 MR. KLEIN: Well, I'm not sure that's the way  
7 the question came out.

8 MR. BERNSTEIN: That's just --

9 MR. KLEIN: If that it what it means, that's  
10 fine.

11 A Mr. Bernstein, the apartments -- I asked you a question.  
12 Did you want me to describe what my opinion was as to  
13 development regulations that would produce least cost housing,  
14 or did you want my opinion as to how I would assess least  
15 cost housing that existed?

16 Q What you are -- A The two are not  
17 combined because you have development regulations in an  
18 ordinance doesn't necessarily mean you will have least cost  
19 housing on the ground and/or if you made a comparison of  
20 development regulations which could be developed by whatever  
21 source, and there was one hundred per cent agreement in  
22 whatever parties reviewed them, that they would produce least  
23 cost housing whether or not least cost housing would be  
24 produced is another question.

25 The units on the ground, in my opinion, in Chatham

1 Township are not least cost housing. I have given you the  
2 reasons why and a comparison of the regulations that I have  
3 recently given, for example, a density of twenty-five to  
4 the acre, a site that is readily developable, the availability  
5 of utilities.

6 I know the density of the development is not twenty-  
7 five to the acre. I know utilities are there and road  
8 access is there.

9 Q Well, Mr. Chadwick, is it your testimony that you  
10 can look at the exterior of a multi-family development that  
11 is existing and tell whether or not the multi-family develop-  
12 ment constitutes least cost housing?

13 A No, sir.

14 Q Is that your testimony?

15 A No,,it is not.

16 Q Can you, Mr. Chadwick, look at the exterior of a  
17 development and tell us whether or not it is least cost  
18 housing?

19 A It contributes to the  
determination.

20 Q What else do you have to know other than an inter-  
21 ior survey of the units before you can tell us whether or  
22 not it is least cost housing?

23 A Rent costs.

24 Q Anything else you have to know?

25 A Income levels.

1 Q What? A Income levels.

2 Q Fine. Anything else you have to know?

3 A And all other costs that may run with the apartments.  
4 Whether utilities are paid, not paid, additional fees,  
5 garbage collection, et cetera.

6 Q Now, sir -- A The context is not  
7 possible. It is a failing on my part that the least cost  
8 housing one is going to relate to the prevailing costs of  
9 housing within an area. Least cost housing in New Jersey  
10 is not the same cost as least cost housing which would be  
11 in Appliachia.

12 Q Now, you are familiar with the Cardinal Hill  
13 Apartments on River Road, are you not, Mr. Chadwick?

14 A I am familiar with apartments on River Road. I am not  
15 familiar with the specific name. If their name is Cardinal  
16 Hills, I would accept that.

17 Q Can you tell us what the rents are today in 1980  
18 for one bedroom units in the Cardinal Hill Apartments?

19 A No.

20 Q Can you tell us what the rents are for two bedroom  
21 apartments? A No.

22 Q Do you know whether or not the rents include  
23 utility charges? A No.

24 Q Do you know whether or not tenants pay extra for  
25 garbage collection? A No.

1 Q Do you know what the rents are today for the  
2 Chatham-Hills Apartments? A No.

3 Q Do you know whether the rent includes utility  
4 charges? A No, I do not.

5 Q Do you know what the bedroom mix up is?

6 A No.

7 Q Do you know what recreational facilities are pro-  
8 vided in either of the apartment units?

9 A No.

10 Q And yet you're willing to -- do you know what the  
11 densities are in either apartment complex?

12 A No.

13 Q Do you know the percentage of open space?

14 A No.

15 Q Do you know what the front setbacks are?

16 A No.

17 Q Yet you're willing to tell us today that these  
18 apartments are not least cost housing, correct?

19 A The apartments that are on Green Village Road and  
20 Shunpike, in my opinion, are not least cost housing. The  
21 apartments on River Road, I have not testified to whatsoever.

22 Q Do you know if they're least cost housing?

23 A No.

24 Q Mr. Chadwick, tell us what housing region you  
25 consider Chatham Township to be in?

1 A I believe I understand your question, Mr. Bernstein,  
2 but I am not certain and I wouldn't speculate on it, so I  
3 would ask you if you could be a little more precise?

4 Q Well, did you make a study of the regional needs  
5 for housing when you took this case on behalf of the  
6 plaintiffs? A Independently? No.

7 Q When you say independently, did you accept any  
8 housing region anyone else had set up?

9 A I examined various source material which I described  
10 in terms of direct testimony.

11 Q Well, do you have a conclusion as to what region  
12 Chatham Township is in? A In my opinion,  
13 they are within the, obviously a mega-region, which is the  
14 tri-state regional area. They're also within subregions,  
15 definitive broad areas. I could not offer to you and I  
16 have stated that previously in a question from Mr. Klein.  
17 They quite obviously are within the Morris County and Essex  
18 County areas. As to the boundaries of those areas, I have  
19 not made an attempt to define them.

20 I have reviewed, as I said before, to draw any con-  
21 clusions and state them to this court the materials developed  
22 by the municipality from their consultants and the materials  
23 developed by the Department of Community Affairs and the  
24 other documents that I have described previously.

25 Q Now, to get back to the question we were on.

1 In determining multi-family development as least cost housing  
2 one of the criteria is rent, is that correct?

3 A In context with a development on the ground, yes.

4 Q On the ground? A Yes.

5 Q Is that a primary criterion?

6 A On the ground existing developed housing, yes, in my  
7 opinion.

8 Q And is it one of the criterion whether or not  
9 there are recreational facilities for the multi-family  
10 development? A In terms of least cost

11 housing?

12 Q Yes, sir. A I don't understand  
13 your question. Is the question a recreation facilities  
14 needed for least cost housing? Is that the question?

15 Q No. The question is do recreational facilities  
16 indicate to you that existing apartments are or are not  
17 least cost housing? A No.

18 Q Okay. Fine.

19 How about the factor that the tenant must pay utilities.  
20 Is this a factor to consider when determining whether or  
21 not an apartment is least cost housing?

22 A When I use the term rent, rent includes all costs.

23 Q How about existing densities, is that a factor  
24 to determine in ascertaining whether or not existing multi-  
25 family development is least cost housing?

2 Q Yes, sir. Just on existing development.

3 A It is not going to be a direct factor. It is an  
4 indirect factor that is going to be reflected in what I  
5 said. In my opinion, would be, fundamental would be the  
6 cost of residing in that housing.

7 Q Other than rent, can you give us any other  
8 criterion by which one could determine if existing multi-  
9 family development is least cost housing?

10 A The cost of the housing compared to one, its condition.  
11 More specifically, if there were two multi-family developments  
12 both of them twelve to the acre and the prevailing costs  
13 have a two bedroom apartment unit of \$360 a month less  
14 utilities, one had a cost of \$250 a month and the other  
15 \$450, the first one would be least cost and the latter  
16 would not.

17 Q Well, I am not interested in comparisons.

18 A All things being equal, Mr. Bernstein.

19 Q Mr. Chadwick, other than rent, can you tell us  
20 any other factors that I could use as a standard in multi-  
21 family development in order to determine if existing in the  
22 ground apartments and townhouses are least cost housing?

23 A From an exterior observation, that is the factor you're  
24 asking?

25 Q Exterior or interior. I just want to get all the

24 incompatible with least cost housing?

25 A No.

1 Q Is it your testimony that recreational facilities  
2 are incompatible with least cost housing?

3 A No.

4 Q Is it your testimony that landscape areas are  
5 incompatible with least cost housing?

6 A No. My testimony, Mr. Bernstein, is that the degree by  
7 which the exterior observation could be made. And you asked  
8 me a question as to if I drove up to a rental housing pro-  
9 ject and if I had no idea what the costs were, what could  
10 I expect by an exterior observation. And I tried to describe  
11 to you in a very real world description what you could  
12 expect.

13 Q Are there any other criterion that you as a  
14 planner could take into account other than what you have  
15 described in order to determine if the existing multi-  
16 family units are least cost housing? Anything else?

17 A The two fundamental issues that I described to you,  
18 number one, the rent cost and then the determination as to  
19 available subsidies.

20 Q And it is your testimony that you have not done  
21 this for the existing units in Chatham Township?

22 A I have not done a study as to whether or not section  
23 8 certificates are available within the existing apartments.

24 Q Have you -- A My opinion would  
25 be that they would not because in my judgment the rents

1 would exceed the fair market for the region three story  
2 non-elevated apartments.

3 Q Have you done a study on the apartment costs?

4 A No.

5 Q You testified on behalf of the Parsippany-Troy  
6 Hills Public Advocate's law suit?

7 A Yes.

8 Q Is it your conclusion today that the existing  
9 multi-family development in Parsippany-Troy Hills is least  
10 cost housing? A Yes.

11 Q Have you done a study on the existing rents  
12 which are charged in multi-family developments in Parsippany-  
13 Troy Hills? A Yes.

14 Q Have you submitted that study to the Public  
15 Advocate? A No.

16 Q Have you done a fair share allocation formula  
17 or plan for Chatham Township in connection with the  
18 present law suit? A Have I examined  
19 the estimates myself personally? No, I have not.

20 Q I believe it was your testimony that the state  
21 allocation plan was a document that you considered to be  
22 valid? A In a general sense, yes, Mr.  
23 Bernstein.

24 Q What I would like you to do, Mr. Chadwick, do  
25 you have a copy of that document?

1 A Yes, I do.

2 Q Would you tell us what the allocation is for  
3 Watchung? A Do you have the page by

4 any chance? I have the document in front of me.

5 MR. KLEIN: What county is Watchung?

6 MR. BERNSTEIN: Somerset.

7 MR. KLEIN: Somerset?

8 Q It is towards the end, Mr. Chadwick. It looks  
9 like it is page 327. I'm sorry, that's housing. It is  
10 the wrong place. 831. A Okay. It is -- I

11 don't recall the exhibit number on the report. It is the  
12 revised statewide housing allocation report of New Jersey  
13 dated May, 1978. And on page 832, I believe this is the  
14 appendix A. The housing allocation listed on column 12  
15 is 732.

16 Q 732? A 782. Excuse me.

17 Q That's the units of low and moderate income  
18 housing? A Correct.

19 Q You agree with that allocation for Watchung?

20 A No.

21 Q What's the allocation for Warren Township for  
22 low and moderate income housing?

23 A 991.

24 Q You agree with that allocation?

25 A No.

1 Q What's the allocation for Parsippany-Troy Hills,  
2 Morris County? A 5007.

3 Q You agree with that allocation?

4 A No.

5 Q Why don't you agree with the Parsippany-Troy  
6 Hills allocation? A Inadequate remain-  
7 ing land exists for 5007 units.

8 Q How many years have you been the town planner  
9 for Parsippany-Troy Hills? A Twelve.

10 Q What is your contention as to the amount of low  
11 and moderate income housing which is the present obligation  
12 of Parsippany-Troy Hills? A They exceed  
13 the obligation under this formula.

14 Q Well, I didn't ask that. I asked, what is your  
15 contention as the town planner to their present obligation  
16 for additional low and moderate income units?

17 A They exceed their obligation.

18 Q So -- A Under this formula.

19 Q I didn't ask this formula. I asked, Mr. Chadwick,  
20 what is your recommendation today? What is their present  
21 obligation for new low and moderate income housing units,  
22 if you know? A I know there is an

23 official housing assistance plan for the municipality, Mr.  
24 Bernstein.

25 Q I didn't ask that. A You're asking

1 me specific numbers, Mr. Bernstein. I'm trying to recall.  
2 The township has an official housing allocation plan and I  
3 can't recall the numbers. I could only or be a guess and I  
4 don't think that is adequate.

5 Q You can't give us an estimate today as to what the  
6 obligation is -- A The plan --

7 Q -- for Parsippany-Troy Hills?

8 MR. KLEIN: I don't know if that is what he  
9 said.

10 MR. BERNSTEIN: If he didn't say that, I would  
11 like to hear what the estimate is.

12 A The housing assistance plan for substantial rehabilit-  
13 ation and new construction, I believe, contains 890 units,  
14 but that's a recollection, Mr. Bernstein, and an additional  
15 subsidy to existing housing, which is the principal housing  
16 need both existing and estimated in the future of 1650.

17 Q So is the total figure 800 or 1600 or 2400?

18 A Eight hundred is the best recollection. I believe it  
19 is closer to 900, but 1650 is 2450.

20 Q So it is your testimony today that the state  
21 allocation guide was off by a hundred per cent in the amount  
22 that they allocated in Parsippany-Troy Hills?

23 A Correct.

24 Q Now, with regard to Watchung. I believe, that the  
25 allocation of Watchung is 782 units, is that correct?

1 A Yes.

2 Q And is it your testimony -- strike that.

3 What is your testimony as regards to the present obli-  
4 gation of Watchung for low and moderate income housing?

5 A I haven't made an examination of their obligation, Mr.  
6 Bernstein. I stated to you previously in terms of cross  
7 examination as to the present circumstances in the Borough  
8 of Watchung that in my judgment that municipality is sub-  
9 stantially developed.

10 Q Is it your testimony -- A Based on  
11 that conclusion --

12 Q Excuse me. A -- the 782 units, <sup>in</sup>/my  
13 judgment, cannot be physically developed within the borough  
14 unless you raise existing development to do so.

15 Q Well, you would admit that there are at least four  
16 to five hundred vacant acres in Watchung?

17 A No, I would not.

18 Q How many acres are there that are vacant in Watchung  
19 today? A I can't recall. I have a rough  
20 recollection of something in the area of 150 acres.

21 Q You're saying that physically?

22 A But that is a rough recollection.

23 Q You're saying physically you couldn't put seven  
24 hundred units on a hundred fifty acres?

25 A In the condition of Watchung. That's correct. That

1 hundred fifty acres is either a side of Watchung mountain  
2 or located between Route 78 and the Dead River.

3 Q Which would be in the flood plain, I assume?

4 A Which has no access.

5 Q Now, has there been dynamic development in Watchung?

6 A No.

7 Q For the past five years? A No.

8 Q It has been spotty? A Yes.

9 Q So that if you testified in 1978 that there were  
10 approximately a thousand vacant acres in Watchung and approx-  
11 imately four to five hundred that were developable, you would  
12 admit that the approximations are the same today?

13 A No.

14 Q No? A I admit the testimony  
15 in 1978 was incorrect.

16 Q I ask you if you testified on July 6, 1978, in the  
17 matter Timber Properties, Inc., before the Watchung Board  
18 of Adjustment? A I testified in that  
19 case. I don't recall the exact date. You have a copy of  
20 the transcript?

21 Q Yes. A Yes.

22 Q And there was an application for townhouses at the  
23 Watchung Circle? A Correct.

24 Q And does the transcript show you making the follow-  
25 ing statement? "Since 1971--" I'll get up here with you.

1 "Since 1971 there have been 285 certificates of  
2 occupancy for single-family residences given. A review of  
3 the municipal records indicates that 99 per cent of those  
4 dwellings were constructed on lots of 60,000 square feet or  
5 greater. Applying a calculation of single-family homes by  
6 acreage, our estimate, or my estimate, is approximately 500  
7 additional acres of land have been consumed since 1971, which  
8 leaves approximately one thousand acres of land remaining  
9 undeveloped within the community. Of that thousand acres  
10 of land, based upon examination of tax maps, approximately  
11 five hundred acres is within flood plain or somewhat land  
12 locked lying between the Greenbrook and Route 78, to the  
13 north. That remains, in terms of developable acreage, my  
14 estimate is approximately five hundred acres, which repre-  
15 sents something in the magnitude of one-eighth of the  
16 municipality."

17 Now, I ask you, sir, was that your testimony on July 6,  
18 1978 before the Watchung Board of Adjustment?

19 A Yes. It is in the transcript. I would assume it is  
20 correct.

21 Q The transcript also shows on page 34. "So then  
22 your analogy of the container --" this is a question being  
23 asked by Mr. Rissi. "I think, the example you used was  
24 ninety per cent that is almost directly transferrable to  
25 our community with four hundred acres remaining of the rough-

1 ly four thousand?"

2 "THE WITNESS:" That is Mr. Chadwick. "That's correct."

3 Was that your testimony?

4 A Yes.

5 Q Is it your testimony here today that you erred  
6 when you testified in 1978 as to the approximately four to  
7 five hundred vacant acres in Watchung?

8 A No.

9 Q Was it -- you did state that?

10 A I withdraw that, Mr. Bernstein, and your question, you  
11 asked me if I could estimate the available developable  
12 acreage in Watchung today. And I hesitated. And then I  
13 said to the best of my recollection approximately two hundred  
14 acres. And it is some place in between. Two hundred and  
15 five hundred.

16 I do not know exactly the amount of development taking  
17 place since June of 1978, the date of that transcript that  
18 you have in your hand.

19 Q It has been modest, hasn't it?

20 A But it would be modest, in my opinion.

21 Q Now, assuming that you were correct in 1978 and  
22 there were four hundred vacant developable acres, you would  
23 admit there is lots of space in that four hundred develop-  
24 able acres for seven or eight hundred least cost housing  
25 units? A No, I would not.

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4 plain or somewhat landlocked, is that correct?

5 A Yes.

6 Q Why did you take out that five hundred acres which  
7 was in the flood plain? A The area between

8 Route 78 and the Dead River or Green Brook is delineated by  
9 the Department of Environmental Protection under the Green  
10 Brook and Stony Brook flood hazard study areas.

11 It specifically shows that area as classified as a  
12 floodway as I have described them in direct testimony.

13 Q But -- A And then there are  
14 areas that were severed with the acquisition of the right-  
15 of-way for Route 78, that of no access whatsoever. I con-  
16 sider those lands remotely developable so I subtracted  
17 them.

18 Q I'm curious, Mr. Chadwick, as to why you used the  
19 term floodway in the transcript when today you're describing  
20 it as the floodway. Do you have any explanation?

21 A Read that question back. You said the same thing.

22 Q I'm curious as to why you used the term "floodway"  
23 excuse me.

24 I'm curious as to why you use the term "flood plain"  
25 in the transcript when today you're describing the area as

23 duality of definitions for the term developing community?

24 A No, I haven't cross examined other planners as to  
25 whether or not they use the term developing in an urban

1 municipality and also use the term developing in a suburban  
2 municipality.

3 Q Now, turning once again to the 1978 allocation  
4 plan by the DCA. Can you tell us what the allocation is  
5 for Warren Township?

6 THE COURT: He told us, didn't he?

7 MR. BERNSTEIN: That was Watchung, your  
8 Honor.

9 MR. KLEIN: He also told us Warren.

10 MR. BERNSTEIN: Okay. Warren is 991.

11 THE COURT: Yes.

12 MR. BERNSTEIN: That's correct.

13 Q Now, do you agree that that is the number of low  
14 and moderate income dwelling units?

15 THE COURT: He already said he did not  
16 agree with it.

17 MR. BERNSTEIN: With Warren as well as  
18 Watchung?

19 THE COURT: Right. Just went through the  
20 list and he gave it.

21 MR. BERNSTEIN: Okay. Fair enough. Thank  
22 you.

23 Q Mr. Chadwick, is it a fair statement that the  
24 three communities which you represent as the town planner  
25 which are closest to Chatham Township are Warren, Watchung

1 and Parsippany-Troy Hills? A The Borough  
2 of Fairfield may also be included. I really don't know,  
3 Mr. Bernstein.

4 Q Fairfield is in which county?

5 A Of all the municipalities, that is Essex County.

6 Q Essex County. There are at least three of the  
7 four communities that you represent that are closest to  
8 Chatham Township, correct?

9 MR. KLEIN: Could we get some -- excuse me,  
10 Mr. Chadwick -- could we get some definition of  
11 closest? What is the basis of comparison?

12 MR. BERNSTEIN: Most people know that when  
13 you say closest you're talking in terms of inches,  
14 feet, miles, and I think, it is a little absurd  
15 for Mr. Klein to say what do you mean closest?  
16 Physically closest.

17 MR. KLEIN: Analytically close or physically?

18 MR. BERNSTEIN: Physically close.

19 THE COURT: That he presently -- excuse me --  
20 that he presently represents are you talking  
21 about?

22 MR. BERNSTEIN: As a town planner. Yes, sir.

23 THE COURT: Okay. Just to clear it up. You  
24 do not now represent Hillsborough, Bernardville  
25 and Bernards, rather?

1 THE WITNESS: That's correct.

2 THE COURT: All right. Oh, you do not repre-  
3 sent Dover?

4 THE WITNESS: That's correct.

5 THE COURT: Okay. All right. You mean  
6 physically close?

7 MR. BERNSTEIN: Physically close.

8 THE COURT: Okay.

9 A And the only other question, not a question, but a  
10 comment is that I do not know whether the City of Linden falls  
11 within that information.

12 Q Well, Linden is certainly farther from Chatham  
13 Township than either Warren or Watchung. You would concede  
14 that? A Oh, yes.

15 Q And Parsippany-Troy Hills is closer to Chatham than  
16 Linden?

17 MR. KLEIN: I don't know if that's true, your  
18 Honor.

19 MR. BERNSTEIN: Wait a minute. I object. If  
20 Mr. Klein wants to testify, I would be more than  
21 happy to put him on the stand.

22 THE COURT: Gentlemen, please, please. Is that  
23 relevant? I mean?

24 MR. BERNSTEIN: I would like to, well, like to  
25 know the answer.

1 THE COURT: All right.

2 A I don't know if that is true.

3 Q Pardon? A I don't know if that  
4 is true.

5 Q You don't know if that is true. What are the five  
6 closest communities that you represent as the town planner?

7 A Linden, Fairfield, Watchung, Warren and Parsippany-Troy  
8 Hills.

9 Q Right. Now, I would like you to turn to page 822.

10 THE COURT: This is in the --

11 MR. BERNSTEIN: State developing guide.

12 THE COURT: Allocation?

13 MR. BERNSTEIN: Yes, sir.

14 A I have the page in front of me, Mr. Bernstein.

15 Q It indicates that Fairfield has a housing allocation  
16 of 2333 units? A Yes.

17 Q You agree with that figure?

18 A No.

19 Q Why don't you agree with it?

20 A Fairfield has approximately three hundred acres of land  
21 that is undeveloped, in my opinion, suited for residential  
22 development.

23 Q Could you put twelve units to the acre and satisfy  
24 more than two thousand units? A Not with-  
25 out adequate sewer capacity and the borough sewer system was

1 designed in accordance with the recent regulations of the  
2 Department of Environmental Protection and the capacity of  
3 the lines are such that there is some flexibility, but not for  
4 2333 units when the municipality only has, I think, approx-  
5 imately 3600 units in the whole town.

6 I don't believe that flexibility of the line capacity  
7 would be two hundred per cent capacity range.

8 Q Do you have any estimate as to what should be the  
9 allocation for Fairfield for low and moderate income housing?

10 A No, I do not.

11 Q How long have you been the planner there?

12 A I believe, the firm was retained in 1968 and I have  
13 represented the firm, I don't recall, some place in the early  
14 1970's, Mr. Bernstein, with other staff personnel assisting.

15 Q Have you prepared any master plans for Fairfield?

16 A Yes, I have.

17 Q Have you done any fair share or regional analysis  
18 for housing needs for Fairfield?

19 A Yes, we did.

20 Q And did you come up with any numbers as to an  
21 obligation for that community?

22 A No, we did not. The housing studies were conducted in  
23 19, early 1970 and were completed in 1973 or 1974. And in  
24 context with the terminology or using -- I'm answering the  
25 question, no, we did not because the terminology is an art

1 form that developed in the 1970's so housing studies were of  
2 a different discipline.

3 Q Would you agree that the allocation of 2300 units  
4 is substantially more than Fairfield could absorb?

5 A For the reasons I have given.

6 Q Fine. Now, I would like you to turn to page 833  
7 of the state allocation guide -- strike that -- of the state  
8 housing allocation plan. A Yes.

9 Q And can you tell us what the allocation is for  
10 Linden? A Twenty-seven twenty-nine.

11 Q And can you tell us whether or not you agree or  
12 disagree with that figure? A I have  
13 never made an examination, Mr. Bernstein. I am not so sure  
14 that figure isn't out of date. This is based on an allocation  
15 of 1970 and I notice there is no credit given for assisted  
16 housing. There in fact has been something in the magnitude  
17 of a thousand units either substantial rehabilitation, new  
18 construction units in Linden since 1970. But I have not made  
19 a detailed examination of the City of Linden.

20 The City of Linden, so you understand, the largest single  
21 family lot is five thousand square feet and the smallest is  
22 twenty-five hundred square feet. There are two zones. Five  
23 thousand square feet and twenty-five hundred square feet.

24 Q Now, with regard to the City of Linden. How many  
25 years have you been the town planner?

1 A We were retained in 1967 or '68.

2 Q And you personally?

3 A Since 1967, 1968.

4 Q And would you as a planner, would you say that  
5 Linden is a developed community?

6 A Yes.

7 Q And as a developed community it had no obligation  
8 for providing low and moderate income housing?

9 THE COURT: No obligation for ...

10 MR. BERNSTEIN: Providing low and moderate  
11 income housing in its zoning ordinance.

12 A In the context of the --

13 THE COURT: You mean new?

14 MR. BERNSTEIN: New.

15 THE COURT: New.

16 A In the context of the developing terminology of Mt.  
17 Laurel or Oakwood at Madison, I would say it has no obligation.  
18 In the context with housing needs identified in the municipality  
19 in the housing programs are developed, as a result of a measure  
20 of those needs.

21 My answer is academic because the municipality has taken  
22 a very aggressive program in terms of development of both new  
23 senior citizen housing and rehabilitation of, substantial  
24 rehabilitation of existing housing.

25 Q But you couldn't tell us what the obligation would

1 be in terms of units that you feel there might be a moral  
2 need for? A No, I could not.

3 THE COURT: More?

4 MR. BERNSTEIN: Moral.

5 MR. KLEIN: Moral.

6 MR. BERNSTEIN: Moral. The question is already  
7 answered.

8 MR. KLEIN: Okay.

9 Q Now, is it a fair statement that you don't agree  
10 with the allocation numbers for the five towns which you  
11 represent that are closest to Chatham Township?

12 A That's correct.

13 Q Now, you testified under depositions at your office  
14 on two occasions, Mr. Chadwick?

15 A Yes.

16 Q Turning to page 62, line 10. I would ask you if  
17 you were asked the following questions and answered them as  
18 I am reading. Page 62, line 10, deposition of John Chadwick  
19 of October 30, 1979. Line 10. "No, as a professional  
20 planner do you believe that the Department of Community  
21 Affairs that the allocations that are given in the 1978  
22 study and the 1976 study actually reflect the needs of low  
23 and moderate income housing for the municipalities in New  
24 Jersey?

25 "ANSWER No.

1 "QUESTION Can you explain to us why you don't feel  
2 that these statistics are proper?

3 "ANSWER Based on my experience they are out of date  
4 the day they were published. The statistics in some cases,  
5 I believe, are/gross<sup>a</sup> underestimated and I believe in some  
6 cases are a gross overestimate in other cases. You would  
7 have to have a very specific understanding of the limitations  
8 within a municipality."

9 Was that the answer that you gave to my questions on  
10 that date, Mr. Chadwick? A It is contained  
11 in the transcript. I don't dispute them.

12 Q Do you agree? A My answer is  
13 yes.

14 Q And you would ascribe to the same answer today?

15 A I believe I have.

16 THE COURT: I am not too sure that is the  
17 appropriate method of cross examination for the use  
18 of interrogators or depositions. What are you trying  
19 to do then, because you could have asked him that  
20 question and he would have given you that answer.

21 MR. BERNSTEIN: I don't know if he would have.

22 THE COURT: I don't want to set a trend of  
23 reading part of a deposition and say this is what  
24 you said because that is not a proper use of the  
25 deposition, as I understand it.

1 MR. BERNSTEIN: Well, I will ask him again  
2 then.

3 THE COURT: Okay. Now, you have established  
4 that point. I just don't want to set a trend that  
5 we will get a lot of reading. You can ask him in  
6 the future and let him give an answer.

7 MR. BERNSTEIN: Then I will ask him.

8 THE COURT: If what he said previously was  
9 contradictory you can use it.

10 MR. BERNSTEIN: Fine.

11 THE COURT: Okay?

12 MR. BERNSTEIN: Fine.

13 THE COURT: Please understand I am not being  
14 critical. I just don't want to start a trend of  
15 doing that.

16 MR. BERNSTEIN: Fair enough. May be more  
17 effective.

18 Q I believe that you testified that one reason why  
19 the subject property should be zoned for multi-family use is  
20 because of the proposed Shunpike Bypass, is that correct, Mr.  
21 Chadwick? A Correct.

22 Q And I believe it was your testimony you have no  
23 idea when if ever that will be built?

24 A Correct.

25 Q I believe another reason why you felt that the

1 subject property should be zoned for multi-family use was  
2 because it was close to existing sewer lines, is that correct?

3 A Correct.

4 Q I believe, the proximity was about eight hundred  
5 to a thousand feet, if memory serves me?

6 A I think, your memory of the eight hundred to a thousand  
7 feet was the Shunpike bypass, I think, and, I think, you  
8 assisted me in making measurements and the numbers were  
9 different. The sewer line is four to five hundred feet.

10 Q Okay. And you felt that was a significant factor,  
11 is that correct? A Correct.

12 Q And you couldn't tell us whether or not there is  
13 existing sewer capacity in the Chatham Township system for  
14 any multi-family development on your client's property, could  
15 you? A That's correct.

16 Q In fact, you don't even know if your client's  
17 property is within the sewer area of the municipality, that  
18 is, the area to be serviced by sewers, can you?

19 A I don't even understand the question.

20 Q Okay. Do you know whether or not your client's  
21 property is within the area which is proposed to be served  
22 by public sewers by the Township of Chatham?

23 A Yes, I do.

24 Q And are both parcels within the service area?

25 A In my opinion, they are based upon my review of the plan

1 as shown in the master plan of the township.

2 Q And if the property was not in the sewer service  
3 area, do you feel that would be a factor to consider?

4 A Yes.

5 Q I am going to show you the 1978 master plan which  
6 has already been marked in evidence and ask you if it shows  
7 both parcels being in the sewer service area?

8 MR. KLEIN: What page is that, Mr. Bernstein?

9 MR. BERNSTEIN: Just after page 53.

10 A It shows on a sanitary sewer system, April '78. The  
11 map shows both parcels either adjoining the southerly parcel  
12 adjoining the sewer service area and the northerly parcel  
13 back half would be in the service area approximately the  
14 back half.

15 Q Doesn't that map show that the southern parcel is  
16 totally without the sewer service area?

17 A I said it is adjacent to it.

18 Q Outside of it, correct? A It is  
19 outside of it.

20 Q And the front of the northern property is outside  
21 of the sewer service area, correct?

22 A That's correct, Mr. Bernstein.

23 Q Thank you. Now, did you testify previously on  
24 cross examination that the justification for low density multi-  
25 family development in the PUD in Parsippany-Troy Hills was

1 because the areas were served by sanitary sewers?

2 MR. KLEIN: I don't understand the question.

3 THE COURT: Well, do you understand the  
4 question?

5 THE WITNESS: I understand the question?

6 No.

7 Q What was the reason you gave for the low densities  
8 for multi-family development in the PUD's for Parsippany-Troy  
9 Hills? A The areas on the PUD's, they're  
10 mixed land use zoning districts, but they incorporate the  
11 concept afforded under the plan development provisions of  
12 the municipal land use law. The areas were zoned for approx-  
13 imately one acre development prior to the master plan. They  
14 were rezoned subsequent to the adoption of the master plan  
15 and implementation by the zoning ordinance of approximately  
16 two to two and a half units to the acre.

17 One of the areas known as the Forge Pond area is sur-  
18 rounded on two sides by interstate highways and large  
19 industrial uses. One of the areas exhibits a slope on the  
20 flat areas of five per cent to ten per cent up to areas in  
21 excess of thirty-five per cent. The gross densities applied  
22 were to take into account the conditions of the land, natural  
23 and the man made conditions, principally in the area of the  
24 Forge Pond area, albeit there is a substantial flood plain  
25 delineated through the area.



1 zoned residential to be rezoned to allow for commercial and  
2 industrial development. The township is facing a circumstance  
3 of effectively all vacant land being requested or litigated  
4 to be rezoned for office and major shopping center uses.  
5 So municipalities may consider this a very desirable cir-  
6 cumstance.

7 In the case of Parsippany-Troy Hills it was an attempt  
8 to take the remaining areas suited for residential development  
9 and to both accommodate the economic development trends which  
10 there was obviously hard evidence in Parsippany-Troy Hills  
11 of reality of those trends and provide for new housing within  
12 the municipality within the same large tract areas and the  
13 decision was to accomplish that through the planned redevelop-  
14 ment techniques.

15 Q Well -- A -- and the density  
16 result from the allocations of the areas within each zone  
17 for non-residential use and for housing use. And the densities  
18 then result in terms of gross densities of two. It is a  
19 formula -- not a formula, but a concept in the ordinance  
20 which describes both gross densities and net densities.

21 Q What I don't understand though, Mr. Chadwick, you  
22 mentioned the interstate was surrounding one tract on two  
23 sizes and industry. And I would like to know what effect  
24 does the proximity of interstate highways and industry have  
25 on a planner when he envisions rezoning a tract for multi-

1 answer. The only problem, your Honor, is I asked

Chadwick - cross

66

Chadwick - cross

65

1 family development. Does the proximity of the interstate  
2 and industry make him want to give a higher density, a lower  
3 density or no effect at all?

4 MR. KLEIN: Is that question asked in terms  
5 of Parsippany?

6 MR. BERNSTEIN: Parsippany.

7 MR. KLEIN: And in terms of the section?

8 MR. BERNSTEIN: Yes.

9 MR. KLEIN: The section that was talked about?

10 MR. BERNSTEIN: Yes.

11 A. I'm answering you specifically with regard to the  
12 Parsippany-Troy Hills and specifically with regard to the  
13 tract of land that I referred to as the Forge Pond area in  
14 the conditions that existed were as I have described to you,  
15 one, a tremendous pressure either brought through litigation  
16 or for formal professional requests prepared and submitted  
17 to the township for rezoning of all the area that remained  
18 residential that was undeveloped to a non-residential cate-  
19 gory. At the same time the township had filed with the  
20 Department of Economic -- Department of Environmental Pro-  
21 tection the flood delineations of both Eastman's Brook and  
22 Troy Brook, which runs through the property or the area, to  
23 be more precise.

24 Another major factor of consideration in these consider-

1 states then are a direct contributor to the tre-  
2 mendous growth that has taken place in the Township.  
3 Therefore, in terms of developing regulations, the  
4 regulations for almost any form of economic  
5 development of the land will occur, the relation-  
6 ship of density is primarily a consideration of  
7 the densities prevailing in the neighborhood and  
8 in order to be clear for myself and the record of  
9 this court, I will describe them.

10 The areas of Forge Pond, Mazdabrook is  
11 approximately five hundred fifty acres in size.  
12 It is crossed by two major stream channels. It  
13 abuts Route 80 and the Jefferson Road industrial  
14 area. It is surrounded on all sides by third of  
15 an acre residential lots, most of which have water  
16 and sewer facilities.

17 The area that was rezoned was zoned for AR-2  
18 category that had a minimum lot size of thirty  
19 thousand square feet. Taking into account the  
20 surrounding residential densities, the restrictions  
21 to the land itself in terms of flood hazard delin-  
22 eations --

23 Q Proceed. A The township's  
24 policy to provide for economic development along the freeway  
25 system that was obviously a policy that was being realized

1 through private industry, the densities then become a  
2 function of all those considerations. Once you take out  
3 land for flood areas, industrial areas, you have remaining  
4 areas suited for residential. And that area would then  
5 adjoin approximately half acre, half to third acre residential  
6 lots which we provided for six dwelling units to the acre  
7 in terms of adjoining residential development.

8 Q Why did you -- A I will summarize  
9 basically the fundamental planning program.

10 Q I understood your testimony that you took out the  
11 flood plain land. A The flood plain  
12 land, as I said to you before, Mr. Bernstein, is a consider-  
13 ation in determination of the density. That was not taken  
14 out. It is determined as a constraint within the areas  
15 zoned for mixed land use.

16 Q Now, is it your testimony, Mr. Chadwick, that the  
17 present zoning ordinance in Parsippany-Troy Hills permits  
18 the construction of least cost gardenapartments and townhouses?

19 A I don't believe I have said anything in terms of town-  
20 houses or garden apartments.

21 Q Well, I'm asking you. Does the present zoning  
22 ordinance of Parsippany-Troy Hills permit the construction  
23 of least cost houses and garden apartments?

24 MR. KLEIN: Your Honor, I think, the testimony  
25 previously was that Mr. Chadwick's opinion of

1 to a need to extend or expand basic facilities  
2 and supplies.

3 Q Now, I understand your answer with regard to the  
4 townhouses. With regard to the garden apartments. Does  
5 the ordinance permit least cost construction or does it  
6 preclude least cost construction?

7 A I have never made an examination of the most recent  
8 development regulations in that ordinance, Mr. Bernstein.  
9 In context with that question, I would have to refer to the  
10 ordinance.

11 Q Well, Mr. Chadwick, how many years have you been  
12 the town planner for Parsippany-Troy Hills?

13 A Ten, twelve.

14 Q And who prepared the latest master plan?

15 A I did.

16 Q Who prepared the latest zoning ordinance?

17 A I did.

18 Q Who prepared the planning defense with regard to  
19 the Public Advocate's law suit?

20 A I provided the information to the interrogatories and  
21 the information to the township attorney in terms of briefs  
22 filed with the court, so in that case, I did.

23 Q And it is your testimony you can't tell the court  
24 today whether or not the Parsippany-Troy Hills ordinance  
25 permits the construction of least cost townhouses?

1 Parsippany using the DCA formula exceeded the  
2 recommended units. As such, I'm not sure that  
3 the question is really appropriate.

4 MR. BERNSTEIN: I think it is appropriate,  
5 your Honor. I would like to know from this man  
6 as to the present zoning --

7 THE COURT: I will allow it. Parsippany-  
8 Troy Hills zoning ordinance permits low cost  
9 housing for garden apartments and townhouses.

10 THE WITNESS: With regard to the garden  
11 apartments, your Honor, there is very little land  
12 available for any further multi-family development  
13 within the municipality. There are, the areas are  
14 permitted to develop at twelve to the acre. We  
15 have not anticipated any further garden apartment  
16 development, although some does exist.

17 In terms of townhouse development and in  
18 terms of the context with the mixed land use pro-  
19 vision of the township, yes, in my opinion, six  
20 dwelling units to the net acre could yield least  
21 cost housing because of the infrastructure that  
22 exists within all of the tracts of land.

23 The case of Parsippany-Troy Hills, the infra-  
24 structure being water and sewer lines and road  
25 systems are in place and at the property as opposed

1 A You didn't ask me that question.

2 MR. KLEIN: That was not the question.

3 MR. BERNSTEIN: That was the very question,  
4 your Honor.

5 MR. KLEIN: No, I object, it is garden apart-  
6 ments.

7 THE COURT: Read the question back.

8 MR. BERNSTEIN: It is garden apartments. If  
9 I said townhouses, I erred.

10 Q I would like to know if you can testify today as  
11 to whether or not the ordinance permits construction of least  
12 cost garden apartments.

13 MR. BERNSTEIN: Thank you, Mr. Klein.

14 A Mr. Bernstein, the precise provisions in that ordinance,  
15 my best recollection the majority of the provisions that  
16 existed prior to 1976 were deleted and the density remains  
17 at twelve to the acre. In all of those provisions, if my  
18 recollection is correct, I would say to you that the least  
19 cost housing under garden apartments for any type of occupancy  
20 is possible, but because all the new structures available and  
21 the land, to my knowledge, is owned as part of the existing  
22 apartment complexes.

23 In addition, the Parsippany-Troy Hills ordinance provides  
24 for multi-family houses under a subsidy basis. I believe it  
25 is thirty-two to the acre. It may be twenty-four to the acre.

1 Q Are you finished? A Which is designed  
2 and requires it to be least cost housing.

3 Q Is the subsidy provision mandatory or optional?

4 A Mandatory.

5 Q With regard to all types of development?

6 A On the apartments for twenty-four to the acre it is  
7 mandatory. On the other parts, no.

8 Q In other words, if you wanted a higher density  
9 you would have to subsidize units with the conventional  
10 twelve units to the acre there is no requirement of subsidy  
11 apartments, correct? A That's correct.

12 Q Now, didn't you testify just now that the availability  
13 of public water, public sewers and public roads in your opinion  
14 was an important factor which led you to believe that six  
15 units to the acre for townhouses and twelve units to the acre  
16 for garden apartments could be consonant with least cost  
17 housing in Parsippany-Troy Hills?

18 A I stated that in context with the description of the  
19 mixed land use provisions of the township and the, also the  
20 economic development allowed within the mixed use plan.

21 Q Well, was my statement correct that in Parsippany-  
22 Troy Hills you could build least cost housing with townhouses  
23 at six units to the acre and least cost housing with garden  
24 apartments at twelve units to the acre because public water,  
25 public sewers and public roads were available to the multi-

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1 family zone sites? A Yes, and in context  
2 with the statement that I already placed on the record, Mr.  
3 Bernstein.

4 Q Now, Mr. Chadwick, can you tell me if there are  
5 any multi-family districts in Chatham Township which don't  
6 have public water, public sewers and public streets right at  
7 the sites?

8 MR. KLEIN: You mean presently?

9 MR. BERNSTEIN: Presently.

10 MR. KLEIN: In place?

11 MR. BERNSTEIN: Presently in place.

12 Q This was a factor that you reviewed, Mr. Chadwick,  
13 prior to your testimony.

14 MR. KLEIN: May I ask --

15 THE COURT: He didn't answer the first question.

16 MR. KLEIN: Why don't you let him answer the  
17 first question?

18 A Yes.

19 MR. KLEIN: Could you --

20 MR. BERNSTEIN: Wait a minute. I am going to  
21 object. Unless there is an objection, I don't  
22 know if Mr. Klein is going to be asking a question.

23 THE COURT: You want to object?

24 MR. KLEIN: I was just going to ask, because  
25 there was a period of time that lapsed between the

1 question and the answer that if Mr. Chadwick could  
2 indicate yes so that we were all clear what he was  
3 saying yes to.

4 MR. BERNSTEIN: That's the way I took it.

5 THE COURT: Yes, no question. Go ahead.

6 Q It is your testimony, Mr. Chadwick, that in Chatham  
7 Township you can't build least cost housing at, for townhouses  
8 at six units to the acre where there are water, sewers and  
9 roads available to the site? Is that your testimony?

10 A Yes.

11 Q And is it your testimony that in Chatham Township  
12 you can't build least cost garden apartments at a density of  
13 twelve units to the acre where you have public water, public  
14 sewers and public streets to the sites, correct?

15 A It is contributing to the conclusions that I stated  
16 previously, Mr. Bernstein, if you recall. I also went through  
17 all of the other regulations in context with each of the  
18 housing types in the municipality as set forth in your zoning  
19 ordinance.

20 Q So it is not just the density you object to, but  
21 other regulations as well, correct, Mr. Chadwick?

22 A That's correct.

23 Q I am giving you a copy of the Parsippany-Troy Hills  
24 ordinance which you previously identified. You're giving it  
25 back?

1 I would ask you, Mr. Chadwick, if the provision that I  
2 am pointing to, it appears to be Section 19-14.1C, is the  
3 regulation that applies to garden apartments?

4 THE COURT: What was the number again?

5 THE WITNESS: 19-14.1C.

6 Q And that's the provision that applies to garden  
7 apartments, isn't it, Mr. Chadwick?

8 A Yes.

9 Q Now, the maximum density for garden apartments is  
10 twelve to the acre, isn't it?

11 A Correct.

12 Q And that's the same as in Chatham Township, isn't  
13 it? A Yes.

14 Q The maximum building coverage is twenty per cent,  
15 isn't that right?

16 THE COURT: What per cent? Twenty?

17 MR. BERNSTEIN: Twenty per cent.

18 A Yes.

19 Q And that's the same as Chatham Township, isn't it?

20 A I don't recall.

21 Q Now, in Parsippany-Troy Hills you provided maximum  
22 coverage for buildings and pavement of seventy-five per cent,  
23 don't you? A Yes.

24 Q And there is no limit as to building and pavement  
25 coverage in Chatham Township, is there in the existing ordin-



1 Q Thank you. In your opinion the density of twelve  
2 units to the acre was unduly restrictive for Chatham Township,  
3 is that correct?

4 A In my opinion, the  
5 density, yes. I don't believe I used the exact word "Unduly",  
6 Mr. Bernstein. That's probably a paraphrase of some sort.

7 Q Fair enough. Nevertheless you would say it was  
8 unreasonable?

9 A That may have been the language.

10 Q Would you say that the twelve unit density in  
11 Parsippany-Troy Hills is equally unreasonable?

12 A In context with the Parsippany-Troy Hills, absolutely  
13 not. The issues are totally different.

14 Q I understand with regard to the building coverage,  
15 I believe, your testimony was that twenty per cent building  
16 coverage was unreasonable in Chatham Township?

17 A That's correct.

18 Q Is the twenty per cent maximum building coverage  
19 unreasonable in Parsippany-Troy Hills?

20 A Really, Mr. Bernstein, I never thought of the specific  
21 provisions within the Parsippany-Troy Hills ordinance as to  
22 their relevancy in terms of a discriminatory zoning ordinance  
23 and haven't made an examination in that context. And I have  
24 already testified to you and to this court the basic funda-  
25 mental reasons why I have not.

26 The examinations dealt with the municipality in my  
27 professional opinion is vastly different from Chatham Township

1 because of the history, size and the development regulations  
2 that have prevailed over a time and have not made a concen-  
3 trated effort to determine whether or not individual pro-  
4 visions of a zoning ordinance in Parsippany-Troy Hills are  
5 comparable to Chatham Township for the purpose of providing  
6 testimony to this court.

7 And I am not avoiding your question. I am giving you  
8 fundamental reasons why I have not made an examination and  
9 why I cannot answer your question.

10 Q Are you saying that the twenty per cent lot cover-  
11 age restriction is always unreasonable or only sometimes  
12 unreasonable?

13 A In general I would say it  
14 is unreasonable. In my opinion, it is a guise or method of  
15 restricting bedrooms with multi-family units.

16 Q But you couldn't -- A It originated  
17 at least to my judgment, as a technical development by our  
18 office in the early 1970's.

19 Q But you can't state today whether or not the twenty  
20 per cent restriction is unreasonable when viewed in the  
21 context of the Parsippany-Troy Hills ordinance?

22 A I would say it is, Mr. Bernstein, but the issues that  
23 relate to the municipalities in my judgment are vastly  
24 different and I have not made an examination.

25 I would say in most general cases the restriction of  
twenty per cent unless there is particular circumstances

1 that relate to the multi-family districts, location of high-  
2 ways. A design use for whatever reason the municipality have  
3 traditional multi-family zones as a buffer between non-  
4 residential and residential districts.

5 Q Now, didn't you testify --

6 A In that case I may have --

7 Q Excuse me. A Precipitated a  
8 reason why to restrict total site coverage as a control in  
9 terms of apartment buildings and their proximity to industrial  
10 uses. I can't see that it is a very effective control, but  
11 it might have some validity in that case.

12 Q Are you testifying at sometime it might be valid  
13 other times it might be invalid?

14 A In general I would say it is invalid.

15 Q Did you testify that the requirements that the  
16 apartment buildings be between twenty and fifty feet from  
17 one another was unreasonable in Chatham Township?

18 A That's correct.

19 Q Is it your testimony that your requirement in  
20 Parsippany-Troy Hills that the apartments be a minimum of  
21 forty feet from one another, is that unreasonable?

22 A Almost all cases, no. In a single case end to end  
23 quite possible.

24 Q When you say almost all cases no, do you mean that  
25 in most cases forty feet is all right?

1 A Front to front, back to back forty feet relates roughly  
2 to the height of the building or light and air provision.  
3 Fifty feet doesn't relate to anything.

4 Q When you say forty feet relates to light and air?

5 A Sun light angles.

6 Q That is always the case?

7 A Not always.

8 Q Well, and how many feet do you have in your typical  
9 floor? A Typical floor of what?

10 Q Garden apartments. A A unit?

11 Q Typical height of garden apartments of one story,  
12 of two story garden apartments?

13 A I don't believe they're really is a typical. You have  
14 two story slab with a Mansard roof and you have two and a  
15 half story with a peaked roof or a hipped roof depending on  
16 the topography of the site. You may have five foot to the  
17 ridge pole, you may not. I am not in the construction  
18 business, Mr. Bernstein.

19 My estimate of the height of a typical garden apartment  
20 is by observation. I would say they range from twenty-eight  
21 to thirty-four feet depending on the roof design.

22 Q Well, what's the relationship then between the  
23 twenty-eight and thirty-four feet as your typical height and  
24 the forty feet which you say is fine for the distance between  
25 buildings? A As a general rule of thumb

1 the height of the building divided by two will provide ade-  
2 quate light between all walls, particularly for residential  
3 buildings where sun light to all windows. If you take thirty-  
4 five and thirty-five it is not forty. It is thirty-five.  
5 But thirty-five doesn't relate to the need for parking stalls,  
6 driveways wide enough to get in an out between. Fifty feet  
7 is just added ten feet.

8 Q Wait. Run through that with me again.

9 If we have an apartment that has a height of twenty-  
10 eight feet, how do we then get the forty feet distance  
11 between buildings?

12 A I said thirty-five  
13 and thirty-five is closer to forty feet. It is not forty  
14 feet, but then added to, or add the statement that thirty-  
15 five feet doesn't really allow for headon parking and drive-  
16 ways. Fifty feet doesn't relate to those heights whatsoever.  
Simply makes a separation.

17 Q Well, you're testifying that you should have the  
18 same separation between buildings as there is to the height  
19 of the buildings? Is that the theory that you are espousing?

20 A It is a rule of thumb, Mr. Bernstein. It is not a  
21 standard that I would say to you this applies to every small  
22 municipality in the State of New Jersey without qualification.  
23 But in general two story garden apartments should at least  
24 provide on window walls roughly the same, half the distance  
25 of the adjoining building heights, or if you had one of two

1 stories and one of three stories and they were twenty and  
2 thirty feet respectively, you add them up, twenty-five feet  
3 between walls should provide light to all windows on the  
4 site and it also provides for a reasonably open space between  
5 the buildings in terms of utilization of walkways or drive-  
6 ways or what have you.

7 Q Now, if your theory is valid, if we had a twenty-  
8 eight foot garden apartment in Parsippany-Troy Hills, wouldn't  
9 that forty foot distance between buildings be excessive?

10 A The forty foot comes into play, the reason thirty-five  
11 is not specified or twenty-eight is not specified is the  
12 need to provide for parking adjoining buildings. And if you  
13 get two buildings lined up in whatever fashion and they're  
14 twenty-eight feet apart uniformly across the tract of  
15 land, probably the only way you can provide adequate parking  
16 is to put pavement around all sides of the building. Put  
17 parallel parking and then some common parking areas some  
18 other way, which could have been prevent<sup>ed</sup>/by simply spreading  
19 the buildings out a little bit and by putting common parking  
20 areas between every other building.

21 Q Were you saying that in every --

22 A It is a design standard that is fairly common, but once  
23 you start taking design standards and just adding a few more  
24 feet on to them, the only thing that occurs then you spread  
25 the buildings across the property and you wind up with a

1 rigid design that I testified to previously.

2 Q Is it your testimony that in every design and  
3 every site plan design that forty feet is required because  
4 of the height of the buildings because of the parking?

5 A No.

6 Q Some more, some less?

7 A Some more, some less.

8 THE COURT: Can we stop here?

9 MR. BERNSTEIN: All right.

10 THE COURT: All right. Thank you. We will  
11 start at 9:30 tomorrow.

12 MR. KLEIN: And run until 12:30?

13 THE COURT: To 12:30.

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

Plaintiffs, )

-vs- )

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

Defendants. )

STENOGRAPHIC TRANSCRIPT

of

PROCEEDINGS.

Wednesday, April 2, 1980.

Morris County Courthouse  
Morristown, New Jersey

B E F O R E:

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

TRANSCRIPT ORDERED BY:

JACQUES H. GASCOYNE, Superior Court Judge.

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

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

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

Earl C. Carlson, CSR  
Official Court Reporter  
Morris County Courthouse  
Morristown, New Jersey  
285-6249 07960

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

1 MR. KLEIN: Good morning, Judge.

2 THE COURT: The witness John Chadwick resume  
3 the stand.

4 J O H N C H A D W I C K, Previously sworn.

5 CROSS EXAMINATION BY MR. BERNSTEIN: (continued)

6 Q Was it your testimony yesterday, Mr. Chadwick, that  
7 the state development guide had recommended densities for  
8 development in the growth, limited growth and no growth  
9 areas?

A As a general statement as to  
10 low densities, medium densities, higher densities, I don't  
11 believe I stated as to any specific numbers.

12 Q And isn't it a fact that there are no densities  
13 which are specifically mentioned in the state development  
14 guide?

A I believe that I said that I  
15 couldn't recall precisely whether there were numbers used  
16 or not. There is a difference in terms of describing the  
17 different categories.

18 Q I am giving you my own copy of the state develop-  
19 ment guide and ask you if you can tell me whether or not  
20 there are specific densities mentioned anywhere in the guide?

A The map is missing from the report, Mr. Bernstein.

22 Q Here is the map, Mr. Chadwick.

A I have glanced at the report entitled "State DEvelopment  
24 Guideline" and my recollection is that no specific statement  
25 in terms of density is correct. It doesn't, at least at a

1 quick perusal contain numbers.

2 Q And I assume as a professional planner you are  
3 familiar with this document?

4 A Yes, I am.

5 Q Now, just to recapitulate, Mr. Chadwick. Was it  
6 your testimony yesterday that the Parsippany-Troy Hills  
7 zoning ordinance permitted the construction of least cost  
8 townhouses? A Yes.

9 Q What I would like you to do is to -- strike that.  
10 And, I believe, that the provisions for townhouses are  
11 found in the PUD sections of the ordinance, am I right on  
12 that? A Mixed land use sections.

13 Q Okay. I would like you to get the section of the  
14 Parsippany-Troy Hills zoning ordinance which pertains to  
15 townhouses. I am going to ask you some questions about them.

16 THE COURT: Which mixed land use district?

17 MR. BERNSTEIN: Okay. I will be asking for  
18 a range on this.

19 Q Can you give us what the -- first, in Chatham  
20 Township you would agree that the minimum lot size for  
21 townhouses is ten acres, is that correct?

22 A I believe you're correct.

23 Q All right. Now, -- A There are two  
24 different lot sizes, if I recall, relate to quadruplex. I  
25 don't recall specifically.

1 Q Okay. Now, with regard to the minimum lot size  
2 for PUD's, the notes I have indicate there appears to be a  
3 range between two hundred and two hundred fifty acres. And  
4 I would like you to look at the ordinance and tell me if I  
5 am correct on that.

6 MR. KLEIN: Your Honor, several times Mr.  
7 Bernstein has used the term PUD and several times  
8 Mr. Chadwick has said mixed land use.

9 MR. BERNSTEIN: I think I will accept that.  
10 It is mixed land use.

11 I am not trying to put anything over on either  
12 Mr. Chadwick or the court and I will use the term  
13 mixed land use. I assume it is PUD.

14 MR. KLEIN: It is not.

15 MR. BERNSTEIN: If Mr. Klein prefers that  
16 term, I have no problem, your Honor.

17 THE COURT: All right.

18 A The question was?

19 Q Okay. The minimum lot size, sir, for those  
20 districts which permit townhouses, I believe, Mr. Klein  
21 referred to it as mixed land uses?

22 A That's correct.

23 Q And my notes indicated between two hundred and  
24 two hundred fifty acres were the minimum lot size, and I'm  
25 asking if that's correct? A Townhouses are

1 permitted as a residential housing type within the mixed  
2 land use provisions and the mixed land use provisions by  
3 district are in the R-1M zone. Minimum of 150 acres.

4 As an alternative formula one, in the R-1M zone altern-  
5 ative formula 2, is two hundred fifty acres, and in the R-2M  
6 zone it is two hundred fifty acres, and in the RCM zone it  
7 is a hundred twenty-nine acres.

8 Q So that we have a minimum lot size of between a  
9 hundred twenty-nine and two hundred fifty acres. Would that  
10 be correct?

A I would disagree in terms of  
11 your statement that the minimum lot statement for townhouses  
12 is two hundred or between a hundred twenty-nine acres and a  
13 hundred fifty acres. It is the lot, the land area required  
14 for use of the, a mixed use option formula.

15 Q So that you couldn't put <sup>a</sup>townhouse district.  
16 Isn't it a fact that you couldn't put townhouses on anything  
17 other than a mixed land use area?

18 A No.

19 Q You can put townhouses in separate residential  
20 zones?

A Yes.

21 Q Are there standards in the ordinance separated from  
22 the, from those in the mixed land use section which pertain  
23 to the requirements for townhouses?

24 A Yes.

25 Q And what sections are they in?

1 A The R-3 zone.

2 Q Would you show that to me?

3 A It's under section 19-11. Excuse me, 19-12.48.

4 Q And is it your testimony that the section you just  
5 referred to permits townhouses in areas other than the mixed  
6 land use district? A Yes, as a conditional  
7 use.

8 Q And does this indicate, Mr. Chadwick, that the  
9 maximum density in the R-3 zone for townhouses as a conditional  
10 use would be two and a half units to the acre?

11 A Gross density, yes.

12 Q Does it give a net density here?

13 A Yes.

14 Q Where is that, sir? A I stand  
15 corrected. In the R-3 zone there are no limitations on net  
16 density.

17 Q The only restriction would be two and a half units  
18 to the acre on a gross basis?

19 A Correct.

20 Q And while we are looking at it, it indicates that  
21 fifty per cent of the tract has to remain in the natural open  
22 space condition? A Natural state.

23 Q Natural state. Why would that be required in the  
24 R-3 zone, Mr. Chadwick? A The R-3 zone in  
25 Parsippany-Troy Hills has substantial areas that border the

1 Rockaway River and major streamways within the municipality  
2 delineated by the DEP as being quite/flood hazard areas and  
3 in order to preclude, and in order to preclude the filling  
4 of the flood hazard areas the option formula development was  
5 set forth in the zoning ordinance.

6 Q And I assume that you feel that the standards in  
7 the R-3 zone for townhouses are reasonable standards given  
8 the situation that exists? A Yes,  
9 they're fundamentally a density that equates to the R-2 and  
10 R-3 residential zones. The conditional use allows for basic-  
11 ally a design standard, but the zone district in terms of  
12 total population yield is roughly equivalent, whether it's  
13 single family homes or townhouses.

14 It is not intended as a method of producing a new hous-  
15 ing type in the municipality as was the mixed land use pro-  
16 visions as I described to you yesterday. It is a recognition  
17 of environmental constraints in the particular area remaining  
18 in the R-3 residential zone.

19 Q And you felt that the fifty per cent open space  
20 requirement was a valid requirement given the environmental  
21 constraints in the district?

22 A That's correct.

23 Q All right. Now, is it your testimony that the  
24 townhouses in the mixed land use zone would constitute least  
25 cost housing? A Yes.

1 Q If you could turn to the mixed land use provisions  
2 and as I understand from your testimony, there are different  
3 ones, so I will try to go slowly.

4 My notes indicate, Mr. Chadwick, that the gross density  
5 permitted in these mixed land use areas is between one and  
6 three quarters and two units to the acre and I would ask if  
7 that is a correct number? A No.

8 Q Okay. Could you tell us the gross densities which  
9 are permitted in these mixed land use areas?

10 MR. KLEIN: Do you mean in each of the  
11 different areas?

12 MR. BERNSTEIN: Yes, sir.

13 MR. KLEIN: As a unit?

14 MR. BERNSTEIN: No. I'm looking for overall  
15 gross densities that are permitted on the entire  
16 tract for all residential types.

17 MR. KLEIN: Well, as I recall the different  
18 districts, your Honor, they each provide for  
19 different densities and, I think, it is not  
20 necessarily appropriate to ask the question the way  
21 Mr. Bernstein has.

22 THE COURT: Well, why don't we let the expert  
23 try to see if he can answer it. He has been doing  
24 quite well so far.

25 MR. KLEIN: Okay.

1 THE COURT: So let him. I think, he can  
2 answer it adequately.

3 A Densities range from one and three quarters to three.

4 Q Very well. Can you tell us what the maximum net  
5 density is for townhouses in each of those zones?

6 THE COURT: You say each of these. Excuse  
7 me. You say each of these zones. Are you talking  
8 about one hundred twenty-nine acres?

9 MR. BERNSTEIN: Yes, sir.

10 THE COURT: To two hundred fifty acre range?

11 THE WITNESS: Yes, sir.

12 MR. BERNSTEIN: Yes, sir. I believe they're  
13 referred to as the mixed use districts.

14 A I hesitate to answer Mr. Bernstein because there is  
15 currently, I don't know if it has been introduced by the  
16 township council or not, in an ordinance to adjust net density  
17 for townhouses.

18 The ordinance that I have in front of me specifies six  
19 on a net basis. This ordinance might be out of date.

20 Q Very well. And what is the maximum net density,  
21 maximum net density for garden apartments in these districts?  
22 Is it the same as the densities of twelve in the garden  
23 apartment district?

A The garden apartments  
24 are not a permitted housing type in a mixed use district.

25 Q I see. And the minimum setback for major roads in

1 likelihood the amount of open space would under the definition  
 2 of the Parsippany-Troy Hills as to what open space is, which  
 3 basically parallels the language of the municipal land use  
 4 law, you would yield substantially more than thirty per cent.

5 Q Open space?

A Yes. The one

6 circumstance that would not exist is in the R-2M zone. If

1 twenty-five per cent in the R-2M zone and fifteen per cent in  
 2 the R-1 zone and twenty per cent in the RCM zone, but that's  
 3 the best of my recollection.

4 Q What I would like to know is first, do you know

5 whether or not this is the ordinance that is presently being  
 6 sold by the town clerk when one comes to the Town of Parsippany  
 7 Troy Hills and asks for a copy of the ordinance? You couldn't  
 8 tell me that this isn't a copy?

9 A I am not in charge of the township clerk's office.

1 these districts is a hundred fifty feet?

2 A The standard for townhouse development in the mixed  
 3 land use districts R-1M and R-2M are set forth in the  
 4 19-30.7.B. And sub-item two reads minimum setback of any  
 5 structure shall be one hundred fifty feet from any existing  
 6 federal, state, county roads. B, any other, any road other  
 7 than local streets is designated upon the master plan of  
 8 Parsippany-Troy Hills and see adjoining single family  
 9 residential zones. Minimum setback from all other public

1 R-1M, the mixed land use provision rests within a one acre  
2 residential zone and that zone permits single family lots  
3 to be twelve thousand square foot, twelve thousand five  
4 hundred square feet in size with a eighty foot front. And  
5 it reduces the lot size in the R-2M zone to fifteen thousand  
6 five hundred square feet with a ninety foot lot.

7 It increased the amount of single family development  
8 allowed. It adjusted what was a peripheral lot size standard  
9 in both the R-2M and the R-1M zones.

10 I have summarized the changes. I neglected to point up  
11 one other aspect. It increased the maximum average aggregate  
12 unit size of townhouses.

13 Q To what? A From thirteen fifty  
14 to eighteen fifty. The thirteen fifty was designed around  
15 housing finance agency's standards for two and three bedroom  
16 townhouse units with the intent to provide for units that meet  
17 those occupancy standards or floor area requirements and  
18 occupancy.

19 The circumstance arises, however, that the housing  
20 finance agency always raised their standards and the private  
21 industry felt that the, or basically presented statistics  
22 to the municipalities that the townhouse unit demand exceeded  
23 1350 square feet and there was an unreasonable restriction.

24 Q What did you find in your experience as a planner?  
25 Did you find that the 1850 square feet was what the private

1 Hills, what would be the most common unit, would be three  
2 bedroom, four bedroom, a two bedroom, one bedroom?

3 MR. KLEIN: Where are we going with all this?

4 MR. BERNSTEIN: This is going to end that  
5 particular line, your Honor, if I can find out.  
6 I assume that three bedrooms are the more common  
7 built townhouse.

8 THE COURT: What what is the relevancy as  
9 to --

10 MR. BERNSTEIN: Rather than point it out --

11 THE COURT: All right.

12 MR. BERNSTEIN: -- I will link it up.

13 THE COURT: All right.

14 Q Is it true? A I have already  
15 stated to you, Mr. Bernstein, there are no townhous units  
16 built in Parsippany-Troy Hills. There are approvals of  
17 two projects in Parsippany-Troy Hills. One having 568 units  
18 in it which occupies the entire R-1M zone and an area  
19 adjoining that tract of land giving a use variance by the  
20 zoning board of adjustment. The units in the 568 unit  
21 development are a mix of two, three and four bedroom. The  
22 average is about 2.7 bedrooms per unit. That's to the best  
23 of my recollection.

24 The other development is, I believe, a sixty forty  
25 mix of six oh twos and four oh threes. I have not conducted

1 a survey by myself of townhouse units in Morris County,  
2 although I am familiar with townhouse development in Morris  
3 County.

4 Q Okay. Fair enough.

5 Now, turing back to this mixed use district. The  
6 maximum height for townhouses is thirty feet, is that  
7 correct?

A Yes.

8 Q How did you happen, how did the town choose thirty  
9 feet rather than thirty-five feet which is in the Chatham  
10 ordinance?

A The townhouse unit  
11 is a unit type that basically comes out twenty-six, twenty-  
12 eight foot to the ridge pole unless you go into four story  
13 units or really a three story with garages underneath.

14 Q You don't feel that the thirty is a cost generat-  
15 ing factor denying the builder the opportunity to build  
16 a higher unit?

A I see no relevance  
17 whatsoever.

18 Q Now, did you testify yesterday that the reason  
19 that Parsippany-Troy Hills had a forty feet distance between  
20 buildings in the apartment zone was because there was some  
21 relationship between the height of the buildings and the  
22 proximity of one building to the other?

A Related to light and air. Relates to parking.

24 Q Now, what I would like to know is, how did you  
25 happen to get a minimum distance between buildings in the

1           have a foundation in terms of comparison of gardens  
2           townhouses and the kind of unit they are or intended  
3           to be before we get into these kind of specifics.  
4           I think, that would help clarify the situation.

5           MR. BERNSTEIN: I think, I have the right to  
6           ask the question.

7           THE COURT: Yes, but you're -- I don't have  
8           any problems with your doing this in the area of  
9           credibility. But, you know, I do have the right,  
10          I think, if we are just going to do it for the  
11          purpose of credibility to say under the rule 4 of  
12          evidence, that's it.

13          MR. BERNSTEIN: It is more than credibility,  
14          your Honor. I think it is substantive.

15          THE COURT: Okay. All right.

16          MR. BERNSTEIN: I believe, the showing of  
17          these ordinances shows what's the norm, not just  
18          according to my witnesses, but according to Mr.  
19          Chadwick's studies, I am offering it not merely  
20          for credibility, but as to affirmative proof that  
21          these, the norms that are accepted, Mr. Chadwick  
22          already testified that the standards in Parsippany-  
23          Troy Hills are reasonable, that least cost housing  
24          can be built and now I am trying to explore the  
25          thought processes as to the distance between build-

1 ings.

2 THE COURT: well, I realize what you're try-  
3 ing to do, but we are exploring it rather extens-  
4 ively.

5 MR. BERNSTEIN: But the problem, your Honor,  
6 that I have, Mr. Chadwick in the space of fifteen  
7 minutes went through all the standards in the  
8 Chatham Township ordinance and said this is  
9 exclusionary, period, that was it.

10 There was basically no testimony as to why other  
11 than the, I consider the nebulous effect or allegedly  
12 cost generating. Now I am charged with defining  
13 the ordinance and despite the fact there wasn't  
14 much said about each of the standards, your Honor.

15 THE COURT: I don't know what the costs are  
16 going to do, and I have a responsibility with  
17 each of these standards.

18 MR. BERNSTEIN: But I am not arguing that.

19 THE COURT: But we are, it seems to me going  
20 somewhat far afield, when you got to the number  
21 of units per acre. We spent a fair amount of time  
22 on that, which was unnecessary. I think, that's  
23 what I'm saying.

24 I don't have any problem with you offering  
25 to show the figures, the norm, but, I think, there

1                   should be more conciseness. All right let's go  
2                   back to that last question. It is moving slowly.

3                   MR. BERNSTEIN: All right, okay. I will try  
4                   to move a little quicker. I accept that criticism,  
5                   your Honor.

6                   Q     With regard to the minimum distance between build-  
7                   ings it's sixty feet in the mixed use district, right?

8                   Correct, Mr. Chadwick?                   A     I believe so,  
9                   Mr. Bernstein.

10                  Q     And you consider that to be a reasonable distance  
11                  between buildings for townhouses in the mixed use district  
12                  in Parsippany-Troy Hills, correct?

13                  A     Yes.

14                  Q     And is that for light and air?

15                  A     Light and air and it will relate to overall densities  
16                  allowed.

17                  Q     Now, would it be a fair statement that the ordinance  
18                  limits townhouses to a maximum of six units per structure in  
19                  the mixed use district?                   A     I don't recall.

20                  If you have the specific citation, I wouldn't argue. As I  
21                  said, Mr. Bernstein, I do not carry the design standards of  
22                  Parsippany-Troy Hills zoning ordinance in my head.

23                  Q     Fine. If you would check --

24                                 THE COURT: That is what I mean. You obviously  
25                                 know it's in the ordinance because you're talking

1 to your planner that this is the standard. The  
2 man has said on a number of times, "I don't keep  
3 all this in my head." If you would say --

4 MR. BERNSTEIN: I don't --

5 THE COURT: -- under section so and so of the  
6 ordinance it says, and it reads this way, do you  
7 agree? Then he wouldn't have to --

8 MR. BERNSTEIN: Your Honor, I have --

9 THE COURT: -- sit here.

10 MR. BERNSTEIN: Okay. Mr. O'Grady took the  
11 Parsippany-Troy Hills ordinance and made a chart  
12 for me, but did not give me the section of the pages.

13 I did the same thing with the Sayreville  
14 ordinance and, I guess, because the legal mind  
15 thinks a little differently, I scrutinized page 11,  
16 page 12 so that when I go over the Sayreville  
17 Ordinance I will be able to do what your Honor  
18 suggests.

19 THE COURT: Okay.

20 MR. BERNSTEIN: But planners, being --

21 THE COURT: I don't know, planners think in  
22 sections too.

23 Take a few minutes and if you -- have you got  
24 a lot of sections?

25 MR. BERNSTEIN: As far as Parsippany-troy Hills

1 goes, this is the last question that I have to ask  
2 about their ordinance because he got a limited  
3 amount of space in that stable, if you can call it  
4 that. And he has been spending an awful lot of  
5 time rustling pages trying to find things.

6 It is a lot easier if you give him sections.  
7 Have you found it?

8 THE WITNESS: Yes, I have, your Honor.

9 THE COURT: Okay.

10 THE WITNESS: And it is six units to the struct-  
11 ure. It is contained in Section 19-20, 19-30 4B10.

12 Q And what's the reason for having a limit of six  
13 units per structure. A It is a -- was a  
14 local determination.

15 Q You feel that is a reasonable number?

16 A No.

17 Q What do you feel is a reasonable maximum number of  
18 units per structure? A Depends on the site  
19 conditions.

20 Q What would be reasonable in the mixed land use  
21 district? A In the R-2M zones the

22 properties, the land area is generally flat having consider-  
23 able woodland. And a unit size in the neighborhood of a  
24 hundred to a hundred twenty-feet is not a unit size, but a  
25 structure size of a hundred to a hundred twenty feet, I think,

1 is a reasonable size. I think, it probably would be a common  
2 denominator building if no standard was set whatsoever, if  
3 there were no standards whatsoever as to the number of units  
4 required or permitted in an ordinance, and private industry  
5 presented the plan having no regulation, in my opinion, the  
6 building size would be a building of six, eight, possibly  
7 ten units per structure.

8 In the R-1M zone, in my opinion, the building size will  
9 be six and seven units with no greater range than that.

10 I base that opinion on the approved plan and the rationale  
11 of the architectural team that presented the plan.

12 Q How about the other districts?

13 A The other districts, again, would be site specific.

14 Q Would they fit in the six to eight units per  
15 structure? A I believe they would.

16 Q Thank you.

17 MR. BERNSTEIN: That's it on Parsippany-Troy  
18 Hills, your Honor.

19 Q Is there any relationship in your opinion as a  
20 planner between the permitted density of a district and the  
21 environmental characteristics of the land in that district?

22 A Yes.

23 Q And what is that relationship, sir?

24 A The natural constraints of the property are going to  
25 predict, in my opinion, have an effect on the allowable

1 utilization of the property. If an area of land in terms  
2 of zoning has severe environmental constraints, either flood-  
3 ing or topography or soil bearing capacities or capabilities,  
4 zoning regulations to be considerate of those factors have  
5 to be made extremely flexible and you basically have to  
6 abandon the Euclidean or cookie cutter method which says  
7 we will have just square boxes and everything will have a  
8 fifty foot separation, forty foot separation and they will  
9 be exactly fifty feet from end to end and you adopt the  
10 mixed land use provisions.

11 They seem to have an overall design frame in terms of  
12 density and various types of uses and those types of standards  
13 then allow private industry to utilize the good land for  
14 development and avoid the lands which have the flooding  
15 conditions or have the steep slopes, which are environmentally  
16 sensitive and effectively you let private industry adapt to  
17 what planners are trying to get across as to save the areas  
18 that are environmentally sensitive, that do have impact on  
19 the existing development and utilize the lands that are  
20 readily developable.

21 Q Don't you need large parcels of land in order to  
22 set up your mixed land use zones?

23 A Not in all cases.

24 Q Well, in Parsippany-Troy Hills, what's the smallest  
25 land area that's permitted for mixed land use development?

1 A A hundred twenty-nine acres.

2 Q Why was such a large parcel set up as the minimum?

3 A In the case of Parsippany-Troy Hills they were complete-  
4 ly reasonable. Parsippany-Troy Hills in one area, the R-1  
5 area had approximately thirty different parcels that  
6 constituted two hundred fifty acres. The R-2M area had  
7 over fifty parcels. It constituted a hundred acre tract.  
8 The RCM area is a single tract of land for which the town-  
9 ship has been in litigation for two years.

10 Q Isn't it a fact, Mr. Chadwick, that in most  
11 communities that you work in the mixed land use or PUD  
12 standards require lot sizes of more than fifty acres?

13 A I guess I would disagree with you, Mr. Bernstein. I  
14 think, you're familiar with the number of municipal ordin-  
15 ances that we have provided the planning standards for in  
16 the Middlesex and Somerset County areas and in that case,  
17 yes, they would be characteristic of fifty acres, hundred  
18 acres, but there are also ordinances that we have provided  
19 or I have personally be the planner in charge of providing  
20 and recommending planning standards.

21 The City of New Brunswick has four planned residential  
22 districts in it that need five acres. They are not urban  
23 renewal tracts. These are privately owned land with no  
24 blightage, no development plan through legislation.

25 The Borough of Highland Park also contains planned



1 Q Mr. Chadwick, was it your testimony that PUD's or  
2 mixed use districts should be employed in environmentally  
3 sensitive areas so that the developer will have some flexibility  
4 of design?

A I say it is a technique  
5 of land development can be applied to areas having identified  
6 environmental and mandated constraints.

7 Q Do you feel that the requirement in the Parsippany-  
8 Troy Hills ordinance requires townhouses to be sixty feet  
9 from one another would detract from the flexibility that the  
10 developer would have in these mixed use districts?

A I couldn't answer definitively yes or no, Mr. Bernstein,  
12 but I think a real potential would exist for a development  
13 which would be required to be more land consumptive than  
14 necessary could result in that standard, yes. But that would,  
15 you can't say definitively on sixty foot on a townhouse  
16 density in the standards set forth in the Parsippany-Troy  
17 Hills ordinances because other standards are almost absent  
18 as to the relationship of parking areas or driveways, et  
19 cetera.

20 There are very few standards relevant to townhouse  
21 clusters within the Parsippany-Troy Hills ordinance other  
22 than the relationship of buildings one to the other. That's  
23 the reason I don't answer you yes or no.

24 Q Fair enough.

25 Now, would you agree that as a planner normally one

1 would place lower densities on environmentally sensitive  
2 areas than on areas that don't have environmental problems.

3 THE COURT: I'm sorry, would you read that  
4 question back?

5 (Last question read by the reporter.)

6 A I can't answer yes or no, Mr. Bernstein. The reason  
7 I can't is because as you have probably recognized previously,  
8 a simple answer in many cases the exceptions to the rule  
9 govern. And, for example, and, I think, I mentioned it in  
10 previous testimony to respond to one of your questions or  
11 to Mr. Klein's, the Hackensack Meadow lands is an environ-  
12 mentally sensitive area, yet the Hackensack Meadow lands  
13 permit densities in the neighborhood of a hundred to a hundred  
14 fifty units to the acre.

15 The New Jersey Shore area is environmentally sensitive  
16 yet the development regulations prevailing along the New  
17 Jersey Shore in most instances are very high density.

18 Q Okay. A And a plan for a  
19 shore municipality that required lot sizes of an acre, an  
20 acre and a half or restrict densities in one unit or less  
21 to the acre would be unreasonable given all other circumstances  
22 that come into play.

23 So to simply answer the question yes or no, I can't do  
24 it.

25 Q Okay. Let me put it a different way.

1 One would ordinarily expect that with areas where there  
2 are high water or flood plain areas or areas with soils with  
3 poor bearing qualities that one would have lower densities  
4 than if these factors were not present?

5 A Mr. Bernstein, I repeat my answer to the previous  
6 question.

7 Q Okay. Fair enough.

8 With regard to the mixed use zones in Parsippany-Troy  
9 Hills, it was your testimony that in these areas in overall  
10 densities of between one and three quarter and three units  
11 on a gross basis was reasonable, isn't that correct?

12 A Yes.

13 Q And it was your testimony that townhouses at a  
14 density of six units to the acre was reasonable, isn't that  
15 correct?

A Yes.

16 Q And what's your basis for the answer, at least the  
17 part the fact that the areas which had the mixed land use  
18 designation that these areas were environmentally sensitive?

19 A Yes.

20 Q And wasn't it a fact that you testified against  
21 the townhouse project in Warren Township because the property  
22 on which it was located was, to use your phrase, under water?

23 A Yes.

24 Q And isn't it a fact that one of the reasons that  
25 you would have advanced in opposing the townhouse project

1 in Watchung was because it was on very steep slopes?

2 A I'm not certain that I testified as to the reasons for  
3 the testimony in the Borough of Watchung relevant to the  
4 townhouse application. I may have mentioned it to you in  
5 passing in conversation, but I don't believe I stated any  
6 reasons for the testimony as a witness in this case.

7 Q Okay. But when you testified before the board of  
8 adjustment in Watchung was not one of the reasons that was  
9 advanced by yourself when you testified that the townhouses  
10 didn't belong on the site in question?

11 A No, sir.

12 Q You would agree that there are environmentally  
13 sensitive areas where the environment helps to dictate the  
14 density? A Yes.

15 Q And Parsippany is at least one of these cases?

16 A Yes.

17 Q Now, I believe, you testified on behalf of the  
18 defendant municipality Manalapan?

19 A Yes.

20 Q And that was in 1979 in a case titled Pozycki  
21 versus Manalapan? A There were several

22 cases involving Pozycki versus Manalapan. I don't know the  
23 years in which these took place. I don't recall the years  
24 in which they took place.

25 Q If I were to tell you that I have a transcript of

1 your testimony dated May 29, 1979, would you have anything  
2 to correct, that you weren't testifying less than one year  
3 ago in Manalapan? A No.

4 Q And isn't it a fact that in Manalapan you supported  
5 zoning for townhouses at a density of six units to the acre  
6 and garden apartments at a density of ten units to the acre?

7 MR. KLEIN: Your Honor, before that question  
8 is answered, I think, Mr. Chadwick said there  
9 were several cases involving Pozycki against  
10 Manalapan and perhaps Mr. Bernstein ought to in  
11 some way identify the particular case that he is  
12 talking about.

13 THE COURT: Well, if he doesn't remember,  
14 let him refresh his recollection.

15 MR. BERNSTEIN: I will give you the docket  
16 number.

17 MR. KLEIN: How does he know the docket  
18 number.

19 MR. BERNSTEIN: How could I tell the gentleman  
20 other than to give the date of the testimony and  
21 the caption in the case is beyond me.

22 THE COURT: I don't know.

23 Do you remember, Mr. Chadwick?

24 THE WITNESS: Your Honor, the Township of  
25 Manalapan's zoning ordinance was declared invalid.

1 MR. BERNSTEIN: I didn't hear that, your  
2 Honor, because of the truck.

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

4 A The Township of Manalapan's zoning ordinance was  
5 declared invalid by Judge Lane back around 1976. We were  
6 not the municipal planner for Manalapan at that time. We  
7 were retained somewhere in the 1978 or thereabouts to re-  
8 view an ordinance developed by staff personnel of the  
9 municipalities which had been adopted and was again being  
10 challenged by Mr. Pozycki and others.

11 That ordinance again was declared invalid by Judge  
12 Lane. A subsequent ordinance was prepared under the assist-  
13 ance of ourselves as opposed to being the principal drafters  
14 of the ordinance. That ordinance was not declared invalid,  
15 but was required to be amended based upon certain judgments  
16 set forth.

17 A subsequent case on the amendment of that ordinance  
18 took place and were upheld. I have no idea --

19 THE COURT: Which one?

20 A -- which ordinance that testimony many relate to because  
21 the issues that were brought before the court were the same  
22 issues in case after case that the ordinance was discrim-  
23 inatory and the testimony would have been repeated. Obvious-  
24 ly were different phrases, but to my recall, that testimony --

25 Q January 13, 1979 ordinance.

1 A That is the second from the last that I described to  
2 you.

3 Q Now, the question, Mr. Chadwick. Did you testify  
4 in favor of the municipality in May of 1979 with regard to  
5 the January, 1979 ordinance?

6 A Yes.

7 Q And did you testify in favor of six acre -- strike  
8 that.

9 Did you testify that six townhouses to the acre and  
10 ten garden apartments to the acre was reasonable for Manalapan?

11 A I could only speculate, Mr. Bernstein. If that's what  
12 is contained in the transcript of the testimony, I would  
13 agree with it. I certainly don't recall precisely.

14 Q Did you testify that least cost or moderate income  
15 housing could be constructed at the densities I have just  
16 described? A I don't recall.

17 MR. KLEIN: In Manalapan?

18 MR. BERNSTEIN: Obviously.

19 A I don't recall, Mr. Bernstein.

20 Q I am going to read to you a statement that you  
21 made in the case and ask if you can deny or affirm having  
22 made that statement. Let me stay next to you, Mr. Chadwick,  
23 so you can follow me.

24 This is from a transcript, Pozycki versus Manalapan,  
25 number L-21114-79 P.W. dated May 29, 1979.

1 MR. KLEIN: Is that transcript certified?

2 MR. BERNSTEIN: Sure it is certified. Bonnie  
3 Patterson, CSR, Official Court Reporter.

4 Mr. Chadwick just reminded me, your Honor, to put  
5 the volume in. It is volume VI, we are on page  
6 46, line 3.

7 Q You're purported to have said, "I'll repeat the  
8 question as I understand it, is the development regulations,  
9 do they provide for housing which would provide the oppor-  
10 tunity for moderate income households to reside in the  
11 township and I described the number one the consideration  
12 of water and sewer as being principal. The standard within  
13 the ordinance relating first to the open space requirement  
14 of the ordinance, in my opinion, why that open space re-  
15 quirement is a function of the constraints of the land being  
16 the flood hazard area in the RC-1 zone is a function of the  
17 density provided in the RC-3 zone. That regulation in my  
18 opinion is sound.

19 "The regulations relevant to the permitted density for  
20 townhouses being six units per acre within the portion of  
21 the tract per cent or portion of the tract allowing town-  
22 houses, in my judgment, does afford the opportunity to build  
23 housing at a cost affordable by moderate income households.  
24 And that same opinion exists for garden apartments at ten  
25 dwelling units to the acre and, I think, I have already

1 previously stated in my judgment the RC-1 zone which  
2 provides for single family housing on a 7500 square foot  
3 lot with a minimum requirement of an eight hundred square  
4 foot dwelling does also provide the opportunity for housing,  
5 constructed and marketed at a cost affordable to moderate  
6 income households."

7 Do you deny having made that statement in 1978, Mr.  
8 Chadwick? A No.

9 Q And I assume, Mr. Chadwick, that you would agree  
10 today that those densities were reasonable for the multi-  
11 family zoned land in Manalapan?

12 A I consider them reasonable, yes.

13 Q And the basis for you're considering them reason-  
14 able with the environmental constraints to the land?

15 A In part, yes.

16 Q Now, I believe, you are still the planner for  
17 Sayreville? A Correct.

18 Q And you drafted the latest zoning ordinance?

19 A Yes.

20 Q And I show you what purpo~~r~~ts to be the latest  
21 zoning ordinance, and, I guess, you could identify it?

22 A Yes. It is an ordinance entitled "Borough of Sayre-  
23 ville Ordinance, Zoning Ordinance, number 1268 with a date  
24 May 17, '78", which contains a series of amendments stapled  
25 thereto.



1 that govern townhouses in the R-7 residential zone, is that  
2 correct? A Yes.

3 Q And, I believe, that the only place where you can  
4 put townhouses other than the PUD's would be in the R-7 zone?

5 A PUD's and PRD's.

6 Q Okay. With those two exceptions the townhouses  
7 if they were to be built as a single project would be the  
8 R-7 zone? A Correct.

9 Q Now, is it not true, and I believe also this  
10 information on townhouses is found on page ten, that the  
11 minimum number of units permitted in a structure is four and  
12 the maximum number of townhouses permitted in a structure  
13 is eight in the R-7 zone? Is that correct?

14 A I believe so, Mr. Bernstein.

15 Q Fair enough. You did refer to the ordinance?

16 A To save the time of the court, I wouldn't question it.

17 Q Well, if you wish to refer to the amendment. I  
18 don't want you to rush on these and I understand.

19 THE COURT: What is the section of the  
20 ordinance?

21 THE WITNESS: Page ten, your Honor.

22 THE COURT: Page ten.

23 Q Mr. Chadwick -- A Section 11G  
24 (6). Excuse me. (7) and (8). I believe those are the  
25 standards in force, Mr. Bernstein.

1 That is shown on -- it is in Section 12.

2 Q On page 14? A G(21) on page  
3 12.

4 Q Now, if you turn to page 9, and I believe, it  
5 shows there that the maximum building coverage for garden  
6 apartments would be twenty-five per cent, is that correct?

7 A That's correct.

8 Q And, I believe, on page 11 or page 10 it shows  
9 that the maximum building coverage for townhouses is twenty  
10 per cent? A That's correct.

11 Q Now, turning to page 11. Does it show that base-  
12 ment apartments are permitted in the garden apartment G-1  
13 district? A Yes.

14 Q And does it indicate on page 7-- strike that.  
15 Does it indicate on page 11, paragraph 7, that no more  
16 than four units in a garden apartment structure may be on  
17 the same straight line? A Yes, it does.

18 Q Would you explain that provision for the court?

19 A It is a jog provision which prevents a single wall  
20 from being flat.

21 Q Isn't that cost generative?

22 A Yes.

23 Q You consider it reasonable in Sayreville?

24 A Yes.

25 Q And on page 11. Would you explain to the court

1 what is found on page 11 as to the requirements for recre-  
2 ational land for each of the garden apartment projects?

3 A It's set forth in Section 12-G8(8). It requires --

4 Q Excuse me. A It requires ten  
5 thousand square foot area and a provision for usable open  
6 space at the site.

7 I'm summarizing the standards set forth in subsection  
8 listed, (A), (B), (C) and (D).

9 Q And does it require five per cent of the gross  
10 area to be in recreation up to a maximum of ten acres?

11 A Correct.

12 Q And are these factors that would add to the cost  
13 of constructing garden apartments?

14 A Not necessarily.

15 Q You consider them to be reasonable for Sayreville  
16 to have this type of a provision?

17 A Yes.

18 Q And on page 11, does it require that each of the  
19 garden apartments be serviced by public water and public  
20 sewers? A Yes.

21 Q And on page 12, paragraph 20, does it require that  
22 all utilities be under ground?

23 A Yes.

24 Q And on page 9, does it require a front yard of  
25 thirty-five feet for garden apartments except that on Ernston

1 Road there is a requirement of a minimum front yard of a  
2 hundred feet? A Yes.

3 Q And on page 11, paragraph 18, does it require  
4 that the developer provide for garbage collection for the  
5 garden apartments? A Yes.

6 Q And you consider that to be reasonable?  
7 A No, because it is not done.

8 Q Okay.

9 THE COURT: What did you say?

10 THE WITNESS: No, because it is not done.

11 Q Do you know where that standard is retained in  
12 the ordinance?

13 MR. KLEIN: Could I have a, I'm not sure if  
14 the answer was that it is not reasonable or it  
15 is just not done.

16 THE WITNESS: Municipal garbage collection  
17 is for all properties within the borough absent  
18 threemajor industrial tracts which have a toxic  
19 solid waste disposal problem.

20 Q Now, with regard to -- A As I  
21 said, I have no recollection of why that paragraph is  
22 retained in the ordinance.

23 Q Fine. On page 11 -- A I am making a  
24 note of it, Mr. Bernstein.

25 Q Thank you. Does it indicate that the front area

1 is to be landscaped rather than paved?

2 A Correct.

3 Q Is that reasonable? A That's page 11?

4 The situation was --

5 Q I can't read my writing.

6 MR. KLEIN: So much for the comment about  
7 planners.

8 Q I got the page right. A It's  
9 (10) under section G.

10 THE COURT: What does it say?

11 THE WITNESS: Front area of each building  
12 shall be landscaped and shall not be paved,  
13 graveled or otherwise improved except for proper  
14 landscaping which may include where apartment  
15 foundation plantings and shrubs.

16 Q Isn't that something that could add to the cost  
17 of constructing garden apartments?

18 A If your interpretation is it means the land between a  
19 road and the apartments cannot be used for parking, you're  
20 interpretation is correct. It simply says that blacktop  
21 cannot be brought right to the foundation of the building.

22 Q Wouldn't it be cheaper though if you just gravel  
23 in the front yard rather than had it with landscaping and  
24 each year you would have to cut the grass and trim the trees?

25 A You may have to replace the gravel each year.

1 Q Well, is it -- A You're asking  
2 me to answer any questions on the maintenance of garden  
3 apartments. I am not an expert on the maintenance of garden  
4 apartments.

5 Q Do you regard this as a cost generator with regard  
6 to the construction and operation of garden apartments?

7 A This specific section in the Sayreville ordinance saying  
8 you can't blacktop to the edge of the building, no.

9 Q You regard it as reasonable then?

10 A Yes.

11 Q With the exception of the provision dealing with  
12 garbage collection, you feel that all the other provisions  
13 that we have discussed are reasonable?

14 A In the Borough of Sayreville, yes.

15 Q Fine. Is Sayreville a more industrialized community  
16 than Chatham Township? A Yes.

17 Q I believe, you identified a document that I am  
18 about to give you as the zoning ordinance of what was then  
19 called Franklin Township, but it is now called Somerset in  
20 the Township of Somerset -- County of Somerville? Excuse  
21 me.

22 MR. KLEIN: Could I have that again? You  
23 were right the first time.

24 MR. BERNSTEIN: Didn't I say the County of  
25 Somerset? I am in good shape today. Okay.

1 Q The Franklin Township Zoning Ordinance, County of  
2 Somerset, Somerville, Somerset?

3 A Yes.

4 Q And when I first cross examined you, I believe,  
5 you testified that we didn't have all the PUD's sections  
6 of the ordinance based on your perusal. Does it appear  
7 that the PUD section of the ordinance are contained in the  
8 insert?

A Yes.

9 Q Now, I would ask that your turn to the provisions  
10 of the ordinance that pertain to garden apartments and, I  
11 believe, I had it folded to that section.

12 A Yes, and they're underlined as well.

13 Q Thank you. Does it show that the maximum density  
14 for garden apartments would be eight dwelling units to the  
15 acre?

A In the highway develop-  
16 ment B-1 and B-2 zones, yes.

17 Q And would it be a fair statment that the only  
18 other zone which allowed garden apartments was the PUD?

19 A Yes.

20 Q And, I believe, you were the author of this  
21 ordinance?

A I was the author of the  
22 PUD standards. I was not the author of this particular  
23 standard.

24 Q I understand. And the minimum lot size for  
25 garden apartments would be ei ther five or ten acres, correct?

1 A In the B-2 zone it would be ten acres. Excuse me.  
 2 Five acres in the B-2 zone and ten acres in the HD and B-1  
 3 zones.

4 Q And the lot coverage was twenty per cent?

5 A Yes.

6 Q And the ordinance also had the so-called zigzag  
 7 provision?

8 THE COURT: The building job?

9 MR. BERNSTEIN: Yes.

10 A Yes.

11 Q Okay. If I could, that is it on that section.

12 I believe, it was your testimony, Mr. Chadwick, that  
 13 you were the author of the PUD section of the ordinance,  
 14 is that correct? A Correct.

15 Q And is the gross -- strike that.

16 Are there three PUD sections, the R-40, the HD and the  
 17 R-41? A Yes.

18 Q And in the R-40, is the minimum lot size three  
 19 hundred acres? A Yes.

20 Q And the HD and R-41 the minimum lot size a hundred  
 21 acres? A Yes.

22 Q And the maximum gross density in the first PUD  
 23 zone is three and a half units to the acre?

24 A That's correct.

25 Q And the maximum density in the second zone is

1 seven units to the acre?

2 A Correct.

3 THE COURT: What was the last, seven?

4 MR. BERNSTEIN: Seven, your Honor.

5 Q And the minimum open space requirement in both  
6 zones is twenty-five per cent?

7 A Yes.

8 Q And the maximum density on a net basis for town-  
9 houses is eight units to the acre?

10 A Yes.

11 Q And the maximum density for garden apartments is  
12 twelve units to the acre?

13 A Yes.

14 Q And the maximum height of the townhouses permitted  
15 in the PUD is thirty feet?

16 A Yes.

17 Q And the minimum number of structures -- strike  
18 that.

19 The minimum number of units in a structure is four?

20 A Yes.

21 Q And the maximum number of units in a structure  
22 is eight? A Yes.

23 Q The minimum distance between structures is fifty  
24 feet? A Yes.

25 Q The maximum lot coverage is twenty per cent?

1 A Yes.

2 Q And I assume that you regard these standards as  
3 being reasonable for Franklin Township?

4 A In context with the PUD regulation of Franklin Town-  
5 ship, those standards are reasonable, in my opinion.

6 Q And I presume that you would agree that these  
7 standards would permit the construction of least cost hous-  
8 ing in Franklin Township?

9 A Absolutely.

10 Q With regard to the amount of vacant developable  
11 land in Chatham Township, in your report did you refer to  
12 a figure for vacant land, overall vacant land?

13 A I would have to refer to the report.

14 Q Fine. A Mr. Bernstein, which  
15 report are you referring to?

16 Q I don't know, Mr. Chadwick. I don't have the  
17 section in front of me. Wait. Page 4. I appears in the  
18 December report.

19 A I don't have that  
report with me, Mr. Bernstein.

20 Q Here, I do. Okay. A Why do  
21 I refer to a categorization of vacant land within the  
22 multi-family zones?

23 Q Well, could you tell us, if you know, what the  
24 total amount of vacant land presently is in Chatham Township?

25 A No.

1 Q Would you know the figure for the vacant develop-  
2 able land in Chatham Township?

3 A No. I believe, I stated to you before that I had made  
4 an examination of the soils types within the zones permit-  
5 ting townhouses, quadruplex or apartments and the report  
6 states that.

7 Q Doesn't your report also state that in your  
8 opinion a substantial amount of each of the sites which is  
9 zoned for multi-family development has between forty and  
10 fifty per cent of the area with a difficult soil type?

11 A Yes, it does. It states that on page four under  
12 paragraph six, second paragraph of that subsection.

13 Q And doesn't your report also indicate that be-  
14 cause of this environmental limitation that it is possible  
15 that the developer may not go, the densities that are  
16 permitted in the zoning ordinance?

17 A I am referring to page four, item six of the report,  
18 Mr. Bernstein. I don't see -- the sentence speaks to a  
19 reduction of density.

20 MR. KLEIN: It seems to me, your Honor, the  
21 report speaks for itself.

22 MR. BERNSTEIN: It seems to me I can cross  
23 examine.

24 MR. KLEIN: Yes, by asking specific questions.

25 THE COURT: Gentlemen. Gentlemen.

1 MR. KLEIN: Not by having him read the  
2 things.

3 THE COURT: The witness answered the question.  
4 Please. Let's move on.

5 Q And is it not true in your report you state that  
6 forty to fifty per cent of the area of each multi-family  
7 site is unsuitable, in your opinion, for development because  
8 of soil characteristics?

9 MR. KLEIN: I believe that question was asked  
10 and answered.

11 THE COURT: He already answered that question.

12 MR. BERNSTEIN: Fine.

13 MR. KLEIN: I don't think there has been a  
14 response to Mr. Chadwick's question by Mr.  
15 Bernstein.

16 MR. BERNSTEIN: I don't have to give a  
17 response. I think, Mr. Klein knows.

18 THE COURT: Move on to another area, please.

19 Q Mr. Chadwick, is it your testimony today that  
20 the soils on the multi-family zone sites would impede a  
21 developer from placing the maximum density that is permitted  
22 under the zoning ordinance?

23 A Yes, in context with the zoning regulations of Chatham  
24 Township.

25 Q You have testified previously that you haven't

1 made any site plans or site designs to show the maximum  
2 density that could be constructed on any of the apartments  
3 zoned or townhouse zoned tract?

4 A No, I have stated the reasons why I have not even  
5 attempted to make a conceptual plan, and that is --

6 Q I did not ask the reason, just --

7 A I know you have not, Mr. Bernstein.

8 Q Has it not been your testimony throughout this  
9 case that you can't build low income housing without sub-  
10 sidies?

A Correct.

11 Q Can you build moderate income housing without  
12 subsidies?

A Yes.

13 Q Now --

14 A I would like to explain  
that rationale.

15 Q Explain it. Fine.

16 A I am  
17 not certain at this point in time today, Wednesday, the  
18 2nd of April, with the prime interest rate approaching  
19 twenty, that you build any housing, but given the circum-  
20 stances that this report was prepared in the context of  
21 the issues of this report of this case, my opinion is yes,  
22 moderate income housing can be constructed through private  
industry in Chatham Township.

23 Q Now, did you testify on direct examination that  
24 in your opinion, the homes in Chatham Township were expens-  
25 ive?

A Yes.

1 Q And did you make any study to determine the price  
2 at which homes in Chatham Township were going?

3 A Utilizing the census information that was provided in  
4 the master plan and familiarity with the area --

5 Q Well -- A -- in both cases the  
6 census information shows, one, the income levels of the  
7 municipality is substantially above the county. The county  
8 being a wealthy county and shows the values of homes on the  
9 higher side in this county. And also showing in Morris  
10 County being a wealthy area, the data that I am citing were  
11 either contained in the master plan of the municipality or  
12 the Bureau of Census data.

13 And the second part, the basis for the answer is my  
14 familiarity with the area.

15 Q Now, did you make any study of the SRAS of the  
16 municipality? A I did not.

17 Q Did you talk to any realtors in the area?

18 A I did not.

19 Q Did you look at any listings?

20 A I did not.

21 Q I would like you to point out to me the section of  
22 the master plan that talks about the value of one family  
23 houses in Chatham Township. A To save  
24 the court's time, I'm not certain, Mr. Bernstein, whether or  
25 not the value of homes contained within the data of the

1 master plan or that information that I cited to you was from  
2 my review of housing census data.

3 I am positive the income data is contained within the  
4 master plan because Mr. Klein questioned me on it and I  
5 believe you have as well.

6 Q The income data is there. Now, you talked about  
7 the census data. What year?

8 A '70.

9 Q '70? You would admit there have been dramatic  
10 changes in the housing market since 1970?

11 A I would admit there has been a dramatic increase in the  
12 cost of housing since 1970.

13 Q In all areas of the state?

14 A I don't know exactly what you mean by market.

15 Q You would agree there has been a housing, dramatic  
16 housing, dramatic increase in the price of housing throughout  
17 the state? A With minor exceptions,  
18 yes.

19 Q And you would agree that you're not an expert when  
20 it comes to housing values, housing costs?

21 MR. KLEIN: Can we have a little better defin-  
22 ition of that question? I think, we need a little  
23 better definition in that question. Mr. Chadwick  
24 is a planner.

25 THE COURT: He is not a real estate expert

1 and not a real estate appraiser that you want.

2 MR. BERNSTEIN: Yes, he is not an expert in  
3 housing values, housing costs.

4 THE COURT: Much of his testimony here has  
5 been relating to housing costs and he is not a  
6 real estate appraiser. He is not here qualified  
7 as a real estate expert, yes, but to the extent  
8 that his discipline requires him to have certain  
9 knowledge relative to housing and the real estate  
10 market, I think, he has amply demonstrated by his  
11 testimony here today that he has considerable  
12 knowledge and experience in that area.

13 MR. BERNSTEIN: I think I have a right to ask  
14 the question if Mr. Klein --

15 THE COURT: The way you ask it.

16 MR. BERNSTEIN: I would like to ask, your  
17 Honor, if he is an expert in housing costs. I  
18 think it is simple. He can either say yes or no.

19 MR. KLEIN: In construction costs?

20 MR. BERNSTEIN: Construction costs. Are you  
21 an expert in construction?

22 THE COURT: You can ask that.

23 Q Are you an expert in construction costs, Mr.

24 Chadwick? A No, I am not.

25 Q Are you an expert in the value of homes?

1 THE COURT: How could he evaluate homes?

2 MR. BERNSTEIN: From an economic standpoint.

3 THE COURT: An expert in evaluating the worth  
4 of one family homes?

5 THE WITNESS: I am not a real estate appraiser  
6 and to my knowledge a real estate appraiser is  
7 recognized as an expert. I therefore would not  
8 state that I am an expert in this court.

9 Q Now, I believe, you testified there are a number  
10 of cost generating factors in the Chatham Township ordinance?

11 A Yes, sir.

12 Q Can you give a dollar figure for any of these so  
13 called cost generating features so that the court will know  
14 what each of these features adds to the cost of a townhouse  
15 or garden apartment unit?

16 A Approximate.

17 Q You can give an approximation? Okay. As between  
18 a density of six units to the acre for townhouses and eight  
19 units to the acre, which I believe you recommend, what is the  
20 cost differential per unit?

21 MR. KLEIN: Is that in the Chatham, Parsippany-  
22 Troy Hills, in Franklin Township?

23 MR. BERNSTEIN: Chatham.

24 A In my opinion, increase the density from six to eight  
25 would reduce the cost of the land per unit. In the neighbor-

1 hood of ten to twelve per cent.

2 Q And how do you get to the ten to twelve per cent?

3 A Based upon my experience and discussions, the cost of  
4 the land and development with developers around the State of  
5 New Jersey.

6 Q Well, can you tell us -- can you run us through  
7 an example and show us the value of the land, the value of  
8 the improvements that are required for six units to the acre  
9 the value of the improvements that are required for eight  
10 units to the acre and showing of the differential?

11 A You didn't ask me that question.

12 Q I'm asking you to now.

13 A You want me to take a typical example --

14 Q Typical. A -- total development  
15 costs changing the density from six to eight?

16 Q Six to eight. A Your Honor, the  
17 purpose, the reason for the hesitation is not that the  
18 examples of reduced cost for site improvements and for the  
19 cost of land per unit are not able to be given to the court  
20 by myself. The reason I hesitated is the specifics of which  
21 I answered the question before in terms of land costs per  
22 unit.

23 In my experience simply by changing the density from  
24 one unit to the acre to two units to the acre does not re-  
25 duce the costs of land by a hundred per cent. Reducing town-

1 houses or increasing the densities of townhouses from six to  
2 eight to the acre is not going to reduce the cost per unit  
3 by twenty-five per cent per unit. Actually, it would be  
4 twenty per cent per unit. But, again, it's a site specific  
5 reduction.

6 If I owned property on Green Village Road and wished to  
7 building housing and it was limited to four units to the  
8 acre with the development regulations of Chatham Township  
9 and was allowed to build eight units to the acre, under a  
10 different set of site development regulations, I could give  
11 you specific cost reductions. I can give you, for example,  
12 linear feet of blacktop using standard specifications, six  
13 inch base and two inches of FABC. You run curbs either  
14 Belgian block or concrete and the curb lengths within six  
15 units or eight units to the acre are going to be roughly the  
16 same.

17 Adding a few extra feet because of the additional park-  
18 ing spaces. Your site improvement costs are going to be  
19 roughly the same for clearing, grading, et cetera, whether  
20 it is six units or eight units. So that is a constant. So  
21 you get a direct reduction in terms of density. The water  
22 lines and sewer lines, in my opinion, are increased in terms  
23 of additional lengths of pipe, et cetera, but pretty much a  
24 washout.

25 I may have some increased costs because of densities in

1 terms of drainage facilities. But, again, that is a site  
2 specific question. Drainage being scum water. Additional  
3 coverage being additional storm water facilities. But the  
4 reason that I am not answering Mr. Bernstein'directly, I'm  
5 trying to explain to the court, and I guess I would have to  
6 conclude, Mr. Bernstein, that I cannot give you a specific  
7 cost for a development.

8 I can give you my opinion based on my experience costs  
9 by development regulations.

10 Q You talk about a site specific calculations. What  
11 was the relevance of that in your answer, Mr. Chadwick?

12 A The R -- is it C3, C2? It has been so long in this  
13 case I have lost what the zoning designation is. C-2, C-2A  
14 and 2B.

15 MR. KLEIN: Here you are.

16 A The RC, the R-3C, 3B and R-3A zones, the soils types  
17 is identified in the Morris County Soils Survey. That survey  
18 is general at best.

19 I am stating to the court in response to Mr. Klein's  
20 questions repeatedly because it is a general designation.  
21 Until you do soil boring tests on any property within those  
22 zones you do not know precisely where the soil boring tests  
23 on any property within those zones, you do not know precise-  
24 ly where the soil types become very difficult in terms of  
25 site construction, and until you do precise calculations in

1 terms of storm runoff and in terms of flood hazard potential  
2 on the site.

3 You don't know how much land you actually have to use.  
4 That's why I gave a range in the report. In my judgment,  
5 forty to fifty per cent of the multi-family zoned areas  
6 exhibit soil types that would inhibit construction. Until  
7 you know the precise data for an individual tract of land,  
8 I think, any specific answers to cost factors would be  
9 speculation on my part. But in terms of specific answers  
10 on specific types of improvements, those improvements are  
11 going to be made regardless of what the soil types show.

12 If you have to build a hundred foot long driveway to  
13 serve six units and serve eight units, you still have to  
14 build that hundred foot driveway. If you have to build,  
15 grade five acres of land for six units to the acre or for  
16 eight units to the acre, you still have to grade five acres  
17 of land. So those costs aren't going to change to a great  
18 extent.

19 Q Now, would it also be true that in order to cal-  
20 culate the additional cost generated by the other features  
21 which you found to be cost generating, would one also have  
22 to make these calculations on a site specific basis?

23 MR. KLEIN: Are you talking about the develop-  
24 ment regulations?

25 MR. BERNSTEIN: Yes.

1 A To relate to each individual standard, the relating to  
2 townhouse, quadruplex and apartments as I had testified  
3 previously in response to Mr. Klein's question on direct  
4 testimony as to which standards, in my opinion, were cost  
5 generating, I can repeat in terms of the reasons why are  
6 precisely in terms of to what extent it's cost generating  
7 in terms of dollars for yourself, if that is your question.

8 Q Well, my question is, you couldn't give me a  
9 figure as to dollars or a specific figure as to per cent  
10 which would relate densities from six to eight units in  
11 Chatham Township? A No. That's correct,  
12 Mr. Bernstein.

13 Q I am asking if you can give a dollar or specific  
14 percentage figure which would be relevant in Chatham Town-  
15 ship for the other items which you contended were cost  
16 generating? A The requirements for  
17 the assemblage of land, I cannot give you a specific for two  
18 fundamental reasons. One, I did not have the owner's survey  
19 and I didn't have the ownership survey because the property  
20 changed hands on a daily basis. It may contribute to increased  
21 costs. I may have no effect whatsoever.

22 The testimony I am giving to you is relating to the  
23 standard in 7026 of the ordinance and density. You asked  
24 me the question. I said no, I could not other than on a  
25 site specific basis.

1 Q I am asking you if you could give numbers or  
2 percentages for the other features.

3 A That's what I am trying to do. I am going to take them  
4 in order and the ones that I simply can't relate to numbers  
5 or percentages I will state to you.

6 In terms of minimum building coverage this does not  
7 relate to site costs, in my opinion, it regulates bedrooms.  
8 I already commented.

9 The setback requirements of a hundred feet from a public  
10 street and thirty-five feet from a interior roadway are  
11 cost generating.

12 Q Can you give us a figure? That's what I'm after.

13 A The fifty foot setback there, a public street other  
14 than a major traffic route, in my opinion, is adequate.  
15 And a standard for an interior roadway is cost generating  
16 itself.

17 Q Well, Mr. Chadwick -- A It need  
18 be zero, therefore, if you set the cost of a twenty-two foot  
19 wide roadway, which would be a minimal for two-way traffic  
20 or driveway with curbing. No appreciable drainage. Not  
21 including water and sewer lines and no curbing. Just a  
22 minimum driveway, will run in the order of -- this is negl-  
23 ible grading, it will run in the order of twenty-two to  
24 twenty-five dollars a foot. But this is a curbing with  
25 curbing and drainage is not going to run in the order of a

1 hundred a foot.

2 Q And is it your testimony that there would be no  
3 drainage? A I am saying I described

4 the least expensive method of providing access on to a site.  
5 A twenty-two foot wide paved area, no curbing, no drainage  
6 requirement of any appreciation other than probably simply  
7 grading on the side of the road, not including water lines  
8 or sewer lines as you would calculate a public road improve-  
9 ment.

10 I stated to you, in my opinion, a twenty foot wide  
11 paved area. This would have four to six inches of base  
12 and two inches of surface will run somewhere between twenty-  
13 five, twenty-two and twenty-five dollars a foot. I think,  
14 that is a conservative estimate.

15 Q Now, with regard to that, is it your testimony  
16 that in Chatham Township in the multi-family district there  
17 is no requirement for drainage improvements?

18 A No. Answering your question the most conservative  
19 estimate relating to what setbacks engendered on site  
20 development, if you require a building to be a hundred  
21 feet from a street, you have got to get access to the  
22 building, assuming a driveway, and I described to you what  
23 I thought was the minimal driveway and gave you a precise  
24 number, at least, in my opinion, what the cost would be.

25 Q Well, my question, sir, is, is it your testimony

1 today that Chatham Township should limit the width of  
2 access driveways to a twenty foot driveway without curbs  
3 and without provision for drainage?

4 A No, Mr. Bernstein. You asked me for an estimate of  
5 costs as they relate to the various proceedings and I  
6 stated to you that I would begin, using as an outline,  
7 section 7026. And when I reached B(1), I said to you that,  
8 in my opinion, the hundred foot setback from a public street  
9 was cost generating. From a local street fifty foot was  
10 adequate.

11 I then began to describe to you in using minimum  
12 standards of what that additional fifty feet generated in  
13 terms of cost. And I stated to you using the most minimal  
14 means of access, in my opinion, it would be twenty-two to  
15 twenty-five dollars a foot.

16 If it were constructed as a public road, it would be  
17 in excess of a hundred dollars a foot. If we reduced that  
18 length of a hundred feet by fifty, we save on the bottom  
19 end fifty times twenty-five, which is \$1250, or fifty times  
20 a hundred, which is \$5000. So there is a precise range in  
21 terms of cost generating features of setbacks, if we proceed.

22 Q Wait. With regard to the setback, what do you  
23 recommend as the width of the roads?

24 A I am not recommending to you a width of the road. In  
25 my judgment, a two-way driveway having no parking should

1 be twenty-two feet. In terms of improvements along those  
2 roadways it's depending upon the circumstances of the site.

3 Q Now, are you testifying that a hundred feet is  
4 never a proper setback, Mr. Chadwick?

5 A From a local street.

6 Q From a local street? A In my  
7 opinion, it is cost generating. It would depend on the  
8 design of the site. An applicant could propose a hundred  
9 feet. You may have an unusual use across the street that  
10 is desirable to have a major setback. It may make sense  
11 to have a greater setback because the front area is a  
12 difficult soils type. It has easement. It has some  
13 impediment to the development, but to simply require a  
14 hundred feet with no flexibility there, in my opinion, is  
15 cost generating.

16 Q My question on this, Mr. Chadwick, if you had  
17 parking in front of the development, would this really be a  
18 cost generating feature because you would be black topping  
19 for parking and you could have your driveways part of your  
20 parking area? Is this not a possibility, which in fact  
21 would mean there would be no cost generating by the setback  
22 of a hundred feet?

23 THE COURT: Does this zoning ordinance per-  
24 mit parking in the front setback?

25 THE COURT: I don't know if it does or it

1 or doesn't.

2 What difference does it make?

3 MR. BERNSTEIN: Your Honor, I am not the  
4 expert and, I think, I have a right --

5 THE COURT: All right.

6 MR. KLEIN: It is not a fair question.

7 THE COURT: Let's deal with the ordinance as  
8 it exists, if parking is permitted in the front  
9 setback. I will allow him to answer.

10 MR. BERNSTEIN: I don't know if it is.

11 THE COURT: Well --

12 Q You know if parking is permitted in the front

13 setback, Mr. Chadwick?

A The parking

14 shall be located at least ten feet from the building and

15 twenty-five feet from the townhouse development property

16 line which means that you could place a double lane of park-

17 ing stalls in an access driveway between a roadway and a

18 building in a townhouse development could be done.

19 On the other hand, you couldn't place the buildings

20 close to the roadway and economize on any other linear

21 distances because the parking lots are going to repeat, based

22 on my examination of the zones in the township. At least

23 their configuration. The likelihood of townhouses being

24 stretched along the roadway in a straight line, I think, is

25 highly remote.



1 it specifies the minimum unit size for any townhouse units.

2 Q And you feel these figures are cost generating?

3 A Yes, I do. The square foot or residential construction,  
4 stick frame construction is probably in excess of \$40 a  
5 foot now. Now, the minimum -- I base this not so much on  
6 hearsay, but on terms of discussion with developers through-  
7 out the State of New Jersey and subscribing to the builders'  
8 association monthly periodical.

9 Q I assume your argument would be that if an eight  
10 hundred square foot townhouse were built that the cost would  
11 be a hundred square feet times \$40 the cost differential  
12 would be, is that correct?

13 A Not directly. But it is a cost. It must be borne  
14 in terms of construction. Quite obviously you have the  
15 undeterminant factor of the profit. But the ability to  
16 produce least cost housing is an issue. And if you must  
17 multiply nine hundred time forty plus land, plus improve-  
18 ments, plus carrying, plus profit, the unit becomes quite  
19 high.

20 If you multiply that same thing, times eight hundred,  
21 the improvements aren't going to decrease unless we increase  
22 density. The cost of the land may or may not decrease  
23 whether you change density at all. But they add to the  
24 ability of private industry to produce least cost housing.

25 Q Now, didn't you testify that Parsippany-Troy Hills

1 the maximum average square footage on townhouses was recently  
2 increased from 1350 square feet to 1850 square feet?

3 A Correct.

4 Q And wasn't your testimony that this was --

5 THE COURT: I'm sorry. Would you read his  
6 question and before he said "correct" back, please?

7 (Last question read by the reporter.)

8 THE COURT: A truck went by and I didn't hear  
9 whether you said maximum and I heard the minimum.

10 MR. BERNSTEIN: It is unusual maximum so  
11 that's it though.

12 THE COURT: Okay.

13 Q Didn't you testify, Mr. Chadwick, that this was  
14 done at the behest of the home building industry because  
15 they were building townhouses at a greater area than 1350  
16 square feet? A Yes.

17 Q Now, do you have any know of any reason why the  
18 market in Chatham Township would require smaller units than  
19 the market in Parsippany-Troy Hills?

20 A No.

21 Q You would agree, would you not, that the market  
22 in Chatham Township is for more expensive units than the  
23 market in Parsippany-Troy Hills?

24 A No question about it, Mr. Bernstein.

25 Q If you could go on, Mr. Chadwick, to the next

1 criterion where you could give us an objective answer,  
2 objective in terms of percentage or dollars?

3 MR. KLEIN: Your Honor, may we approach the  
4 bench for a moment?

5 THE COURT: Sure.

6 (Discussion had at side bar.)

7 THE COURT: The next time will come.

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I, Earl C. Carlson, certify that  
the foregoing is a true and accurate  
transcript of the testimony and proceedings  
in the above entitled matter.

Earl C. Carlson

Date: *March 5, 1981*

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