

ML - Green Village 139 Corporation
v. Chatham

April 22, 1980

Transcript of proceedings : examination of John Chadwick

pg. 116

ML 000 835 S

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

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

ML000835S

Plaintiffs,)

STENOGRAPHIC TRANSCRIPT

-vs-

of

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

PROCEEDINGS.

Defendants.)

Tuesday, April 22, 1980.

Morris County Courthouse
Morristown, New Jersey 07960

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 Plaintiff.

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

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

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

Name	Direct	Crosss	Redirect	Recross
JOHN CHADWICK,	-	1	59	101

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

Number		Ident.
D-5	Drawing pertaining to Zigzag	32

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

2 CROSS EXAMINATION BY MR. BERNSTEIN: (continued)

3 THE COURT: Okay, Mr. Bernstein, we are
4 changing subjects. The last time when I
5 interrupted you, I have down the next item in
6 terms of, and then I interrupted you and you
7 had asked him, the last question or last area
8 we are talking about maximum average square
9 footage, 1350 to 1850, and do you have any know-
10 ledge about Chatham Township's requirement of
11 smaller units than Parsippany-Troy Hills and he
12 said no.

13 MR. BERNSTEIN: Good. I know. I appreciate
14 that, Judge.

15 THE COURT: Okay. That's about where we
16 stopped.

17 MR. BERNSTEIN: Okay.

18 Q Mr. Chadwich, would you please get out your copy
19 of the Chatham Township Zoning Ordinance?

20 A I have it in front of me.

21 Q Thank you. Turning to page 77...

22 A Yes.

23 Q Can you tell us -- we had been over, I believe,
24 the requirement up to section, up to page 77. Can you
25 tell us what you believe to be the next exclusionary or

1 cost generative aspects of the ordinance pertaining to
2 multi-family development after that section dealing with
3 square footage and which we discussed at the last hearing.

4 A Item five. I would say, I guess, that would be, not
5 a guess, but that would be under section 7526, parenthesis
6 E close parenthesis, parenthesis 5, close parenthesis.

7 Q And what in particular do you find to be cost
8 generative about anything in section five of the ordinance?

9 A All of the requirements.

10 Q Well, isn't it a fact that one of the -- what
11 did you say, what requirement?

12 A All of the requirements.

13 THE COURT: All of the requirements.

14 Q Isn't it a fact that most townhouse units have
15 the, their own separate heating and utility systems?

16 THE COURT: Could I just ask so I under-
17 stand the question?

18 In the sense of all townhouses zoning ordin-
19 ances have market costs regardless of what
20 municipality you are talking about.

21 MR. BERNSTEIN: No, sir. I am talking about
22 actual development that where you have two town-
23 houses standard practice for development.

24 THE COURT: All right.

25 A I couldn't answer within any authority, Mr. Bernstein,

1 but this requirement, in my opinion, would unquestionably
2 increase the cost of the units, if they were to be offered
3 for rent. And, in addition, the requirements for its own
4 heating system, heating plant, no central or common laundry
5 or other similar facility intended for two or more dwelling
6 units shall be permitted in a townhouse development.

7 I see no fundamental nexus to the purposes of
8 zoning. If it is housing code or building code, it maybe
9 a regulation that would be appropriate in terms of the
10 zoning ordinance. It pre-empts, in my opinion, any poss-
11 ibility of developing those units for rental purposes in
12 a realistic sense.

13 Q Now, can you tell us whether or not a townhouse
14 development typically has separate utilities in each unit?

15 A In my experience they would, yes.

16 Q Why would they have separate utilities?

17 A The majority of townhouses, at least in my experience
18 that I am familiar with, have been developed on a for sale
19 basis and the common denominator being a fee simple owner's
20 association. However, I am familiar with numerous projects
21 which would from outward appearance appear as townhouses
22 as you would refer to them or, I think, most people in
23 this courtroom would refer to them as townhouse units, in
24 fact, or rental properties, on a good example would be
25 the development on Speedwell Avenue, which was a rental

1 project.

2 It was actually a two floor apartment from the out-
3 **side** of it. That unit, it looks exactly as you would
4 envision a townhouse development, Mr. Bernstein.

5 Q Now, Mr. Chadwick, would you give us the numbers
6 as to what the cost increase would be as a result of
7 separate heating systems and separate meters in each
8 apartment? A In a quantitative
9 measure, no.

10 Q Can you tell us the next section of the ordinance
11 that you feel is cost generative?

12 A Section 702.6 parenthesis 6, close parenthesis,
13 specifies the specific size, type and design of a detached
14 open space area within townhouses.

15 Q And which page is that on?

16 A Begins on page 707 at the bottom and continues to
17 page 7 dash 8 at the top.

18 THE COURT: I'm sorry, did you say 7 dash
19 7 at the bottom and carry over to 7 dash 8 at
20 the top?

21 THE WITNESS: That's correct.

22 Q Okay, you're claiming then about the yard area
23 in the townhouses? A Not complaining,
24 Mr. Bernstein. I am stating to you, in my opinion, that
25 is cost generative.

1 Q Fair enough. And we are talking about a yard
2 size that would be the width of the structure by at least
3 fifteen feet, is that right?

4 A I don't understand your question, Mr. Bernstein.

5 Q How large is this open area that you are claiming
6 is cost generative? Isn't it just the width of the structure
7 by at least the minimum of fifteen feet?

8 A I don't believe you can separate one standard. I
9 read the standard (6) as I quoted in this appropriate
10 section as a requirement that all townhouse units must
11 have a patio area and states what the dimension and it
12 states a improvement that must be carried with that patio
13 area.

14 Whether or not a patio area would be appropriate
15 given the topographic conditions. Whether or not it is
16 necessary in terms of the design of the units, this
17 standard says it will be there and would require a variance
18 for the municipality to exempt it.

19 Q How big is this area, that's what I would like
20 to know. My original question is, isn't it merely the
21 width of the structure by a depth of at least fifteen feet?
22 Isn't that what we are talking about in the area?

23 A It would be speculative to answer your question, Mr.
24 Bernstein. There is no specific standard for the width of
25 a townhouse, at least in terms of my review of the zoning

1 ordinance.

2 I will expect that townhouses, again based on my
3 experience, to be a minimum of sixteen feet in width and
4 in all likelihood twenty feet or larger.

5 Q So if a town -- A If it were
6 fifteen feet, it would be 225. If it were twenty-feet,
7 it would be 300 and there on up.

8 Q Now, as a planner, are you telling us that a
9 requirement that townhouses have 220 or 250 feet of open
10 usable space in your opinion is excessive and cost gener-
11 ative and should be deleted?

12 MR. KLEIN: Are we talking about cost
13 generating or are we talking about excessive?
14 The terms that have been used up to now is cost
15 generating. This is the first time I heard the
16 term excessive. I am not sure --

17 MR. BERNSTEIN: I would like to hear if he
18 thinks it is excessive. I think it is to the --

19 THE COURT: Take the either or out of there
20 so it is not two questions. Take it cost
21 generative.

22 MR. BERNSTEIN: Cost generative and excessive,
23 fine.

24 THE COURT: Okay.

25 A In my opinion, it adds to the cost because it is a

1 standard within the zoning ordinance. It must be specific-
2 ally subscribed to in terms of design of any project.
3 Whether or not it is appropriate and whether it is excessive
4 I offer no opinion.

5 Q Can you -- A My opinion, however,
6 is as I stated before. The fact the standard is contained
7 within the ordinance becomes a requirement and it is not
8 a standard as you would have it in a subdivision site
9 plan regulation, which is an administrative standard that
10 the planning board used as guidelines. To exempt this
11 standard would require the municipality to have a special
12 finding. It cannot be provided.

13 Q Now, is it your testimony that it is proper to
14 have open space requirements for garden apartments?

15 A Yes, I believe so.

16 Q But it is improper to have open space requirements
17 for townhouses? A I did not say that.

18 Q I'm asking you, is it improper to have --

19 A No.

20 Q Pardon? A No. In my opinion,
21 it is not.

22 Q It is not. It is only improper to have the open
23 space requirement for each townhouse unit?

24 MR. KLEIN: Is that a question?

25 MR. BERNSTEN: That's a question.

1 A I would not consider a patio an open space under
2 what I could classify as open spaces. At least in terms
3 of my understanding of the definitions contained within
4 the municipal land use law and in context with the
5 townhouse development scheme. This ordinance may have a
6 different intent, I'm not aware of it.

7 Q Is it your reading of this section of the
8 ordinance, Mr. Chadwick, that it requires each townhouse
9 to have a patio?

10 A Yes. I read it
11 each townhouse dwelling unit shall be separated from the
12 adjoining unit. Excuse me. Each townhouse unit shall have
13 at least one individual private yard, open area or open
14 patio or court adjoining and equal to or greater than the
15 width of the unit at least fifteen feet in depth.
16 ordinance

17 Q Doesn't the / ... mean that the townhouse must
18 have either a yard or a patio or a court, is that what the
19 ordinance means in that section of the ordinance?

20 A Yes.

21 Q And if one wanted to make a less expensive town-
22 house unit, one could use a yard rather than a court or
23 a patio?

24 A Maybe that's the
25 municipality's interpretation, Mr. Bernstein. But my
interpretation of the second sentence of that same section
is each private yard area, patio or court shall be effect-
ively screened from adjoining units by a fence, wall,

1 natural screening in order to provide a reasonable degree
2 of privacy. So whether we call it a yard, court or patio,
3 it has to be screened and be attached to that unit as a
4 private space.

5 Now, that is the specific standard that I take
6 the two sentences collectively together and requiring an
7 improvement, an attachment to that unit.

8 Now, that is my interpretation. If the interpret-
9 ation is meant to be different, I will accept it, but
10 couldn't read it otherwise.

11 Q Can you give us a dollar figure or what it would
12 cost to put in a private yard area with effective screening
13 as called for in the ordinance?

14 A You're asking for a quantitative figure of a standard
15 of which we do not know what the width of the unit is, nor
16 do we know what the improvements may or may not be to meet
17 the term, "reasonable degree of privacy." If a fence were
18 required, there is a great number of fences you can get.
19 A chain link fence obviously is unacceptable. At least,
20 that would be my opinion.

21 You can get into a lot of different types of fences
22 and different types of improvements. So the quantitative
23 measure would have to be speculation on my part. It obvious-
24 ly is more than a dollar. In my opinion, it is a standard
25 that adds costs to the development of this unit for no purpose

1 that I can see with respect to the zoning or with respect
2 to all the other standards that are contained in the town-
3 house section.

4 Q Well -- A I think, the municipi-
5 pality standards regardless of all of the other statements
6 or opinions I have rendered insure there will be adequate
7 open space on this tract.

8 Q Well, isn't the answer you can't tell us what
9 costs will specifically be generated by this provision?

10 A Of course not, Mr. Bernstein.

11 Q Now, can you give us dollar figures or percentage
12 figures as to any of the standards applying to either town-
13 houses, quadraplexes or garden apartments that you claim
14 could be cost generative?

15 A I believe I have already offered those numbers in
16 previous testimony.

17 Q Other than what you have previously testified to,
18 and we will leave it to the record as to what you said, can
19 you give us any dollar figures for any of the other provisions
20 in the ordinance starting on page 7 hyphen 8 and continuing
21 through quadra-plexes and garden apartments? And I would
22 like to know specific numbers for any section of the ordinance
23 you previously testified was cost generative.

24 MR. KLEIN: Did you say --

25 MR. BERNSTEIN: 7 hyphen 8 where we are right

1 now.

2 A Beginning on the bottom of page 7 hyphen 8 would be
3 702.6 (g) (1), the standard requires curbing of all parking
4 areas. Depending on the standard, which I will save time, I
5 don't even know if the curbing standards are contained in
6 the development regulations. I assume they're development
7 standards in the municipality. Curbing would run in terms
8 of concrete curbing which would be six by eighteen inch
9 road design would run in the neighborhood of seven forty-five
10 to eight dollars installed. If it were asphalt curbing,
11 which I doubt would meet the ordinance with the page, dash
12 page, top of page 7 dash 9 in accordance with the township
13 of road specifications.

14 Q Now, how much is that per unit?

15 MR. KLEIN: I don't think he answered the
16 question.

17 Q You didn't? A Which I doubt would
18 meet those standards and I stopped the statement. There-
19 fore, I won't apply a figure. The standard width of a
20 parking space would be ten feet. Counting driveway access
21 to the parking area, I would assign 1.75 parking spaces or
22 seventeen foot of curbing. And to be conservative, assign
23 a less than standard road spec in terms of curbing of
24 \$5 a foot. We have got a hundred units because of the curb
25 requirement of parking lots.

1 Q Are you finished, Mr. Chadwick?

2 A No, I am going to continue through the ordinance at your
3 request.

4 Q Wait. Wait. Now, you're saying that the cost
5 here is \$100 a unit because of the curbing at a minimum?

6 A Yes.

7 Q Is there any advantage to this internal curbing?

8 A Only if positive draining facilities are necessary and
9 if the grading cannot be accomplished otherwise.

10 Q Do you know whether or not most of the vacant
11 properties and vacant lots which are zoned for multi-family
12 development have in fact existing drainage problems that
13 would require things such as curbs?

14 A I don't understand your question at all, Mr. Bernstein.

15 Q Do you know whether or not there are serious drain-
16 age problems affecting the vacant areas which are zoned for
17 multi-family development?

18 A I believe I testified previously, Mr. Bernstein, in
19 terms of my knowledge of the soils of the area and my know-
20 ledge of the HUD delineations of the flood hazard areas
21 associated with the Great Swamp and the Loantaka Brook.
22 But in terms of the specific site conditions, no, I have not
23 made an examination, nor am I qualified to make an examin-
24 ation, but I, the purpose of the statement, Mr. Bernstein,
25 in response to your question is curbing is one way of creat-

1 ing positive drainage flow as to drainage.

2 I am not testifying to you in respect to a civil
3 engineer. Just stating this as a commonly known and under-
4 stood fact. Obviously drainage can be designed not to use
5 curbing, but it is a requirement of the zoning ordinance
6 of Chatham Township to curb parking lots for townhouses.

7 Q Would it be reasonable if Chatham required curb-
8 ing for garden apartment complexes?

9 A Mr. Bernstein --

10 MR. KLEIN: You mean generally?

11 A The requirement --

12 Q For internal roadways.

13 A I think, the requirement for curbing depends upon the
14 design, the development and the conditions that prevail.

15 Q The question, Mr. Chadwick is, whether or not it
16 would be a reasonable requirement in/^{the}Chatham Township
17 ordinance that there must be curbing for internal roadways
18 and parking in garden apartment developments? Would that
19 be reasonable?

20 MR. KLEIN: Again, are we talking reasonable
21 or least cost?

22 MR. BERNSTEIN: Reasonable.

23 a
24 A As a standard of/zoning ordinance or as a standard of
25 a standard construction spec with development regulations
as they would be contained in the cite , which?

1 Q Take both. A I would say that as
2 a standard within a site plan subdivision regulations, which
3 is the standard administratively applied by a planning board
4 or board of adjustment having jurisdiction, it is appropriate.
5 Particularly for areas that are of high traffic because of
6 density and/or public access as a regulation within a zoning
7 code in my opinion, it has no place.

8 Q Now, if this regulation were placed in the site
9 plan of the subdivision ordinance, would you have any
10 complaints with it as pertaining to townhouses?

11 A The standard for curbing and improvements within the
12 majority of the development regulations which I have prepared
13 or supervised, I would say in recent years directs those
14 improvements to public improvements and/or parking, or
15 driveway facilities that are generally open to the public,
16 retail stores, theaters, et cetera. Those standards in
17 terms of curbing and improvement of parking areas is a
18 general acceptance by local planning boards. And I say
19 this from my experience working with a number of municipal
20 planning boards that the requirements for urban improvements,
21 curbing and sidewalks and public road construction within
22 a multi-family development may in fact be no reason to be
23 contained therein and actually run contrary to what the
24 objectives of the design standards of the municipality
25 promulgates to hopefully achieve a type of development that

1 they would want to see developed within the municipality.

2 In effect, they would provide for a multi-family or
3 higher density housing, but wish it to be as pleasing and
4 adapted to the site as possible. Yet then requiring
5 intensive or extensive site improvements run contrary to
6 that general objective.

7 Q So it is your testimony that it would be unreason-
8 able to require a curbing requirement for either garden
9 apartments or townhouses in either a zoning or site plan
10 or subdivision ordinance?

11 A I stated too, Mr. Bernstein, that curbing regulations
12 appropriate within the site plan subdivision regulations
13 to have a flat statement as to all of the possibilities of
14 townhouses or garden apartments for all municipalities, I
15 don't know. I don't offer an opinion. I think, that opinion
16 would be valueless.

17 Q Okay. Mr. Chadwick, I am going to show you the
18 Par-Troy Hills ordinance. And we have marked a small X by
19 a provision in that ordinance dealing with interior roads.
20 And I would ask you if you read that provision?

21 A Interior roads?

22 Q Yes, for garden apartment projects.

23 A This is under Section 19-14.8, Par-Troy Hills zoning
24 ordinance. Subsection entitled, "Interior Roads." All
25 roads and other access ways within the garden apartment

1 development shall be private roads constructed, paved and
2 curbed to a right-of-way width of not less than 30 feet.
3 All such construction, paving and curbing shall be completed
4 in accordance with the subdivision regulations of the Par-
5 Troy Hills Township."

6 Q Now, the question is, do you consider this pro-
7 vision to be cost generative in the Par-Troy Hills ordinance?

8 A No, Mr. Bernstein, but I have not --

9 Q I prefer, Mr. Chadwick, if you just --

10 A I withdraw --

11 Q -- answer the question.

12 A No, I did not.

13 Q Thank you. Thank you for folding it.

14 Now, Mr. Chadwick, tell us the next section of the
15 Chatham ordinance which, A, you find to be cost generative
16 and, B, for which you can give us a dollar figure or a
17 range showing us how it is cost generative?

18 A The remaining standards within 7206 continuing from
19 page 7-8 beginning with parenthesis small f, close parenthe-
20 sis -- excuse me -- beginning with small g, close parenthe-
21 sis one, close parenthesis, in my opinion are reasonable
22 with the comment as to the discretion of the planning board,
23 or approved by the planning board when the comments are
24 necessary.

25 There are very specific standards is not the comment,

1 but the need for approval by the planning board seems un-
2 necessary. There is a specific standard or types of
3 standards that can be applied and then the caveat and
4 approved or subject to approval of the planning board,
5 which at least in my experience always leads to additional
6 requests by boards, but that is not a common denominator
7 by boards. And I have been involved with various issues
8 of dispute as to an unstandard specification having a
9 regulation which then says subject to, or at the discretion
10 of the planning board, which changes the regulation.

11 But in general, Mr. Bernstein, those standards contained
12 in the ordinance as they, as I cited the section, parenthesis
13 G, with the exception of sub-item parenthesis 1, close
14 parenthesis, through the end of section 702.6, in my opinion,
15 are reasonable.

16 Q Mr. Chadwick, isn't it a fact that in most of
17 our communities in New Jersey the planning boards do in
18 fact control the development of either townhouses or garden
19 apartments through site plan review?

20 A Yes.

21 Q And isn't it a fact if your planning boards usually
22 take into account the criteria that is mentioned in sub-
23 paragraph 4 on page 7 hyphen 9, such as safety, proper
24 circulation and convenience to residents and their guests,
25 isn't, aren't these common standards by planning boards?

1 A Yes.

2 Q Now, would you tell me the next section of the
3 ordinance that, A, you find to be cost generative, and, B,
4 you can give me a dollar figure as to how it is cost
5 generative?

6 MR. KLEIN: Are we still talking about
7 townhouses?

8 MR. BERNSTEIN: Talking about townhouses,
9 talking about quadra-plexes, talking about garden
10 apartments.

11 A The standards for curbing of a parking lot, other
12 standards where general site designs which are referenced in
13 7527 for quadra-plex and in 7528, for apartments, that I
14 have commented on previously were directed to townhouses
15 I would repeat.

16 Q The same things that apply to townhouses will
17 apply to quadra-plexes and apartments, correct?

18 A Those common standards and they're basically listed
19 in other requirements under the two respective sections that
20 I have commented on, in my opinion, would be cost generat-
21 ing and for the reasons I have stated and to the magnitude
22 that I was able to qualify it. Those provisions that I
23 have considered reasonable.

24 I would repeat again, to focus specifically on the
25 sections of the ordinance with respect to quadra-plexes,

1 which is section 702.7. The district is the R-3A district,
2 the maximum density of four dwelling units to the acre, in
3 my opinion, will not result in moderate cost housing.

4 And based that opinion on any knowledge of the
5 municipality developed through the research of the materials
6 that I have testified to and as a result of the continuing
7 testimony before this court.

8 Q With regard to the provisions as to the density,
9 can you tell us right now what land, which is zoned for
10 quadra-plexes is selling for in Chatham Township?

11 A No.

12 Q Can you tell us what effect, A, increased density
13 would have on the cost of the land per unit for quadra-
14 plexes?

15 A No, I cannot, Mr. Bern-
16 stein. And I offer to you the same statements that I had
17 discussed respective to townhouse development and, in my
18 opinion, the raising or the increasing of density does to
19 reduce the cost per unit arithematically, and, again, there
20 is a great number of variables that may come into play.

21 In my opinion, however, an increase of density does
22 reduce the per unit cost across the board, but it is not a
23 one to one relationship and a great number of factors come
24 into play.

25 I can't offer it to you in terms of an expert opinion
which factor would be most weighty within Chatham Township.

1 Q Now, Mr. Chadwick, I am not asking you to rehash
2 each of the sections you believe to be cost generative. I
3 only want you to hit on those sections where you can give
4 me a dollar figure as to the increase costs resulting from
5 what you believe to be an unreasonable cost generative
6 provision. And I would ask that you follow that mandate
7 and go down the ordinance.

8 A Under the townhouse quadra-plex regulations, parenthesis
9 B, close parenthesis, in section 702.7, seventy-five foot
10 setback from a public street and thirty-five feet from an
11 interior roadway, in my opinion, are excessive and cost
12 generative.

13 The cost would relate to the width of driveways and
14 the amount of pavement required for those setbacks. I
15 believe, I offered my opinion as to the cost of driveway
16 construction under townhouses and I will repeat that by
17 record as reposed to recalculate.

18 Q With regard to that, what you're saying is the
19 increase cost of, stemming from 702.7, would be the increased
20 cost from constructing a driveway seventy-five feet back,
21 or interior roadway rather than closer to the roadway, is
22 that correct? A Yes. That comment goes
23 with, and as I say, possibly to expedite my testimony, that
24 same comment goes with any other facilities necessary to
25 provide services to the units; waterlines, sewer lines,

1 telephone lines, gas lines, electric lines, and I guess
2 there is a requirement for cable TV and Cable TV under
3 section 702.8, which there are no other comments that I
4 offer with respect to quadraplex dwellings other than the
5 general comment that I have stated to you before, which is
6 applicable to townhouses and apartments as well.

7 Under section 702.8, requirements for apartments, the
8 standards contained under section, subsection parenthesis
9 B, close parenthesis, seventy-five foot setback from public
10 streets and the sub-item one, and the requirement for a
11 jogged building line, which is subsection 2, in my opinion,
12 are cost generating.

13 I believe, again, the quantity of cost is based on the
14 previous statements, to save time and to recalculate,
15 and I believe, in terms of the zigzag or jog front require-
16 ment we have also on the record, my estimate of that cost.

17 Q Well, that I don't recollect.

18 What I ask you is to give us an estimate of the cost
19 per unit for the so called zigzag provision found in
20 702.8.

21 A In my opinion, Mr. Bernstein, it would range between
22 four hundred and a thousand dollars depending whether a
23 wood veneer construction or brick construction. I offer
24 this based upon my knowledge of building costs.

25 Q And would you tell us how you arrived at the figure

1 of between was the four hundred and a thousand dollars per
2 unit depending upon the type of construction, whether wood
3 siding or brick veneer.

4 Tell us how you arrive at that figure, Mr. Chadwick.

5 A My experience and knowledge of building costs.

6 Q Well, tell us the computations that went into
7 a coming out with the result of \$400 to \$1000. Tell us
8 your thought processes. Tell us the addition you went
9 through, or is this merely a guesstimate?

10 A It is not merely a guesstimate. It is based upon my
11 experience, Mr. Bernstein, and any expense that would be
12 the cost of a jog or a zigzag building frontage.

13 You're talking about such a great number of variables
14 in terms of that type. Its minimum, in my opinion, would
15 be \$400.

16 Q Well, tell us -- A The maximum
17 would range to \$1000. You could get construction quotes
18 to change a corner in your house and have a specific
19 estimate offered, but in terms of construction of a project,
20 in my opinion, the four foot off set based on outside wall
21 construction would be in those ranges, and that's my opinion.

22 Q What I would like to know, Mr. Chadwick, we have
23 your conclusion. What is the mathematical process you went
24 through? What are the costs that you added up that come
25 to the range between \$400 and \$1000? How did you get the

1 number? A Bricks are roughly
2 twenty-five cents delivered. Four feet of brick times
3 twenty feet for height.

4 Q Equals what? A That was my,
5 the basis for the calculation. Now, I ran it through --

6 Q You're talking about labor?

7 A Approximately two-thirds of that. Two-thirds time
8 that cost. I will make the calculation, Mr. Bernstein,
9 excuse me. I will make the calculations for you, Mr.
10 Bernstein.

11 To construct the most expensive wall, use my estimate
12 and run down through it for you, Mr. Bernstein, how I
13 calculate the brick wall and we will call that the most
14 expensive condition and anything thereafter would be less.
15 And if we could take, possible we could have calculated
16 for this court the cost of a jog of a brick wall.

17 Well, conservatively a four foot wall. Well, take
18 six bricks to go across. That is conservative. And we
19 are going to go up twenty feet. Going to take three layers.
20 Two or three rows per foot. Sixty rows.

21 We are going to multiply that sixty times six and
22 get 360. And we are going to quarter that because the
23 brick estimate at twenty-five cents apiece, which I con-
24 sider conservative. So we have got 90. All right, that's
25 the brick.

1 In all candidness, your guess of concrete is as good
2 as mine. Ten dollars on it so we got a round number. We
3 are going to buy two and a half sheets of plywood to go
4 twenty feet in the air. Four feet wide. Four by eights.
5 Conservative, \$17 a sheet. That's thirty-four plus nine
6 and a half. Round that. We will round that one off at
7 fifty. So we got a hundred fifty dollars of material.

8 We go for studs now. Sixteen on center. Use two on
9 the cornice. That's five. You're going to have the plate
10 doubled. Four of those. They're going to go at five
11 dollars apiece. And that is extremely conservative.

12 We got fifty-nine, hundred dollars of two by fours.
13 I think, we are at about \$350. I am running rough estimates.

14 Going to put in insulation and put some drywall in
15 there. And then we are going to build. And the labor
16 costs of construction, in my opinion, runs two-thirds of
17 the total product. But my conservative estimate was using
18 those construction costs roughed out in my mind and re-
19 calculating verbally for yourselves, I still rest with the
20 thousand dollar estimate of that job in that wall.

21 Q If we didn't have the zigzag, the builder would
22 still have to have bricks on the outside, wouldn't he?

23 A Four foot less.

24 Q Four foot of bricks? A Yes.

25 If you build a building that is 120 feet long, but you are

1 required to put a jog in it every two units, we are going
2 to lose four foot of bricks every two units.

3 If you take four blocks, Mr. Bernstein, and line them
4 up, the outside perimeter of those blocks, okay? In terms
5 of the fronts would change, if you jog them back and forth.

6 Q Now, are you talking about --

7 A You have increased the size of the structure.

8 Q Okay. You're talking about a distance that is
9 four feet by twenty feet high?

10 A That was the example I was using.

11 Q Now, that would be for one unit or for two units?

12 A More than likely it would be for two units.

13 Q Two units. Now, the total figure you came out
14 with, we got \$350 worth of material. Then you lost me.

15 A We then adding in insulation and drywall.

16 Q And what was your figure?

17 A I conservatively estimated, and in my mental process
18 before I elaborated for yourself something in the magnitude
19 of \$400 for the materials.

20 I think, in fact it is an extremely conservative
21 estimate. And then taking the cost of development being
22 two-thirds of cost of development, which is a rule of thumb
23 figure, if you and I went to buy a house and a house cost
24 \$100, what we are actually paying for is \$33.30 materials
25 and \$67.00 worth of labor and profit, et cetera. It is a

1 a generally accepted rule of thumb. I think, it is a
2 reasonable gauge to apply. Therefore, if you took that
3 rule of thumb factor to get that wall in place right, it
4 is simply \$350, \$400, \$500 times the factor of three, you
5 get \$1000 or \$1500, which ever number we are using.

6 I offer my conservative estimate as in terms of the
7 method of brick veneer.

8 You obviously can take that cost down by changing the
9 facade. The outside facade, but not dramatically because
10 the brick is a relatively minor cost in the total bottom
11 line as I have developed it.

12 Q Now, that method, that is for two units, isn't
13 it? A Yes. At least in my opinion,
14 more than likely. Not necessarily.

15 Q So that there is a potential, at least, for using
16 your hypothetical \$500 per unit for the zigzag?

17 A Yes, in terms of that calculation. As I said, it is a
18 conservative offering and I have explained the mental pro-
19 cesses of developing that offering.

20 Yes, you're absolutely correct. You divide that
21 number by two assuming standard garden apartment develop-
22 ment up and down units.

23 Q Now, you would testify that this was a maximum
24 figure and I would like to know how, what one would do in
25 order to reduce the figure in terms of construction.

1 Eliminate the jog requirement.

2 Q Now, didn't you testify previously that you were
3 going to figure the maximum cost of the zigzag and one
4 could diminish it if other things were done. Wasn't that
5 your testimony? A As I said, you
6 can diminish that cost by changing the outside veneer.
7 But the outside veneer cost, as I took you through the
8 process, becomes relatively minor in that total cost.
9 The brick, I think, we calculated we came up with a figure
10 of \$360. No, \$90. I think, that is extremely conservative.

11 We will put Cedar shakes and buy them by the bundle
12 and we will put asbestos siding. I guess we can't put
13 asbestos siding on the walls. We will put a composition
14 siding on. But even if we get it down to zero, all we do
15 is paint the exterior plywood. Buy a gallon of paint for
16 \$12 and cover that eight hundred foot area. We will have
17 to buy two gallons. We still aren't going to reduce that
18 cost of that four foot wall substantially no matter what
19 we do with the outside.

20 The only way we are going to reduce the cost of that
21 outside wall is to eliminate the jog.

22 Q You would concede, I take it, that you could take at
23 least two or three hundred off the estimate that you just
24 gave, if one were to use different exterior materials and
25 not to use the brick, the concrete, the bracing and all the

1 things that are required for bricks?

2 A You have lost me. We are going to change the outside
3 veneer from a brick to something else?

4 Q Right. A And we are going
5 to reduce, and your statement was, you asked me a question.

6 Q Would you agree that we could reduce the facade
7 costs by several hundred dollars?

8 A I would agree the basic reduction of cost, of course,
9 is a result of labor not material.

10 We will agree that we will paint a four by twenty
11 foot wall much quickly than with a brick veneer wall, four
12 by twenty wall and paint a wall as opposed to the brick
13 wall, I assume, would be different. But I agree with you
14 and we are getting into a wide range of approximations.

15 Q Now, could you give us the same costs if you had
16 a precast construction where you had factory built apart-
17 ments or factory built modules rather than building it at
18 the site? Can you go through the same process to tell me
19 what the difference would be?

20 A No.

21 Q You recognize that the precast or modular con-
22 struction is permitted under the state uniform construction
23 code? A Yes, I do. I am aware of it.

24 Q You recognize that economies can be obtained by
25 using precast or modular construction?

1 A I don't recognize that, Mr. Bernstein. I couldn't
2 offer an opinion. I am aware of the cost of buildings
3 because of my occupation. I am not here to state to you
4 that I can't offer an opinion to this court of ^aprecast
5 building is going to be less or more expensive than a site
6 constructed building. Obviously it would depend on
7 materials and the choices of the owner.

8 Q Are there any other provisions that you can tell
9 us are cost generative and give us the dollar figure?

10 A The standards contained within subsection D on page
11 712, excepting, in my opinion, parenthesis 1, close par-
12 entesis, which is the two and a half story regulation, or
13 actually it would contain subsections two through five,
14 beginning on the top of page 7-13, accumulatively, in my
15 opinion, are cost generating.

16 I cannot offer to you, Mr. Bernstein, a quantification
17 of that opinion as to the regulations minimum and maximum
18 units within the structure.

19 The fire walls -- excuse me -- I don't mean to include
20 fire walls regulation.

21 The entrance requirements and secondary entrances are
22 common outside entrance requirements, in my opinion, those
23 regulations are more than adequately provided for within
24 the uniform construction code.

25 In terms of health, safety to the degree they differ

1 from the uniform construction code, I am not a construction
2 official. I am not licensed in the State of New Jersey in
3 that particular discipline and I don't propose to this
4 court that I know that code backward and forward.

5 I do state to you that there are differences, at least,
6 in my recollection.

7 Q Well, Mr. Chadwick, first you can't tell us the
8 dollar figure for any of these standards, can you?

9 A No. I say I could not offer and cannot offer a
10 quantative measure with respect to that opinion. I have
11 given the reasons for the opinion, but I cannot offer in
12 terms of part B of your question.

13 One, I can offer to you an opinion as to whether or
14 not they are cost generative or not. I cannot quantify
15 it for the reasons I have stated.

16 Q Okay. Also with regard to the, with regard to
17 all these provisions, you can't tell us today how they
18 might differ from the requirements of the uniform construction
19 code as to the construction of multi-family units?

20 A Precisely. I cannot. You're correct.

21 Q Now, with regard to the zigzag provision. I am
22 going to put a little drawing on the board and ask you if
23 that is not a representation of the zigzag?

24 THE COURT: Can we have that marked?

25 MR. BERNSTEIN: Certainly, your Honor. I

1 guess that would be the next P number or D
2 number. Excuse me.

3 MR. KLEIN: Five of six. D-5.

4 (The document referred to was marked D-5 for identification.)

5 Q You would agree, Mr. Chadwick, that this is an
6 accurate representation of the zigzag?

7 A Yes, showing four units in the offset.

8 Q Now, that shows four ground floor units affected
9 by the jog, isn't that correct?

10 A I don't know. It shows four boxes labeled one through
11 four. If you're telling me that's a plan-metric of an
12 apartment of four units or eight unit apartment building,
13 if it is eight units. We will assume one apartment on top
14 of the other. I am not trying to be argumentative, Mr.
15 Bernstein. Just if that's what it is.

16 Q Now, isn't it a fair statement that each of these
17 eight units would be increased by the cost of the single
18 jog?

19 A As I have interpreted the
20 ordinance, Mr. Bernstein, by increase by the cost of two
21 jogs front and rear, I apply that standard to the walls of
21 the structure.

22 Q I see. So that if we had two jogs, that would
23 mean we would have a cost, assuming brick, of approximately
24 \$2000, correct?

A Correct.

25 Q And if we had eight apartments that would mean

1 approximately \$300 per unit increased cost as a result of
2 the zigzag provision using brick, correct?

3 A It might be less than that. On the thousand dollar
4 maximum, in reality, it might be substantially more. As
5 I say to you, my estimate it is substantially -- a little
6 conservative estimate.

7 Q Is there any advantage to this zigzag provision
8 that you are aware of? A There are
9 some advantages in terms of interior design and location
10 of utility space that I am aware of, but I am not an
11 architect, Mr. Bernstein.

12 In terms from a planning standpoint, I think, the
13 concern would be to preserving the barracks or factory wall
14 construction or continuous line unbroken within multi-
15 family units.

16 In my opinion, an ordinance could simply state as a
17 guideline that unbroken or monolithic factory wall con-
18 struction should be discouraged so that you do not have
19 applicants walking to planning boards with precast one
20 hundred twenty foot long walls with windows cut out, which
21 in my judgment, the fear of the municipality or municipal
22 planning board or elected officials in common. In reality
23 I can stretch my imagination to think of that apartment
24 construction in Morris County present only in Parsippany-
25 Troy Hills.

1 Q You mean its barracks type of construction?

2 A Absolutely.

3 Q Now, are there any cheaper ways of having this
4 huge barracks type garden apartments where you have a
5 number of units in each structure rather than zigzag?

6 A No, Mr. Bernstein, I can't offer to you how to build
7 an apartment building of the cost of it, if that's the
8 question. I am not a builder. I am a professional planner
9 in the State of New Jersey.

10 I consider myself more knowledgeable than the lay
11 individual with respect to construction costs or the pre-
12 vailing costs of development because of that occupation.
13 But I do not offer myself, and I have stated that to you,
14 as an expert in terms of construction costs or construction
15 materials, but I can base my opinion as to why, in my opinion,
16 the zigzag or jog provision is cost generating. And I
17 stated to you the only rationale that I perceived for it
18 is to preclude, as stated, the factory wall, the barracks
19 type construction, which I don't believe has been a real
20 or a reality in this county in particular.

21 Q Well, again I ask the same question, Mr. Chadwick.
22 Can you give us any other mechanism for breaking up the
23 large apartment structures, which in your opinion as a
24 planner with the caveat you have given us, would be cheaper
25 than the zigzag? A It is a treatment

1 of the facade wall.

2 Q You're saying that you could have the large one
3 or two hundred length apartment that would not look like a
4 barracks, if you treated the walls a little differently?

5 A Your ordinance only permits twelve units to a structure,
6 Mr. Bernstein. I did not comment on it with respect to
7 a cost generating factor because I, as I commented and I
8 felt that I offered conservative comments with respect to
9 the cost generating feature.

10 Obviously, if we put a building two hundred feet in
11 length, let's assume the apartments are twenty on center,
12 we got ten per floor, we got twenty units in that building
13 more than likely.

14 Can a two hundred foot length building be designed
15 so that it has an appearance of not having the factory
16 wall change? Yes, I think it can be done. I think you
17 have examples of it in New Jersey. Simple change in a
18 roof line. The relatively good design of just simple
19 roof line changes.

20 Q Were you talking about the change --

21 A I will have to withdraw the comment because I was
22 going to cite the location, but I just cannot recall.

23 Q Now, you are talking about a change in roof line.
24 Do you mean that there would be changes in the roof lines
25 aslong a single garden apartment structure that would be

1 more than a hundred feet in width?

2 A A hundred feet in width.

3 Q Assuming you have a garden apartment structure
4 that is a hundred feet long. A Long.

5 Q Now, how many different roof lines would you
6 have in this structure in order to prevent the barracks
7 like apartment appearance?

8 A I don't know, Mr. Bernstein. I am not prepared to
9 design the building. I am saying to you there are ways,
10 of other changes of outside walls, in my opinion, would
11 be less expensive, yes.

12 One of those ways is to change the roof line and the
13 roof line is simply adding a little bit of an extension to
14 a fire wall, perching the roof a few feet higher or de-
15 pressing the roof on the adjoining structures. Adding
16 some texture to the walls or columns to the wall or awnings
17 to windows or landscaping or jogging the building on the
18 top to break the line. A number of different techniques.

19 In my opinion, these types of techniques would be
20 less costly than would be the requirement of a jog.

21 I think, the requirements accumulatively add cost of
22 construction for no useful purpose.

23 Q What I would like to know with my hypothetical,
24 with a hundred foot wide garden apartment complex, what
25 would the savings be if your hypothetical developer were

1 to change the roof line rather than to use the zigzag
2 provision, what would be the savings in dollars and cents?

3 A It would probably be a washout in any increase in
4 savings.

5 If we came to a number of three hundred dollars a unit
6 on the hypothetical design, you gave me on that yellow
7 piece of paper shown as D-5 by simply lowering the roof
8 level at two ends and raising it slightly in the middle,
9 you use the same amount of block, same amount of brick,
10 same amount of shingles, I guess, we would have to add in
11 a few feet of fascia to the cost, but that in my opinion
12 is negligible.

13 THE COURT: You prepared to move on, fine.

14 If not, I am going to move you on. I think, we
15 have exhausted it insofar as I am satisfied
16 with this zigzag. We have been on it for twenty-
17 five minutes and under Rule 4, I'm going to tell
18 you to move on.

19 MR. BERNSTEIN: Fine.

20 THE COURT: Okay.

21 Q Now, Mr. Chadwick, turning to your December 26,
22 1979 report. I refer you to page 4. Do you have a copy
23 of it we can share? A No, I still don't
24 have a copy of it, Mr. Bernstein. As soon as you mentioned
25 it, I realized I had not.

1 Q And I refer you to paragraph 6, item 6, I should
2 say, the second paragraph.

3 THE COURT: Hold it a second. Let's see
4 if I can find it.

5 MR. BERNSTEIN: Sure.

6 THE COURT: This is the December 26th one?

7 MR. BERNSTEIN: Yes, sir.

8 THE COURT: Page what?

9 MR. KLEIN: Four.

10 MR. BERNSTEIN: Page 4.

11 Q And does your report indicate, Mr. Chadwick,
12 that approximately forty to fifty per cent of the land
13 area which is zoned for multi-family development has soils
14 which are unsuitable to intensive development?

15 A Yes, it does.

16 Q And that is your opinion today?

17 A Yes, with a qualification. Previous, Mr. Bernstein,
18 I believe you asked me the same question and I based that
19 forty to fifty per cent estimate upon the soils data
20 exhibited presented by the Morris County Soils Conservation
21 District and I stated to you the accuracy of those soils
22 can only be verified through site investigation, but my
23 opinion that forty to fifty per cent is reasonably accurate.

24 Q Now, Mr. Chadwick, is it your opinion that based
25 on these environmental constraints the sites which the

1 municipality has designated for multi-family development
2 are in fact inappropriate for multi-family development.

3 MR. KLEIN: Perhaps the witness would like
4 to see the map to refresh his recollection?

5 MR. BERNSTEIN: I am going to object, your
6 Honor, to any comment by Mr. Klein. Mr. Chadwick
7 is --

8 MR. KLEIN: You want Mr. Bernstein --

9 THE COURT: Gentlemen, gentlemen.

10 MR. BERNSTEIN: Your Honor, I'm --

11 THE COURT: Si vous plait.

12 MR. BERNSTEIN: I am objecting to Mr. Klein
13 telling Mr. Chadwick --

14 MR. KLEIN: In talking to me --

15 THE COURT: Mr. Klein, what is your objection?
16 You have an objection to the question?

17 MR. KLEIN: My objection -- yes, your Honor.

18 THE COURT: What is it?

19 MR. KLEIN: My objection is based upon the
20 fact that we have had any number of sessions on
21 this hearing. I think, if that kind of question
22 is asked, it is appropriate that the map, which
23 is the zoning map, which lays out the areas in
24 question zoned for multi-family housing be posted
25 and that the witness have an opportunity to look

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1 at it.

2 THE COURT: If the witness doesn't remember,
3 then he can ask to see it, but at the present I
4 will allow the question as it is asked.

5 I think, it is time for the court reporter
6 to have a break. Fifteen minutes.

7 (A short recess was taken.)

8 Q Mr. Chadwick, that between forty and fifty per
9 cent of the land area of the site, which is presently zoned
10 for multi-family development had soils unsuited to intensive
11 development, correct? A Yes.

12 Q Based on that, is it your testimony -- strike
13 that. Based on that is it your opinion that Chatham Town-
14 ship shows poor sites for multi-family development in their
15 zoning ordinance? A Yes and no,
16 Mr. Bernstein. I believe I have commented upon all of the
17 zone areas in direct testimony and either raised questions
18 to the court, or attempted to in my research of the zoning
19 scheme commented on the rationale of zoning, one or another
20 for multi-family use and excluding the areas which you have
21 discussed at length which are owned by the plaintiffs in
22 this case.

23 I would refer specifically to the area that is zoned
24 the R-3C area, which is at the northerly side of the inter-
25 section of Shun Pike and Greenville Road which shows severe

1 soils limitations. Zoned for the highest density housing
2 in the ordinance.

3 Inversely, the areas that are along Greenvillage Road.

4 Q Mr. Chadwick, I would ask you to restrict yourself
5 to the question that I am asking. I didn't ask about Green
6 Village Road. You had the opportunity on direct and you
7 will have the opportunity presumably on redirect to talk
8 about Greenvillage Road all you want.

9 I asked you specifically your opinion as to whether or
10 not the sites which are presently zoned for multi-family
11 development were good sites for multi-family development?

12 I'd ask you to restrict yourself to answering that
13 question and not give gratuitous answers that you want to
14 give.

15 MR. KLEIN: Your Honor, I think, Mr. Bernstein
16 is totally out of order. Mr. Chadwick has sat
17 patiently through four or five days.

18 THE COURT: Six, I think, it is.

19 MR. KLEIN: Six days of examination and
20 cross examination all over the lot. He has been,
21 in my opinion, patient and intelligent in his
22 answers and, I think, he is entitled to answer a
23 question in the manner in which he feels appropri-
24 ate to answer a question.

25 THE COURT: All right. He did get a

1 little bit outside the framework of the question.
2 I don't know whether Mr. Bernstein, whether his
3 response called for your response. You have asked
4 him and he said yes and no.

5 Do you say that Chatham Township has picked
6 poor sites. He said yes or no, so he answered
7 the question. So, all right, then if you want
8 to ask the next question with respect to the
9 yes and with respect to the no, let's move into
10 that area.

11 MR. BERNSTEIN: Fine.

12 Q Are there any sites which Chatham Township has
13 zoned for multi-family development that you as a professional
14 planner would recommend not be zoned for multi-family
15 development?

16 A No, there aren't, Mr.
17 Bernstein, but I believe the condition that the municipality
18 has abundant regulations as to site investigation of lands
19 for development of multi-family, particularly with regard
20 to foundation bearing capability of the soils. I do not,
21 in my opinion, feel the soils are a limitation in terms of
22 drainage features or flooding because, I think, these
23 aspects of the zones can be readily overcome.

24 I do believe that a soils investigation and testing
25 as to their bearing capacities is absolutely essential,
particularly in the zone that I referred to before, the

1 R-3C district.

2 Q So the answer to my question was you would not
3 recommend the rezoning back to one family residential use
4 of any of the lands in the multi-family district in Chatham
5 Township? A No.

6 Q When you say -- A I agree with you,
7 Mr. Bernstein.

8 Q Thank you, Mr. Chadwick.

9 Now, did I understand you to say that the soils were
10 or were not a limitation to development in the areas which
11 are presently zoned for multi-family development?

12 A I believe they are limitations, yes.

13 Q And you believe that forty to fifty per cent of
14 the land area which is zoned for multi-family development
15 has soils which are unsuited to intensive development,
16 correct? A I, or that is an estimate

17 and that's correct as contained in the report. I believe,
18 it is December, 1979?

19 Q That's correct, Mr. Chadwick.

20 A On page 4.

21 Q Thank you. Now, with respect to the Chatham
22 Township zoning ordinance. You have testified as to your
23 recommendations as to the plaintiff's property and other's
24 property along Green Village Road, is that correct?

25 A That's correct.

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1 Q Are there any other areas of the municipality
2 aside from the area along Green Village Road that you would
3 recommend to the court today to be rezoned for multi-family
4 development?

A I would not recommend
5 any additional areas today, Mr. Bernstein. That does not,
6 and I don't mean to imply to the court that additional
7 areas should not be contemplated, but I'm not prepared to
8 offer any additional locations today.

9 Q You would agree, Mr. Chadwick, that a primary
10 attribute of land which is to be developed for multi-
11 family development is the existence of sanitary sewers,
12 would you not?

A I take your question
13 to mean the existence and available, or am I extending the
14 question too far?

15 Q I would agree. I will accept both.

16 A And I would agree with you, yes, consider a major
17 factor.

18 Q And is it your testimony today that sewers are
19 presently in 180 available to the subject property?

20 A If you don't object, when you refer to the subject
21 property, I assume you're referring to the Green Village
22 Road area and that area that I have testified to at length?

23 Q Just the plaintiff's property, Mr. Chadwick.

24 A Then I consider sewer facilities available to that
25 tract south of Green Village Road and the area north within

1 the planned sewer service area.

2 Q And you consider sewers to be available despite
3 the fact that you don't know if there is excess capacity
4 in the present plan, correct?

5 A Correct.

6 Q And I believe it was your testimony that municip-
7 alities should follow the law and update their master plan
8 every six years? A I don't recall

9 making the statement, Mr. Bernstein. If you have a quot-
10 ation, I wouldn't deny it.

11 Q Would you -- A I think, they're
12 mandated to keep their plans current and to reaffirm or
13 make adjustments in accordance with the municipal land use
14 law. Yes, that's my opinion.

15 Q And you would agree that it would be reasonable
16 for a town to reassess its multi-family requirements every
17 six years? A I wouldn't offer that
18 generality to the court, Mr. Bernstein, particularly in the
19 context with the issues and the state of the housing market
20 in New Jersey today. I think, a periodic six year re-
21 examination is not a good time frame for municipalities to
22 follow. I think, that the particular issues of housing
23 are becoming/^{of} such a complex nature in this state that an
24 ongoing examination of development regulations and housing
25 policies is absolutely essential and those policies extend

1 far beyond a zoning ordinance.

2 Q Would you agree, would you not, sir, that it is
3 reasonable to re-examine the multi-family housing needs in
4 Warren Township within a six year context?

5 A Sooner. Yes, I would agree with your statement, Mr.
6 Bernstein.

7 Q And Par-Troy Hills you recommend densities for
8 townhouses at six and eight units to the acre, correct?

9 A Are you asking my recommendations to the planning
10 board and to the mayor or council and/or are you asking
11 what is contained in the zoning ordinance?

12 Q What's contained in the zoning ordinance.

13 A Yes, that is correct.

14 Q And you recommended densities of six and eight
15 units for townhouses, didn't you?

16 A I believe so, Mr. Bernstein. You're testing my
17 recollection of the Par-Troy Hills zoning ordinance that I
18 am not prepared to offer definitive statements, but I would
19 not disagree with the statement.

20 Q And as a professional planner you feel there are
21 instances when densities of six to eight, between six to
22 eight dwelling units to the acre are reasonable and there
23 are instances in which these densities are unreasonable,
24 correct? A Yes.

25 Q You would agree that where there are natural

1 impediments to develop that a density of six units to the
2 acre for townhouses might be excessive?

3 A When you're asking me that question, Mr. Bernstein,
4 you're taking in the entire world or are you taking into
5 the world being the Township of Chatham?

6 Q Talking about New Jersey. The world for the
7 purpose of this courtroom.

8 MR. KLEIN: Consider the very topography
9 in this state which maybe equivalent to the world.
10 Could we have some further definition on that
11 question?

12 THE COURT: I would like to hear the question
13 read.

14 MR. BERNSTEIN: I will give it again, your
15 Honor.

16 THE COURT: All right.

17 Q You agree, Mr. Chadwick, that there are instances
18 where natural constraints make a density of six townhouses
19 to the acre excessive? A I would agree
20 in extreme cases. The extreme case would be the lengthy
21 discussion or testimony I offered with respect to the Glen
22 Hills application in Warren Township, which you provided
23 the court with a copy of the transcript. There was a piece
24 of property that was eighty-five per cent covered by water.
25 That would be an extreme condition.

1 Q Flooding is one condition that might make six
2 dwelling units to the acre excessive density, correct?

3 A I agreed with you with the comment that I expressed
4 previously.

5 Q I would like you to answer my question, Mr. Chad-
6 wick. A I agree with you with the
7 comment I expressed previously.

8 Q I will restate the question. Is the flooding
9 one criteria that might make a density for townhouses of
10 six units to the acre excessive? Yes or no.

11 A Yes.

12 Q Are steep slopes a condition that might make a
13 density of six dwelling units to the acre for townhouses
14 excessive? Yes or no.

15 A Yes.

16 THE COURT: Excuse me a minute. I have a
17 call from another assignment judge. I'll be
18 right back.

19 (Judge left the bench for a short while and returned.)

20 MR. KLEIN: Your Honor, may we approach the
21 bench for a minute?

22 THE COURT: Sure.

23 (Discussion had at side bar.)

24 MR. BERNSTEIN: I'd like the last question
25 read back.

1 (Last question and answer read by the reporter.)

2 Q Are difficult soil conditions a factor that might
3 make a density of six townhouses to the acre excessive?

4 Yes or no. A I can't answer your
5 question, Mr. Bernstein. You would have to clarify what
6 you mean by the term "difficult soil conditions".

7 Q Are there certain soil conditions which would
8 make development at a density of six units to the acre for
9 townhouses excessive? Yes or no.

10 A Yes.

11 Q You would agree that a density of six townhouses
12 to the acre might be excessive for a small tract of land
13 surrounding by heavy traffic routs?

14 THE COURT: How small is small?

15 MR. BERNSTEIN: I'm asking the question be-
16 cause Mr. Chadwick said the identical, made the
17 identical statement on depositions.

18 THE COURT: I know what you're doing, but
19 small is small? I understand.

20 MR. BERNSTEIN: He didn't give any. I can't
21 Judge.

22 MR. KLEIN: Mr. Chadwick, your Honor --

23 MR. BERNSTEIN: In Mr. Chadwick's mind,
24 your Honor and he can tell how small is small.
25 I can only repeat what he had given.

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THE COURT: I know he is, but he is talking about something in that transcript that exists.

MR. BERNSTEIN: No, sir.

THE COURT: You were talking about a subject piece of property, weren't you?

MR. BERNSTEIN: No. I was talking in hypothetical terms as I am now.

THE COURT: A small tract of land. So small could be in relationship to the universe rather than the world.

MR. BERNSTEIN: I would take whatever Mr. Chadwick means by the term small because --

THE COURT: Whatever definition he has. I don't know how it is going to be helpful to me. I would have to say I object to the question because it is not helpful to me as a trier of facts.

MR. BERNSTEIN: Okay.

Q What do you regard as a small tract with regard to townhouses, of townhouse development, Mr. Chadwick?

THE COURT: In number of acres.

A Less than five acres.

THE COURT: Less than five?

THE WITNESS: Yes, your Honor. Excuse me.

Q And I assume that you would agree that there are sites of less than five acres on heavily travel roads where

1 a density of six townhouses to the acre would be excessive?

2 A Mr. Bernstein, I assume and possibly incorrectly that
3 we are still dealing with New Jersey in context with these
4 questions?

5 Q Of course. I don't practice anyplace else.

6 A And I would agree with you and I agree with you the
7 assumption we are talking about a heavily traffic street
8 as an every day use of the term. You're not asking me to
9 specify ADT or peak hours or just a condition, and I agree,
10 yes.

11 Q You would agree that sanitary sewers would not
12 control a high water condition which existed on a parcel
13 of property?

14 A I won't agree with you,
15 but my expertise is not as a civil engineer.

16 Q You're saying that sanitary sewers would cure
17 all problems associated with high water tables?

18 A Mr. Bernstein, I said I would not agree with you, but
19 I offer that opinion as not being a civil engineer as my
20 experience that the installing of sanitary sewer lines and
21 gas lines and water lines has a tendency to lower the
22 water table.

23 Q So your testimony is that the installing of a
24 sanitary sewer line would in fact cure a high water table?

25 A I didn't say that, Mr. Bernstein.

Q It would or wouldn't? You tell me what you're

1 saying? A I don't know. If you have
2 high water table, extremely high water table and install
3 sanitary sewers in the area it eliminates one issue and
4 that's in terms of waste disposal. Whether it will have
5 any affect whatsoever in terms of the ability to develop
6 the land, only specific site development would show that.

7 Q Turning to page 14 of the depositions, January
8 17, 1980. Were you ask the question, "But if we had
9 sanitary sewer lines too and assuming sanitary sewers were
10 available with the capacity to plan for additional
11 effluents all the way along Green Village Road, wouldn't
12 the existence of these sewers cure any of the environmental
13 problems caused by the F V soils?" Weren't you asked that
14 question? A I am reading it.

15 MR. KLEIN: Your Honor --

16 A It's quite certain it is in the transcript.

17 MR. KLEIN: Your Honor, if I may? Mr.
18 Bernstein has gone from a very general question
19 involving the State of New Jersey to in his
20 deposition which he is using, I suppose, as re-
21 lated to credibility, although, you can't be
22 sure to a question which dealt with Green Village
23 Road and PV soils.

24 tTHE COURT: What is the page of the
25 question?

1 MR. BERNSTEIN: Page 14, line 2 through 3.

2 MR. KLEIN: I think, before he uses the
3 deposition in that way he should ask the question
4 in that way.

5 THE COURT: Are you objecting to the use of
6 the deposition and asserting it is improperly
7 used?

8 MR. KLEIN: Yes, I am, sir, in this manner.

9 THE COURT: You're using his question and
10 answer, 2 through 9?

11 MR. BERNSTEIN: That's right, 2 through 3.

12 THE COURT: I don't see that he is saying
13 anything different than what he just got through
14 saying.

15 MR. BERNSTEIN: As I read it, your Honor,
16 he says that sanitary sewers would not cure high
17 water tables with wet ground conditions, which
18 is basic to construction. And I understood him
19 to say on the questions I had asked him prior to
20 deposition that he couldn't say.

21 THE COURT: Well, he says it would be, cure
22 the disposal problem there. Not cure a high
23 ground water table with a wet ground condition,
24 which is basic to construction. He said he didn't
25 agree with you.

1 You asked him, do you agree sanitary sewers
2 will not control high water conditions. He is
3 not agreeing with you, because he is not a civil
4 engineer. He says sanitary sewer lines, water
5 lines, gas lines had in his experience lowered
6 the water table. He does not know if the sanitary
7 sewer lines cures not the water table. He said
8 it cures the disposal problem.

9 MR. BERNSTEIN: I don't know what he said.
10 If I can ask that Mr. Carlson read back the
11 question and the answer because I understood
12 him to say he didn't know what effect it would
13 have. At the very end, your Honor. One of the
14 problems is that Mr. Klein is commenting grat-
15 uitously. One of the problems I have had. I
16 ask a simple question. I am not sure what answer
17 I actually am getting.

18 THE COURT: Well, I thought, I was sure of
19 the answer you were getting. But go ahead. If
20 you want to ask him the question, go ahead and
21 ask him, to him directly and then let him answer.

22 Q You would admit, Mr. Chadwick, that the install-
23 ing of sanitary sewers would not cure a high water table
24 or a wet ground condition with regard to the construction?

25 A Correct.

1 Q You would agree, Mr. Chadwick, that high water
2 tables and wet conditions impede the construction of
3 multi-family development?

4 A It may.

5 Q It may. They add to the cost of constructing
6 multi-family development, don't they?

7 A Potentially. It is impossible to give you a yes or
8 no, Mr. Bernstein.

9 Q They require fill, additional drainage, sand
10 piling in order to stabilize the ground, don't they?

11 A It is a common practice that we are talking about
12 the entire world, which is my understanding of all the
13 questions of the world being the State of New Jersey. No
14 site specification.

15 Ground water table can be high, having absolutely no
16 bearing capacity whatsoever in various parts of the State
17 of New Jersey.

18 Q You would agree that soil conditions are an
19 important factor for municipalities to consider when plan-
20 ning the location of multi-family development?

21 A Yes.

22 Q You would prefer to see multi-family development
23 constructed on dry land rather than land which was subject
24 to flooding?

25 A I am not certain I understand what I prefer.

1 Q As a planner. A Yes, we would
2 not recommend that. I would not recommend approval of a
3 development by a local planning board or zoning board of
4 adjustment with the dwelling units were shown to be below
5 flood elevations and known flooding elevations and I would
6 agree, given that caveat, and that's the only method that
7 I can answer that question, Mr. Bernstein.

8 Q Would you prefer to see multi-family development
9 constructed on dry ground rather than ground with a high
10 water table?

11 MR. KLEIN: Have we determined grounds with
12 high water tables, not dry ground. I don't
13 think that has been established.

14 MR. BERNSTEIN: It is pretty evident that
15 you have got a high water table. The water
16 doesn't just stop at a certain point. That's
17 considered wet soil.

18 THE COURT: I will allow the question as it
19 is asked.

20 A In the context with the State of New Jersey, the
21 question has no meaning, Mr. Bernstein.

22 Q So that you can't answer it?

23 A That's correct.

24 Q Fine. Turning the the depositions of January
25 17, 1980, page 15, line 2. I ask you if you were asked

1 question -- line 2. "Would you prefer to have you multi-
2 family development put on dry land which cannot have a
3 high water table and was not subject to flooding, correct?"

4 "ANSWER I answer you yes. You may at basic stages
5 at general locations multi-family housing is suited in
6 that location where you have three soil types. One,
7 there is a swamp. One there is medium dry and one that is
8 high and dry, high and dry should be selected."

9 You gave that answer, didn't you?

10 A Yes.

11 Q You would agree today you would prefer it high
12 and dry than medium dry?

13 A That wasn't your question.

14 Q I didn't ask you what my question was, Mr. Chad-
15 wick. That was for the court to decide.

16 MR. KLEIN: Your Honor --

17 THE COURT: All right, you don't. Ask the
18 question again.

19 Q You prefer the land high and dry rather than the
20 land that is medium dry?

21 A Yes, I would stand by that answer in the deposition,
22 Mr. Bernstein.

23 Q You have to, Mr. Chadwick.

24 Now, Mr. Chadwick, are you today recommending R-3A
25 zoning for the subject property owned by Green Village

1 Q Turning to your deposition of October 30, 1979;
2 page 67, line 15. Were you asked, "So it is your recommend-
3 ation that the plaintiff's property on both the north and
4 south side of Green Village Road be rezoned to the R-3A
5 designation? Is that a fair statement?"

6 "ANSWER That's correct.

7 "QUESTION And you feel that the R-3A designation
8 could support least cost housing on the plaintiff's property,
9 correct?"

10 And, "ANSWER That's correct."

11 I correctly read the questions and answers from this
12 deposition? A Yes, you did.

13 Q Would you agree now that -- strike that.

14 You disagree with your answer of October 30, 1979, that
15 you could build least cost housing with the R-3A designation
16 on the plaintiff's property?

17 A Under the regulations in place today, yes.

18 MR. BERNSTEIN: No further questions.

19

20 REDIRECT EXAMINATION BY MR. KLEIN:

21 Q Mr. Chadwick, if we could just get back to that
22 deposition for a moment. I will give you the page and the
23 questions so that you can look at it.

24 Is it your recollection that that question was asked
25 in the context of the Chatham Township regulations or in

1 context of least cost housing?

2 MR. BERNSTEIN: I am going to object to this,
3 your Honor. This question really has no relevance.
4 We can talk about it in the context and marvelous-
5 ly ambiguous word like that, when we are dealing
6 with past recollections or with past conversations
7 but here we have the actual deposition itself.
8 If there is a different context than what I have
9 read, I would suggest that the procedure would
10 be to call it to the witness' attention and
11 certainly my adversary has that right. But in
12 asking him to characterize what's in black and
13 white on the page, I think, is improper.

14 MR. KLEIN: Your Honor, if I may? The
15 witness was asked the question and each time he
16 was asked the question he answered it in the con-
17 text, and he added that modifier in the context
18 of the Township regulations.

19 The question in the depositions has no
20 bearing on the Chatham Township development reg-
21 ulations and there is no implication in the
22 question that it does. That is all.

23 THE COURT: Well, ask the question that
24 relates to the deposition. Then find out, you
25 know, do you agree that you're going to have to

1 point it out in the deposition to get the proper
2 context.

3 MR. KLEIN: Unfortunately, your Honor, the
4 questions asked in the deposition were not asked
5 in any specific context, which was why I asked
6 the question the way I did.

7 Q Mr. Chadwick, referring to that question again.

8 THE COURT: Why don't you let him read it
9 and see it. I don't know how he can possibly be
10 expected to recollect what happened on -- that
11 was my main problem with your question October
12 3, 1979. Let him read it.

13 MR. KLEIN: He was reading it at the time
14 when Mr. Bernstein objected.

15 THE COURT: Let him read it. Just read it.
16 I'd say back to page 66, maybe 65. I don't know.
17 But, I think, 66 would get you the framework of
18 it. Maybe 65, Mr. Chadwick, if you have looked
19 back there already.

20 THE WITNESS: I'm sorry, your Honor.

21 THE COURT: Maybe page 65. If you go back
22 to 65, line 2. Could you tell us what your under-
23 standing of what is permitted by the present zon-
24 ing ordinance?

25 THE WITNESS: Your Honor, I have read through

1 page 64 through 68 of my deposition of October
2 30, '79 quickly. I understand the context of
3 the questions. Obviously my recollection is
4 what the court feels it is. From October 30th
5 until -- 1979 -- to today. I read the questions.
6 A general discussion between myself and Mr.
7 Bernstein of questions and answers in respect to
8 housing costs, of housing zoning districts and
9 referencing back to previous testimony describing
10 what in my opinion an alternative land use scheme
11 along Green Village road was possible.

12 THE COURT: Okay. I think, what I am going
13 to do, I will decide the question the the frame
14 work. I think, he is right.

15 MR. KLEIN: Okay.

16 Q Mr. Chadwick, you were asked on cross questions
17 about the effect of sanitary sewers on lands having a high
18 water table and whether or not it would cure such condition.
19 I take it, it is your opinion it would not necessarily cure
20 such a condition, is that correct?

21 MR. BERNSTEIN: I am going to object here and
22 I think I have to set my position out in the be-
23 ginning of the redirect, your Honor. I think, Mr.
24 Klein can ask an open ended question, but certainly
25 when commenting about my questions, it is improper

1 for the question to telegraph the answer that is
2 sought. Therefore, I would object to leading
3 questions at this phase of the proceeding.

4 THE COURT: Well, I am not too sure that he
5 is. All right, yes, you're right on leading
6 questions, but I am not too sure that the leading
7 question is doing anything other than telling
8 what he has already told us. So I see no harm
9 from it. All right, I will allow it.

10 MR. KLEIN: I am trying to put these things
11 in context.

12 THE COURT: I will allow it as long as he
13 doesn't lead him into a controversial area. I am
14 going to allow the leading. I don't think we
15 are going to lead Mr. Chadwick, in any event.
16 All right, but go ahead.

17 THE WITNESS: Yes.

18 Q Do you think it would have any effect?

19 A Offering my opinion of installing of sewers, number
20 one, cures the issue of sanitary waste disposal. It may
21 have an effect in terms of high water table. It may have
22 no effect in terms of high water table. A high water table
23 may have an effect in terms of construction of the tract.
24 It may have little or no effect in terms of construction
25 of the tract.

1 Q Now, based upon your examination of Chatham
2 Township's master plan, et cetera, is there any land in
3 your opinion which is high and dry in the northern area
4 of the township? A Yes.

5 Q And where is that? A Along
6 Green Village Road. Along Shunpike and the northerly areas
7 of Chatham Township.

8 Q Now, you were asked if you thought that sewers
9 were available to the plaintiff's property even though you
10 didn't know if there was any excess capacity. And you
11 answered according to my notes, yes.

12 Could you explain that answer, please?

13 A My opinion the existing sewer lines that is shown on
14 page --

15 THE COURT: As shown on the master plan?

16 THE WITNESS: My memory is getting better.

17 As shown on the following page, 55 and of the
18 master plan of Chatham Township shows the exist-
19 ing plans the sewer service areas of the municip-
20 ality. And the sewer line, in my opinion, is
21 even in close proximity to the tract of land
22 which was marked on the exhibit in this court to
23 the south of the Green Village Road and the sewer
24 service area extends across the area marked on
25 the northerly side. In my judgment, or my opinion

1 then, therefore, sewer service is available and
2 in the immediate vicinity of the, both the
3 subject site of the plaintiffs' as well as the
4 Green Village Road area in general.

5 MR. BERNSTEIN: I would ask that the answer
6 be stricken because specifically in the question
7 there was reference to capacity and Mr. Chadwick
8 can answer a void.

9 THE COURT: He said the availability of
10 sewers to the plaintiff's property, even though
11 no excess capacity.

12 MR. BERNSTEIN: Would you explain --

13 THE COURT: He just explained it.

14 MR. BERNSTEIN: Okay.

15 THE COURT: Okay. I will allow the answer.

16 Q You were asked if Chatham Township chose poor
17 sites for multi-family development. And according to my
18 notes your answer was both yes and no. Is that your
19 recollection? A Generally, Mr. Klein,
20 yes.

21 Q Okay. Now, could you explain why on the one
22 hand yes and on the other hand no?

23 A The -- excuse me -- the RC3 zone, I believe, I explained
24 that at least in my examination of the soils information
25 and principally the soils information, considerable

1 difficulty would be encountered developing that tract of
2 land for the highest residential or intensity of residential
3 development allowed in the zoning ordinance. And I made
4 it as a comment as opposed to saying the site was not
5 suited because I have testified or explained to the court
6 repeatedly absent site soil investigation, the Morris
7 County soils information may or may not be accurate.

8 I have also commented in terms of the Green
9 Village Road area with respect to the R-2, R-3A and R-3B
10 zones that each had limitations aspects to soils as is
11 shown in the soils survey, and each had lands of fifty to
12 sixty per cent. If you take the converse of the statement
13 in my report referred to, I think, it is December, '79,
14 page 4, paragraph 2 are suited for development.

15 Obviously the converse of forty to fifty per
16 cent is unsuited. Fifty to sixty per cent is suited. So
17 the answer to yes and no is my evaluation of the conditions
18 of the areas within each zone, yes they are, and no, they
19 aren't principally to the rear areas to which I believe
20 you asked numerous questions on direct.

21 Q Okay. Now, referring to D-5 for a moment just
22 to clarify it so that we understand it. Although the
23 exhibit has marked on it the word "jog" at one place, is
24 that the only place in which there is a jog?

25 A No.

1 Q Okay. Am I correct there is a jog at the point
2 between the 2 and 3 in the rear?

3 A Yes. I assume at the top of the two squares.

4 Q Okay. So it shows two jogs, not one?

5 A Correct.

6 Q Now, we spent some time this morning on the
7 question of cost generating and trying to get definitions
8 from you of specific / of cost. You were not in a
9 position to give us specific items of cost, are you?

10 A No, I am not.

11 Q Okay. Could you tell us though the basis upon
12 which you make your evaluation that some items are cost
13 generating and some are not, or some are more cost generat-
14 ing than others? A The features
15 within the zoning ordinance that I have cited as cost
16 generating in terms of development of housing, the quadra-
17 plex townhouse and apartments within the Township of
18 Chatham zone 1-I consider cumulative and in groups of
19 conditions both affecting outside conditions such as curb-
20 ing, setbacks which require additional driveway, water line,
21 sewer line and then that group which relates to the con-
22 struction of the building.

23 A The jog zigzag requirement, patio requirements, things
24 of that nature which I have attempted to provide in
25 questions to Mr. Bernstein the quantitative measure and,

1 I think, the court has heard enough with respect to the
2 cost of the zigzag provision . And in others I have not
3 offered a measure of the cost, but cummulatively, in my
4 opinion, they add and add most significantly when all of
5 the design provisions are taken into account fully to
6 produce housing in the township in accordance with these
7 regulations.

8 Q And what is the basis of your opinion that they
9 add significantly?

A That basis is my
10 experience in terms of working with planning boards and
11 governing bodies in the State of New Jersey in the
12 capacity of a planning consultant in having working know-
13 ledge of the costs of new and rehabilitation construction
14 as a result of my occupation; that being a planning con-
15 sultant, including substantial work with the housing --

16 THE COURT: Can we have none of this
17 whispering?

18 MR. BERNSTEIN: Your Honor, I think, it is
19 perfectly proper. I am preparing for redirect.
20 I have three witnesses who are here for a reason.

21 THE COURT: Not for the volume, if I can
22 hear you, the witness can hear you. If the
23 witness can hear you, it is distracting.

24 I have no problem with your sitting down and
25 leaning over and talking to a witness, but not

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to the extent that I can hear you.

MR. BERNSTEIN: I agree.

THE COURT: Okay, go ahead. Why don't we
break for lunch? It is 12:30.

MR. KLEIN: Okay.

(The noon recess was taken.)

Q Mr. Chadwick, you had made a statement, I believe,
that with respect to some of the requirements of the zoning
ordinance in Chatham Township that they seem to add costs
with no purpose of legitimate zoning. Is that a fair
statement of your testimony on that point?

A Yes.

Q Okay. Could you explain that, please?

A I believe that opinion was offered when I was refer-
ring to the question relevant to cost generating factors
as I perceived them in context with the townhouse quadra-
plex and apartment development regulations. And beginning
on page 7-9, proceeding down through page 7-10, under the
provisions for townhouse development, which are also then
repeated by reference for quadra-plex, although, I think,
I stated before there was no way that I could offer to the
court a specific quantitative measure of the added cost
for the regulations as set forth, the requirements of
emphasizing types of shrubbery and sidewalk construction,
the requirements for, of emphasis for lighting, for screen-

1 ing, for solid waste disposal, in my judgment will lead
2 to a perceived development type that is of a model form
3 of housing having amenities that may be desirable and may
4 be desired by residents, whether they're low income,
5 moderate income or upper income, but cummulatively will
6 add to the cost of construction, if taken in the literal
7 sense to make that housing affordable by the upper income
8 and wealthy and not affordable to middle and lower income
9 households.

10 I cannot offer to yourself, nor could I offer to Mr.
11 Bernstein in respect to his question on those points any
12 quantitative measure. It is my opinion that the recitation
13 at length within the ordinance of that type of standard
14 clearly indicates, at least in my opinion, an intention
15 for housing that would be constructed would not fall with-
16 in the means of moderate income housing.

17 Q Okay. Does that opinion hold true with respect
18 to the requirements, for example, of with respect to town-
19 houses in the R-2A and R-3B district of a hundred foot set-
20 back from public streets?

21 A Yes.

22 Q And thirty-five feet from interior roadways?

23 A Yes.

24 Q And the limitation on two continuous dwelling
25 structures?

A Yes, it does.

1 Q And in addition for the requirement that there
2 be no central or common laundry or similar facilities?

3 A Yes.

4 Q Now, drawing your attention just for a moment to
5 page 7-7, subsection E6, which goes over the to 7-8.

6 A Of the section.

7 Q Okay. In your opinion, do the provisions of
8 that section, are the provisions of that section intended
9 to create open space? A No.

10 Q And the reason you don't believe so?

11 A I consider the specification for a private patio or
12 yard area that is fenced or screened an adjunct to the
13 structure. It is an appurtenance. It is, as I perceive
14 that regulation, is clearly a space that is restricted
15 solely to the residents of the unit and it sets some
16 general design standards of how that is to be achieved.
17 And as I view the use of the term "open space" in context
18 with townhouse units, quadra-plex units that area is use-
19 able and effectively common to the residents of the
20 development and that area would not be common, but would
21 be exclusive to the occupats of the unit. And, I believe,
22 that's the way the standard is intended.

23 Q And referring for a moment to page 7-9, sub-
24 section H of the ordinance.

25 A Yes.

1 Q Is that the section that deals with what might
2 be called common open space? A It is
3 entitled landscape and common open space, yes.

4 THE COURT: Does H1, in your opinion, cover
5 E6, what's required in E6 to be in each one or
6 is it exclusive of what's required to be in H1,
7 the forty per cent factor, in other words?

8 THE WITNESS: I percieve the forty per cent
9 factor is in addition to the fifteen foot by
10 whatever the width of the dwelling unit is. And
11 in context with the density permitted in the
12 zone, your Honor.

13 THE COURT: Okay.

14 THE WITNESS: There is no need for overlap
15 or double count, let's put it that way.

16 Q Now, in your experience, are townhouses limited
17 to fee ownership or are townhouses sometimes used as
18 rental? A I believe, I already
19 testified my experience they're not limited to fee simple
20 or condominium or to rental market. I believe I cited
21 an instances where the design of the unit on Speedwell
22 Avenue right next to Washington Crossing is a two story
23 apartment building. They appear as townhouses in context
24 with the description of the ordinance of Chatham Township.
25 And I would suggest that many people have perceived them

1 as townhouses. They are rental units or were rental units.
2 I think, historically many rental units were of the two
3 story nature. Whether they have individual front facades
4 or not, the one story apartment units or two story garden
5 apartment units is really, as I perceive it, a suburban
6 housing type beginning in the late 1940's.

7 Q When dealing with lands that have development
8 limitations of one sort or another, be it high water table,
9 steep slopes, et cetera, has it been your experience that
10 zoning other than standard zoning is appropriate for those
11 areas?

12 THE COURT: Would you repeat that question
13 back?

14 (Last question read by the reporter.)

15 THE COURT: Okay.

16 A Yes, I believe, I stated previously that in my judgment
17 as I perceive the regulations and not limiting this comment
18 to Chatham Township, but many municipalities where a com-
19 munity will offer an alternative housing type within their
20 zone. A clustering using a term as to the extreme of a
21 townhouse option within a single family residential zone,
22 the regulations then imposed in the terms of the option in
23 many instances run counter productive to the fundamental
24 issue of the reason for offering the alternative type, that
25 being to allow for better development of the land, if it

1 has a water condition or having a steep slope condition or
2 have a major roadway or some sort of man made improvement
3 that impacts certain areas of land. And the result is, is
4 that the concept of providing an option form of housing
5 that can better address site limitations is then in many
6 cases counteracted to a large degree, or to a lesser degree
7 by requiring certain regulations that spread the housing
8 across the property for no good reason except facts that
9 are excessive or other forms of design details in effect
10 makes all the land to be improved and the intention was to
11 try to conserve and/or preserve portions of the tract.

12 So in response to your question, I think, that the
13 flexibility of a zoning ordinance in addition to the reg-
14 ulations of density have to be examined to have a finding
15 as to whether or not the ordinance, one, can produce various
16 types of housing and various costs and also meet mandates
17 or environmental issues as they are known. And, I think,
18 in terms of the statements that I have offered to the court
19 with respect to the examination of Chatham Township's
20 ordinance, I think, they're fairly complete on the record.
21 At least, in my mind they are.

22 Q In your experience and background there are
23 communities in this state which would justify large lot
24 zoning, say anything over two acres?

25 A Yes.

1 Q All right. Can you tell us what communities would
2 so justify or would justify that kind of zoning? What kind
3 of communities? A I think, in terms of
4 viewing the State of New Jersey, those areas that in my
5 judgment are well beyond the areas either designated by the
6 Department of Community Affairs within the state development
7 plan or tri-state and DVRP, Delaware Valley Regional
8 Planning association with respect to their designation of
9 growth areas, they're not all coinciding one to the other.
10 And in context with the local identification of constraints,
11 no sewer facilities whatsoever within the municipality or
12 within a region. No health conditions existing warranting
13 the developing, development of sewer facilities as develop-
14 ing existed and a known limitation in terms of septic
15 systems, if development were to be intensive. I think,
16 obviously those criteria render, I would consider the
17 northwestern portions in a general context of the state
18 suited to large lot zoning. Whether it is three or five or
19 two acre development as to provisions to allow for cluster-
20 ing, but maintaining gross densities that obviously would
21 require detailed analysis.

22 The same discussion only in terms of other regulations
23 applies in the south, Cape May County, southern Gloucester
24 County and a substantial portion of Burlington and Atlantic
25 Counties in terms of preservation through larger lot resi-

1 Q Now, there was a point a few days ago. I am not
2 sure exactly when the term "developing community" was used
3 by you, I thought, in two different contexts.

4 Did you use that term in two different contexts?

5 A Yes, I did. I believe, I tried to explain it to Mr.
6 Bernstein in response to questions or it may have been to
7 Judge Muir. I am not positive. But the term "developing
8 community" is used, as I perceive it, in context with
9 litigation and the suburban municipalities in the past.
10 When I used the term I would also include, and I gave an
11 example of the City of New Brunswick, in my opinion, was a
12 developing municipality because of the circumstances I
13 described of the rehabilitation of the Johnson & Johnson
14 complex and the actions of the city.

15 So in terms of the questions and the context of the
16 discussion, we can use the term "developing community".
17 And it can mean two different things depending upon the
18 issues or the context of the discussion. Hopefully I
19 haven't confused people by interchanging or confused the
20 record.

21 Q Okay. In terms of Chatham Township, when you use
22 the term "developing community", in what sense was that
23 intended to refer?

24 A The context, in the context with the former example,
25 my opinion there, an area classified as growth area. They're

1 in an area that is experienced or has experienced sub-
2 stantial development and there is substantial land area
3 remaining for future development.

4 MR. KLEIN: Your Honor, may I have, I think,
5 it is P-1 for Identification?

6 THE COURT: The map?

7 MR. KLEIN: Yes, I am trying to recall
8 which one we marked up. Whether it was J-3 or
9 P-1. I think, it is J-3.

10 Did I finally get P-1?

11 THE WITNESS: Off the record. You're going
12 to get a tack in your foot.

13 MR. KLEIN: Okay. I have it. Thank you.

14 Q Am I -- well, strike that.

15 Mr. Chadwick, can you identify for us on this
16 exhibit, please, the proposed location of the sewer line
17 as indicated in the master plan?

18 THE COURT: He has done this before. I know
19 where it is.

20 MR. KLEIN: Okay. I am just doing that in
21 preparation for a question.

22 THE COURT: Okay. Fine. He has done it
23 before.

24 MR. KLEIN: Okay, fine.

25 Q My notes indicate that you had testified that the

1 sewer line at present was approximately five hundred feet
2 from the plaintiff's property on the southerly portion of
3 Green Village Road and approximately fifteen hundred to
4 eighteen hundred feet from the northerly portion of Green
5 Village Road. Is that your recollection?

6 A Yes, I believe so. Mr. Bernstein and I measured it
7 either on that exhibit or another exhibit. I think, those
8 numbers are correct.

9 Q Okay. Now, referring to this piece of property.
10 Doesn't seem to be marked. It is along side the nursery.
11 Is that property, to your recollection, zoned for garden
12 apartments? A Yes, it is.

13 Q Okay. Could you tell us approximately --

14 THE COURT: Hold it just a second. Let the
15 record show he is referring to a tract of land --
16 could you put an X on it? Something. I don't
17 care what, but Mr. Chadwick is going to put an X
18 on it in black crayon.

19 MR. KLEIN: Why don't we use a C. We seem
20 to be using an X. I'm colored blind. Can't tell
21 me --

22 THE COURT: Blue.

23 MR. KLEIN: Why don't you use it then. We
24 will know what it is.

25 A I'm marking on --

1 THE COURT: Circle in blue. Right.

2 THE WITNESS: Circle in blue the property
3 to which Mr. Klein was pointing and that area is
4 zoned for apartments.

5 Q And that was an area that you had indicated, I
6 believe, had some severe soil type problems?

7 A In my opinion, it does.

8 Q Now, could you tell us roughly how far that
9 property is located from the sewer line?

10 A I believe, the sewer line's existing service area
11 would include the easterly portion, and I am making that
12 statement -- I assume, I don't doubt the accuracy of the
13 map contained in the master plan following page 53. It
14 shows the existing limit of sewer service area and approx-
15 imately half of the area that I have circles in blue is
16 shown within the limit of our service area.

17 Q Is it your understanding that's intended to
18 indicate existing service? A Yes, avail-
19 ability of existing service.

20 Q Okay.

21 THE COURT: Can I ask a question?

22 MR. KLEIN: Yes.

23 THE COURT: That area that is in that blue,
24 I thought I saw somewhere that that was referred
25 to a golf course. Am I correct?

1 A VOICE: Partly.

2 THE COURT: Partly. I was reading through
3 the document. It is partly a golf course. Okay.
4 I am just trying to clear it up.

5 Q Mr. Chadwick, in the course of cross examination
6 you were asked a series of questions about various cases in
7 which you testified and I don't want to get into all of
8 that detail. But I would like to ask you a few questions
9 with respect to some of the cases, in any event.

10 With respect to the Watchung townhouse case, would
11 you tell us what the applicant sought in that case?

12 A The application was for townhouses on a, what is
13 referred to as the Watchung Circle. The area was zoned
14 for business use. There was existing business uses on
15 either side of the property. The proposal was for approx-
16 imately eleven units to the acre. And the applicant claimed
17 unusual hardship owing to topography.

18 In my opinion, and I believe I have testified to it
19 previously, the use was not suited to that location and the
20 claim of topography was, in my opinion, not overwhelming to
21 render the property unusable for the purposes zoned.

22 Q And what purpose was it zoned for?

23 A For office and retail uses.

24 Q Now, let's turn to the Franklin Township zoning
25 ordinance for a moment.

1 Did the zoning ordinance designate land for PUD
2 development? A Yes, it has.

3 Q All right. Could you identify that, the terms
4 of that ordinance for us, please? Generally.

5 A There were two options of planned unit development
6 within the Franklin Township zoning ordinance. One was for
7 a gross of dwelling units of 3.5 to the acre, and the other
8 was for a gross density of seven dwelling units to the
9 acre.

10 Within the respective formula under the 3.5 units
11 also there was a minimum requirement of ten and a maximum
12 requirement of thirty per cent of the land for non-residential
13 development. In the higher density option there is a
14 minimum requirement of five and a maximum limitation of
15 twenty-five per cent of the land for non-residential
16 development.

17 These zones are options were applicable to approximate-
18 ly eight thousand acres of land. The land with the lower
19 density had at least, in my opinion, sewer facilities
20 available or could be extended thereto. The lands in the
21 higher densities zoning district did not have sewer capacity
22 available.

23 The ordinance was brought before Judge Leahy in the
24 Superior Court, Somerset County under a suit Leo Mendell
25 and wife, versus Franklin Township. It was litigated. In

1 the opinion of Judge Leahy that the ordinance was valid.
2 I believe, it was taken to the appellate division and up-
3 held.

4 In addition to that the PUD options, it contained
5 a provision requiring five per cent of the housing develop-
6 ed within the PUD to be for low income households as de-
7 fined by HUD. And an additional ten per cent available to
8 moderate income households as defined by HUD.

9 This provision was recommended by our office to the
10 municipality and after some debate it was accepted and
11 adopted within the zoning provisions of their PUD ordinance.

12 Q Now, turning for a moment to the Sayreville. Well,
13 before we get to Sayreville. These provisions in the zon-
14 ing ordinance of Franklin Township and changes in the zon-
15 ing occurred when? A They began in 1972
16 and with the examination of the land use and housing
17 elements of the municipality were contracted in August,
18 1971, with the Township of Franklin and myself. The plan
19 was completed in the fall of 19 -- spring of 1972 and
20 effectuated by zoning in the fall of 1972 as well.

21 There were some technical or I will call them technical
22 changes made in 1973. And there was some amendments made
23 this past year. But the proviso and the requirement of
24 low income households, the regulations for the density of
25 apartments, townhouses and single family homes within the

1 PUD are the same.

2 The ordinance was drawn in context with that municipi-
3 pality's recognition of the issues that I have referred to
4 as the Mt. Laurel and Oakwood at Madison cases, albeit,
5 back in 1971 and '72 debated.

6 Q Now, turning to Sayreville for a moment. Was
7 Sayreville a defendant in a suit brought by the Urban
8 League? A Yes.

9 Q And as a result of that suit were there any
10 changes effected in the zoning ordinance in Sayreville?

11 A Yes.

12 Q And could you tell us what they are?

13 A Initially 170 acres of land were rezoned from light
14 industrial to garden apartment development at twelve units
15 to the acre. The area that was rezoned, approximately a
16 half of the tract was shown as a flood hazard area on the
17 report number 2, New Jersey Department of Environmental
18 Protection along the South River. This was known.

19 The alternative locations -- I'm a little ahead of my-
20 self. There were alternative locations examined prior to
21 a consent for the rezoning of that tract of land between
22 the borough, the plaintiff. Judge Furman presided.

23 That tract of land is now under development for garden
24 apartments. 1950 units.

25 Q How many acres is that?

1 A One hundred sixty with 1950 units are located on
2 approximately seventy-five acres.

3 The additional revisions were made in the period of
4 1976 through 1979. Fundamental change was a change of
5 areas from a PUD to a PRD and changing the gross densities
6 from three and a half to four to seven with provisions to
7 increase to eight units to the acre.

8 The Borough of Sayreville is a unique community. I
9 consider relatively unique community within the State of
10 New Jersey for a large area that is developing, but having
11 nevertheless a master plan which would be, quote, "Blue
12 print", for knowing precisely the housing mix and the
13 location of development in terms of sequence, because all
14 of the available lands suited for residential development
15 absent small two acre and isolated lots are within a PUD
16 or PRD district.

17 In addition, the municipality has amended the zoning
18 code to permit twenty-four units to the acre subsidize
19 family and senior citizens housing with the single restriction
20 that it has sewer and water facilities available and that
21 there is a certified subsidy program either through non-
22 profit or governmental agencies and that the product is
23 developed under the rules of a public non-profit limited
24 developer or limited partnership entity.

25 The municipality is further in context with its

1 housing plan established a public housing agency. Received
2 Section 8 certificate fees. Rehabilitation program and
3 actively pursuing applications of the Federal government
4 through either the 202 Section 8 or the housing financial
5 program for senior citizens and family housing within the
6 municipality.

7 All of these changes that I have described or policy
8 changes in either changes of zoning or the attitude of
9 the municipality since 1976.

10 Q All right. And I take it they are then not re-
11 flected in the DCA report?

12 A Not at all.

13 Q Turning to Par-Troy Hills for a moment. Could
14 you generally describe the housing types currently available
15 in Par-Troy Hills and with respect to the vacant land that
16 which is buildable with the zoning? Why don't we take one
17 question at a time. The housing type presently available
18 in Parsippany.

19 MR. BERNSTEIN: I would object here, your
20 Honor. Certainly there was extensive cross
21 examination on the zoning ordinance of Par-Troy
22 Hills, which the witness states was non-exclusion-
23 ary. And, I think, redirect as to the zoning
24 ordinancy itself is highly improper. I don't
25 see the nexus between existing housing types and

1 the reasonableness of the provisions in a zoning
2 ordinance, and, therefore, I don't think the
3 question is proper

4 MR. KLEIN: I can step back and ask --

5 THE COURT: If you, if you will, I will ask
6 you a question. If you have a zoning ordinance
7 and have certain regulations with respect to
8 density for a city the type of Newark, and then
9 you try to compare those density regulations for
10 a township the size of Parsippany -- no, let's
11 take Chatham Township -- and you don't compare
12 the types of uses and the nature of the city in
13 the record, how can the comparison be legitimate?

14 It is a rhetorical question. I will allow
15 the question.

16 MR. BERNSTEIN: Okay.

17 A The township's housing stock currently is approximate-
18 ly 18,000 units. Of that total, 7200 are garden apartments.
19 Those garden apartments are developed and the density of
20 18 to 24 units to the acre.

21 THE COURT: Eighteen to what?

22 THE WITNESS: To twenty-four. They are
23 two and three story units, non-elevator.

24 Approximately six thousand of those units
25 fall within the rent guidelines of fair market

1 rent for Morris County. The term "fair market"
2 means a housing cost that will be subsidized by
3 the Federal Government under its existing housing
4 Section 8 program.

5 The remaining dwelling units are single
6 family and two family units. About ninety per
7 cent of that eleven thousand units are single
8 family. Of the eleven thousand units that are
9 single family homes or twelve thousand units
10 that are single family homes, approximately
11 seventy-five hundred plus are on lots of six
12 thousand square feet or less. Of that seventy-
13 five hundred that are on six thousand square
14 feet or less, approximately four thousand are on
15 forty thousand, four thousand square foot lot
16 size or less.

17 Q Excuse me. That's four thousand?

18 A Four thousand.

19 Q Okay. A The majority of the
20 resident population, when I say the majority, I should say
21 a better estimate would be ninety per cent of the resident
22 population of the township resides in housing either within
23 garden apartments of the density stated or within residential
24 homes on lots, very small single family lots.

25 The recent development has been on ten thousand and

1 fifteen thousand square foot lots in areas that were not
2 sewerred or sewers had been extended. The remaining large
3 undeveloped vacant land of the township, which I have
4 described previously to the court are areas that are
5 positioned between single family residential development
6 and rapidly developing commercial areas.

7 In the case of the Forge Pond area and in the case
8 of the Dodge tract and in the case of Mountain Way area
9 that I referred to as the severely sloped area I described
10 to you. The flat land as being ten to fifteen per cent in
11 slope and steep land in excess of thirty-five per cent.

12 The zoning for those areas provides for gross densities
13 of approximately two. I believe it is 1.7 and 2 zero
14 five with a maximum restriction in the Forge Pond area of
15 one third of the tract, or thirty-five per cent of the
16 tract for non-residential development. And in the Mountain
17 Way area ten percent.

18 In context with the Par-Troy Hills infrastructure,
19 all areas are sewerred, water and road improvements general-
20 ly there. Road improvements, being there are no by-pass
21 routes planned through the Mountain Way area, could
22 anticipate road development being developed, but not a
23 major traffic route. Parsippany-Troy Hills has its high-
24 ways constructed through its boundaries.

25 In context with the infrastructure, the character of

1 Par-Troy Hills as I have generally describe it. In my
2 judgment, the regulations are set forth in that township
3 ordinance can achieve least cost housing and affordable to
4 moderate income households.

5 There is an additional aspect of the activity within
6 Par-Troy Hills from a legislative standpoint, and that has
7 been for the municipality to have the Morris County Housing
8 Authority to be a substantial participant within the Section
9 8 housing program, has allocated approximately forty per
10 cent of its annual grants through community block grant
11 program for housing assistance and has aided assistance of
12 over four hundred single family homes owned and occupied by
13 the lower income households in the past four years.

14 It now has 256 senior citizen section 8 units under
15 construction. Occupancy planned for October and has received
16 final commitment for construction of 192 units of senior
17 citizen housing in the most recent New Jersey housing fin-
18 ancial bond issue.

19 All of those factors are highlights of the zoning and
20 housing policies of the township.

21 Q And with respect to those areas of the township
22 where you testified there were particular topographical
23 problems. For example, I believe it is Mountain Way with
24 the slopes running from ten to thirty-five per cent?

25 A Yes.

1 Q Has the zoning been designed, the development
2 regulations, have they been designed in a way to encourage
3 the maintenance of open space in those areas that present
4 that kind of topographical problem?

5 A Yes, they have.

6 Q All right. A They have been de-
7 signed primarily with a definitive knowledge of the steep
8 slope areas of the Mountain Way area of the Township of
9 Par-Troy Hills has had available aerial topographical surveys
10 since 1969. Those topographic surveys were utilized to
11 measure the amount of land in excess of twenty-five per
12 cent slope.

13 We are not talking about a flattening condition on top
14 of Mountain Way. We are principally interested in the
15 limitations of the slope. Taking those, that principal
16 factor into consideration, we then designed alternative
17 regulations for a mix of townhouse and single family homes.
18 Single family homes and lots as small as ten thousand square
19 feet and townhouses density of six units to the acre on the
20 gross basis or the net basis and found those regulations
21 adaptable to known site conditions.

22 Q And with respect to the Forge Pond area, was the
23 concern there in part the preservation of a historical pond
24 and mill area?

25 MR. BERNSTEIN: Your Honor, I object. I have

1 no problem with Mr. Klein wants to testify by put-
2 ting him under oath.

3 THE COURT: He led on that one.

4 MR. KLEIN: Okay. I'm sorry.

5 Q What was the concern --

6 THE COURT: Now that he has led the witness,
7 he knows what the answer is.

8 MR. KLEIN: I think, we previously testified
9 exactly that in any event, your Honor.

10 THE COURT: All right, go ahead.

11 Q Mr. Chadwick, what was the concern in the develop-
12 ment of a, of the zoning for the Forge Pond area?

13 A Basically a three part issue. One was the tremendous
14 activity of economic development within an industrial zone
15 along 287. Basically parallels the westerly side of this
16 tract and the continuous petition of industrial developers
17 within that zone to expand the industrial area easterly
18 within to what was the Mazdabrook Golf Course area and
19 further east. The known flood hazard limitation coincided
20 with Eastman's Brook and Forge Pond, the designation of the
21 historical site which has been commented, with the mill
22 within the Forge Pond itself and finally a method of the
23 township addressing rapid development down stream drainage
24 and providing for additional housing types not available
25 within the community, that being the bridge between the

1 single family home whether on a small lot, medium size or
2 large lot and the garden apartments.

3 Effectively the mix land use option attempted to address,
4 one, that area of comingling of industrial uses and
5 residential uses provide for a range of housing that is in
6 keeping with the known environmental constraints of the
7 tract of land in this case principally flood hazard area
8 delineated by DEP.

9 Q And how does the ordinance create the flexibility
10 which would permit a developer to deal with, for example,
11 the flood hazard area? A It simply
12 establishes a gross density for the tract of land which is
13 obviously an easy calculation. Know how much property you
14 have and multiply times that number you know the number of
15 dwelling units that the zoning permits.

16 It then establishes ranges of housing types within the
17 ordinance which the designer can apply to the various con-
18 ditions of land as well as ranges of non-residential
19 development.

20 In the case of the
21 the In the case of/Forge Pond area, it is possible to
22 achieve all of the maximums. I think, this is a correction
23 to a previous statement I made in response to testimony to
24 a question of Mr. Bernstein.

25 If a developer proposed to develop to the maximum amount
of non-residential development under the formula could also

1 achieve the maximum in terms of housing units being the
2 gross density. And my statement was I did not believe so.
3 It is possible. It is possible because of a reduction of
4 lot size as a result of the amendment of 1979, all of those
5 standards, therefore, I think, address the planning issue
6 that I tried to describe to this court do provide for a
7 range of housing type, and, I think, cognizant of the
8 development pressures of the area in which Forge Pond is
9 located, being that rough intersection of the interstate
10 freeway system in northern New Jersey.

11 Q And does the zoning tend to encourage the flood
12 hazard area as being left as open space or minimumly
13 utilized?

A Specifically requires
14 that the areas delineated by flood hazard by the Department
15 of Environmental Protection be preserved does not pre-empt
16 of course, road crossings, but it speaks to the flood hazard
17 regulations in the context of general regulations of the
18 township and in context with the mixed land use regulations
19 of the R-2M and LM zone.

20 Q All right. At the same time it permits the con-
21 struction on what might be called the high and dry land?

22 A Yes.

23 Q Okay. In your review of the Chatham Township
24 ordinance and in your opinion does the Chatham Township
25 ordinance permit this kind of flexibility? Particularly,

1 I am referring to the townhouse quadraplex and the garden
2 apartment sections. A First of all,
3 there are no mixed land use provisions within their ordinance
4 and the flexibility of choices of uses doesn't exist. It is
5 either an option for quadraplex in the R-3B zone, garden
6 apartments in the R-3C zone and townhouses in the R-2B.

7 I think, I have got the letters transposed. No, I was
8 correct. R-3A is quadraplex. R-3B is townhouses and R-3C
9 being the garden apartment zone. With no provision for
10 mix of those types, whether the tract of land is large or
11 relatively small. And in my opinion, the --

12 THE COURT: Go ahead. Small is what you
13 were going to.

14 A In my opinion, the site regulations are contrary to
15 the findings of the master plan in terms of back ground
16 information, in terms of the high water tables, potential
17 flooding conditions in my judgment those regulations do
18 require a spreading of the development across the tract of
19 land. Not totally but substantially.

20 THE COURT: Could I see you both?

21 (Discussion had at side bar.)

22 THE COURT: Let's take ten minutes.

23 (A short recess was taken.)

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

25 Q Mr. Chadwick, with reference to Warren Township,

1 are there currently some amendments to the zoning ordinance
2 being considered by the township?

3 A Yes.

4 Q Could you identify those for us?

5 A The municipality is re-examining its regulations per-
6 taining to the type of housing permitted within the community.
7 The planning board has recommended consideration by the
8 township committee of rezoning land for multi-family housing
9 and the planning board has directed ourselves or the firm
10 or, or associates, myself specifically, the township attorney
11 and the planning board attorney to provide a general frame-
12 work for revision to the housing element of the residential
13 plan and the zoning standard for the residential development
14 of the community in the immediate future.

15 Q And you're in the process of doing that at this
16 time? A Yes, I am.

17 Q Now, with respect to the City of Linden.

18 A Yes.

19 Q Right. Could you tell us the housing types avail-
20 able in the City of Linden?

21 MR. BERNSTEIN: I would object here as being
22 beyond the scope of the cross examination. The
23 only question with regard to Linden was as to
24 whether or not Mr. Chadwick agreed with the
25 determination and the state allocation scheme.

1 There were no questions as to the, its zoning
2 ordinance or its housing types.

3 MR. KLEIN: I think, he is opening the door
4 by asking --

5 THE COURT: Yes.

6 MR. KLEIN: -- that question.

7 THE COURT: Yes, but as a matter of practic-
8 ality, the housing types in Linden --

9 MR. KLEIN: It was one of --

10 THE COURT: I sat in the Elizabeth or Union
11 County Courthouse. He has got a lot of housing
12 types to describe. I don't know that it is that
13 significant really.

14 MR. KLEIN: Okay. I raised it, your Honor,
15 only because it was one of the five communities
16 which were within this general area represented
17 by --

18 THE COURT: I don't know that they're in
19 comparison whatsoever.

20 MR. KLEIN: Okay, fine.

21 Q Now, turning for a moment to the statewide housing
22 allocation report which was marked, I believe, P-14. Yes.

23 Have you since our last session had an opportunity to
24 do the computations underlying the findings, the housing
25 allocation findings contained in this report? The general

1 computations used. A Yes.

2 Q All right. Could you describe those to us, please?

3 A Yes. The report contains the base data necessary to
4 make the computations of housing needs for the year 1990
5 as estimated by DCA, the appendix table contains all of the
6 numbers and information necessary.

7 The appendix tables are drawn from the departments of
8 Census, Labor and Industry. And the formula for housing
9 needs of existing, for existing housing under HUD's definit-
10 ion, and the matter of arithmetic using the tables contained
11 in the appendix and applying the proportion, proportional
12 factors as would be attributed to Chatham Township to
13 arrive at all the calculations as shown in the appendix A.
14 I believe it's page A27.

15 The only difficulty in the computation is the addition
16 of all of the base data contained in the report for the
17 region, two areas which includes Bergen, Essex, Hunterdon,
18 Middlesex, Morris, Passaic, Somerset and Union Counties.
19 And then taking the proportionate value to Chatham
20 Township of overall needs, or the overall factors to arrive
21 at a calculation which then tells the number.

22 I have followed their methodology. Prepared the
23 arithmetic, prepared the calculations and confirmed the
24 estimate of the Department of Community Affairs of 903 units
25 in terms of that methodology.

1 MR. KLEIN: Okay. Your Honor, in an effort
2 to save time, I had asked Mr. Chadwick to prepare
3 on a schedule the computation. The actual com-
4 putation rather than just describing the method-
5 ology at arriving at it. Unfortunately we don't
6 have that today. And what I would like to do,
7 with your permission, and subject, of course, to
8 Mr. Bernstein's right of examination with respect
9 to it, is to have that submitted to you. I will
10 submit it together with my memo on the evidentiary
11 question on this thing and ask that without actual
12 oral testimony subject it to cross examination
13 that that become part of the record.

14 THE COURT: Well, why don't you -- all right,
15 why don't you submit it to Mr. Bernstein and let
16 Mr. Bernstein discuss it with you with his planner
17 and see if there is any disagreement. Maybe it
18 can be worked out between the planners so there
19 is no problem with the methodology. Maybe it
20 might save a trip. I don't know.

21 MR. KLEIN: Okay.

22 THE COURT: I don't pretend to know the math.
23 I looked at them, but I don't pretend to know it.
24 Can we do it that way?

25 MR. KLEIN: It has been represented to me by

1 Mr. Chadwick that going through the math would
2 take a couple of hours. I did not want us to get
3 involved in that.

4 THE COURT: I would rather have it on paper.

5 MR. KLEIN: Okay. I kind of suspected that,
6 your Honor.

7 Q One final thing, Mr. Chadwick. With respect to
8 the Shunpike by-pass, which there was some discussion
9 previously. Is it your experience that roads such as that
10 are built only with public funds and by some governmental
11 body?

12 A To the contrary my
13 experience public funds may be required to complete such
14 proposals, but it is an indication of facilities acquired
15 with the municipality and private development becomes a
16 principal vehicle in which those facilities are placed on
17 the ground.

18 In effect, they are placed as part of the site develop-
19 ment. Whether they maybe within the tract of land as pro-
20 vided for under the land use law.

21 Q And would that be particularly true when you're
22 considering a tract which, such as the tract which the
23 Prudential owns and appears to be considered developing for
24 some kind of office use?

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

There was no testimony as to what Prudential was

1 doing on the Chatham portion of the Dodge Estate.
2 In fact, I asked Mr. Chadwick specifically were
3 applications made? Were there any discussions
4 with the municipality people? Were there any
5 plans submitted. Where the build --

6 THE COURT: I will sustain it. It is very
7 conjectural at this stage.

8 MR. KLEIN: If I may, your Honor? There was
9 a question put to Mr. Chadwick about discussions
10 of it by Prudential of the Dodge Estate. My
11 notes say, "office, part time job of Chatham",
12 and the type of uses is a conditional use. This
13 is Mr. Chadwick's testimony on cross examination.

14 THE COURT: But the Shunpike by-pass goes
15 from there. It goes way off the site.

16 MR. KLEIN: I understand that. That's part
17 of my point, your Honor.

18 THE COURT: No, I think, it is too speculative.
19 I will sustain the objection.

20 MR. KLEIN: Okay. No further questions.

21 THE COURT: Okay?

22 MR. BERNSTEIN: Yes, sir.

23
24 RECROSS EXAMINATION BY MR. BERNSTEIN:

25 Q Turning once more to the famous zigzag on page

1 712 of the zoning ordinance.

2 Isn't it a fact, Mr. Chadwick, that the zigzag, I'm
3 showing you my copy in the book is only required for the
4 front building line and not the rear building line?

5 MR. KLEIN: Your Honor, I don't know if this
6 is proper recross.

7 THE COURT: You asked him about that little
8 diagram, D-5.

9 MR. KLEIN: That is a diagram he submitted
10 drawn by him.

11 THE COURT: All right.

12 MR. KLEIN: Or one of his.

13 THE COURT: Plaintiff. If I may just clarify
14 a point. I will allow it.

15 A What was your reference, Mr. Bernstein?

16 Q Page 712, 702.8 little a2.

17 The question is whether or not the zigzag is mere-
18 ly required in the front building line rather than the rear
19 building line as well. A Little b2.

20 THE COURT: b2, yeah, you were at the --

21 THE WITNESS: I'm sorry b2.

22 THE COURT: It's got to be b2.

23 A It is a requirement for the front building line, and,
24 yes, I would agree with you that is only required.

25 Q Isn't it a fact, Mr. Chadwick, that there is an

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1 existing sanitary sewer line on the, what looks to be the
2 northside of Green Village Road, which sewer line would be
3 closer to the circled area on the map which I believe is
4 marked P-1, than the red line which you would draw on that
5 map? And for reference, I'm going to give you a copy of the
6 latest master plan. A Same thing.

7 Q Yes. A Okay. I didn't
8 understand your question. I have the match.

9 Q Do you want me to rephrase it?

10 A Yes, please.

11 Q Yes, sir. I'm pointing to what appears to be a
12 northern extension of Green Village Road beyond Shunpike
13 and looking at the master plan on the page I had given you,
14 it appears that there is an existing sewer line on the
15 northern extreme of Green Village Road, which is closer to
16 the circled site than the site of the sewer line which you
17 have drawn in red. And I would ask for a confirmation
18 from you on that fact. A My problem

19 with the question is, Mr. Bernstein as to -- are you asking
20 me the red line is closer to the circle than a sewer line
21 on --

22 Q Opposite. Isn't it a fact that there is a closer
23 sewer line to the circled property than the red line ease-
24 ment? A Yes, I stated that.

25 Q And that's much closer to the circled property,

1 isn't it? It is adjacent to it?

2 A Yes, I have stated that previously.

3 Q Okay. I just want to clarify it.

4 You would agree that standards of density for develop-
5 ment are not immutable for each of the towns in New Jersey,
6 but it depends upon existing development patterns and
7 environmental considerations, would you not?

8 A Yes, of course, Mr. Bernstein. That I would agree
9 with you that you could not write model standards for all
10 uses and apply those standards to the 568 municipalities in
11 New Jersey.

12 Q You were asked -- I'm sorry, excuse me.

13 A I would say to you, however, that there are various
14 development regulations that are fundamental in terms of
15 regulations of various types of uses and because of the
16 state code, the state law housing code, the New Jersey
17 Department of Transportation standards, et cetera. So
18 in terms of the general answer, yes, I agree with you.

19 In terms of exceptions, there may be a great
20 number of exceptions to the rule where they are adaptable.
21 Almost homogeneous.

22 Q Are these standards that you feel apply across
23 the board? Do they include densities from multi-family
24 development?

A No.

25 Q The answer was no, sir?

A No.

1 Q Thank you.

2 You were asked a question about large lot zoning and I
3 would ask you, would you consider zoning in excess -- strike
4 that.

5 Would you consider zoning one acre or more to be large
6 lot zoning? A This question is

7 in context with the State of New Jersey?

8 Q Yes, sir. A Or in context with
9 Chatham Township?

10 Q The State of New Jersey.

11 A The State of New Jersey? In excess of one acre, in
12 my opinion, is large lot zoning, yes.

13 Q And in Par-Troy Hills you have an RCW zone?

14 A Yes.

15 Q I believe that is a five acre minimum, am I right
16 there? I can show you the ordinance.

17 A Five or three. I can't recall. Five acre, I wouldn't
18 disagree.

19 Q And that was established on land which is environ-
20 mentally sensitive? A That was

21 established under a great number of criteria. One of the
22 characteristics of the area would be a large number of
23 natural features which would then result in a classification
24 environmentally sensitive. That's one of the issues. Just
25 one of the factors associated with the land.

1 Q Now, Mr. Chadwick, have you recently recommended
2 multi-family development to any municipal officials or
3 employees or bodies in Warren Township?

4 MR. KLEIN: Your Honor, I don't -- if that's
5 in the scope of recross--

6 MR. BERNSTEIN: They had raised the issue
7 that was supposedly recommended as to multi-family
8 housing in Warren Township and I wanted to know
9 if Mr. Chadwick played a part in that process, or
10 if that was some part over which he had no --

11 THE COURT: He testified to it. I will
12 allow it.

13 A The municipal planning board at its public meeting in
14 April, on April 8th recommended to the township committee
15 that they consider rezoning of an area of land as a result
16 of various presentations to the board over the past eight
17 months of land owners, citizens, et cetera, for multi-
18 family housing within the municipality.

19 I advised the board in terms of the appropriateness
20 of various proposals and in context with other facilities
21 and also recommended to them, as far back as 1974, that
22 multi-family housing should be provided for within their
23 regulations. In fact, public hearings were held in mid
24 1970 in Warren Township on the provision for townhouse
25 development in the Warrentown area of the municipality.

1 And I will stand by those recommendations in 1975.

2 Q What proposed densities did you recommend to any
3 municipal officials at any time with regard to multi-family
4 development? A Never reached the development
5 densities. It reached the stage of recommendation of multi-
6 family housing.

7 Q Now, on redirect you were asked about the Franklin
8 Township ordinance. And I believe you testified that PUD
9 provided a maximum density of five units to the acre?

10 A They did, yes.

11 Q And I assume that you consider the Franklin Town-
12 ship ordinance to be non-exclusionary and not cost gener-
13 ating? A I do.

14 Q Would you consider, sir, Franklin Township to be
15 a more urbanized community than Chatham Township?

16 A I don't think you can make a comparison of Chatham
17 Township and Franklin Township. As you may or may not
18 be aware, Franklin Township extends from the Raritan River
19 to Princeton. It is forty-eight square miles in area. It
20 has eight post office boxes. It has a number of villages
21 within the municipality with place names both historical
22 and current. And to draw a comparison of Franklin Town-
23 ship and Chatham Township, in my opinion, would be absurd.

24 Q Okay. Franklin Township is adjacent to New
25 Brunswick, is that correct? A Yes, it is.

1 Q It is an urban center?

2 A Yes.

3 Q Chatham Township is not adjacent to any urban
4 center, correct? A You would have to

5 define to me urban center, if it is beyond the City of
6 New Brunswick. Chatham Township is adjacent to a number
7 of municipalities. There are density characteristics. It
8 is not an urban center, as you would classify the City of
9 New Brunswick. That I would agree with you.

10 Q Fair enough. Does Route 78 run through Franklin
11 Township? A Yes, it does.

12 Q Any highways having that magnitude of traffic
13 run through Chatham Township?

14 A No.

15 Q How does the industry in Franklin Township com-
16 pare with the industry in Chatham Township?

17 A There is an industrial base within Franklin Township.
18 I would consider Chatham Township as having an industrial
19 base.

20 Q Now, sir, to recapitulate with regard to the
21 Franklin Township ordinance which was marked D-2 for
22 identification. That indicates garden apartments with
23 maximum density of eight to the acre.

24 A That's in a business zone.

25 Q And maximum lot coverage of twenty per cent?

1 A That's in a business zone.

2 Q Maximum height of thirty feet?

3 A In a business zone. There are two standards for
4 apartments, Mr. Bernstein.

5 Q Fair enough. Are those that I am going over, does
6 it indicate that any rooms other than a kitchen, bedroom
7 closet or combined living-dining room should be counted
8 as a bedroom? A Shall be counted as
9 bedroom.

10 Q Fair enough. I will sit next to you.

11 A Section 11 10 20.6-3, under multi-family garden
12 apartments standards for the B2 and HD, highway development
13 zones contains a paragraph, floor plans of identical units
14 shall be required. Any room other than a kitchen, bathroom,
15 closet or combined living-dining room shall be counted as
16 a bedroom for purposes hereof."

17 Q Fair enough.

18 Does this ordinance have a provision requiring a zig-
19 zag for every four dwelling units?

20 A Yes, it does.

21 Q And, I believe, the maximum lot coverage was
22 twenty per cent, is that right, Mr. Chadwick?

23 A Yes, that's the regulations again for the highway
24 development in B-1 zones.

25 Q Now, would you be able to find in the next two

1 or three minutes any other garden apartment section that
2 you referred to? If you can/ I understand and I will go
3 on to something, but I do want to finish shortly as does
4 everyone and would that be immediately available to you,
5 or would it take you time looking through the ordinance?

6 A It would take sometime because if you recall, there
7 is ordinance 942 and 940 and 942 there is litigation of
8 which I am the expert retained on behalf of the municipality.

9 They amended those standards. Those standards, how-
10 ever, are not the standards of the PUD zone.

11 Q Fair enough. Then we will go on to something
12 else.

13 The last question with regard to Franklin Township.
14 Do you know of any low or moderate income housing that is
15 built, has been built in any PUD in Franklin?

16 A No. They are under, the only development is under
17 construction. I don't believe there is any occupancies as
18 of yet.

19 Q Now, with regard to Sayreville. Would you agree
20 that's a more urbanized community than Chatham?

21 A If you simply applied density of population to land
22 area, you might find they're very similar in the character
23 themselves. The municipality of Sayreville has an extensive
24 mining history and industrial base and high density neigh-
25 borhood. If that's your characteristic of or use of the

1 term "urbanized", I would agree with you.

2 Q And it has the Garden State Parkway running through

3 it? A Yes, it has.

4 Q Does it have a larger industrial base than Chatham

5 Township? A Yes.

6 Q And I believe you testified that the ordinance was

7 amended to comport with Judge Furman's ruling in the case?

8 We were both involved in the Urban League versus Carteret

9 also? A Yes.

10 Q Turning to the garden apartment zone. It requires
11 all apartments to include a complete kitchen, toilet, bathing,
12 washing facility and living space, correct?

13 A No, all of those standards have been deleted. There
14 is a series of amendments in 1979, which went to eliminate
15 what I will call the -- I don't want to use the word "useless",
16 Mr. Bernstein, but have no effect in terms of control of
17 bulk intensity of population on the land. And I will classify
18 as clean up the ordinance.

19 Q Okay. I show you what has been given to me by the
20 clerk. Actually by the Borough of Sayreville and ask you --

21 MR. KLEIN: I think, we ought to use the same
22 test. If it takes Mr. Chadwick more than a couple
23 of minutes to find that, maybe we ought to pass.

24 MR. BERNSTEIN: Mr. Klein, we got about six
25 amendments in the Borough of Sayreville's ordinance.

1 In my copy in the Franklin Township, it is a
2 larger case. It is page after page. It is small
3 print.

4 MR. KLEIN: I am aware of the difference.

5 Q It is a very simple question. When did you get
6 this? By when, you first testified -- I forget when that
7 was though. Is that a month ago?

8 THE COURT: The last four weeks, three weeks.

9 A That is one of the reasons that I am because the
10 ordinance for the adjustment to those garden apartment
11 standards were resting with the council and, I believe, that
12 they may have been heard or adopted sometime in February,
13 published in March.

14 I believe, Mr. Bernstein. I can't even tell you for
15 a certainty if they were finally effectuated. I will tell
16 for a certainty that they're not applied and I will give you --

17 Q Okay, you don't have to go look after six hundred
18 apartments with an unbroken building line under construction.

19 Lastly, with our, with respect to the Par-Troy ordinance,
20 this will be the last ordinance?

21 A There is a limitation involved in getting smaller and
22 smaller print.

23 Q Only on our eyes. In the one zone this appears
24 to be a residential zone. You say townhouses are two and
25 a half dwelling units to the acre?

1 A This is the R-3 zone, the two and a half.

2 Q Two and a half units to the acre?

3 A The R-3 zone, Section 19-12 sets forth the uses and
4 development regulations of the residential R-3 zone in Par-
5 sippany. And subsection 19-12 3B sets forth the standards
6 for townhouse options as a conditional use within that
7 residential zone and the gross density would be two and a
8 halftimes the land.

9 Q And provided for fifty per cent, fifty percent
10 open space, correct?

11 A Yes, it does.

12 Q I assume that's in environmental sensitive areas?

13 A Yes, I believe I described those areas previously.

14 Q And the garden apartment regulations give a density
15 of twelve dwelling units to the acre?

16 A Correct.

17 Q And they require each apartment unit to have a
18 separate bedroom, separate bathroom, separate living room
19 and separate kitchen facilities which kitchen facilities
20 shall be located separate and apart from other rooms, is that
21 correct?

A Yes.

22 Q And the interior roads for garden apartments must
23 be paved to a width of thirty feet and also curbed?

24 A Interior roads, all roads, yes. I believe, I read that
25 previously.

1 Q And spaces required in the basement for storage,
2 is that correct? A That's correct.

3 Q And there is another section for townhouse stand-
4 ards. Is this for the PRD zones, the section I am pointing
5 to? A Mixed land use.

6 Q Strike that. Strike that. I don't have time.

7 A Yes.

8 Q Okay. Fair enough.

9 Now, tantamount the maximum density is six dwelling
10 units to the acre? A Yes.

11 Q Maximum height thirty feet?

12 A Yes.

13 Q The maximum number of units in a structure is four?

14 A No, minimum.

15 Q Minimum. Sorry about that. The maximum number is
16 six? A Correct.

17 Q And could least cost housing be built under the
18 standards we just discussed?

19 A I stated, in my opinion, yes, it can in Par-Troy Hills.

20 Q Let me see. Do you have any -- I don't know of
21 any difference in building costs in Par-Troy Hills or in
22 Franklin Township or in Sayreville that would differentiate
23 these costs with Chatham Township.

24 A Are you referring to all development costs, land,
25 utilities? Are you referring to strict construction costs?

1 Q I am talking about everything besides the zoning
2 ordinance which would, we have gone into utilities, contract-
3 ing costs, the profit for developers, material costs,
4 excavation costs, the whole gambit. Do you know?

5 THE COURT: Not land costs?

6 MR. BERNSTEIN: Not land costs.

7 A In my opinion, there would be a difference. I do not/
8 that I could quantify the difference between an identical believe
9 unit placed on land in the R-3A, R-3b zone -- excuse me --
10 and placed in a R-3 residential district in Par-Troy Hills.
11 But based upon my experience in working with municipalities
12 throughout the State of New Jersey, there is a difference
13 between the cost of housing in one municipality versus the
14 cost of housing in other municipalities for the lack of a more
15 technical term, because the market will bear it. But the
16 facets of adding cost generation factors in one municipality
17 may substantially increase the cost in one community more
18 than in another either because of availability of utilities,
19 availability of road improvements to tracts of land, what
20 have you. But you have tried. You have asked me a question
21 of how would I, could I differentiate between Sayreville,
22 Franklin Township, Parsippany and Chatham. That is the
23 most definitive answer that I could give you, Mr. Bernstein.
24 They have vastly different infrastructures, the prevailing
25 cost of housing within Chatham versus Parsippany versus

1 Sayreville Township are different. I can offer my opinion.
2 I can offer nothing more than that.

3 MR. BERNSTEIN: No further questions of this
4 witness at this time, your Honor.

5 THE COURT: Okay. Step down, Mr. Chadwick.

6 THE WITNESS: Thank you, your Honor.

7 MR. BERNSTEIN: If we could approach the
8 bench? We have a question about scheduling.

9 - o o o -

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I, Earl C. Carlson, certify to the
14 foregoing transcript.

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Earl C. Carlson

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Date: *March 5, '95*

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