

... of Deposition of Robert O'Grady

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pg. 151

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

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MORRIS COUNTY FAIR :

HOUSING COUNCIL, et als, :

Plaintiffs :

vs. :

DEPOSITION OF:

ROBERT O'GRADY

BOONTON TOWNSHIP, et als, :

Defendants :

January 9, 1980
Wednesday, 10:00 A.M.

2 Valley Road
Denville, New Jersey

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

STANLEY C. VAN NESS, Public Advocate
BY: KEITH A. ONSDORFF, ESQ.
Representing the Plaintiffs

MESSRS: EDWARDS & GALLO
BY: W. CARY EDWARDS, JR., ESQ.
RANDY BUSH, ESQ., Co-Counsel
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I N D E X

Witness

Direct

ROBERT O'GRADY

By Mr. Onsdorff

2

E X H I B I T S

Number

Description

For
Iden.

EHO-1 Subpoena served upon Mr. Robert O'Grady, re: Morris County Fair Housing Council vs. Boonton Twsp. 2

EHO-2 through EHO-8 Worksheets of East Hanover Township prepared by Robert O'Grady 4

EHO-9 Map of East Hanover Township showing development patterns, zoning patterns, floodway, 100 year flood fringe and 500 year flood fringe. 8

EHO-10 Map of East Hanover Township showing development patterns, zoning patterns, vacant lands within and without flood hazard areas. 12

EHO-11 Map of East Hanover Township showing development patterns, zoning patterns, vacant lands in floodway, vacant lands in 100 year flood fringe, vacant lands with wet soil land characteristics, and vacant lands falling outside of aforementioned categories 13

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E X H I B I T S (contd.)

<u>Number</u>	<u>Description</u>	<u>For Iden.</u>
EHO-12	Expert report prepared by Robert O'Grady, dated April 26, 1979, 4 pages.	17
EHO-13	Report prepared by Robert O'Grady dated September 25 with attachments	22
EHO-14	Master Plan of East Hanover Township	24
EHO-15	Resolution: State of New Jersey Department of Environmental Protection Division of Water Resources, 3 pages	33
EHO-16	Report prepared by Robert O'Grady to W. Carey Edwards, Esq., dated December 11, 1979, 7 pages	40
EHO-17	Department of Housing and Urban Development Flood Insurance Administration Flood Insurance rate map for East Hanover Township	43
EHO-18	Plan for development of sanitary sewers in the Township of East Hanover	89

1 ROBERT O'GRADY, having been duly sworn,
2 testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. ONSDORFF:

6 Q Mr. O'Grady, for the record, I guess we'll
7 just indicate that we're continuing the deposition in the
8 Morris County Fair Housing litigation.

9 I'm Mr. Onsdorff from the Public Advocate, again.
10 Today we're going to initially focus on your efforts on
11 behalf of the defendant municipality, East Hanover Township.

12 I understand that were served with a subpoena as
13 regards your work on behalf of East Hanover Township.

14 Is that correct?

15 A That's correct.

16 Q I show you a document. Could you identify
17 that as a copy of the subpoena that you were served with?

18 A Yes, it is.

19 MR. ONSDORFF: I would suggest we mark this
20 exhibit as EHO-1 for identification.

21
22 (EHO-1 for identification is the subpoena
23 served upon Mr. Robert O'Grady, re: Morris County
24 Fair Housing Council vs. Boonton Township.)

25

1 Q Mr. O'Grady, can you tell me what materials
2 that you have produced in response to this subpoena, if
3 any?

4 A I have not really produced any materials beyond my
5 reports and beyond a worksheet which we inadvertently gave
6 to you at the last deposition thinking that they were
7 of Chatham Township. But, they turned out to be East
8 Hanover.

9 I provided a worksheet that was an evaluation of
10 the various vacant land areas in East Hanover Township.

11 Q The fact that you supplied us with East
12 Hanover Township for Chatham, does that mean to you that
13 the townships are identical?

14 A Not at all. They're both very wet, but they are
15 not identical.

16 Q I have the copies.
17 Do you have those worksheets?

18 A Yes, I do.

19 Q So, we can have those marked?

20 A Yes.

21 MR. ONSDORFF: Let us do that, at this time.

22 I would imagine that the markings on the
23 worksheets now were when we thought they were for
24 Chatham Township. We have to take those out and
25 mark them correctly.

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MR. EDWARDS: Just for the record, did you have correctly introduced --

THE WITNESS: Yes, we did.

MR. EDWARDS: And was the markings for the Chatham Township worksheets substituted for the same markings, or do you need the character of the markings maintained?

MR. ONSDORFF: No, we can delete that.

(EHO-2 through EHO-8 for identification are the worksheets of East Hanover Township prepared by Robert O'Grady.)

Q Directing your attention to what is marked EHO-2 through EHO-8 for identification, could you just very briefly describe what those documents comprise?

A Yes.

This is a listing of each of the vacant sites in East Hanover Township listed by the zoned district indicating the total acreage of each site, the type of soil according to the Morris County Soil Survey, and the portion of each, or portions of each vacant site found to be in floodways, flood hazard areas and other areas containing wetland soils.

Q You indicate that that comprises a listing

1 of vacant sites. How did you determine or define what would
2 be considered to be a vacant tract of land in East Hanover
3 Township?

4 A We have this past year, January 1979, in fact, pre-
5 pared an existing development map of the Township which
6 showed the use of each parcel of land based upon the tax
7 map and tax duplicate information and based also on actual
8 field survey. And, any property that was developed, or
9 substantially developed by structures or devoted to public
10 uses or semipublic uses such as cemeteries, were considered
11 to be developed property.

12 All other properties, generally, were considered to
13 be vacant.

14 Q I understand, I believe, the definition you've
15 adopted that the existence of structures on a premises takes
16 it out of the vacant category.

17 Who specifically verified the existence of structures
18 on a tract or the fact that land was in a virgin state?

19 A The information was either verified by the tax dupli-
20 cate information, which we assume to be accurate, or by
21 our personal field investigation.

22 Q When you say "our", did you personally
23 do this work?

24 A I personally have traveled throughout the Township
25 and inspected virtually all properties in the Township.

1 Q Over what period of time?

2 A I would say at various times throughout 1979.

3 I had several occasions to drive throughout East
4 Hanover Township, and on one occasion specifically to
5 examine all of the vacant lands and many of the developed
6 lands, as well.

7 Q In examining a parcel of land, which accord-
8 ing to a tax map or other source contained a building or
9 other structure, did you have any cutoff point as to how
10 much vacant property can also be owned by that same land-
11 owner which might be available for additional development,
12 or did the mere existence of one structure on a particular
13 parcel take it out of the vacant category, entirely?

14 A Generally, if a parcel of property of substantial
15 size that may have contained only one structure -- generally,
16 we consider that to be an undeveloped parcel of property
17 and have potential for additional development.

18 If a particular property could be, for example,
19 subdivided into only one or possibly two lots under the
20 zoning requirements, we did not consider that to be a
21 vacant parcel. We considered it to be a developed parcel.

22 It would be difficult to determine precisely where
23 the existing structure might be and exactly what the pot-
24 ential for subdivision of a property of that size might be.
25 So, essentially, we considered it to be a developed property.

1 But, for example, there might be a property of
2 three acres or, perhaps, even two acres or larger in size
3 which might contain this one structure. We would consider
4 that to be still an undeveloped parcel of land.

5 Q Are there any maps in this room now which
6 constitute reproductions of the status of development
7 in East Hanover Township, presently?

8 A Yes.

9 There are three maps which present that type of
10 information displayed on the wall.

11 Q These are exhibits which you have prepared
12 for use in trial of this cause?

13 A They are exhibits which, as they stand now, or
14 with perhaps some graphic modification, not to the informa-
15 tion shown on them, but perhaps for better visual presenta-
16 tion would be used at trial.

17 Q Why don't we start with the one directly
18 in front of us here?

19 Would you identify that and explain what it purports
20 to represent?

21 A Yes.

22 This is a map showing the existing development
23 pattern of the Township as well as the existing zoning
24 pattern of the Township. On that map we have superimposed
25 areas that are in a floodway, a 100 year flood fringe and

1 a 500 year flood fringe.

2 MR. ONSDORFF: Before you go on, let us
3 have that marked.

4
5 (EHO-9 for identification is a map of East
6 Hanover Township showing development patters,
7 zoning patterns, vacant lands within and without
8 flood hazard areas.)

9
10 Q Directing your attention to what has been
11 marked for identification as EHO-9, in what manner is
12 existing development portrayed on that map?

13 A The existing development is portrayed in either
14 symbol or pattern form.

15 For example, residential structures are shown with
16 dots, commercial-industrial public and semipublic lands
17 are shown in different patterns.

18 Q For trial, are any additions or changes to
19 this information envisioned?

20 A At this particular time, I would not envision any,
21 with the possible exception of, perhaps, adding a develop-
22 ment that may have occurred since the maps were prepared.

23 For example, there have been some properties that
24 have received a preliminary or final subdivision approval
25 which approvals have not been received at the time of -- well,

1 which approvals may have been received at the time of the
2 preparation of these maps but were not reflected, at that
3 time, on the tax maps.

4 MR. EDWARDS: It's our intention to deliver
5 to you just prior to trial or within some specified
6 manner of a week before trial, a final updated map
7 showing all development that's under construction.
8 So, when we do go to trial we will have an accurate
9 set of maps.

10 MR. ONSDORFF: Fine.

11 Q You also indicated that the flood hazard
12 areas are depicted upon EHO-9, also?

13 A That's correct.

14 Q In what manner are those areas shown?

15 A Those areas are shown in three colors: the floodway
16 portion of the flood hazard area is shown in a blue color,
17 the 100 year flood fringe is shown in a gray and the 500
18 year flood fringe is shown in a light green.

19 Q In what manner were these areas so delineated?

20 In other words, what was your data source or --

21 A The data source for this information was the flood
22 hazard area maps of the U.S. Department of Housing and
23 Urban Development, The Federal Insurance Information.

24 Q Do you envision any changes in regards to
25 your flood hazard delineations between now and the time of

1 trial of this cause?

2 A Yes, only if additional information were to become
3 available which would indicate that the HUD Flood Hazard
4 Area Maps were incorrect.

5 MR. EDWARDS: For matter of information,
6 the New Jersey Department/^{of}Environmental Protection
7 agency is also doing flood delineation, based on
8 the FIA maps that we're looking at now.

9 In the event that the Department of Environ-
10 mental Protection comes up with a new or different
11 map, we will also have that data prepared and super-
12 imposed on the map and deliver that to you.

13 MR. ONSDORFF: Okay.

14 Q Directing your attention, Mr. O'Grady, to the
15 right of the one we've just been discussing, could you
16 identify that?

17 A Yes.

18 This is also a map which shows the existing develop-
19 ment patterns and the existing zoning patterns. And in
20 addition to that, we have reflected vacant lands in the
21 Township indicating -- or rather outlining, vacant lands
22 with a red pen -- it's not too evident from the distance
23 I'm sitting from the map, but it does show the vacant lands,
24 both the portion within the flood hazard area as well as
25 portions that are outside of the flood hazard area.

1 Q In addition to the flood hazard areas
2 depicted on the previous exhibits, you have now also indicat-
3 ed the location of the vacant lands.

4 Is that correct?

5 A That is correct.

6 MR. EDWARDS: Would you like to mark that,
7 too?

8 MR. ONSDORFF: Yes.

9 I have one other question; I'm not clear.

10 Q Did you maintain the same color coding for
11 flood hazard areas on this exhibit as --

12 A We did.

13 There is one difference between this map -- and
14 what is it, EHO-9?

15 MR. ONSDORFF: Right.

16 A We have not indicated on this map the 500 year
17 flood fringe.

18 Q Why is that, sir?

19 A Our only reason for doing that is that we felt
20 that the limitation to development would be of a less
21 severe nature in the 500 year flood fringe that it would
22 be in the 100 year flood fringe.

23 Q In other words, it wasn't relevant to the
24 determination of vacant developable tracts?

25 A I think it's relevant to a degree, but not to the --

1 not as severe a degree as the 100 year flood fringe.

2 MR. ONSDORFF: Why don't we take a moment
3 and mark this?

4
5 (EHO-10 for identification is a map of East
6 Hanover Township showing development patterns, zoning
7 patterns, vacant lands within and without flood
8 hazard areas.)

9
10 Q Directing your attention, Mr. O'Grady, to
11 the last map which has been put on the wall, can you briefly
12 identify what it purports to depict?

13 A This map depicts, again, the existing develop
14 patterns, the existing zoning patterns, and it shows
15 vacant lands in the flood way, in the 100 year flood fringe
16 and vacant lands with wetland soil characteristics, based
17 upon the Morris County Soil Survey, and the remaining
18 vacant lands which would fall outside of those categories;
19 the vacant lands falling outside of those categories being
20 shown in yellow, wet soils in green, floodway in blue,
21 and 100 year flood fringe in gray.

22 Q Again, as in the previous exhibits, you
23 have deleted the 500 year flood fringe area which was
24 shown on the first exhibit?

25 A That's right.

1 MR. ONSDORFF: Why don't we have this marked,
2 please?

3
4 (EHO-11 for identification is a map of East
5 Hanover Township showing development patterns,
6 zoning patterns, vacant lands in flood way, vacant
7 lands in 100 year flood fringe, vacant lands with
8 wet soil land characteristics, and vacant lands
9 falling outside of aforementioned categories.)
10

11 Q What we have marked for identification as
12 EHO-11 you have endeavored to graphically depict all the
13 environmental characteristics of the lands in East Hanover
14 Township which comprise development restraints.

15 Is my understanding correct?

16 A I haven't attempted to depict all of the environ-
17 mental restrictions. I have attempted to depict those
18 which we consider to be -- and represent the most severe
19 limitation to development in terms of characteristics in
20 East Hanover. These are namely the flood hazard area and
21 soils with very high water tables.

22 Q Let me ask you this question: As far as the
23 trial of this litigation is concerned, the wet soils and
24 the flood hazard areas, those are two of some substance,
25 to your mind, that they will be argued in trial as opposed

1 to any other that may exist --

2 MR. EDWARDS: That's a strategy that we
3 will argue. The factual presentation, I think,
4 is the way Bob has described it.

5 What we will argue may include more witnesses
6 than Bob and more facts.

7 We will be deciding what will be argued.

8 Maybe you can rephrase that.

9 MR. ONSDORFF: I will try.

10 Q As far as your analysis and study, is it
11 limited to those two environmental conditions which you
12 have depicted on Exhibit 11?

13 A As far as my environmental analysis, I would say
14 it would be substantially limited to this except where
15 I may have indicated in the written report material where
16 certain sites may have some topographic problems such as
17 slope or soil mining operation. Things of that nature
18 which I think are related to the environment.

19 Q The vacant land which is depicted on Exhibit
20 11 in yellow, do those areas fall outside of these environ-
21 mentally constrained lands?

22 Is that the reason for their depiction as yellow
23 areas?

24 A They are lands which fall outside of either a
25 flood way, flood fringe or wet soil indication. Some of

1 them are not necessarily without additional environmental
2 restrictions.

3 Q Have you endeavored to ascertain whether there
4 are any other environmental restrictions as to the develop-
5 ment of those tracts?

6 A In reviewing the map, I think the only other major
7 environmental limitation relates to one site which contains
8 a soil mining operation along with some very steep slopes
9 resulting from that soil mining operation.

10 Q Would you be in a position to indicate on
11 Exhibit 11 where that specific site is?

12 A Yes..

13 The site is located on the westerly side of River
14 Road immediately north of the Morristown and Erie Railroad
15 and is indicated as a soil identified as Ua.

16 Q What does that soil code "Ua" stand for?

17 A Generally, as I recall, Ua indicates that the land
18 has been disturbed by man to a substantial degree.

19 Q I believe your testimony is that a soil
20 mining operation was performing at that location for some
21 time.

22 Is that correct?

23 A I don't know for what length of time. My observation
24 is that there is still soil mining activity on the property
25 by evidence of the equipment and machinery on the property.

1 Q When was the last time you visited this
2 property?

3 A Yesterday.

4 MR. ONSDORFF: Off the record.

5
6 (An off the record discussion takes place.)

7
8 Q Do you know what the zoning is applicable
9 to this vacant land which has an ongoing mining operation?

10 A That property is located in the R-20 residential
11 zone.

12 Q In addition to these three maps, are there
13 any other exhibits, at this time, you propose to use at
14 trial?

15 A No, I don't -- I can't offhand think of any other
16 exhibits that we might use -- again, except to state that
17 these maps may be changed in terms of the graphic presen-
18 tation. But the information, or updated information,
19 will be essentially the same.

20 Q I believe you also prepared a number of
21 expert reports in this matter.

22 Is that correct?

23 A That is correct.

24 Q I show you one dated April 26, 1979.

25 I ask you if that is the initial report that you

1 filed with counsel for East Hanover Township?

2 A That is the initial report I submitted.

3 Q That's four pages in length.

4 Is that correct?

5 A That's correct.

6 MR. ONSDORFF: I guess that will be marked
7 as EHO-12 for identification.

8
9 (EHO-12 for identification is the expert
10 report prepared by Robert O'Grady, dated April 26,
11 1979, 4 pages.)

12
13 Q When did you begin to work on what has been
14 marked as EHO-12, Mr. O'Grady?

15 A I don't recall the exact date that I began working
16 on this particular letter.

17 We began working in January of 1979 assembling
18 information, doing various mapping work including the
19 existing development information which is displayed on
20 the three exhibits. And, over a period of time between
21 January and April 26, we developed and analyzed the informa-
22 tion that went into this report.

23 Q In Chatham Township you had acted as a planning
24 consultant for the master plan. That is not the case,
25 however, in East Hanover Township.

1 Is that correct?

2 A That's correct.

3 Q You were retained, then, in January of 1979
4 to act as an expert consultant for East Hanover in this
5 litigation.

6 Is that my understanding?

7 A That's correct.

8 However, I had been previously retained by the
9 Township to do other planning work.

10 Q What other planning work have you been
11 retained for by East Hanover Township?

12 A I had been previously retained in, I believe, 1978.
13 And, possibly even going back into 1977 in connection with
14 certain zoning problems or questions that the Township
15 was confronted with.

16 Q Could you be a little more specific?

17 A Well, at one time we were asked to make a study
18 and make recommendations concerning cluster zoning procedures
19 that potentially might be added to the zoning regulations.
20 I had also reviewed certain development proposals that the
21 planning board had received and referred to me.

22 Q What period of time would you have reviewed
23 certain development proposals?

24 They were referred by whom?

25 A By the planning board.

1 I would say at certain times, perhaps, starting in
2 late 1978 and running through 1979.

3 Q In addition to this work from 1977, possibly on
4 through '79, have there been any other occasions in which
5 you have performed any studies of the lands in East Hanover
6 Township either for any governmental agency or private
7 enterprise?

8 A No.

9 Q The study of the potential for cluster zoning
10 procedures which you performed, was there any written sub-
11 mission or report submitted to the planning board as a
12 result of that investigation?

13 A There was a report that was submitted to Mr. Edwards,
14 the Township Attorney.

15 Q What was the date of that report?

16 A I don't offhand recall.

17 I have it here in the office on file, but I don't
18 have the date of the letter or the report.

19 Q Was it sometime toward the end of 1978,
20 October or November?

21 A I think it may have been the latter part of 1977.

22 MR. BUSH: Yes.

23 MR. ONSDORFF: Would it be possible to
24 examine a copy of that?

25 MR. EDWARDS: I have no objection to it.

1 It's a report that deals specifically with various
2 alternate definitions that the Township might use
3 in establishing a cluster zone or cluster zoning
4 concept within the town and the kinds of formula
5 that they might use.

6 I have no objection to you seeing a copy of
7 it. We could get one, if you would like.

8 MR. ONSDORFF: Thank you.

9 Q I believe you also testified, Mr. O'Grady,
10 that you had reviewed certain development proposals through
11 1978 and 1979 for the planning board.

12 Do you recall whether you had submitted any written
13 reports on those proposals?

14 A Yes.

15 I think I indicated starting, perhaps, the latter
16 part of 1978 -- I'm not absolutely certain of the first
17 report I may have submitted, but the planning board at
18 least through 1979, if not partly in 1978, had referred
19 to me several requests by private property owners for
20 rezoning of property. And I received, at least, one
21 request to review a proposed development application for
22 a commercial use.

23 Q Would copies of those reports be available
24 for our inspection?

25 A Yes.

1 I would be happy to make them available.

2 MR. EDWARDS: We will also deliver to you
3 a recent zoning amendment which deals with some
4 of the recommendations that Mr. O'Grady's letters
5 reflect. There will be additional zoning ordinance
6 amendments, introductions, based on some of the
7 recommendations that Mr. O'Grady has put forth in
8 those reports. And, we will give you a whole pack-
9 age of that.

10 MR. ONSDORFF: Thank you.

11 MR. EDWARDS: I should mention that most of
12 those are minor and deal with straightening out
13 property lines.

14 There is one fact that might be of interest
15 in which part of the land is going to be delivered
16 to the Township as public land which is part in a
17 flood area. And, we will try to highlight that for
18 you.

19 MR. ONSDORFF: Thank you.

20 Q Mr. O'Grady, I'd like to direct your attention
21 to what I believe is your second report, dated September
22 25, 1979 entailing a six page letter to Mr. Edwards, and
23 ask if you can identify that?

24 A Yes.

25 This was a report subsequent to my April 26 report.

1 Q That had a number of attachments in addition
2 to the body of your letter.

3 Is that correct?

4 A There were two attachments, I believe.

5 Q I'll show you the pages that I have which
6 were reproduced -- and I actually have four pages because
7 they were larger than my copying facility was able to do
8 on individual sheets.

9 I ask if you can identify these two that I've
10 placed together as being the attachments to your September
11 25 report?

12 A They're labelled: Table 1 and 2.

13
14 (EHO-13 for identification is a report
15 prepared by Robert O'Grady, dated September 25,
16 1979 with attachments.)

17
18 Q Directing your attention to EHO-13 for
19 identification, do you recall the period of time that
20 was devoted to the preparation of this report?

21 A Well, I would say that as far as this specific
22 report is concerned, the period of time ran from April 26
23 through September 25.

24 Q Within that time period, what would you say
25 would be a rough estimate of the hours that you worked on

1 the preparation of the data, and whatever else was placed
2 into this report?

3 A At this particular moment, I couldn't. I would
4 have to check my calendar to see what time was actually
5 devoted to this.

6 Q Briefly, could you describe what it is that
7 is included in the body of your September 25 report?

8 A Yes.

9 The information that's contained in the September 25
10 report is essentially the information that was contained
11 in the April 26 report except that we had had the oppor-
12 tunity to refine some of the data -- update some of the
13 data that was contained in the April 26 report.

14 In this report, we, or I, have attempted to outline
15 the basic development characteristics of East Hanover
16 Township: its size and general physical conditions, its
17 highway and traffic access, generally describing the exist-
18 ing zoning of the Township and then getting into a somewhat
19 detailed vacant land survey or evaluation of vacant lands,
20 particularly in terms of the environmental limitations
21 which are displayed on Exhibit EHO-9, 10 and 11.

22 Q What were the major sources of data, or how
23 did you obtain--or where did you obtain the materials
24 which appeared in these two reports: April and September
25 of 1979?

1 A Well, we used various sources of information
2 including our own field inspection of the Township. We
3 relied upon the Township tax maps, the Township tax dupli-
4 cates, the Township topographic maps, the master plan, the
5 HUD FIA Flood Hazard Area Maps, the Morris County Soil
6 Survey.

7 Generally, I think that covers most of the sources
8 of materials.

9 Q I'll show you this document which is entitled:
10 East Hanover Master Plan 1975.

11 Is that the master plan which you indicate was used
12 in the preparation of your two reports: EHO-12 and 13?

13 A This is the master plan which -- I would say that
14 we examined and read --

15 I should correct my previous statement to the extent
16 that the master plan itself was not a basis for any of the
17 factual data or conclusions or findings provided in our
18 report of September 25.

19 Q To your knowledge, is this the current
20 master plan in East Hanover Township?

21 A To the best of my knowledge, it is.

22 Q Could we have this marked as EHO-14?

23
24 (EHO-14 for identification is the Master
25 Plan of East Hanover Township.)

1 Q If I understand your last answer correctly,
2 you indicate that the master plan does not constitute a
3 source for the factual material which appears in your
4 April and September reports.

5 In what manner was the master plan used in the
6 preparation of those two documents, then?

7 A I would say that the master plan was only used
8 to give us some background material on the basic planning
9 history in the Township and what the various considerations
10 were that went into the development of the master plan and
11 particularly the present zoning policy -- zoning regulations
12 of the Township.

13 Q Does this 1975 master plan address some of
14 the environmental characteristics of the land in East
15 Hanover Township?

16 For example, flood hazard areas and wet soils which
17 are addressed in your two reports: 12 and 13?

18 A As I recall it, it does address those matters.

19 Q Do your reports provide data and conclusions
20 which you believe to be consistent with the material in
21 the master plan as pertaining to wet soils and flood hazard
22 areas?

23 A My recollection is that the material that was in
24 the master plan concerning wet soils and flood hazard
25 areas is now somewhat outdated. For this reason, we

1 developed our own independent studies concerning those
2 matters.

3 Q Showing you the master plan, Exhibit 14,
4 could you refer to any specific material contained in
5 there concerning either soils or flood hazard areas which
6 you have determined to be outdated?

7 A There is one particular map entitled: Flood Areas,
8 which is map number three, preceding Page 10 of the master
9 plan which indicates, "Flood areas based on 1971 floods
10 and State of New Jersey flood hazard areas based on 1903
11 floods."

12 While this information may not be completely
13 outdated, I believe it is superseded by the HUD FIA Flood
14 Hazard Area maps.

15 There is also a map number five indicating problem
16 soils, the source being the U.S. Department of Agricultural
17 Soil Conservation Survey. This particular map, while it
18 may be very similar in some respects, has been replaced
19 by a later and updated mapping of soils by the Soil Conser-
20 vation Service.

21 Q Before you go on, let me ask you a question.

22 This updated map prepared by the Soil Conservation
23 Service, is that the same governmental body which issued
24 the map number five appearing in the master plan, Exhibit
25 14?

1 A Exhibit 14?

2 Q Exhibit 14 is the master plan?

3 A Yes.

4 I was referring to the map number five in Exhibit 14,
5 the map entitled: Problem Soils.

6 Q The same governmental agency which issued
7 that map appearing on map number five has since issued
8 an updated map?

9 A That's correct.

10 Q Is that your testimony?

11 A Yes.

12 Q When you say: updated, would you be more
13 specific?

14 The soils, have they changed or moved, or why
15 would there be a necessity to issue an updated soils
16 map?

17 A Well, I don't know if there may be a necessity. I
18 think the Soil Conservation Service would be the best one
19 to respond to that question. But, the mapping which is
20 indicated on map number five of Exhibit 14 I believe to
21 be a preliminary mapping of soils of the county.

22 Subsequently, in 1976 the Soil Conservation Service
23 published a final soil survey of Morris County, and again,
24 while some of the soils outlined would appear to have the
25 same outline as soils we've shown on our exhibits, the soil

1 designations are different. The soil survey itself,
2 the written report provides additional data and information.

3 Q In preparing your Exhibit number 11 which
4 I believe includes soil types, and comparing it to the map
5 number five in the master plan, as far as the areas you've
6 identified as vacant land, has there been any change in
7 the designation of the soil types as pertains to those
8 tracts of land?

9 A I've not made an evaluation to determine whether
10 or not there are any differences between our mapping and
11 the mapping in the master plan. The approach we took was
12 to use the latest or the most current information from the
13 Soil Conservation Service.

14 Q In other words, as opposed to using the
15 term "updated" in the sense of making changes, you meant
16 it was the most recent publication that they had issued.

17 Is that correct?

18 A That's correct.

19 Q Directing your attention again to the
20 master plan, Exhibit 14, map number three, you indicated
21 that to the extent that the flood map and flood hazard
22 areas shown there were not outdated, they had been super-
23 seded by the flood maps prepared by HUD which you had
24 relied on.

25 Can you be more specific as to the manner in which

1 this Map 3 is either outdated or has been superseded?

2 A I have not made a precise comparison of Map 3 with
3 our data. But, the Federal Insurance Administration Flood
4 Hazard Area Maps are more recent maps indicating the pot-
5 ential flood hazard areas of the Township. And, while I
6 can't say that the information on Map 3 is not still valid
7 to some degree, we relied upon HUD maps assuming them to be
8 the most current information. They are the maps which are
9 used by the Township in its zoning regulations and, there-
10 fore, I think the assumption could be made that they are
11 considered to be the most valid by the Township.

12 Q When you say they are used by the Township
13 in their zoning regulations, are you familiar with the
14 manner in which they are so used?

15 A Yes.

16 As part of the Township Zoning Regulations, flood
17 hazard area regulations have been adopted with reference
18 to the Federal Insurance Administration Maps.

19 Q In the adoption of the HUD maps, in what
20 manner has that adoption effected the way in which develop-
21 ment can take place in those areas which are delineated in
22 the HUD maps as being flood hazard areas?

23 A Well, the zoning regulations, or the flood hazard
24 area regulation provisions of the zoning ordinance require
25 the submission of any additional and more specific

1 information in connection with development applications
2 where properties fall within the flood hazard area. The
3 regulations establish certain regulations and controls and
4 requirements for development if it is to take place in
5 flood areas.

6 MR. ONSDORFF: Let us take a five minute
7 break.

8
9 (A short recess is taken.)

10
11 Q Directing your attention, Mr. O'Grady, again
12 to Exhibit 14 on Page 7, the last paragraph appears -- and
13 then carrying over beyond a number of tabulations to page
14 10, there is certain information describing the Township's
15 actions in regard to flood hazard areas and also the actions
16 of the New Jersey Department of Environmental Protection.

17 Could you just briefly examine that material and --

18 A Starting with the last paragraph on 7?

19 Q That's correct.

20 A Yes.

21 Q My specific questions are in regards to the
22 Township's flooding ordinance. I believe that was adopted
23 as a result of a 1971 flood.

24 Are you aware of how that Township action compares
25 with HUD flood maps which you relied upon?

1 A I'm not really sure I understand the question
2 completely.

3 Q Let me rephrase it, then.

4 It appears that the Township delineated certain
5 flood hazard areas as a result of flood levels recorded
6 in August of 1971. And, my question is: What is the
7 relationship between that flood delineation and the housing
8 and urban flood delineation which you selected to rely
9 upon?

10 A Well, as far as the mapping itself is concerned,
11 there are similarities and dissimilarities, I believe,
12 from a brief examination of the two maps between the 1971
13 mapping and the present HUD mapping.

14 Q Do you ^{know} what is the basis for the delineation
15 done by HUD? Is it the 1971 flood, also, or what did they
16 use as their data base for their flood delineation?

17 A As far as East Hanover Township is concerned, I'm
18 not certain as to exactly what the basis was for their
19 delineation.

20 MR. EDWARDS: I think that question is
21 more appropriately directed toward the people at
22 HUD. They're the ones that did it. They had the
23 data -- they had both of these maps at the time they
24 did the most recent delineation for which the
25 ordinance is based.

1 Q You indicated that the municipality had
2 adopted the HUD Flood Maps and incorporated them by refer-
3 ence in their zoning regulations.

4 To your knowledge, then, what is the status of the
5 1971 flood delineation which the master plan makes reference
6 to as far as controlling development in the flood areas
7 delineation based upon that Township's work of the 1971
8 flood?

9 A To the best of my knowledge, the 1971 mapping has
10 no application -- or no longer has application in the
11 Township as far as its zoning regulations are concerned.
12 And, they are relying on the current HUD maps.

13 Q Additionally, the material which I asked you
14 to review addresses a delineation performed by the New Jersey
15 Department of Environmental Protection, I believe based
16 upon a 1903 flood, and it indicates that the DEP adopted
17 certain land use regulations as a result of that delineation.

18 Are you aware of the relationship between the DEP
19 delineation and the HUD flood maps?

20 A Again, as in the case of the 1971 mapping, there are
21 similarities and dissimilarities in the flood hazard area
22 boundary.

23 Q Are you aware of the present status of that
24 flood hazard regulation adopted by the New Jersey Water
25 Policy and Supply Council within the New Jersey Department

1 of Environmental Protection?

2 A I'm not precisely certain of what the status is
3 as far as the Department of Environmental Protection is
4 concerned. I believe that they were using the 1903 flood
5 as the basis for requiring approval by the DEP, or the
6 State Water Policy and Supply Council, for stream encroach-
7 ment permits. Whether or not they are still using that
8 data, I'm not certain.

9 Q Have you examined the resolution of adoption
10 which was recorded by the Water Policy and Supply Council
11 of 1973? If I showed you a copy would you be familiar
12 with that document?

13 A (No response.)

14 Q Do you recall?

15 A I don't recall, offhand, whether I had seen or
16 read this, or not. Certainly, not recently.

17 MR. ONSDORFF: Can we have this marked, also?

18

19 (EHO-15 for identification is a Resolution:
20 State of New Jersey Department of Environmental
21 Protection, Division of Water Resources, 3 pages.)

22

23 Q My understanding of your testimony, Mr. O'Grady,
24 is that in regards to what you have delineated or depicted
25 on the exhibits as wet soils are soils having high water

1 tables as denoted in the Soil Conservation Survey soils
2 study.

3 Is that correct?

4 A That's correct.

5 Q You have not made any independent inspection
6 or analysis of the soils in East Hanover Township.

7 Is that correct?

8 A That's correct.

9 Q Directing your attention to Page 11 of
10 the master plan, Exhibit 14, the statement appears on
11 the second full paragraph, "The soil map and the legends
12 provide basic information about soils for any user of
13 land. Engineers, farmers, land planners and municipal
14 officials have all found this soil survey useful. The
15 soil survey is a tool to assist such people in planning
16 their work or in evaluating other plans."

17 And then under Conclusions the statement is as
18 follows, "The Soil Service should not be used as the full
19 basis for judgment nor can it replace detailed on site
20 inspections and testing for design purposes."

21 Do you agree with that statement?

22 A I agree with that statement as it would apply to
23 actual development of a specific tract of land.

24 Q In other words, if I wanted to develop a
25 parcel of vacant land in East Hanover Township, in order

1 to determine its development potential I would have to do
2 an on site inspection to really get the detailed data I
3 would need to determine whether or not that would be an
4 appropriate land use.

5 Is that what you're saying?

6 A Yes.

7 I would think that would be a logical procedure.

8 Q Directing your attention to Exhibit 12,
9 your report of April 1979, the third full paragraph on
10 Page 2, you say, "The significant commercial industrial
11 developments are concentrated in the southerly portion
12 of the Township along or in the vicinity of Route 10."

13 Have you endeavored to determine the employment
14 which has resulted as a consequence of that business
15 development in that area of the Township?

16 A No.

17 Q Do you know or have you examined employment
18 figures for the Township since World War II?

19 A No.

20 Q Have you examined the current zoning ordinance
21 for the Township to evaluate the potential for future
22 employment growth in the period from, say, 1980 through
23 the year 2,000 which exists in East Hanover Township?

24 A Only in a very broad way.

25 I'm not -- but not in specific terms of employment.

1 per se, but in terms of the amount of vacant land zoned
2 for commercial uses versus the amount of developed commer-
3 cial land in those zones.

4 Q Even as a result of your rather broad review,
5 what conclusions have you reached in regards to future
6 employment growth in East Hanover Township?

7 A Well, the conclusions I have reached based upon
8 the relationship of the total area zoned for commercial
9 use and the amount of vacant land in the commercial zones
10 is that the employment growth will represent a relatively
11 small proportion -- that is, future additional employment
12 will be very small in terms of current employment.

13 Q Have you examined the contiguous or adjacent
14 municipalities in regards to their potential for employment
15 growth in the same period of, say, 1980 through the year
16 2,000?

17 A No.

18 Q Also, on that same page you have a statement,
19 "Public and semi-public land also constitutes a major
20 land use."

21 Can you specify in what manner lands have been
22 devoted to public and semi-public uses?

23 A In East Hanover, particularly, there is a very large
24 amount of land which is devoted to cemetery use. I
25 believe that in total, 10 percent of the Township --

1 approximately, 10 percent of the Township is devoted to
2 either cemetery use or is in public land ownership.

3 Q When you talk about 225 acres in your April
4 report being devoted to cemetery use, are all those acres
5 currently in such use or are they vacant and proposed for
6 that use in the future?

7 A Well, the 225 acres refer to properties that are
8 in a cemetery use. I believe there are probably some
9 vacant grave sites within them, but the property is actually
10 devoted to cemetery use.

11 Q In addition to those 225 acres, are there
12 other areas which are vacant but in some fashion are either
13 dedicated for future cemetery development or in some other
14 manner have been proposed for such a use?

15 A There's only one small parcel of land. I believe
16 it lies in a cemetery zone which is devoted to cemetery
17 use.

18 That may have been already rezoned.

19 Q But, virtually all of the cemetery zone
20 includes property actually devoted to cemetery use?

21 I am not sure I quite understand.

22 You started to refer to a small parcel which was
23 within a cemetery zone, but you indicated has been rezoned
24 recently.

25 Is that your testimony?

1 A I believe there was a proposal -- pending ordinance
2 that would have rezoned a small area of land which was -- is
3 either presently or was in a cemetery zone but not devoted
4 to cemetery use.

5 MR. EDWARDS: That is one of the zoning
6 ordinance amendments that we just adopted and
7 which I will be giving you a copy of. There was
8 an erroneous zoning designation because it was
9 contained within the confines of a larger area and
10 was not being used for cemetery use, nor was it
11 planned to be.

12 It was a few acres, not a large tract.

13 MR. BUSH: Eight acres.

14 MR. EDWARDS: Eight acres.

15 Q Do you recall, offhand, Mr. O'Grady, where
16 this area which is being rezoned is located?

17 A Yes.

18 It's in the -- the cemetery zone in the southeasterly
19 most portion of the Township, lying south of Route 10 and
20 east of Hanover Avenue.

21 Q While you're still up there and with Exhibit
22 11, could you just point out where this parcel is located?

23 A Yes.

24 This being Route 10, this being Hanover Avenue,
25 it lies south of Route 10 into the east of Hanover Avenue.

1 Q If I understand correctly, there is a large
2 dark blue letter CM and the area which you specifically
3 pointed to has the letters over it: RMC?

4 A Yes.

5 I'm not certain as to whether or not it included
6 both of these parcels of property of just this one.

7 Q You have an area colored in yellow there
8 which would constitute, according to your legend, vacant
9 land.

10 Is that correct?

11 A That is correct.

12 Q What is the size, approximately, of that
13 parcel of vacant land which you have designated on Exhibit
14 11?

15 A To answer that question I would have to refer to
16 a subsequent report that I prepared -- at least, I believe
17 the information -- the size of that property in that ceme-
18 tery zone which is not devoted to cemetery use is 14 acres,
19 according to, I believe, the Township tax maps.

20 Q You indicated you were going to refer to a
21 subsequent report.

22 Is that your report dated December 11, 1979?

23 A That's correct.

24 Q Where in that document is that reference
25 contained?

1 A It's contained on Page 6, Paragraph H.

2 Q Since we've gotten to it, this is a seven
3 page report dated December 11, 1979 from you to Mr. Edwards,
4 again.

5 Is that correct?

6 A That's correct.

7 MR. ONSDORFF: Let us mark that as Exhibit 16.

8
9 (EHO-16 for identification is a report
10 prepared by Robert O'Grady to W. Carey Edwards, Esq.
11 dated December 11, 1979, 7 pages.)

12
13 Q Again, directing your attention to Page 2
14 of your April report, the next paragraph after the one
15 we've been discussing indicates that about 1,800 acres is
16 vacant, privately owned land.

17 In what manner was that acreage determination
18 arrived at?

19 A This was arrived at by determining -- first of all,
20 using the existing development map, which parcels of land
21 were undeveloped and either using the tax map where it
22 indicated the actual acreage of the vacant tract or using
23 a planimeter to calculate the areas where the tax map
24 did not indicate the acreage.

25 Q Further down on page 2, the statement appears,

1 "45.5 percent of the Township is zoned for residential use
2 and 46.5 percent is zoned for commercial."

3 Have you determined what percentage of the 46 percent
4 commercial zoning is vacant land?

5 A Yes, I have.

6 Q What is that portion of the commercial land
7 which is still vacant?

8 A Again, referring to another report -- according to
9 Table 2, I believe this is my letter of September 25, 1979,
10 there are, approximately, 830 vacant acres of commercially--
11 or nonresidential -- nonresidentially zoned land.

12 Q You're making a distinction between non-
13 residentially zoned and zoned commercial.

14 What deletion would you make from that 830 figure
15 for the commercial zoned property?

16 A Well, there are various commercial zones in the
17 Township. And, I think, if we can assume that business
18 industrial -- professional and business and residential
19 laboratory zones all fall within the category of commer-
20 cial, the only one I would exclude would be the cemetery
21 zone, and even that has a commercial aspect to it.

22 Q As far as the --

23 A But -- I am sorry.

24 Q As far as the cemetery, my understanding
25 was that we would consider that all development. So,

1 you still retain the 830 acre figure for your commercial.

2 You wouldn't delete anything because the cemeteries
3 are fully within the developed category.

4 Is that correct?

5 A Virtually, except for the -- I would not delete the
6 14 acres, perhaps. But, there are, approximately, 830
7 vacant land -- acres of vacant land which are zoned
8 commercially.

9 Q Have you determined how many acres which are
10 zoned commercial are actually presently in commercial use
11 or developed for commercial purposes?

12 A Again, without subtracting, and I would have to
13 subtract here the cemetery zones -- but, including the
14 cemetery zone, there would be, approximately, 2,100 acres
15 developed commercially.

16 Q With that 2,100 acres already in commercial
17 use, do you know what amount of employment is provided
18 by those businesses using that amount of land?

19 A No, I don't.

20 Q You have not endeavored to examine the
21 current employment to determine whether there's any
22 relationship between it and the amount of land devoted
23 to those uses in comparison to the remaining vacant land
24 currently proposed for commercial uses to see if there's
25 any relationship or any relationship for determining future

1 employment based upon current uses and employment figures.

2 Is that correct?

3 A No, I have not made any such calculations.

4 Q Are you aware upon what basis the decision
5 was made by the municipality to zone an additional 830
6 acres for commercial purposes in light of the existing
7 2,100 acres which are already in such use?

8 A I am not aware of specifically why the municipal
9 officials zoned for 830 acres for commercial use, although
10 it's evident to me from the development pattern in compari-
11 son to the zoning pattern that the vacant properties in-
12 variably fall in the midst of established commercial develop-
13 ment. So, from a broad land use or zoning point of view,
14 it would be the only logical zoning for those properties.

15 Q I'd like to direct your attention to this
16 document and ask if you can identify what it is?

17 A This is the Department of Housing and Urban Develop-
18 ment Flood Insurance Administration Flood Insurance Rate
19 Map for East Hanover Township.

20 MR. ONSDORFF: May I have this marked as
21 Exhibit 17?

22
23 (EHO-17 for identification is Department of
24 Housing and Urban Development Flood Insurance Admini-
25 stration Flood Insurance Rate Map for East Hanover

1 Township.)

2

3 Q Directing your attention to what has been
4 marked for identification as EHO-17, which you already
5 stated is a flood insurance rate map prepared by the
6 U.S. Department of Housing and Urban Development, my
7 question is: Is this the flood map prepared by or published
8 by HUD which you relied upon in producing your Exhibits
9 9, 10 and 11?

10 A I relied upon this Exhibit. And, additionally,
11 there is another map which was included with the HUD mapping
12 which indicated the delineation of the 100 year flood fringe.
13 This particular map combines the floodway and the 100 year
14 flood fringe, but I did rely on this map.

15 Q This additional map which you just indicated
16 has a separate delineation for the 100 year flood fringe
17 outside of the floodway. Is a copy of that available for
18 our inspection and review?

19 A I believe it is.

20 I did not personally have the map itself. I have
21 only photocopies of various -- the various sections of
22 the map covered by the flood hazard area.

23 MR. EDWARDS: The original of the map that
24 Bob is referring to is on file with the Township
25 Clerk and the other maps of the FIA maps. Other

1 than this one, they were not available for distribu-
2 tion. In fact, I don't have a copy.

3 MR. BUSH: We've been attempting to get
4 additional copies of these maps and the other
5 portion of the flood study. But, we haven't had
6 much success.

7 MR. EDWARDS: Which delineates the flood.
8 So, we had to copy that one to give it to Bob.

9 MR. ONSDORFF: Fine.

10 Q Directing your attention to the Notes to
11 User Manual, in the right margin the statement is included,
12 "Certain areas not in the special flood hazard area zones
13 A and V may be protected by flood control structures."

14 Are you aware of what is meant by that statement?

15 A I assume that the statement means certain areas
16 which are not in what is designated as Zones A and V --
17 whether its a permissive type of statement, but it indicates
18 that flood control structures may be used.

19 I'm not certain of the precise -- in answer to your
20 question, I'm not, at this moment, certain of the precise
21 interpretation of that statement.

22 MR. EDWARDS: Are you looking for a definition
23 of what a C area is, because, that's contained in
24 the explanation of zoned designations.

25 MR. ONSDORFF: No, I was concerned within

1 what manner they endeavored to make special pro-
2 visions for flood control measures in Zones A and V
3 in accordance with their statement there.

4 Q Did that explanation change your answer,
5 in any way, Mr. O'Grady?

6 A No.

7 MR. EDWARDS: I'm confused by the question,
8 too.

9 The statement is one that says, "Certain
10 areas not in the special flood hazard areas designa-
11 ted A and V may be protected by flood control struc-
12 tures."

13 I don't know what you're looking for with
14 reference to that.

15 MR. ONSDORFF: My question would be in using
16 this map, if a developer came to you for your pro-
17 fessional advice as to what were the protective
18 measures that HUD was advising to be taken, and he
19 referred you to that statement --

20 Q Mr. O'Grady, what would be your advice
21 concerning what the import of that statement made in regards
22 of this development in Zones A and V?

23 A In looking at the map, I don't think V is applicable
24 to East Hanover. It appears to refer to coastal flood
25 which, I believe, would exclude East Hanover.

1 Looking at the areas in East Hanover designated as
2 Zone A, include areas which incorporate both the floodway
3 and the 100 year flood fringe.

4 MR. EDWARDS: Excuse me.

5 I don't understand your question, still,
6 because it says, "Certain areas not in the special
7 flood areas designated A and V."

8 So, the question and statement, "not to
9 User," refers to when it's not included in either
10 one of those two designations which may be protected
11 by flood areas.

12 You seem to be indicating that there's another
13 protection within those areas that's needed.

14 Q With that caveat, Mr. O'Grady -- or shall
15 I say that you agree with Mr. Edwards' interpretation as
16 to the statement as it applies to Zones A and V, or whether
17 it applies to areas outside of Zones A and V?

18 A It would appear to me that it applies to areas
19 outside of Zones A and V. And, my interpretation after
20 reading it further is that there may be already existing
21 structures beyond areas A and V which have some form of
22 flood protective construction, which without that construc-
23 tion might be subject to flooding.

24 MR. EDWARDS: They seem to be using Zones
25 B, C -- they have also defined here D, that have

1 different flood characteristics.

2 MR. ONSDORFF: Okay.

3 Q You've already testified, Mr. O'Grady, in
4 regards to the flood fringe and the floodway being depicted
5 on this map by one color code.

6 Is that correct?

7 A That's correct.

8 Q If there is a distinction between the flood
9 fringe and the floodway, would you know as to why they
10 would be depicted by the same color code?

11 A I believe this indication has to do with the
12 establishment of flood insurance rates.

13 MR. EDWARDS: I think the question is
14 more properly directed to HUD as to why they lumped
15 the two together.

16 MR. ONSDORFF: Yes.

17 I certainly realize that they were the
18 initial source, but in light of Mr. O'Grady's
19 reliance on it, I want to explore his answer as
20 to what HUD did and as to why he relied on that.

21 That's the reason I'm asking him that.

22 MR. EDWARDS: You're asking his reliance
23 upon this and as being a flood hazard area, generally?

24 MR. ONSDORFF: Yes.

25 MR. EDWARDS: And what the meaning of that

1 them for the purpose of your exhibits.

2 Is that correct?

3 A For the purpose of these exhibits, I have accepted
4 them, yes.

5 Q In regards to the flood hazard area which has
6 initially been delineated by HUD and incorporated in your
7 exhibits, can you elaborate on what the extent or -- speci-
8 fically, what is the flood hazard concerns presented by
9 these low lying areas, generally speaking?

10 MR. EDWARDS: You're talking about the real
11 danger of flooding in those areas, the actual physi-
12 cal danger?

13 MR. ONSDORFF: Yes.

14 I mean, if we went out there and examined
15 these lands or we posed an observer or examiner
16 to take periodic photographs, what is it that we
17 would observe?

18 A I'm sorry, I'm a little confused by the question.

19 I can only answer it this way without clarification:
20 that the flood hazard area maps prepared by HUD would
21 indicate those areas which would carry normal flood waters.
22 Namely, the floodway and those areas which would have a
23 relatively high potential for flooding beyond the floodway
24 which would be the 100 year flood fringe.

25 MR. EDWARDS: You're asking Mr. O'Grady

1 whether or not he believes there should be a develop-
2 ment restriction with reference to this area because
3 of the actual event of flooding.

4 Is that correct?

5 MR. ONSDORFF: Ultimately, we're going to
6 get to that.

7 Now, we have lines in the map -- I'm trying
8 to give them a little life, in essence.

9 MR. EDWARDS: The procedure, then: you're
10 asking for a procedure from which these lines were
11 established?

12 Mr. O'Grady was not the source of that.
13 The housing development material comes from the
14 field observations, and including having delivered
15 preliminary maps to the Township and having received
16 copies of the two maps that you referred to earlier,
17 the 1903 flood map and the --

18 MR. ONSDORFF: Stop, because I understand.

19 We are coming from different directions.
20 So, just to save us time and money, let me approach
21 it from a different angle.

22 Q From your own personal knowledge, if you
23 went to any particular location within the dark colored
24 areas which / have been delineated by HUD in Exhibit 17 as
25 a flood hazard area -- and I request that you stay there

1 for an extended period of time: a year, five years, however
2 long -- to your own personal knowledge, do you know what
3 you would observe in terms of how much water would, in a
4 given period of time, cover that land area, if any?

5 A I can answer the question this way: That I personally
6 observed flooding in East Hanover Township.

7 I could take you out today and show you flood waters
8 within the flood hazard area.

9 I have not been in all sections of East Hanover
10 Township during period of flooding. I have certainly read
11 newspaper reports and heard radio reports of sections of
12 East Hanover which have flooded, and the information would
13 certainly, in those areas, correspond with what is indicated
14 by these maps.

15 Q Based upon an examination of the HUD map,
16 is it possible to determine with reference to the delineation
17 based upon that the level of actual flood waters which would
18 cover the land at any given time, or over any projected
19 period of time, to your knowledge?

20 A Excuse me.

21 To the best of my knowledge, the flood hazard areas
22 map indicated on the exhibit would indicate the maximum
23 limit of areas that would be inundated by flood waters.
24 So, once every 100 years -- the maximum limit -- certain
25 portions of the areas within the flood hazard areas would

1 be covered by water -- flood waters more frequently than
2 once every 100 years.

3 Q With reference to Exhibit 9, for instance,
4 can you indicate the current zoning applicable to those
5 areas which are subjected to this periodic inundation of
6 flood waters as delineated by the HUD Flood Map?

7 A The flood --

8 MR. EDWARDS: Current zoning you're looking
9 for?

10 MR. ONSDORFF: That's correct.

11 A (Continuing) The flood hazard area covers portions
12 of virtually every zone in the Township. There may be one
13 or two exceptions, but there are various zones that fall
14 within the flood hazard area.

15 Q In other words, development in the flood
16 hazard area is not precluded under the present land use
17 controls in East Hanover Township.

18 Is that correct?

19 A The development is not precluded --

20 MR. EDWARDS: You're talking about an absolute
21 prohibition on development.

22 Is that correct?

23 MR. ONSDORFF: That would be a fair definition
24 of precluded.

25 A (Continuing) The ordinance does not prohibit

1 development within the flood hazard area.

2 Q Does the ordinance regulate the manner in
3 which such development is allowed to take place?

4 A Yes.

5 The ordinance provides certain regulations placing
6 limitations on and controls on development.

7 Q Can you elaborate on the nature of those
8 controls and limitations on development in the flood hazard
9 areas of the Township?

10 A The ordinance, generally, would require that the
11 applicant demonstrate that the development that he proposes
12 would not have an impact on the health, safety or general
13 welfare of the Township; it would not increase the poten-
14 tial for flooding; that structures located within the
15 flood hazard area have first floor levels, I believe, two
16 feet above the elevation of the flood hazard area; that
17 structures within the flood hazard area be properly flood-
18 proofed or constructed with floodproofing measures; properly
19 anchored; that any filling, disturbance of land, would not
20 increase the potential of flooding beyond a reasonable
21 limit.

22 Q Directing your attention to Exhibit 11 which
23 depicts the vacant land in yellow, if I recall correctly,
24 are there any areas which you have so designated which are
25 within the flood hazard areas of the Township?

1 A Exhibit 11 indicates a number of vacant properties
2 in the flood hazard area, if you mentioned something about
3 yellow.

4 Q What is the designation used for the vacant
5 properties on Exhibit 11?

6 A All of the vacant properties are outlined in red.
7 The map needs some modification through some drafting
8 errors, as far as the legend designation.

9 Vacant land is shown as yellow, but the intent
10 there was to indicate in yellow the portions of the vacant
11 land that fall beyond flood hazard areas and wetland soils.
12 The actual vacant areas are outlined in red, and within
13 that red outline we indicate what soils, flood fringe,
14 floodway. And then in yellow, areas not subject to those
15 three limitations.

16 Q In other words, the legend now which says
17 vacant land and has a block of yellow has been modified or
18 changed?

19 A That's correct.

20 Q Exhibit 11 also indicates the flood fringe.
21 If I read the legend correctly, it is at that
22 100 year flood fringe?

23 A Yes.

24 Q Could you define that any further?

25 A I thought I previously indicated that it's my

1 understanding the 100 year flood fringe is the flood hazard
2 area beyond the floodway, the area beyond the floodway
3 that could be expected would be inundated by the flood
4 waters at least once every 100 years.

5 Q How could you define the floodway?

6 A The floodway would be the river channel or the
7 stream channel and the adjoining areas beyond the stream--
8 immediate stream channels which would carry the -- would
9 be expected to carry normal flood waters which might
10 happen -- I don't know that there's a specific time frame
11 or storm period involved in the floodway, but certainly
12 on a far more frequent basis than once every 100 years.
13 Perhaps, annually.

14 MR. ONSDORFF: Off the record.

15
16 (An off the record discussion takes place.)

17
18 (A luncheon recess is taken.)

19
20 Q Mr. O'Grady, in the number of reports you
21 filed I believe you addressed, at least in the summary
22 fashion, the issue of sewage availability.

23 Could you help me out? I am trying to locate that.

24 I guess on your September 25 report on Page 5
25 in the section entitled: Summary, Paragraph 2, you

1 indicate, "A lack of sanitary sewers preclude establishment
2 of high densities. Even if sewers become available, it
3 is doubtful that least cost density criteria would be met
4 if wetland characteristics have to be restricted."

5 A What report was that?

6 Q That's the September 25.

7 A Okay.

8 Q Exhibit 13, does that statement comport
9 with your present understanding or present opinion as to
10 sewer conditions in East Hanover Township?

11 A Yes.

12 I would say it does.

13 I think only a very small area of the Township
14 that I think is served through Florham Park -- other than
15 that, there's no sanitary sewers in East Hanover.

16 Q Are you aware of what plans, if any, there
17 are for public sewers in East Hanover for future develop-
18 ment in the Township?

19 A Yes.

20 Q What are those plans, to your knowledge?

21 A To my knowledge, a plan for providing sanitary
22 sewers throughout most of the Township has been developed.
23 The sewage would be handled through the Parsippany - Troy
24 Hills Sewerage Treatment Plant, and that grants and con-
25 struction, I believe, are anticipated to begin in 1980.

1 Q Are you aware of the allocation of sewer
2 capacity to the Township in gallons per day?

3 A That particular figure, I don't recall. I believe
4 I've heard the figure, but I don't recall what that is
5 at the present time.

6 Q How about, then, the capacity or the addi-
7 tional population that the allocation of sewer capacity
8 will provide for.

9 In other words, the number of people that can be
10 served by this sewer? Are you aware of any population
11 figures on that?

12 A No.

13 Again, if I heard the figure -- I don't recall it.

14 Q Based on your answer, then, is it correct
15 that you, yourself, haven't done any independent study of
16 the sewer plans for the Township?

17 A Only to the extent of examining the plan for the
18 proposed sewer system from which I gained the understanding
19 that most of the Township would be provided with sanitary
20 sewers. Presumably, that, therefore, most of the develop-
21 ment in the Township would be within reasonable proximity
22 to sanitary sewers.

23 Q This plan, to your knowledge, has it been
24 issued in final form? Is it readily available to myself?

25 A I believe it is a matter of public record.

1 Q Do you know the title and date of issue, or
2 do you have a copy available that we might examine here
3 today?

4 A I do not have a copy of the entire map. I have a
5 single map that shows a -- I'm not sure of the date of the
6 plan, but it does show proposed phasing of sewers in various
7 sections of the Township.

8 MR. EDWARDS: We submitted that data in our
9 Answers to Interrogatories as to titles, dates of
10 the entire sewer plan, the Parsippany alternative,
11 and I think we've submitted representatives from
12 Bowe-Walsh and Associates who are the sewer manage-
13 ment consultants as opposed to Van Note/Harvey who
14 are the sewer engineering consultants. And, some
15 of their representatives we plan to present for
16 environmental reasons dealing with sewage.

17 I think, maybe, your questions or a future
18 deposition of a representative of Bowe-Walsh can
19 answer that.

20 Q You did indicate that you have a sewer map
21 available.

22 Is that correct?

23 A I have a copy of a sewer map that was prepared,
24 I believe, by Harvey. I'm not too certain.

25 And, it shows the location of proposed collection

1 systems, or collection system lines, the various phasing
2 for construction by section of the Township.

3 MR. ONSDORFF: We'll take a look at that.

4 Q Your statement is that you believe it's
5 doubtful that least cost density criteria can be met of
6 wetland characteristics.

7 Can you elaborate on what you mean by that?

8 A Yes.

9 If you take the various vacant properties in the
10 Township and you evaluate them in terms of the portions
11 that are either subject to flooding -- that is, located
12 in the flood hazard areas or which have very high water
13 tables, the land left -- or the portions of a property
14 remaining, in most instances, constitute a very small
15 portion of the property. And, even with the clustering
16 of development into the more favorable portions, the overall
17 result in density for property would be quite low.

18 Q In the context of this statement, how do you
19 define your least cost density criteria?

20 A Well, I have never defined least cost density
21 criteria. I believe that any reference to densities that
22 I may have used in any of my reports were simply related
23 densities proposed by Allan Mallach.

24 Q In the context of this report you had
25 accepted Allan Mallach's least cost criteria.

1 Is that correct?

2 A I have not.

3 I think I've really confined my remarks to the
4 subject of density rather than to what might be least
5 cost density.

6 Q In the first unnumbered paragraph of your
7 summary on your September report, second sentence, it
8 states, "I further conclude that it is not reasonably
9 possible for the Township to provide through its zoning
10 for any significant or meaningful amount of least cost
11 housing."

12 How did you define or what did you mean in the
13 context of that sentence by the phrase: least cost
14 housing?

15 A I believe in that statement I was really referring
16 back to Mallach's terminology of least cost housing densities
17 or moderate and low income housing densities. I have never
18 put forth what I would consider to be least cost or moder-
19 ate or low income housing densities.

20 Q You indicate that it's not reasonably possi-
21 ble through zoning in the Township to provide for any
22 significant or meaningful amount of this least cost housing.

23 What do you mean by: significant or meaningful
24 amounts of such housing?

25 A Essentially, what I mean is that there are basically

1 few, if any, properties that are without any vacant --
2 vacant properties that are without any of the environmental
3 limitations that we are referring to today in terms of the
4 exhibits on the wall. And, that when you apply the densities
5 that are proposed by Allan Mallach to the areas of these
6 vacant properties that are presumably suitable for develop-
7 ment, the resultant density on the whole property becomes
8 much more than what has been proposed by Mallach.

9 I would even, perhaps, amend my statement in the
10 report, that it would be virtually impossible to provide
11 for least cost housing, meaning Mallach's densities on just
12 about every property in the Township, if we're going to
13 observe these critical areas.

14 Q In the third numbered paragraph of your
15 Summary on Page 5 of the September 25 report you indicate
16 that, "Vacant lands are, for the most part, located in
17 established residential neighborhoods. Establishment of
18 multi-family housing would be disturbance of the existing
19 neighborhood character."

20 Could you specify the manner in which this disturb-
21 ance would take place?

22 A In many instances, the vacant properties in East
23 Hanover Township located within residential zones are in-
24 terior lands which are surrounded by established single
25 family residential development. The access to these

1 properties is along streets which have a developed single
2 family residential character. I feel that to inject alter-
3 nate forms of housing and higher densities into those
4 established neighborhoods would have an adverse impact on
5 the character of the neighborhood and could certainly have
6 an impact on the value of existing residential development.

7 Q Are there any other impacts you foresee in
8 addition to those you've just listed?

9 A I think there would be the additional impact of
10 additional traffic generated by higher density use within
11 the residential neighborhoods.

12 Q You conclude this statement by indicating,
13 "In addition to the disruption, such an establishment would
14 ignore accepted planning and zoning practices."

15 Could you specify what planning and zoning practices
16 you're referring to there?

17 A Primarily, the accepted planning practice or approach
18 of maintaining the character and integrity of established
19 neighborhoods in maintaining the value of property within
20 those neighborhoods. And, it is an accepted planning and
21 zoning practice that we do have an established residential
22 neighborhood of a certain character. Particularly, a
23 single family residential character, that where vacant
24 properties within that neighborhood do exist that the
25 existing pattern of development should be continued rather

1 than injecting an alternate form of development.

2 Q You indicate that these are accepted planning
3 and zoning practices.

4 Is there any specific document or other writing in
5 which that acceptance is recorded or memorialized?

6 A I can't point to a specific document or textbook
7 that would make that statement. It is certainly consistent
8 with any of the readings I've done in my planning education
9 and any of the planning practices which I have become aware
10 of or confronted with in my experience.

11 Q For a minute, I would ask you to compare your
12 April 26 report with your September 25 one, Exhibits 12 and
13 13. I know on Page 2 of each document you have a paragraph
14 just before the heading: Existing Zoning.

15 In the April report you speak of 1,800 acres of
16 vacant privately owned land. In the September report that
17 figure is indicated at 1,639 acres of vacant privately
18 owned land.

19 In what manner was this figure reduced from 1,800
20 to 1,639?

21 A This figure was reduced based on information we
22 gained subsequent to April 26 and prior to September 25
23 indicating that various properties in the Township had
24 received a final subdivision approval by the planning board.

25 Q In addition to that modification and revision,

1 are there any other statements or conclusions in your
2 subsequent report which substantially revises your earlier
3 April report?

4 A There are a number of -- I would say, probably
5 relatively minor changes to various statistics or data
6 in that the April 26 report was essentially a preliminary
7 report whereby we were under somewhat of a time schedule
8 to get some initial findings to Mr. Edwards so that we would
9 know essentially what basis we would have for providing
10 planning justification of the Township Zoning Pattern
11 and indicating in that April 26 letter that we would be
12 refining this data.

13 Q In light of your time constraints, did you
14 confer at all with the planning consultants who had pre-
15 pared the master plan in 1975 to obtain any of the data
16 base or materials they had, or, you say they had prepared
17 in the preparation and publication of this Exhibit 14 at
18 any time prior to your April or September report?

19 A No, Exhibit 14 being specifically --

20 Q The master plan of 1975?

21 A I was in contact with, I believe, the firm of
22 Borman and Durane (phonetically) in efforts to obtain
23 certain mapping materials which would be helpful to us
24 in preparing our own exhibits. But, other than that, I
25 did not attempt to acquire any additional information from

1 those consultants.

2 Q On Page 2 of the master plan it makes reference
3 to the planning firm of Borman and Durane and a number of
4 proposals which they had submitted but had not incorporated
5 in the master plan as a result of the statutory responsibili-
6 ties being exercised by the planning board.

7 Did you examine those proposals which were not in-
8 corporated in the master plan prepared by the consultant
9 firm of Borman and Durane?

10 A No.

11 Q Are you familiar with the Nabisco office
12 headquarters complex in East Hanover Township?

13 A To the extent of knowing it's there and having
14 seen it, yes.

15 Q Do you know its employment at that facility?

16 A Not offhand.

17 I believe -- at one time I did hear the figure,
18 but I don't recall what it was.

19 Q Are you aware or are you familiar with a
20 tract of land in which that Nabisco facility is located?

21 A I used to play golf there and it's over hill, over
22 dale, up and down.

23 Q Do you know the size in square footage of
24 buildings that have been constructed there?

25 A I'm not familiar, precisely, with the size of the

1 building. It's quite -- at least the main building is
2 quite a substantial building.

3 Q You've indicated you used to play golf there.
4 This is a recent construction, then?

5 A The Nabisco plant? Yes.

6 I would say within the past ten years, approximately.

7 Q In regards to your classifying lands -- let
8 me rephrase that.

9 You indicated, did you not, you are not aware of the
10 square footage of the building? How about as far as the
11 lot coverage? Do you know the percentage of the tract which
12 has not been constructed upon as opposed to total acreage?

13 A No.

14 Q Do you recall whether or not that particular
15 parcel of land was placed in a developed category, or is
16 that deemed to be a vacant developable tract as a result
17 of the amount of open space surrounding the buildings that
18 were built there?

19 A The entire tract of land owned by Nabisco has been
20 considered for our purposes as being a developed property.

21 Q Directing your attention, again, to Exhibit
22 14 on Page 2, the paragraph labelled: One Family Residen-
23 tial Use, the statement appears, "About 650 additional
24 homes could still be built. The master plan prepared
25 puts the present number of homes in the Township of,

1 approximately, 2,200."

2 Is that statement as to projected future residential
3 growth consistent with the planning studies that you have
4 performed on behalf of the Township?

5 A Just as an aside, there appears to be some typograph-
6 ical errors since the statement is not complete. However,
7 I believe we have estimated that there are, approximately,
8 2,400 existing homes in the Township as opposed to 2,200
9 indicated in the master plan.

10 In one of my reports I have indicated the number of
11 additional homes I believe that could be constructed under
12 current zoning, and I don't recall exactly which report it's
13 in or exactly what that figure is. My recollection is that
14 it's less than the 650 indicated in the master plan.

15 Q Directing your attention to Page 5 of the
16 master plan, Exhibit 14, the statement appears on the right
17 column, "Farms and nurseries are identified separately in
18 the land use survey although these are probably transitional
19 uses and are subject to the future development somewhat to
20 the same extent as vacant lands. The total is about 129
21 acres."

22 In your work on behalf of the Township did you do
23 any analyses of the present status of these 129 acres of
24 farms and nurseries?

25 A No.

1 I don't know precisely or exactly what 129 acres --
2 or 129 -- yes.

3 As far as farmlands are concerned, we considered them
4 to be vacant lands or we did not distinguish a farmland
5 from vacant land, in any way.

6 Q Directing your attention to Exhibit 16,
7 your September 11, 1979 report, the first page, second
8 paragraph, "Concerning the former, there are a number of
9 vacant lots in the Township on which it would be physically
10 impossible to locate a mobile home assuming that utility
11 requirements applicable to conventional single-family
12 homes were met."

13 Have you, in any fashion, identified the number
14 and location of these vacant lots which you refer to in
15 that statement?

16 A No, not precisely.

17 There are a number of subdivisions, relative sub-
18 divisions in which there exist -- still exists some vacant
19 lots. There may be also a handful or two of vacant lands
20 which are scattered throughout the Township in the midst
21 of established residential neighborhoods.

22 I have not attempted to determine the precise number
23 of these lots.

24 Q You indicate that, "The vacant lots invariably--"
25 This is the first numbered paragraph on Page 1 of your

1 September report, "Are invariably located in established
2 neighborhoods of conventionally constructed homes."

3 How is that conclusion reached if you did not visit
4 all these vacant lots?

5 A I don't think it's necessary to visit them, although
6 I have been through virtually all of the neighborhoods in
7 the Township. But, on examination of the existing develop-
8 ment map, it indicates where these vacant lots are located.

9 Q You've indicated that the dedication of these
10 lots for mobile home development would be inconsistent with
11 the character of the neighborhood and would have adverse
12 impact on the resale value of existing homes and discourage
13 constructions of homes in the vicinity.

14 Are there any other impacts which you have identified
15 which are not stated in that paragraph that would flow
16 from such use of these lots for mobile home occupancy?

17 A Offhand, none that I can think of.

18 I think the significant feature is the wide differ-
19 ence in character between the mobile homes and the conven-
20 tionally constructed home.

21 Q Is it your opinion that there's a need for
22 some sort of separation or buffer between mobile homes and
23 other residential dwellings to avoid these impacts?

24 A Yes.

25 I think, whether you're talking about mobile homes

1 or any form of housing, I believe that there should be some
2 separation between housing types that do have a wide diff-
3 erence in character. And for this reason, I indicated in
4 my letter that I believe the mobile homes should be located
5 in a mobile home park along with other units of that type.

6 Q Have you endeavored to quantify or specify
7 the amount of land separation there should be between a
8 mobile home and a different type of a residential dwelling?

9 A I have not attempted to quantify it in terms of
10 East Hanover. I think that if a mobile home park adjoins
11 a conventional residential development that it would be
12 desirable to have a buffer of at least 100 feet between the
13 two neighborhoods.

14 Q In the second page of your December 11, 1979
15 letter, Exhibit 16, you describe in considerable detail the
16 impacts as far as real estate values and real estate trans-
17 actions.

18 My question would be as to your experience in real
19 estate transactions. Have you done any real estate work
20 of this nature?

21 A No, I don't have any qualifications in the real
22 estate field.

23 Q The third paragraph on Page 2 addresses your
24 concern for the value of the mobile home as opposed to the
25 value of the lot, and the statement appears, "Land values

1 invariably increase."

2 What is your basis for that statement?

3 A Basically, I think just common knowledge, personal
4 experience with knowing through personal knowledge what
5 property is -- what properties sell for 10 or 15 years
6 versus what they sell for today, or what a vacant lot
7 sells for today versus 10 or 15 years, given the same sized
8 lot.

9 Q The next statement following the one I've
10 quoted, "Even if the mobile homes were to increase in value,
11 the rate of increase would probably be much slower than the
12 rate of land value increase and slower than the increase
13 in value of a conventional home."

14 In what manner have you come to that conclusion?

15 A In my opinion and in any reading I have done concern-
16 ing mobile home development, mobile homes tend to depre-
17 ciate in value.

18 I know that there's disagreement with that statement
19 and that there may be a lesser depreciation today than there
20 used to be in the value of mobile homes, but it is a -- a
21 mobile home is a manufactured type of dwelling unit, manu-
22 factured in a factory and it does depreciate over a period
23 of years to some degree, in my own opinion.

24 Q Can you cite me to any document or other
25 statistics or empirical data upon which you base that

O'Grady - direct

1 opinion?

2 A I can't recall specifically, offhand, just what
 3 documents I have read or seen concerning that subject.
 4 I think one of the documents certainly that I did refer
 5 to was the Haeckel report which indicated a considerable
 6 amount of statistical data concerning mobile homes and
 7 their resale value after a period of years. And while
 8 that report indicates that in some areas mobile homes
 9 have increased in value --

10 In other words, have sold for a price greater than
 11 what they were originally purchased for, that in other
 12 instances they did not increase in value.

13 Q Have you examined any mobile home sales
 14 in any community within Morris County to compare its
 15 resale value as opposed to this initial purchase price?

16 A No, I haven't.

17 Q Based upon your opinion that mobile homes
 18 are more appropriately located in parks with other similar
 19 units, in your experience and knowledge of vacant lands
 20 throughout Morris County or other areas of the State of
 21 New Jersey, have you in your professional experience deter-
 22 mined any tracts of land which would be appropriate for
 23 the dedication of that property for mobile home dwelling
 24 units in a park or other cluster development of that nature?

25 A In Morris County?

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1 Q Yes.

2 A No, I've never really had occasion or reason to
3 do that.

4 Q Have you determined through your professional
5 experience any land areas that would be appropriately
6 dedicated to mobile home use in New Jersey?

7 A Well, I haven't made any studies or made any effort
8 to determine where in New Jersey I feel that mobile home
9 development would be appropriate or should take place. I
10 do know that mobile homes and mobile home parks, particular-
11 ly are far more prevalent in southern New Jersey, in or
12 near some of the shore resort areas, in areas of the state
13 that are basically much different physically in character
14 than northern New Jersey.

15 In other words, in relatively flat level areas of
16 the state, generally in the sandy Pine Barren areas of
17 New Jersey where sites are relatively level and well drain-
18 ed.

19 Q What does present zoning ordinances in
20 East Hanover Township provide regarding the use of mobile
21 homes within the Township?

22 A The ordinance in East Hanover does not really address
23 mobile homes, specifically.

24 Q In Paragraph 4 of Page 2 of your December
25 11 letter report, the statement appears, "Given the high

1 land values and improvement cost prevalent in the areas ,
2 densities would have to be quite high in order to make
3 mobile home development feasible."

4 In what manner did you determine the land values
5 to be high and what is the area in which you indicate that
6 these land values -- these high land values are prevalent?

7 A I've indicated previously in Paragraph 2 of this
8 December 11 report, or letter that the value -- or the
9 selling price of certain properties in the Township recently
10 recorded, which information I obtained from the tax assessor--
11 reported to me by the tax assessor -- and in that paragraph
12 I attempted to establish a relationship between the value
13 or selling price of a given lot versus a smaller -- poten-
14 tial selling price of a smaller lot that might be more
15 closely associated with a mobile home, like a 50 x 100 lot
16 which I've used here, and the result would appear to be
17 the selling price of a 50 x 100 foot lot would probably be
18 at least \$12,000.

19 Q In other words, you have endeavored to make
20 an extrapolation from a real estate transaction on a larger
21 lot down to the smaller lot that you envisioned would be
22 used in a real estate transaction for a mobile home.

23 Is that correct?

24 A Yes.

25 Since there was no recently recorded sale of a

1 50 foot lot, I used the 75 foot lot and formed a front foot
2 value -- and per front foot value.

3 Q Have you performed any professional planning
4 work for Clinton Township?

5 A Yes, I have.

6 Q Over what period of time?

7 A As I recall, from approximately 1974 to the present.

8 Q What was the nature of the professional
9 services that you performed for Clinton Township?

10 A Initially, we were retained to prepare a land use
11 element for their master plan and municipal land use
12 ordinance. We have since been retained annually as con-
13 sultants.

14 Q At any time since 1974, have you made any
15 recommendations to the governing body of Clinton Township
16 or the planning board in regard to making provisions for
17 mobile homes within that community?

18 A The land use ordinance of Clinton Township which
19 we drafted incorporates provisions allowing mobile home
20 park development as conditional use. The provisions of
21 the ordinance resulted from the fact that there were no
22 provisions in the ordinance -- the previous ordinance for
23 mobile home development, and through discussions between
24 ourselves and the planning board, certain areas of the
25 Township were selected as being potentially feasible for

1 mobile home park development, and, therefore, were included
2 in the ordinance.

3 Q At any time since 1974 to the present, did
4 you submit a report to the planning board or the governing
5 body of Clinton Township outlining your views pertaining
6 to the lack of adequate provisions for multi-family housing
7 opportunities within that Township?

8 A I don't recall whether or not I ever submitted a
9 report specifically addressing or solely addressing the lack
10 or need for multi-family housing in Clinton Township. We
11 did make various recommendations to the Township concerning
12 allowing various types of multi-family housing in various
13 sections of the Township.

14 Q Do you recall the dates of those recommendations?

15 A I think most of the recommendations either were in-
16 corporated into the land use plan or were made during the
17 period in which the land use plan was being developed.

18 Q Did you provide any reports dealing with
19 housing in general and the provisions of the land use plan
20 or zoning ordinance in regards to meeting housing needs,
21 in general, in Clinton Township since 1974?

22 A Yes.

23 But, again, as part of the master plan studies or
24 in the master plan -- the land use plan element, itself.

25 Q Directing your attention, again, to your

1 report, Exhibit 16, I'd like to discuss the material beginn-
2 ing of Page 4. Approximately half way down the page, the
3 paragraph begins, "Vacant lands in the Township are limited
4 to eight of the fourteen zone districts, and namely the
5 R-15, R-20, R-120, B-2, PB-1, PB-2, I-3 and cemetery zones.
6 The vacant lands in each of these zones is discussed below."

7 Could you indicate what the code letter, number iden-
8 tifications for these eight zones refer to?

9 A Yes.

10 R-15 refers to residential zone indicated for single
11 family residential development on 15,000 square foot lots;
12 R-20, likewise, a single family residential zone with a
13 minimum lot size of 20,000 square feet; R-120 likewise,
14 a single family residential zone, minimum lot size of
15 120,000 square feet; B-2 is a business and, I think as I
16 recall, a highway business zone; PB-1 and PB-2 are office
17 buildings zone; I-3 is an industrial zone and the cemetery
18 zone is self-explanatory.

19 Q The vacant lands which are discussed below,
20 these are approximately 1,639 acres which your previous
21 report identified and discussed in some summary fashion.

22 Is that correct?

23 A That is correct, with the qualification that 600
24 and some odd acres you mentioned, that exact figure or
25 figure that would have been contained I guess in our

1 September 25 report.

2 Q I'm sorry, you made reference to a 600 acre
3 figure?

4 A I think that's the figure that you just mentioned.

5 Q No, that was 1,639.

6 A I am sorry, I thought you said 639.

7 Yes, the 1,639 acres would be located in these zones.

8 Q That's pursuant to your definition of what
9 areas are of sufficient size in regards to their open
10 spaces to be further subdivided and developed.

11 Is that correct?

12 A That's correct.

13 Q In the --

14 A Excuse me, either subdivided or particularly in
15 the case of commercials zones, you know, just simply
16 developed for individual use.

17 Q The first paragraph identified with the letter
18 A addresses the R-15 zone.

19 Could you identify with reference to your Exhibit
20 11 where this particular tract is that is addressed in
21 that paragraph A?

22 A Yes.

23 That property would be located on the easterly side
24 of Ridgedale Avenue just to the -- to the south of Route 280.

25 Q What is the total acreage of that tract?

1 A According to my report, we indicate -- well, that
2 is the nonwetland area.

3 Excuse me, let me refer to the exhibit.

4 MR. ONSDORFF: Off the record.

5

6 (An off the record discussion takes place.)

7

8 A (Continuing) There are actually -- I'm not sure
9 the reason for the discrepancy, but if I said a single --
10 one vacant area in terms of the R-15 zone -- there are
11 two acre areas in the R-15 zone. The one that I mentioned
12 on Ridgedale Avenue, the other one -- if I can relate it
13 to an existing street somehow, along the southerly side
14 of what I think is Central Avenue and about midway between
15 Ridgedale Avenue and River Road. And the first tract I
16 mentioned is about 12 acres, the second one is about 15
17 acres.

18 Q If I understand your testimony correctly,
19 Mr. O'Grady, the first tract east of Ridgedale and south
20 of Route 280 totals 12 acres of which 7 is nonwetland.

21 A No, the 7 acres of nonwetland -- and this is where
22 the error came in, the seven acres refers to the second
23 tract I mentioned. All of the tract east of Ridgedale and
24 south of 280 is wetland. The second tract on Central
25 Avenue contains seven acres of nonwetland soil.

1 Q So I understand you correctly, now, the
2 entire 12 acres east of Ridgedale and south of 280 is
3 nondevelopable as a result of these wetland soils.

4 Is that your position?

5 A I would not say that the property is nondevelopable.
6 I would say that it's development potential is limited
7 because of the wetland conditions.

8 Q In what fashion is it so limited?

9 A I think it's limited because a portion of the
10 property is within a flood hazard area. The remaining --
11 and most of it, however, falls in an area with an extremely
12 high water table adjoining the flood hazard area.

13 As I believe, I've testified previously in connection
14 with this matter of soils and wetlands. The wetland
15 characteristics provide a number -- create a number of
16 limitations to development in terms of building foundations,
17 road construction, septic effluent, disposal. There are
18 problems of eliminating natural ground absorption character-
19 istics by covering or by adding construction which would
20 be impervious, whether it be buildings or pavement.

21 Q The present zoning applicable to the site
22 we've been discussing, the 12 acre site is R-15, that
23 would allow what density of residential development on this
24 land?

25 A One lot -- well, single family development with a

1 minimum lot size of 15,000 square feet. The density would
2 depend on just how many lots could be obtained on the pro-
3 perty.

4 Q Have you endeavored to quantify or analyze
5 the adverse environmental impacts which would flow from
6 the development of this tract at the maximum density permissi-
7 ed under the present zoning ordinance?

8 A I've made no evaluation relating specifically to
9 that property.

10 Q Do you have an opinion as to whether or not
11 substantial adverse environmental impacts would flow from
12 the development of this tract at the maximum density allowed
13 by the present zoning regime?

14 A I would be of the opinion that if the property were
15 developed to its maximum potential under the zoning ordinance,
16 that an excessive amount of land coverage would result from
17 the construction of the streets and houses, that adjoining
18 areas may potentially be adversely impacted because of
19 drainage characteristics in that area. I would have some
20 reservations as to the appropriateness of the R-15 designa-
21 tion for that particular property. Not only based upon
22 what's stated here, but based upon physical examination
23 of the property.

24 Q In regards to the second tract which we've
25 identified, I believe, as comprising 15 acres, is it your

1 testimony that seven of those acres are nonwetland, non-
2 flood hazard lands?

3 Is that correct?

4 A That's correct.

5 Q They are depicted on Exhibit 11 by a yellow
6 coloring surrounded by a red line.

7 Is that correct?

8 A That's correct.

9 Q Between the two areas of yellow there's
10 a boot without a heel with the letters: PK?

11 A That's correct.

12 Q Have you endeavored to analyze or to quantify
13 the environmental impacts which would flow from the develop-
14 ment of these lands which are not constricted by the high
15 water table and flood hazard characteristics if they were
16 developed with least cost housing densities as defined in
17 the Mallach report which you have previously testified that
18 you examined?

19 A I have not attempted to quantify the development
20 of the yellow areas for that tract using Mallach's densities,
21 if that's the -- if my understanding of your question is
22 correct.

23 Q Would you have an opinion as to the appropria-
24 teness of such a development used for those two tracts?

25 A The two tracts of yellow?

1 Q That's correct.

2 A In a general way, the two yellow areas as you indica-
3 ted are separated by PK soil which is usually found along
4 streams. As I recall, there is a drainage course running
5 through that PK area. The PK area -- or PK soils would
6 have water tables at or very near the surface, I believe
7 zero to one foot according to interpretations by the
8 Soil Conservation Service.

9 Beyond the PK area, that property has unusual topo-
10 graphic configurations. And, in addition to the fact that
11 the favorable lands -- the yellow area is not concentrated,
12 but separated into two sections leaving two sections with
13 unusual configurations, that it would be very difficult
14 to gain any type of efficient layout or efficient utiliza-
15 tion and density on that particular property.

16 Q Have you endeavored to do any quantitative
17 analyses of the environmental impacts which would flow
18 from the full development of both the unrestricted and the
19 constrained areas of that tract which is zoned R-15 under
20 the current zoning ordinance?

21 A No, I have not made any specific quantitative
22 evaluation.

23 I think that such an evaluation would have to be
24 quite a detailed examination in terms of actually attempt-
25 ing to apply different densities -- or given housing types

1 with actual design and layout of streets, roads, buildings,
2 and so forth.

3 Q Would you have an opinion as to whether the
4 adverse environmental impacts which would flow from develop-
5 ment could be less or greater if the development was
6 clustered in the unrestricted portions of the two tracts
7 as opposed to full development under the current zoning
8 ordinance which would allow the development on both areas
9 at the maximum density permitted under that R-15 zone?

10 A No, I haven't made any quantitative evaluation,
11 again, in that regard. I've only concluded that based
12 upon the configuration of the property, the configuration
13 of the favorable land and the location of wetland areas,
14 that the development potential for the property is very --
15 is quite limited.

16 Q I am sorry, let me try to rephrase that.

17 I didn't ask you whether or not you've done any
18 quantitative analyses. I asked you whether or not you had
19 an opinion as to clustering development at higher densities
20 on the unrestricted portions of the tract that would result
21 in lesser or greater adverse environmental impacts than
22 full development under the present zoning ordinance at the
23 maximum density allowed that would allow development to be
24 forthcoming under both the environmental critical lands
25 and the vacant developable portions of the tract?

1 density allowed under R-15 which encompasses the
2 entire tract, some of which is environmentally
3 sensitive and some which is not. If you retain
4 that same density, could you get the same number of
5 units?

6 MR. ONSDORFF: And placed all those units
7 in the unrestricted areas, would that result in
8 lesser environmental damage than the present zoning
9 ordinance would permit or could flow from maximum
10 development under the current zoning ordinance.

11 Q Does that make the question clearer?

12 A Well --

13 MR. EDWARDS: It's clear to me.

14 You're talking about the environmental
15 impacts. You're saying: Is it his opinion the
16 environmental impact would be lessened by develop-
17 ment in clustering than in its present zoning.

18 MR. ONSDORFF: The clustering in the
19 unrestricted portions, of course.

20 A As a general rule, I would say that it's generally
21 less, and there should be generally less environmental
22 impacts if development can be clustered to areas of a
23 given tract that are without environmental limitation.

24 As to this particular site, I have not attempted
25 to evaluate it in any way. It may be that portions of the

1 site cannot be developed or should not be developed and
2 that maybe clustering would not even work in remaining
3 areas. I have not really evaluated the site in those terms.

4 The conclusion that I've drawn from my discussions
5 is that the development of any higher density than what
6 is allowed now would be inappropriate given the overall
7 characteristics of the site.

8 Q In addition to the environmental characteris-
9 tics of land which you have endeavored to delineate flood
10 hazard and high water table and wetland, what other factors
11 do you deem to be valid criteria for determining the
12 appropriateness of cluster development on a particular
13 tract of land?

14 A I think the configuration and the topographic
15 features of the remaining portions of the site are a
16 factor. I think that the adjoining development and the
17 character of that development may be a factor. I'm not
18 saying it is in this case, but I'm saying it may be.

19 MR. ONSDORFF: Let us take a short break.

20
21 (A short recess is taken.)

22
23 Q Directing your attention to the map which
24 you obtained during the break which I understand is the
25 sewer map or plan for development of sanitary sewers in

1 Township of East Hanover.

2 Is that correct?

3 A That's correct.

4 MR. ONSDORFF: Can we have that marked?

5

6 (EHO-18 for identification is the plan for
7 development of sanitary sewers in the Township of
8 East Hanover.)

9

10 Q Very briefly, could you just specify your
11 understanding of what this map indicates and as to its
12 current status as far as its accuracy in regards to the
13 proposed -- the most recent proposal for the development
14 of sanitary sewer service in East Hanover Township?

15 A Yes.

16 This map indicates the proposed sanitary sewerage
17 collection system for East Hanover Township, and it indicates
18 the phasing for the construction of the sanitary sewer
19 system.

20 Q It depicts the actual location of where
21 the sewer pipes would go in the various streets and the
22 Township.

23 Is that correct?

24 A It indicates the approximate location -- the
25 location in terms of a given street.

1 Q As far as the designations of where the
2 sewage will flow, had there been any revisions since this
3 particular map was published?

4 A I would not be able to answer that. I wouldn't
5 have any personal knowledge as to whether or not there have
6 been changes.

7 Q Are you aware of your examination of this
8 map as to where it indicates sewage will be ultimately
9 sent to as regards to the sewerage treatment plant?

10 A Yes.

11 It's my understanding that whereas this map indicates
12 the transportation of effluent to the Hanover Township
13 Sewerage Treatment Plant, that instead it will go to the
14 Parsippany - Troy Hills Treatment Plant following along
15 Ridgedale Avenue and, I guess, crossing Route 280.

16 Q Resuming with our discussion of your December
17 11, 1979 report, you indicated that in determining the
18 appropriateness of cluster development on any given tract
19 of land there are a number of factors in addition to the
20 environmental characteristics of the land which you have
21 to examine in order to come to an opinion as to that issue.
22 I believe you testified one was the configuration, is that
23 correct, the configuration of the vacant land itself?

24 A That's correct.

25 Q Could you elaborate or specify what you mean

1 by that?

2 In other words, is there a certain size of a tract
3 that is necessary in order to be developed in a cluster
4 manner?

5 A I don't know that there would necessarily be a
6 specific size. But, I can well conceive of there being
7 tracts of land where it would not necessarily be suitable
8 to cluster development. Clustering usually ends up -- results
9 in the preservation of open space lands, and in residential
10 subdivision, not only ends up being dedicated or deeded to
11 the municipality. Frequently and particularly on smaller
12 tracts of land, it is not always desirable for the munic-
13 ipality to gain ownership and control over tracts of land
14 particularly where they would be quite small. Perhaps
15 not very useable for many viable municipal purposes.

16 In such an instance it might be more desirable
17 simply to design the tract with oversized lots wherein
18 the areas with environmental limitations would simply be
19 in portions of the lot where construction would not take
20 place. Possibly, these might even be protected -- these
21 more critical areas of the site might be protected by
22 conservation easements.

23 Q I believe you mentioned one other factor
24 and that was the character of adjoining property, is that
25 correct, as being another factor that you would want to

1 examine before proffering an opinion as to the suitability
2 of a particular site for cluster development or high density
3 development?

4 A Yes.

5 I think this would have to be a factor to be taken
6 into consideration.

7 For example, and just as an example, if properties
8 immediately adjoining the property in question were develop-
9 ed, say, at 15,000 square foot lots, to develop a cluster
10 plan on the property in question with lots clustered immedi-
11 ately adjoining these 15,000 square foot lots, a lot size
12 considerably smaller might not be desirable in terms of
13 the character of the neighborhood and there could be some
14 adverse impact on the existing adjoining development.

15 I think you have to examine each site individually
16 and very carefully to determine whether or not clustering
17 is workable. And if so, in what manner the clustering
18 should take place.

19 Q You indicated adverse impacts on adjoining
20 developments.

21 What type of adverse impacts did you have in mind?

22 A Thinking, again, of the basic neighborhood character
23 in terms of lot size: the nearest of residential structures
24 or relationship between residential structures.

25 In those terms, I think the municipality has an

1 obligation under the law to help maintain the value of
2 property throughout the municipality.

3 The obligation to maintain the quality of existing
4 development by putting a much higher density development
5 with structures clustered together and very close to lots
6 which have been developed at a much lower density seems
7 to me to be injecting a different character into the
8 neighborhood and would have an adverse impact to some
9 degree, at least, on the value of those homes.

10 Q From what you've just testified to, I under-
11 stand the configuration deals with the size and the smaller
12 open spaces that might be dedicated or divided over to the
13 municipality. And, your second criteria dealt with possible
14 adverse impacts by an inconsistent or different density
15 scheme which would adversely impact land values, neither
16 of which factor you listed seems to me to be an environmen-
17 tal or something which concerns increasing adverse environ-
18 mental impacts.

19 Is my understanding of your testimony accurate?

20 A I think that's accurate.

21 I think zoning and development isn't purely environ-
22 mental.

23 Q I understand that.

24 What I'm trying to do is just for the purpose of
25 these depositions focus on the environmental impacts and

1 the level of environmental adverse impacts which you would
2 envision occurring on each of these tracts as we go through
3 them realizing that you have other concerns which you would
4 forward in the context of an overall zoning decision.

5 We're limiting it to adverse environmental impacts.

6 A I understand.

7 Q Your paragraph B on Page 4 indicates that,
8 "In the R-20 zone there are 13 separate vacant areas."

9 Is that correct?

10 A That's correct.

11 Q They total 381 acres.

12 Is that correct?

13 A Correct.

14 Q The first particular tract that you have
15 discussed comprises 3.9 acres.

16 Could you identify with reference to Exhibit 11
17 where that property is located?

18 A It's located on the easterly side of -- pardon me,
19 on the westerly side of Ridgedale Avenue, just slightly
20 north of the intersection of Eagle Rock Avenue.

21 MR. EDWARDS: Is that the area designated
22 in yellow?

23 THE WITNESS: Yes.

24 Q Your description of this particular site
25 indicates that, "It's a deep, narrow property which will

1 not allow efficient development."

2 Could you elaborate upon that statement?

3 A Well, the property is very narrow and, I'd say,
4 approximately 200 feet in width at it's widest point.

5 And, I believe that this shape -- a deep narrow piece of
6 property will not allow for a very efficient utilization
7 regardless of the type of development that you were to put
8 in there.

9 Q Other than this narrow configuration of the
10 property, it appears from your Exhibit 11 that the land
11 is unconstrained by either floods or high water character-
12 istics?

13 A Yes.

14 Q You also say it adjoins conventional
15 development?

16 A A single family residential neighborhood.

17 Q The second parcel you identified comprises
18 25.8 acres which you indicate as general favorable topo-
19 graphic and soil conditions.

20 Could you locate that particular tract with reference
21 to Exhibit 11?

22 A Yes.

23 That particular piece of property lies on the
24 westerly side of River Road extending from River Road
25 back to the Morristown and Erie Railroad.

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Q In light of your analysis of this tract of vacant land, in light of the environmental -- potential environmental factors which constrain land development that you've identified, is it your opinion that this land is suitable for high density multi-family land development based on an environmental consideration?

A Limiting that to environmental considerations, I would see little impediment to development for higher density.

Q The third parcel of land that you've identified appears in your report on Page 5 and it indicates that it comprises 44.3 acres.

Can you identify the location of that tract in reference to Exhibit 11?

A Yes.

This particular tract lies on the easterly side -- westerly side of River Road and adjoins the northerly right of way of the Morristown and Erie Railroad.

Q What is the present zoning for this particular tract of land?

A It's in the R-20 zone.

Q You've identified 47 percent of the tract as being high water table, subject to high water table.

Is that correct?

A That's correct.

1 Q That would leave, I believe, 53 percent of
2 the tract which is not subject to any unusual environmental
3 constraints on its development?

4 A No, that would not be correct.

5 As I've indicated here, the large portion of the
6 property contains a quarry, abandoned quarry.

7 Subsequent investigation indicates to me that there
8 is still quarrying going on on that particular property.
9 But, there is a very large, deep excavation within the
10 yellow portion of that property, the area designated as
11 Ua on Exhibit 11.

12 Q What portion of the quarry is outside the
13 area which is designated as wetland?

14 A I'm not absolutely certain. I think that -- I'm
15 not absolutely certain.

16 I'll leave my answer at that.

17 Q The next tract that you've identified as
18 Number 4 contains 10.5 acres, all of which is wetland.

19 Can you identify the location of that with reference
20 to Exhibit 11?

21 Excuse me, one other question.

22 Mr. O'Grady, to your knowledge, is there any municipi-
23 pal land use control requiring a nonconforming use to be
24 abandoned or conformed to the zoning ordinance?

25 MR. EDWARDS: What kind of nonconforming use?

1 The quarry use?

2 MR. ONSDORFF: Yes.

3 A To the best of my knowledge, there is none.

4 I do not recall seeing any ordinance requirement relating
5 to abandonment of nonconforming uses.

6 Back to the original question: area Number 5 under
7 the R-20 zone, this is an area which lies to the south of
8 Old Troy Road and is bordering on Parsippany -Troy Hills
9 Township. It takes in this particular area south of --

10 Q Excuse me.

11 You mentioned Area Number 5. I think you may have
12 just skipped Number 4?

13 A I am sorry, I thought we had mentioned some large
14 acreage.

15 Area Number 4 contains 10.5 acres.

16 Area Number 4 lies on the easterly side of River
17 Road and on the northerly side of what I believe is
18 Lincoln Street.

19 Q You determined the development restrictions
20 on this parcel solely with reference to the Soil Survey,
21 The Soil Conservation Survey.

22 Is that correct?

23 A That is correct.

24 Q What is the present zoning for this 10.5
25 acres of vacant wetland?

1 A R-20. In fact, all of the numbered sites --
2 numbered sites we are talking about right now are in the
3 R-20 zone, the 13 sites.

4 Q Have you endeavored to perform a quantitative
5 analysis of the adverse environmental impacts which would
6 flow from the full development of this site pursuant to
7 the maximum density presently allowable under the R-20 zone?

8 A I have not performed any quantitative analysis.

9 Q Do you have an opinion as to whether or not
10 there would be substantial adverse environmental impacts
11 should such development take place?

12 A I believe that the major environmental impacts
13 that would take place would again result from the placement
14 of impervious surfaces on the wetland soils, soils which
15 carry with them limitations for construction of foundations
16 and roads, the unstable conditions that prevail because
17 of wetland conditions for construction of foundations.

18 Generally, I would say that development in such
19 areas should be limited.

20 Q Would your recommendation be that it should
21 be limited more than it is at the present time pursuant
22 to the current zoning ordinance?

23 A I think that I would have to have more detailed
24 information before I could make a judgment in that regard.

25 Q Again, addressing the fifth identified tract

1 which in your report is identified as comprising 60.1
2 acres of vacant land, could you locate that with reference
3 to Exhibit 11?

4 A Yes.

5 This is the area located on the southerly side of
6 Old Troy Road and east of the Parsippany - Troy Hills
7 boundary line.

8 Q What are the environmental constraints
9 which are found in this location?

10 A A large portion of the property -- in fact, more
11 than half of the property is in a flood hazard area.
12 Both a floodway and a flood fringe. And, another 10
13 acres has wetland soil characteristics.

14 Further limitations is the fact that the property
15 is bisected by utility easements.

16 Q Under the present zoning controls, is there
17 any requirement or provision for clustering development
18 outside of the environmentally sensitive areas?

19 A There is no specific regulations for zoning control,
20 to the best of my knowledge, that would specifically require
21 that development be confined to areas outside an environ-
22 mentally sensitive area.

23 Q Would you have an opinion as to whether the
24 environmental impacts would be lesser or greater if this
25 tract was developed at the maximum density permitted under

1 the current zoning ordinance without regard to leaving
2 as open spaces the environmentally sensitive areas as oppos-
3 ed to a development scheme which would provide for construc-
4 tion of least cost housing on these portions of the tract
5 which are not subject to the environmental constraints
6 that you have identified?

7 A I am sorry, I have to ask you to repeat that
8 question.

9
10 (The Court Reporter reads the requested question:
11 Would you have an opinion as to whether the environmental
12 impacts would be lesser or greater if this tract was
13 developed at the maximum density permitted under the current
14 zoning ordinance without regard to leaving as open spaces
15 the environmentally sensitive areas as opposed to a develop-
16 ment scheme which would provide for construction of least
17 cost housing on these portions of the tract which are not
18 subject to the environmental constraints that you have
19 identified?)

20
21 A As far as this particular property is concerned,
22 I think there are portions of the property that should not
23 be developed under the present R-20 zoning requirements,
24 and actual areas that cannot be developed, because they
25 lie within a floodway. The portion of that particular

1 property that is suitable for development is very limited.
2 I believe that, generally, it would be appropriate to
3 develop, assuming sanitary sewers were available -- appro-
4 priate to develop the property for 20,000 square foot lots
5 within the areas outside of the flood hazard area.

6 MR. EDWARDS: This is the area you're talking
7 about? (Indicating)

8 THE WITNESS: Yes.

9 MR. EDWARDS: That was one of those tracts
10 of land we've just rezoned R-15.

11 For informational purposes, we're getting a
12 deed of dedication for the flood plain area to the
13 Township and the remaining area that is potentially
14 developable without giving that -- I'll get that to
15 you later -- has been zoned R-15.

16 MR. ONSDORFF: Off the record.

17
18 (An off the record discussion takes place.)

19
20 MR. ONSDORFF: I guess we've just discussed
21 certain changes which have taken place in the zoning
22 provisions for Site Number 5 in the last week and a
23 half regarding a dedication of a portion of a tract
24 which purportedly is in a flood hazard area over to
25 the Township in return for reducing the zoning in

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the remaining portions from R-20 to R-15, the exact boundaries of the new vacant developable private land to be provided to us at a later date.

Is that correct, Mr. Edwards?

MR. EDWARDS: That's correct.

That borders the R-10 property which is right up next to it.

Q In regards to that modification which renders your discussion somewhat outdated, Mr. O'Grady, why don't we move on to your parcel Number 6 comprising 10.5 acres?

Would you be able to locate that on Exhibit 11?

A Yes.

That particular piece of property lies on the western side of River Road.

MR. ONSDORFF: Off the record.

(An off the record discussion takes place.)

A (Continuing) I would say, approximately, 2,000 feet north of Route 10.

I wouldn't know how to describe the shape of it.

MR. ONSDORFF: Off the record.

(An off the record discussion takes place.)

1 Q In addition to the irregular shape which
2 you have concluded does not lend itself to an efficient
3 layout, have you identified any other environmental -- I
4 shouldn't say "any other", any environmental restrictions
5 or limitations on the development potential of this land?

6 A No, I have not.

7 Q Your seventh site contains 69.4 acres.
8 Could you locate that on Exhibit 11?

9 A Yes.

10 This site lies on the easterly side of River Road
11 directly opposite Area Number 6 and is this property.
12 (Indicating)

13 Q You've indicated that out of approximately
14 70 acres all but 11 acres are subject to environmental
15 constraints.

16 Is that correct?

17 A That's correct.

18 Q The 11 acres of unrestricted land pursuant
19 to environmental concerns, have you endeavored to deter-
20 mine what the maximum carrying capacity of those lands
21 would be as far as residential development is concerned?

22 A No, I haven't made any specific evaluation concerning
23 that site.

24 Q Would you have an opinion concerning whether
25 the adverse environmental impacts would be lesser or

1 greater for the entire site to be developed to the maximum
2 density permitted under the current zoning ordinance as
3 opposed to developing solely the 11 acres which is unrestricted-
4 ed for the least cost housing as defined by Allan Mallach
5 in his reports which you have examined -- as to which
6 would result in the greater adverse environmental impacts?

7 MR. EDWARDS: Which one would have greater
8 environmental impacts of the cluster development,
9 or according to Allan Mallach's density formulas,
10 or the conventional development of R-20?

11 MR. ONSDORFF: That's correct.

12 Q Comparing those two development options --

13 A I haven't, again, made any evaluation. So, I don't
14 know that I could really have an opinion as to which would
15 have the greater impact.

16 And, when you are referring to Allan Mallach, let
17 me get something clarified, if I can.

18 Are you talking about -- for example, if his density
19 is 10 units to the acre, are you talking about 10 units
20 to the acre on the 69 acres or are you talking about 10
21 units to the acre on the 11 acres of good land?

22 MR. EDWARDS: The 11 acres of good land?

23 MR. ONSDORFF: Yes.

24 Q We're talking about just the development of
25 the good at 10 to the acre or higher, depending upon

1 townhouses or apartments or somewhat less for single
2 family homes on small lots as we've defined previously
3 for purposes of your testimony.

4 A Well, if we were, for example, to compare -- were
5 to compare development at 20,000 square foot lots on 10
6 acres versus 10 units to the acre on the 10 acres -- assume
7 townhouses, for example, which is the housing type he
8 associated with 10 units to the acre, I would think that
9 the environmental impact would be greater from the 10 units
10 to the acre.

11 I think the overall land coverage, amount of build-
12 ing coverage, the amount of pavement coverage, would be
13 greater at 10,000 -- or, pardon me, at 10 units to the acre
14 versus single family homes on 20,000 square foot lots.

15 Q That's correct in your analysis of the question
16 to the point you've taken. However, my question is slightly
17 broader than that in that in addition to the 11 acres of
18 unconstained property, we're restricting our development
19 for those of the least cost densities and moving out -- and,
20 rather, using the impaired property as open spaces for the
21 least costhousing. However, comparing it now to a develop-
22 ment authorized under the current zoning which would author-
23 ize and permit structures at -- on 20,000 square foot lots
24 in the remaining 60 acres of flood plain and wetland -- and
25 my question is: Would the least cost development be limited

1 to the good, as you have described it, land resulting in
2 less adverse environmental impacts than the current zoning
3 ordinance which allows construction at R-20 densities
4 throughout the flood plain and wetland areas in addition
5 to development on the good land?

6 MR. EDWARDS: Your question assumes the
7 full development of the --

8 THE WITNESS: Sixty-nine acres?

9 MR. EDWARDS: Sixty-nine acres without any
10 construction restraints because of flood plain and
11 wetland existing?

12 MR. ONSDORFF: That's correct.

13 MR. EDWARDS: So, you're posing a hypothetical
14 question, then.

15 MR. ONSDORFF: Well --

16 MR. EDWARDS: There are constraints right
17 now --

18 MR. ONSDORFF: All right.

19 MR. EDWARDS: -- under the zoning ordinance.

20 MR. ONSDORFF: I indicated the maximum
21 density as authorized under the current zoning
22 ordinance which, to the extent as identified in
23 the report, is a R-20 or 20,000 square foot lot.

24 Q In addition to that zoning provision limiting
25 density in this tract, are you aware of any other

1 land use controls which would impact or further
2 limit the development potential of this tract,
3 Mr. O'Grady?

4 A Well, I believe that the flood plain regulations
5 contained in what I believe is Chapter 9 of the Land Use
6 Regulations of the Township, would place a significant
7 restriction or limitation on the development of lands in
8 both the floodway and in the flood fringe portion of that
9 property. I think it reasonable to assume that there would
10 be no development in the floodway or, probably, could not
11 be -- and very limited development in the flood fringe.

12 Q That's pursuant to what provisions of the
13 municipal code?

14 A Chapter 9 of the Land Use.

15 MR. EDWARDS: The Land Use and Zoning Ordinance?

16 THE WITNESS: Yes.

17 Q It's your testimony pursuant to Chapter 9 of
18 the Land Use and Zoning Ordinance, residential development
19 in the flood plain is prohibited?

20 A No, it's not prohibited. But, I feel that the --
21 just the existence of the floodway and the flood fringe
22 in themselves will ultimately restrict and limit the
23 development that can take place from a practical point of
24 view. I think it's evident from looking at other develop-
25 ments that have occurred along or through that area that --

1 some development has taken place in the flood fringe,
2 not in the floodway, and the development in the flood
3 fringe itself has been very limited.

4 I think there are practical problems -- practical
5 limitations regardless of ordinance requirements which
6 will result in very little, if any, development within
7 the flood hazard area.

8 Q But for purposes of our question, we just
9 want to focus on governmental restrictions or limitations.

10 MR. EDWARDS: I think he's referring to
11 governmental restrictions.

12 I think your questions deal with the impact
13 of environmental constraints from a realistic stand-
14 point and which would be --

15 MR. ONSDORFF: Off the record.

16
17 (An off the record discussion takes place.)
18

19 Q Mr. O'Grady, incorporating in my previous
20 question all the development regulations, controls,
21 restrictions and limitations in the land use and zoning
22 ordinance, Chapter 9 of the municipality of East Hanover
23 Township, and continuing to develop this entire 70 acre
24 tract at the maximum density consistent with all those
25 controls including the one single family dwelling to

1 20,000 square foot lots, and compare that to a cluster
2 development that authorized least cost housing development
3 on the unincumbered land, would you have an opinion as to
4 which development scheme would result in greater environ-
5 mental harm?

6 A I think I have more problem in answering the question
7 now than I did before.

8 Inasmuch as -- taking into consideration Chapter 9,
9 this would allow an applicant to perhaps do certain things
10 as far as construction within flood fringe areas. But,
11 certainly, this would require engineering study to determine
12 exactly what could be done on any given piece of property
13 and how it should be done on any given piece of property.

14 It is quite possible, and I can only say this in a
15 very general way, that if all 69 acres were developed
16 single family lots, 20,000 square foot, ignoring the exist-
17 ence of the floodway and the flood fringe and streets and
18 homes were put throughout all of that area, that the environ-
19 mental limitations would likely be greater -- environmental
20 effect and impact is very likely to be greater than if you
21 just developed the favorable 11 acres at a relative high
22 density.

23 Q As a professional planner, would it be your
24 recommendation that it would be more prudent to limit and
25 cluster development on the unimpaired portions of this

1 tract as opposed to a spread out development over the
2 impaired or restricted portions of the tract?

3 A I think I indicated before, that as a general rule,
4 I think that that's the more favorable approach: ignoring
5 any other conditions other than the environmental consider-
6 ations.

7 Q We agree, as a general rule, that's a favor-
8 able approach.

9 Now, I'm asking you to apply that general rule to
10 this site, again limiting it to environmental concerns.

11 MR. EDWARDS: You have already said that
12 you cannot do that without doing the engineering
13 work?

14 THE WITNESS: I think it was -- I can answer
15 that question as it relates to any site in the
16 same fashion. Generally, unless you make a specific
17 site evaluation, I don't think you can determine
18 whether or not clustering is workable.

19 Ignoring all other outside influences and
20 without making any very specific site evaluation,
21 I would say probably it would be better to cluster.

22 Q Number 8 you have indicated comprises 20.1
23 acres with an irregular shape.

24 Could you locate that on Exhibit 11?

25 A Yes.

1 This particular area lies to the east of the
2 cemetery zone which fronts on Hanover Avenue. It's sort
3 of an L-shaped tract of land located in the R-20 zone.

4 Q Your description of this tract indicates,
5 "It's accessible only through a cemetery zone and adjoins
6 conventional residences on one side."

7 Is it my understanding, then, that you have not
8 identified any particular environmental constraints which
9 pertain to this particular property?

10 A There are some environmental constraints as indicated
11 on the map. A portion does lie within the flood hazard
12 area, and most of the site is designated as having wetland
13 soil conditions.

14 Q That material is not contained in your report,
15 however.

16 Is that correct?

17 A That is not indicated here in the report.

18 Q What portion of the tract, then, is it your
19 opinion is incumbered by such environmental constraints?

20 A I would say all but the -- say, approximately, the
21 northern one quarter of the property shown in yellow.

22 Q What would be the acreage of the unimpaired
23 portion of this site?

24 A It would appear to represent four to five acres
25 from previous examination of the map.

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MR. ONSDORFF: Off the record.

(An off the record discussion takes place.)

Q It's my understanding, Mr. O'Grady, that as a result of a recent rezoning, in addition to the four to five acres that you've identified as being in the R-20, a portion of which is on Exhibit 11 as being in the cemetery zone, has also been incorporated by recent rezoning into the R-20 zone.

Is that correct?

A That's correct.

Q Do you know the acreage of the contiguous areas which are now included in this R-20 zone?

A Yes, 14 acres.

Q That gives us, approximately, 18 to 19 total acres in the R-20 which would be unincumbered by the environmental constraints depicted on Exhibit 11?

A Well, if we combine the area that was formally cemetery and now R-20 and Area 8 which we've started talking about, we would have a total of 34 acres in the entire site. And, I would guesstimate from examining the map that approximately -- well, not more than 50 percent of the site would have limitations; leaving 50 percent that, presumably, would be without flood hazard limitations which would give

1 us about 17 acres, give or take.

2 Q The environmental constraints that you have
3 depicted on Exhibit 11 comprise wetland soils and some
4 flood fringe and floodway lands.

5 Is that correct?

6 A That's correct.

7 Q What is the acreage of the high water table
8 soils?

9 A Looking at the map, the high water table soils would
10 represent about 12 acres, and 5 acres might be in the
11 flood hazard area.

12 Q Are there any additional municipal limitations
13 on development on high water table lands?

14 In other words, are they incorporated in Chapter 9
15 of the Land Use and Zoning Ordinance, Chapter 9 which we
16 discussed in regards to flood hazard areas?

17 MR. EDWARDS: You're referring to the
18 wetlands --

19 MR. ONSDORFF: Yes..

20 MR. EDWARDS: -- are they controlled by
21 Chapter 9?

22 MR. ONSDORFF: That's correct.

23 A To the best of my knowledge, the wetlands are not
24 specifically controlled. It would probably be a matter of
25 consideration by the planning board in reviewing any

1 subdivision or site plan.

2 I don't know of any specific controls relating to
3 the wetlands.

4 Q Approximately, in an endeavor to save more
5 time, in regards to all the vacant tracts that we will be
6 addressing throughout this deposition, would it be accurate
7 to say that you have not performed any quantitative analyses
8 on the level of pollution and other adverse environmental
9 impacts which would occur as a result of various develop-
10 ment senarios?

11 A I believe we can assume that.

12 Q However, would you have an opinion as to
13 whether or not the adverse environmental impacts would
14 be lesser or greater if this newly enlarged Tract 8 was
15 developed to its maximum density permitted under all the
16 municipal land use controls as opposed to the 17 acres which
17 you have identified as being unincumbered by the environ-
18 mental constraints to be developed as least cost housing
19 densities as identified by Mr. Mallach?

20 A I really feel that, again, there would have to be
21 further evaluation of each given site.

22 I think the question is very, very difficult to
23 answer yes or no, or that -- I really don't have an opinion
24 because I think every site is different and every site is
25 going to involve different considerations.

1 MR. EDWARDS: Your question is restricted
2 to strictly environmental reasons?

3 MR. ONSDORFF: That's correct.

4 MR. EDWARDS: It is at the acreage designated
5 in yellow as: no identified environmental constraints.

6 Is there any other environmental constraints
7 that would prohibit that from being used in accord-
8 ance with Mr. Mallach's criteria of least cost
9 housing?

10 MR. ONSDORFF: That's correct.

11 We've discussed whether or not environ-
12 mental problems --

13 MR. EDWARDS: Take away from zoning and
14 other planning and quality of neighborhoods?

15 MR. ONSDORFF: That's correct.

16 A I think the major problem that I have is, in your
17 question you indicate development under all the current
18 zoning and planning regulations. And, those planning and
19 zoning regulations involve flood hazard area regulations.
20 And, only through specific site evaluation and specific
21 site design can you determine what has to be done in order
22 to meet the limitations or the criteria established under
23 Chapter 9. That's why I find it difficult to answer the
24 question one way or another as to whether or not the
25 environmental results or impacts would be greater under

1 conventional development as permitted by the ordinance
2 versus higher density development as advocated by Allan
3 Mallach.

4 MR. EDWARDS: What you're really saying is:
5 Would it be zoned other than R-20 if you only consid-
6 ered environmental constraints?

7 It could have been clustered for 100 units
8 per acre or five units per acre or three units per
9 acre tracts. And, obviously, if you take away all
10 the environmental constraints our position -- and,
11 I think that we stated as -- Bob's report states,
12 "Yes, those areas can be used."

13 The environmental constraints other than
14 sewers, wetland and flood plain would be the only
15 environmental constraints that we're talking about.
16 If you take those away, obviously, it could be zoned
17 as anything.

18 MR. ONSDORFF: That's correct.

19 Q On Number 9 you indicate that this is 21.4
20 acres comprised of four separate properties.

21 Can you locate those properties?

22 A This particularly property lies on the westerly
23 side of Hanover Avenue opposite the cemetery zone. It
24 looks like half a Christmas tree.

25 Q Your report indicates four separate properties.

1 In other words, these are under different ownership?

2 A That's right, just as in the previous property that
3 we discussed: Area Number 8 and the former portion of the
4 cemetery zone, that consists of four separate properties,
5 as well.

6 Q Your report does not list any environmental
7 limitations in development of this 21.4 acres.

8 Is that correct?

9 A That is correct. However, the map indicates that
10 the soils in the entire area are wetland soils.

11 Q Were this tract to be developed at the maxi-
12 mum density permitted under the current zoning ordinance,
13 what would be the adverse environmental impacts that you
14 foresee occurring?

15 A I would foresee the possibility for additional
16 drainage problems occurring. Right now, the area is
17 vacant and absorbs storm water.

18 Development from adjoining properties, as I recall,
19 drains to some degree into this area. There are the poten-
20 tial problems with road construction and foundation construc-
21 tion in unstable wetland conditions, problems/land as in
22 any wetland area with frost and heaving. Basically, those
23 I think are the environmental limitations to the develop-
24 ment of the property.

25 Q If I understand the wetland designation which

1 you have applied to this tract, the ground water is
2 situated at any depth from zero to no deeper than one and
3 a half feet below surface level?

4 A It's a seasonal high water table which would be
5 from zero to one and a half feet of the surface.

6 Q In light of that very high water table, there
7 would not be much potential for further rain water or other
8 drainage absorption.

9 Wouldn't that be correct?

10 A No.

11 I think it depends on exactly what the water table
12 in the area is. But, certainly, if the seasonal high water
13 table is at zero and we add water to it, then, obviously,
14 the water is going to have to go somewhere and if it does
15 not remain on that property it's going to have to be drained
16 off through some mechanical means: piping, or what have
17 you, or it's going to have to flow on to adjoining properties.

18 Q In this situation if the water is, in essence,
19 at the surface, you're not going to have any ability to absorb
20 more. So, it runs off.

21 While it's vacant, that condition occurs periodically,
22 according to your wetland designation.

23 Is that correct?

24 MR. EDWARDS: His previous testimony was
25 that the ground water table was zero to eighteen

1 inches. But, if it's at zero, obviously, the
2 wetland includes swamp and marshes. They are
3 all designated the same way, which has dead water
4 on them.

5 MR. ONSDORFF: Yes, swamps also are included
6 in wetlands.

7 MR. EDWARDS: Which means the water would not
8 be draining off, it would be resting on top of the
9 land and sitting there.

10 MR. ONSDORFF: Certainly standing water in a
11 swamp would be indicative of the swamp question.

12 MR. EDWARDS: Then your question is --

13 MR. ONSDORFF: I don't know whether it
14 follows that if there is a condition of standing
15 water that the addition of further water would remain.

16 If a swamp is at a certain elevation any addi-
17 tional water might be above that which the parti-
18 cular low area holds and it might drain off.

19 But, we can possibly clarify this and ask --

20 Q Have you identified any swamps at this site
21 that we're talking about now, Mr. O'Grady?

22 A I have not identified any swamp, per se. I have
23 observed that the area is an extremely flat area and, as
24 a matter of fact, has been recognized by the Township as
25 environmentally in a sensitive area for its wetland conditions.

1 Two relatively recent subdivisions have been
2 dedicated -- or are being dedicated to the Township for
3 open space.

4 MR. EDWARDS: Two adjoining tracts which is
5 part of a major piece of litigation were, in fact,
6 clustered for that very reason.

7 If you look on the map this area here has
8 all been dedicated to the Township. The deeds came
9 in about a week ago.

10 Q Just trying to pin down the holding capacity
11 of this particular site for additional surface waters,
12 would it be your opinion that at periods of time when the
13 water table is close to the surface even though the land
14 is now vacant, does it provide any substantial or signifi-
15 cant water retention capabilities?

16 A With reference to this specific site, I don't know
17 whether it does or not.

18 MR. EDWARDS: Again, I would think that
19 requires engineering data and I think our engineer-
20 ing department would be able to give you that inform-
21 ation.

22 Q Site Number 10 indicates it contains 23 acres.
23 Could you identify the location of that tract on
24 Exhibit 11?

25 A Yes.

1 This tract of land is located in the midst of the
2 open space which has been dedicated to the Township as part
3 of the Gifford-Sagner subdivision and is this unusually
4 shaped tract of land lying immediately south of the I-3 zone.

5 Q Is that property still privately owned and
6 susceptible to further residential development?

7 A To the best of my knowledge, at least when we pre-
8 pared -- and as of January 1979, according to the tax
9 records, this was a privately owned piece of property;
10 and we can assume, therefore, subject to future development.

11 MR. EDWARDS: Again, that's in the same areas
12 that we were talking about before.

13 Q It is your testimony, then, that this entire
14 tract is an environmentally sensitive or critical area
15 due to the wetland nature of the surface, is that correct,
16 and the soils?

17 A Due to the wetland nature and soils as indicated
18 by the Soil Survey of Morris County and my physical inspec-
19 tion of the area indicates that its physical characteris-
20 tics are similar to adjoining areas that have been deeded
21 to the Township for retention or detention purposes.

22 Q Your eleventh individual tract is indicated
23 to comprise 7.5 acres.

24 Could you identify its location on Exhibit 11?

25 A Yes.

1 This particular property lies on the westerly side
2 of Ridgedale Avenue extending from Ridgedale Avenue back
3 to Black Brook. It's a U-shaped parcel of land.

4 Q That entire tract is incumbered by wetlands
5 to the greatest proportion and a small portion to the rear
6 is subject to --

7 MR. EDWARDS: Flood.

8 Q -- flood fringe --

9 A Yes.

10 Q -- designations?

11 A This is designated as flood fringe and potentially
12 it is floodway -- or a portion is floodway. The delineation
13 between the floodway and the flood fringe stopped north of
14 the site -- where the detailed delineation of flood way and
15 flood fringe stopped north of the site and from the south
16 the floodway and the flood fringe has not been distinguished
17 one from the other.

18 MR. EDWARDS: Which is one of the inconsisten-
19 cies denoted in the map because the brook is right
20 there. They're in the channel of the stream so,
21 obviously, they would be in floodway there.

22 We don't know exactly where it is.

23 Q The U-shape which you have identified appears
24 to surround on three sides an individual lot with a dot,
25 apparently, indicating an individual residence.

1 Are you familiar enough with this tract to have
2 observed that particular dwelling on that particular site?

3 A No, I don't recall the precise location of the dwell-
4 ing within the tract.

5 Q You wouldn't have any idea as to when that
6 house was built, would you?

7 A No.

8 I really don't recall what its appearance was, or
9 an idea of its age or location on the lot.

10 Q Would you be in a position to tell us whether
11 or not that particular lot was also in the wetland soil
12 prior to its development?

13 It seems it's very geometric of the wetland area there.
14 At least, that's my observation.

15 A Well, I would have no way of knowing how or why the
16 lot was created in that given configuration, and I don't
17 know that the soils would have been any different -- whether
18 or not the soils would have been any different prior to
19 its -- the establishment of that lot.

20 MR. EDWARDS: There are other lands that may
21 be built on to the Township that are wetlands. But,
22 the areas in green and yellow were those designated
23 as wetlands undeveloped.

24 MR. ONSDORFF: I realize that.

25 MR. EDWARDS: That is an individual lot.

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1 It's developed. It is in a developed category,
2 so therefore, it's been ruled out.

3 MR. ONSDORFF: I understand it's consistent
4 with this mapping scheme. I'm curious as to whether
5 or not we have a particular tract of land which seems
6 might very well have been entirely in an environmen-
7 tally critical area, and we might be able to see
8 what experience has been with that particular land
9 since it was developed in order to get some better
10 estimation or quantification of what the develop-
11 ment impacts are in a wetland soil.

12 Q Just for a brief second, I might refer you
13 to the master plan of 1975, Exhibit 14, which I believe
14 it was indicated contained a soils map which you may be
15 able to examine to determine whether or not there was any
16 indication as to whether that slice out of the U is, in
17 fact, a development on a wetland soil?

18 MR. EDWARDS: Here it is.

19 It's not.

20 Q Have you been able to locate the lot in
21 question on that Map Number 5?

22 A Yes.

23 Q What is the designation as far as the soils
24 situated at that location?

25 A The map indicates that the properties in the soil

1 designated as 6520, sandy loam, no problem except inadequate
2 drainage for septic tanks with moderate limitations on
3 building.

4 Q What would you conclude from that soil desig-
5 nation as far as depth to ground water?

6 A I would conclude that very possibly the ground water
7 table is relatively high, based upon the statement that
8 there's no problem except for inadequate drainage for
9 septic tanks.

10 The soil boundary line, for example in that area,
11 is identical to the soil boundary line shown on our Exhibit
12 11, and the Soil Conservation Service in the report indicates
13 a high water table for that soil designation shown on our
14 exhibit as Hab.

15 MR. EDWARDS: Ph.

16 A (Continuing) The rear portion Ph, but the major
17 portion of the property fronting on Ridgedale being Hab.

18 Q My understanding of your previous testimony
19 was that only a very minor portion of the Township had public
20 sewer, sanitary sewer service.

21 Do you know whether this lot is so served or whether
22 its sewage is disposed of by a method other than through
23 sanitary sewers?

24 A I have to assume the particular lot is served by
25 an individual septic system. That particular area is not

1 within the limited areas served by sewers in Florham Park.

2 Q Would you envision then, as a result of that
3 soil designation that that septic might not be functioning
4 adequately at that location?

5 A I would have no way of knowing. I wouldn't make any
6 assumption.

7 MR. EDWARDS: There's a critical need survey
8 done of a significant portion of the Phase 1 area.
9 I don't think this is it. It's the Phase 3 or 2
10 that would indicate the status of septic systems
11 almost throughout the Township. That is also
12 available to you.

13 MR. ONSDORFF: Yes.

14 MR. EDWARDS: That was necessary in order to
15 qualify for the critical problems we have for getting
16 our sewer grants -- the Township had for getting
17 sewer grants.

18 There is a great deal with that: the need
19 for sewers throughout the Township, because even
20 the designations that you referred to in the old
21 master plan --

22 Q Number 12 on your report is identified as
23 containing 77.1 acres.

24 Could you locate that --

25 A Yes.

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Q -- on Exhibit 11?

A This tract is located on the southwesterly side of Ridgedale Avenue, very close to the Florham Park boundary.

MR. ONSDORFF: Off the record.

(An off the record discussion takes place.)

Q Your report indicates that this is the largest R-20 vacant site. However, 43 acres are located in the flood fringe and another 24 acres is wetland soils leaving but, approximately, 10 acres suitable for intensive development.

Is that correct?

A Correct.

Q What was your meaning in this context of "intensive development"? What was your density criteria for that descriptive phrase?

A I don't know that I had a specific density in mind other than the fact that so much of the area is subject to flooding and so much is wetland that the density should be as low as possible, given other normal planning and zoning practices.

It's now zoned for 20,000 square foot lots. I would certainly consider that to be the maximum highest density for the area of the site lying outside of the flood

1 hazard area.

2 Q Why would you recommend that has a maximum
3 density outside of the flood hazard area?

4 A I would recommend the 20,000 square foot primarily
5 because of the character of -- not only the fact that a
6 relatively low density is desirable, but also because of
7 the established character of adjoining development to the
8 north, to the south, and the development which cuts into
9 the middle of the site.

10 Q I'm just going to ask that we remember the
11 boundaries of our discussion to the extent of disregarding
12 other planning considerations. But, as far as environmental
13 impacts, would you see any significant harm occurring to
14 the environment by an intensive development of the unrestric-
15 ted portions of this tract to comport with the requirements
16 for least cost housing as specified in the Mallach report?

17 A I think in development in wetland soils the higher
18 the density the greater the impact, the greater amount of
19 land --

20 Q Let me interrupt one more time.

21 I said limiting the development to those portions
22 of the tract unincumbered by the wetland soils or are
23 located in the flood fringe.

24 We're clustering the development in the 10 acres
25 which you have identified as being suitable for intensive

1 development.

2 Are those acres for environmental reasons appropriate
3 or could they be appropriately dedicated for least cost
4 housing?

5 MR. EDWARDS: Other than the sewer issue?

6 MR. ONSDORFF: Right.

7 A Assuming the availability of sewers and forgetting
8 considerations other than environmental considerations, I
9 would say that it would be very, very difficult to provide
10 any meaningful or significant clustering of high density
11 such as those recommended by Mallach, given the fact that
12 10 acres of land which is presumably not subjected to
13 critical considerations is separated into three different
14 areas: one small area lying to the north of the development
15 on Alexandria Drive and another small area to the south
16 of the development on Alexandria Drive and another small
17 area at the very southerly end of the tract.

18 There is very little opportunity for getting any
19 efficient type of layout or arrangement of housing structures
20 given that lack of concentration of favorable land.

21 Q In light of the delineations that you have
22 made pertaining to this tract of flood fringe and wetland,
23 the only municipal land use controls presently applicable
24 to the entire 77 acres is the R-20 lot size control.

25 Is that correct?

1 A The R-20 lot size control and the Chapter 9 flood
2 plain regulations. But, as far as --

3 Q I thought the Chapter 9 was applicable to
4 floodway.

5 Could you refresh your recollection as to what the
6 controls are in the flood fringe as they would apply to this
7 site?

8 A (Pause.)

9 MR. EDWARDS: I think --

10 A As I recall -- and I don't recall the precise
11 requirements, that any development in the flood fringe --
12 the lowest floor elevation has to be two feet above the
13 flood fringe elevation. No basements or cellars, rather,
14 below the flood fringe elevation.

15 The other controls are less specific but adequate
16 water -- adequate flood proofing, I should say.

17 I believe there is a regulation that prohibits
18 inground tanks below the flood fringe elevation and fuel
19 tanks, for example.

20 Q Would you characterize these controls that
21 you have listed as essentially directed and focusing on the
22 protection of the structures to be built and the individual
23 property -- naturally, the interests of the individual
24 property owner for the structure being built?

25 A They are also directed at not adversely impacted

1 adjoining properties or properties downstream by virtue
2 of the fact that uncontrolled development -- or unregulated
3 development in the flood fringe could aggravate flooding
4 conditions on adjoining properties.

5 Q However, to the extent that development is
6 permitted in the flood fringe, that development will dis-
7 place surface waters during times of flooding.

8 Is that correct?

9 A This is -- would be my conclusion: If the area is
10 subject to flooding, and I assume that it has flooded before,
11 to place a structure in there is going to displace what
12 formerly collected flood waters.

13 Q In addition to the problems with construction
14 in the wetland as far as --

15 A Excuse me.

16 Q In addition to the problems with pavements
17 heaving and other impediments to sound construction on such
18 wetland soils which are directed towards the property
19 owner's concerns, you've also identified, if I understand
20 your testimony correctly, the displacement of surface
21 waters and drainage problems that likewise result from
22 building in these wetland areas.

23 Is that correct?

24 A Yes.

25 I think you obviously are going to have the problem

1 of additional surface runoff as soon as you put impervious
2 surfaces on the land, in addition to losing the absorption
3 capacity of a given piece of land. Additional waters are
4 going to have to flow either onto adjoining streams or
5 be carried off some way by piping directly to streams.

6 Q In regards to this particular site, it appears
7 to me that you have your wetland soils adjacent and to the
8 next higher elevation above the flood fringe. Would that
9 be a correct understanding of this site characteristic as
10 far as the topography is concerned?

11 A Yes.

12 I think the boundary lines of the soils that are
13 shown on that particular tract render a fair indication
14 of the surface relief.

15 For example, Alexandria Drive which cuts straight
16 out through the middle of the property--as you leave
17 Ridgedale Avenue and enter Alexandria Drive you go up a
18 slight grade and about midway you start going downgrade
19 and the grade continues to go down to lower elevations to
20 the rear of the property.

21 Q What water course do these wet soils and
22 flood fringe areas drain into?

23 A I believe, essentially, there they drain into what
24 is very swampy area which, I believe, has a main water
25 course: the Black Brook. That area is part of a very large

1 or even vast low lying swampy area that extends up through
2 the Morristown Airport, down across Columbia Road or
3 South Orange Avenue through that entire area of Morris
4 County.

5 Q Ultimately draining to what river?

6 A I believe it's into the Whippany River.

7 MR. EDWARDS: Yes.

8 A (Continuing) And the Whippany into the Rockaway --

9 Q With respect to the 10 acres outside of these
10 impaired areas, you have made the distinction between the
11 displacement of significant quantities of flood waters and
12 those lands which are not so environmentally sensitive as
13 to displace flood waters.

14 Is that correct?

15 A Well, by that question do you mean the distinction
16 I made between a wetland soil versus a flood hazard area?

17 Q It seems to me that we've made a progression
18 here. You've initially got the land at the lowest elevation
19 closest to the Black Brook stream -- they are periodically
20 covered and inundated with flood waters because of their
21 juxtaposition to the streams. Flood waters leave the
22 contour of the stream channel, and then moving to a higher
23 elevation you get into an area that is wetland soils and
24 then you move to the higher elevation that because of the
25 distance, apparently away from the stream, has a drier

1 characteristic, and it's not subjected to the flooding and
2 high water table of land closer to the water course?

3 A More likely, the elevation rather than the distance,
4 the actual distance from the stream.

5 Q When you get to that higher elevation you
6 don't run into the flood water problem and drainage problem
7 that you had at the lower elevation?

8 A Correct.

9 Q For that reason, that's been color coded as
10 yellow and not subject to those peculiar environmental
11 constraints?

12 A Right.

13 Q From an environmental prospective, construction
14 which is limited to the unincumbered portions would result
15 in the least adverse environmental impact as far as water
16 displacement.

17 Is that correct?

18 A Generally, I would agree that that is correct.

19 Q Number 13 you indicate is a parcel of land
20 comprising 8.1 acres all of which has wetland soils.

21 Can you locate that on Exhibit 11, please?

22 A Yes.

23 Area Number 13 is a flag shaped piece of property
24 lying west of River Road and to the north of Route 10
25 separated from Route 10 by a commercial zone and commercial

1 development.

2 Q Your report doesn't comment upon the configura-
3 tion of this tract.

4 Does it?

5 A No.

6 I really felt that that particular parcel of land
7 didn't require much further statement inasmuch as it has a
8 very peculiar shape and is entirely in wetland characteris-
9 tic soil. Certainly, not an attractive land -- if I were
10 to add much further comment, it would leave the realm of
11 environmental considerations.

12 Q As far as it stands, now, under the municipal
13 land use control that land can be developed for residential
14 housing despite its environmentally sensitive nature?

15 A Yes.

16 If you're going to build a 2,000 foot road before
17 you can get to an area, you can develop.

18 Q Your next parcel of land that you've address-
19 ed in your report appears on Page 6, and we return to a
20 letter designation since we've moved from the R-20 to the
21 R-120 zone.

22 You've identified 399.4 vacant acres in the R-120
23 zone?

24 A That's correct.

25 Q Could you indicate where these lands are

1 located on your map of Exhibit 11?

2 A Yes.

3 They, for the most part, are located on the outer
4 perimeter of the Township along the various rivers and
5 streams which form the boundary of the Township.

6 Let's start from the very south easterly boundary
7 along the Passaic River next to Florham Park. There's
8 an R-120 zone in that area.

9 Proceeding north we pick up an R-120 zone lying
10 between River Road and the Passaic River immediately south
11 of Eagle Rock Avenue. Then, there's an R-120 zone along
12 the southerly side of Route 280: another R-120 zone along
13 the southerly side of Route 280 and Ridgedale Avenue over
14 near the Rockaway River and that R-120 zone extends all
15 the way down along the westerly boundary of the Township
16 common with Parsippany - Troy Hills along the Black Brook--
17 generally, encompassing lands that lie within the flood
18 hazard area along the outer perimeter of the Township in
19 several different areas.

20 MR. ONSDORFF: Let me take a brief break for
21 a moment.

22

23 (A short recess is taken.)

24

25 Q In discussing this approximate 400 acres of

1 vacant land in the R-120 zone, you have delineated 322
2 acres as within a flood hazard area and 77 acres being
3 wetland soils. That, in essence, takes up the entire tract
4 or the entire land area that you've identified.

5 Is that correct?

6 A That's correct.

7 Q The flood hazard area, do you know what
8 portion of that is flood fringe as opposed to floodway?

9 A I could calculate it from my table, but it would
10 take several minutes in order to extrapolate some of those
11 figures.

12 Q Just a general estimate?

13 A I would say, in general, that the majority of it
14 is floodway.

15 Q Over 60 percent?

16 A I would say over 60 percent.

17 Q The next category of land you've described
18 is a B-2 business zone of which only two parcels remain
19 vacant.

20 Is that correct?

21 A B-2 business zone contains four vacant parcels.

22 Q And then --

23 A Subsequently, I've indicated that since the original
24 investigations were made, I believe that two properties
25 along Route 10 have been developed for commercial use.

1 Q That was two recent commercial developments.
2 Were they in areas subject to your environmental
3 constraints of wetlands and flood hazard areas?

4 A Yes, they were.

5 Q Out of the vacant land remaining here 5.2
6 acres you've identified as not being subject to environmental
7 constraints?

8 A Yes.

9 The 5.2 acres being distributed beyond the four
10 different -- well, beyond at least three of the four sites.

11 Q Your Category E, a PB-1 zone, two small sites
12 at 4.8 and 2.7 acres. One is located entirely in the
13 floodway. The latter 2.7 acres is wetlands.

14 Is that correct?

15 A That is correct.

16 Q Yet despite these environmentally sensitive
17 locations these lands are zoned for business structures?

18 A Yes.

19 By virtue of their location in relationship to
20 other properties previously established, PB zones with --
21 or, some form of commercial development.

22 Q Could you identify on Exhibit 11 the 4.8
23 acres in the floodway, where that is situated in this PB-1
24 zone?

25 A Yes.

1 One of these sites is at the south westerly corner
2 of Route 10 and Ridgedale Avenue.

3 The PB-1 zone, I believe, has been rezoned in the
4 past week or two to a business zone.

5 THE WITNESS: A PB-1 zone, I believe?

6 MR. EDWARDS: Right.

7 THE WITNESS: The other --

8 Q That's okay, I just wanted to locate the one.
9 Thank you.

10 That floodway is in the floodway of the Whippany
11 River?

12 A Yes.

13 Q And the placement of a business enterprise
14 in that location would result in aggravation of the flood-
15 ing situation along the Whippany River.

16 Is that correct?

17 A I would assume that there is that possibility.

18 MR. EDWARDS: The land in question is present-
19 ly being used as a golf range, driving range, so
20 that the land that floods is not developed at all.
21 The use to which that land is being put is for a
22 commercial golf range.

23 THE WITNESS: The golf range is in Hanover
24 Township.

25 The same person owns --

1 MR. EDWARDS: The two tracts.

2 THE WITNESS: This parcel in East Hanover.

3 But, I think it's DiMaio.

4 MR. EDWARDS: Yes.

5 THE WITNESS: Yes.

6 MR. EDWARDS: But is it contiguous to the
7 golf property?

8 THE WITNESS: Yes, separated by the stream.

9 Q Any structures there would have to displace
10 flood water.

11 Is that correct?

12 A That's quite possible.

13 Q Your Category F, a PB-2 zone apparently
14 comprises two separate parcels of 50 and 39 acres.

15 Is that correct?

16 A That's correct.

17 Q Where are those tracts located in reference
18 to Exhibit 11?

19 A The 50 acre tract is located at the north easterly
20 corner of Route 10 and River Road extending over to the
21 Passaic River. And, the 39 acre area is located on the
22 easterly side of Ridgedale Avenue in the north of Route 10,
23 being a U-shaped parcel of property.

24 Q In both instances you have identified sub-
25 stantial environmental constraints in the development of

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1 these two tracts, one being dominated by wetland soils
2 and the other one being dominated by wetland soils and
3 flood hazard areas?

4 A That's correct.

5 Q What is the maximum density of development
6 currently authorized under the existing zoning ordinance
7 pertaining to those two tracts?

8 A I don't recall, at the moment, what the limitation
9 there may be in the zoning regulations concerning lot
10 coverage for professional business use.

11 I believe -- I just don't recall what that figure
12 might be or what the exact zoning regulations or restric-
13 tions might be.

14 Q However, it does provide for building suffi-
15 ciently sized to be useful for the conduct of professional
16 businesses.

17 Is that correct?

18 A That's correct.

19 Q What would be the adverse environmental con-
20 sequences that you would envision were such structures to
21 be built at these locations: say the 39 acres of wetland,
22 that tract?

23 A I think the environmental impact or environmental
24 results would be similar to the results that I testified
25 to in connection with residential development in the

1 residential areas that have these wetland conditions.

2 I believe that the results of development would be similar.

3 You could have increased run off, you would be depleting
4 the amount of vacant land that would absorb storm waters.

5 You would have potential problems in construction with
6 unstable wetland conditions.

7 Q With this 39 acre tract, can you tell us
8 where surface water drainage would run off toward were
9 this tract to be developed?

10 A I believe that the natural drainage for that area
11 would be westerly across Ridgedale Avenue to the Whippany
12 River.

13 Q The other tract of 50.5 acres, is that land
14 also incumbered with flood hazard?

15 A Yes, it is.

16 Q Construction of commercial buildings there
17 would displace flood waters?

18 A Yes.

19 Q Where would those displaced waters flow,
20 in your opinion?

21 A Well, I have not formed an opinion. I can only
22 assume that if substantial structures are placed within
23 the flood hazard area that there is the potential for
24 increasing the limit of the flood hazard area. If not
25 on this particular property, then on adjoining properties.

1 Q The next category you have addressed is an
2 I-3 industrial zone?

3 A Yes.

4 Q Of 678 vacant acres.

5 Those areas as displayed on Exhibit 11 are located
6 at the southerly point and northerly point of the munici-
7 pality and, also, I believe on the westerly and easterly
8 boundaries along the Whippany and Passaic Rivers?

9 Is that correct?

10 A That's correct.

11 Q Excluding that tract on the southerly side
12 of Route 10, the other areas we've identified as delineated
13 on Exhibit 11 appear to be entirely incumbered by either
14 wet soils or flood fringe or flood hazard.

15 Is that accurate?

16 A I would say that's an accurate statement.

17 What is the maximum ground coverage authorized in
18 this I-3 industrial zone?

19 A I don't recall what the zoning regulation or limita-
20 tion is.

21 I had the schedule of zoning requirements out on
22 my desk this morning to bring in, but I left it there.

23 Q Would you see the potential for adverse
24 environmental impacts resulting from such displacement
25 through industrial buildings being constructed in these

1 areas?

2 A Yes, I would.

3 Q The tract which you've identified south of
4 Route 10, do you know the acreage of that vacant tract of
5 land?

6 A Yes.

7 I think I can give you that acreage. It's, approxi-
8 mately, 62 acres -- that does not jive. Just a minute.

9 Yes, I am sorry, it is 62 acres.

10 Q What portion of this 62 acres are what you
11 would describe as being both vacant and developable, that
12 is being unincumbered by abnormal environmental constraints?

13 A Zero.

14 One hundred percent of the area has a wetland
15 designation.

16 Q I am sorry. Your Paragraph G indicates only
17 18 acres is outside flood plain and wetland soils.

18 Is this a separate tract than the one south of
19 Route 10 that we're now discussing?

20 A No.

21 I think, previously, when you were referring to the
22 other industrial zones, the I-3 zone which bordered on the
23 various rivers and streams, and you indicated that it appear-
24 ed from the map that they were all within the flood fringe
25 or floodway, I responded that I agreed with you. I think,

1 with perhaps one qualification, that there are, perhaps,
2 small sections of the I-3 zone elsewhere that may extend--
3 vacant properties that may not be in a wetland condition.

4 MR. ONSDORFF: Off the record.

5

6 (An off the record discussion takes place.)

7

8 Q I think you would like to include one addition-
9 al I-3 tract beyond the one south of Route 10.

10 That was the 67 acres, if our understanding is now
11 correct, Mr. O'Grady?

12 A Yes.

13 There's an I-3 industrial zone north of the B-2 zone
14 on the northerly side of Route 10. And, within three tracts
15 of land there are sections of -- of those three tracts of
16 land that have nonwetland conditions.

17 Q This industrial tract has some frontage
18 southerly of Murray Road (phonetically).

19 Is that not correct?

20 A One property has frontage on Murray Road and two
21 have frontage on Route 10.

22 Q Those areas are not incumbered, to your know-
23 lege, by unusual environmental constraints?

24 A Not to my knowledge.

25 Q The final specific site which you addressed

1 is under the heading: H, which is the cemetery zone contain-
2 ing only one vacant area of 14 acres.

3 Where is that situated?

4 A That's the portion of the cemetery zone that recently
5 was rezoned to R-20. And, we discussed that in connection
6 with Site Number 8 under the R-20 zone.

7 Q Then as far as you know, this December 11,
8 1979 report in the various parcels which we have spent a
9 good part of the afternoon discussing comprises the totality
10 of vacant land subject to further development within East
11 Hanover Township?

12 A Yes.

13 MR. ONSDORFF: Off the record.

14

15 (An off the record discussion takes place.)

16

17 MR. ONSDORFF: Seeing as how the hour has
18 reached 5:00 and we have been here since 10:00 this
19 morning, I think it's appropriate to call a conclusion
20 to the festivities today.

21

22 At this time, I would hope that we have compl-
23 eted our analysis of East Hanover Township. However,
24 certain additional materials have been provided that
25 I would like the opportunity to review to see if they
raise any additional pertinent questions. So, I

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reserve the right to call Mr. O'Grady for that limited purpose only.

(The deposition adjourns at 4:55 p.m.)

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C E R T I F I C A T E

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

ROBERT O'GRADY

was duly sworn by me to testify the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing
is a true and accurate transcript of the testimony
as taken stenographically by and before me at the
time, place and on the date hereinbefore set forth,
to the best of my ability.

I DO FURTHER CERTIFY that I am neither
a relative nor employee nor attorney nor counsel
of any of the parties to this action, and that I
am neither a relative nor employee of such attorney
or counsel, and that I am not financially interested
in the action.

Notary Public of the State of New Jersey