

v. Boonton

Transcript of Deposition of Thomas A. Thomas

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING :
COUNCIL, et al.,

Plaintiffs, :

-vs- :

BOONTON TOWNSHIP, et al., :

Defendants. :

CIVIL ACTION

Deposition of:

THOMAS A. THOMAS

T R A N S C R I P T of the stenographic notes
taken in the above-captioned matter before NANCY RICH, a
Certified Shorthand Reporter and Notary Public of the
State of New Jersey, at the offices of TOWNPLAN ASSOCIATES,
26 Main Street, Toms River, New Jersey, on February 22,
1980, at 2:00 in the afternoon.

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

KEITH QNSDORFF, ESQ.,
OFFICE OF PUBLIC ADVOCATE

SHANLEY & FISCHER, ESQS.,
BY: CHARLES A. REID, ESQ.,
ATTORNEYS FOR HARDING TOWNSHIP

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THOMAS A. THOMAS

Direct Examination by Mr. Onsdorff

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E X H I B I T S M A R K E DEXHIBIT NO.DESCRIPTIONIDEN.

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Resume

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Report on planning & zoning

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Letter dated February 7, 1980

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Master Plan

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Natural Resource Inventory Report

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1 What undergraduate program did you pursue?

2 A That was a degree. I received a Bachelors Degree
3 in Urban Planning, Bachelor of Science Degree.

4 Q And what areas of scientific discipline are
5 involved in your Urban Planning Degree?

6 A The Urban Planning Program at Michigan State is a
7 multiple disciplinary degree and it has elements of social
8 studies, sociology, demographics. We also had a great deal
9 of engineering background, design background in terms of
10 landscape architecture and architecture, a great deal of
11 analysis of urbanization, courses on history of urban and
12 city planning.

13 It was a very diversified program.

14 Q Did you take any courses in biology or
15 chemistry?

16 A Yes. As part of the Michigan State undergraduate
17 program, courses were required in biology, chemistry,
18 physics, geology, natural resources, and so on; and we also
19 had a lot of course work as part of urban planning, the
20 urban planning curriculum relating a lot of that type of
21 study to urban planning courses and the specific discipline
22 we were involved in.

23 Q Then after that I see you obtained a Masters
24 at Rutgers University.

25 A Yes. That's several years later, after I was out of

1 the army I obtained my Masters in City and Regional Planning
2 in Rutgers University.

3 What is not reflected on the resume is the fact
4 that after the completion of the masters program, that I
5 did complete the coursework for the doctoral program for
6 urban planning and policy.

7 Q Can you briefly elaborate on what the courses
8 of study were for your Masters at Rutgers?

9 A Well -- I ended up with fifty-some credits overall,
10 and they included statistics, housing, economics, budgeting,
11 urban policy, urban issues, independent research, legal
12 foundations for planning, zoning, took several courses from
13 Norman Williams, and courses in design, presentation tech-
14 niques, and so on.

15 Q Now, I see that you were employed at the
16 University of Arkansas, is that correct?

17 A I was, yes, right after I graduated from Michigan.

18 Q And that is what, the Community Planning
19 Division?

20 A Yes.

21 Q What type of work did that involve?

22 A The Community Planning Division served as a public
23 agency for providing technical planning services to small
24 towns throughout the State of Arkansas. They were funded
25 by the predecessor to HUD for purposes of providing those

1 services to small towns; and we were responsible for working
2 with municipalities and developing basic planning studies,
3 zoning ordinances, land division regulations, master plans,
4 and so on.

5 Q Did any of that planning work for this division
6 entail plans for multi-family housing projects?

7 A Well, yes. In terms of working with the munici-
8 palities, depending on the municipality, some of that work
9 did, yes. Particularly in terms of preparing the master
10 plan and zoning ordinance for areas that would be suitable
11 for multi-family housing.

12 Q What were the suitability criteria that you
13 employed during that period of time?

14 A Well, even at that time there were several criteria
15 that we would utilize.

16 Number one is availability of water and sewer, par-
17 ticularly for multi-family units. Proximity to shopping
18 facilities and proximity to existing development patterns;
19 and accessibility in terms of transportation, roadways; and
20 physical characteristics of the site itself.

21 Q When you say the availability of water and
22 sewer, were there alternate means of providing those nec-
23 essary or --

24 A Yes. It depended. Arkansas is a varied state
25 geologically, and there are parts of the state that are very

1 mountainous, other parts of the state are very low and wet,
2 along the Mississippi Delta area; and depending upon the
3 particular situation. Obviously there were areas which were
4 totally unsuitable. If the depth of water table was such
5 that they couldn't put septic tanks in or required extensive
6 amount of area for septic tanks, we knew even at that time,
7 and this is several years ago, that there were problems
8 with concentrations of development in areas where it had
9 very shallow depth of water table; and we could see that
10 from the problems emanating from motels, primarily motels
11 that had concentrations of people in one spot; but it did
12 vary from one part of the state to the other depending on
13 natural features.

14 Q Depending upon natural features, septic
15 systems for multi-family housing were a viable option if
16 the water table was sufficiently deep enough, is that my
17 understanding, correct?

18 A There were other factors. If the depth of water
19 table was sufficient and percolation rates were decent or
20 acceptable with accordance with health standards issued in
21 the state.

22 Q And were these multi-family units also pro-
23 vided with well water or --

24 A Yes. There were very few areas -- in the areas of
25 Arkansas that I worked in, there were very few public water

1 this firm with municipalities in Pennsylvania?

2 A Yes. Pennsylvania and Maryland. I also did some
3 work on some municipalities, one municipality in New Jersey,
4 but most of the work was concentrated in central Pennsylvania
5 and Maryland.

6 Q Do you recall the municipality in New Jersey
7 that you performed services for?

8 A Yes, I do. Some preliminary, some basic study work
9 in the Township just south of Toms River. It was Union
10 Town, which is now called Barnegat Township.

11 Q And what were the services in Barnegat
12 Township that you performed?

13 A I was a junior planner under a principal of the
14 planning division, and my responsibilities primarily con-
15 sisted of obtaining population data and working with the
16 principal on colating, writing, editing a report, working
17 with the drafting staff, and getting the maps prepared,
18 and that type of thing.

19 Q Was this for the preparation of a master
20 plan?

21 A Yes, it was.

22 Q Did any of your consulting work involve
23 planning for residential housing in Barnegat Township?

24 A Yes. As part of the master plan we would indicate
25 areas for different densities of development. I was not

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1 A Yes, that's correct.

2 Q And what were your responsibilities with
3 Smith Associates?

4 A I had several responsibilities. I worked as a
5 planner and a responsible planner for a number of munic-
6 ipalities in New Jersey and New York on master planning
7 programs, the acumen of the 701 Comprehensive Planning
8 Programs.

9 I also worked for the consultant for Five County
10 Solid Waste Study in the Syracuse area. That was the first
11 comprehensive regional solid waste program in New York.

12 I also worked on numerous special studies for
13 developers for shopping center activities, and so on in New
14 Jersey and in other states including Maryland and Pennsylvania.

15 Q Do you recall the municipalities that you
16 did planning work with Smith in the State of New Jersey?

17 A It's quite a long list, but I can give you some in-
18 dication of the scope.

19 Bloomsbury in Hunterdon County; Lopatcong, L-o-p,
20 Lopatcong in Warren County; Califon in Hunterdon County;
21 Berkeley Township, Ocean County; Hamilton Township, Mercer
22 County.

23 I also did work in Burlington County. Did a lot of
24 specialty work for Board of Adjustment cases throughout the
25 State, and also specialty work for developers in other parts

1 in your file?

2 A I'm sure someplace. The report was prepared in
3 conjunction with Herbert H. Smith.

4 Q What would you estimate would be the time
5 factor for retrieving that report out of your files?

6 A Probably a week at least. First of all, I have to
7 remember where it is. I don't have it in my offices. It
8 would be in a box at home. So I'd have to go dig it out of
9 my personal files.

10 Q Can you recall any other specialty work
11 that you did in Morris County?

12 A Yes. I represented the Branch Bank in a use
13 variance application before the Victory Gardens Board of
14 Adjustment; and I also appeared before the Morris Township
15 Board of Adjustment on a use variance for a proposed quality
16 restaurant in the township.

17 Q In the Morris County situation, what was the
18 reason for the need to get a use variance?

19 A The zoned district in which the proposed restaurant
20 was located was a residential -- residentially zoned area.

21 Q And what were the aspects of this variance
22 application which you evaluated?

23 A We did the site analysis. We did an analysis of
24 the compatibility of the restaurant with the area in which
25 it was located, and with uses adjacent to the site and in

1 close proximity to the site.

2 Q Did this consulting work result in a written
3 report?

4 A I don't think so, no.

5 Q The scope of your work in this instance in
6 Morris Township also includes evaluation of the site as far
7 as the environmental --

8 A It was an existing structure. Yes, it was also an
9 evaluation of the environmental characteristics of the site.

10 Q Now, in terms of the evaluation made, do you
11 recall your conclusions as far as the environmental impacts
12 of a restaurant in this residential neighborhood in Morris
13 Township?

14 A I don't remember all of the details. It was an
15 existing old stone home on a parcel of property located
16 along Route 202. It was in an area which had several other
17 commercial and non-residential uses in close proximity to
18 the site. It was a location which was generally suitable
19 for that type of use. There were no immediate residences
20 around the site. All of the adjacent uses or land basically
21 blocked the use and so on from where the site was located.

22 Q Did you do an evaluation of the traffic?

23 A Yes, we did. As I remember there was a traffic
24 consultant who was specialized in it, but we were also in-
25 volved in at least considering in a general fashion what the

1 impact of traffic would be on that particular location.

2 Q Do you recall what your recommendations or
3 conclusions were as to traffic and parking at this restaurant
4 on 202?

5 A Yes. We had the -- the conclusions were that there
6 would be minimal impact.

7 First of all, the site was such that the direct
8 access would be off from a side street. Even though the
9 building faced on 202, the access would be on the side
10 street. It's an existing roadway and the site distance and
11 so on were such that traffic, the traffic engineer concluded
12 that it would be no significant problem, as I remember.

13 Q Was there an estimate on how many vehicles
14 would be on the site at any given time?

15 A I'm sure there were, and that was based upon the
16 number of anticipated patrons, but I don't remember it.

17 Q And do you recall the year this proposal
18 was before the zoning board in Morris Township?

19 A It would have been in -- let's see. 1972.

20 Q Do you recall the outcome of that application
21 before the zoning board?

22 A Yes, I do. It was denied.

23 Q Do you recall the reason why it was denied?

24 A No, I don't remember.

25 Q Following your association with Smith

1 Associates, I see you were the director of the Ocean County
2 Planning Board from 1973 to 1977.

3 A That's correct.

4 Q What were your responsibilities in that
5 position?

6 A A lot of the responsibilities are listed in the
7 resume. As the County Planning Director I had a great many
8 responsibilities.

9 At one point I think I served on approximately 20
10 advisory committees within the county or for the State, or
11 for regional agencies. County Planning Directors are in-
12 volved in a great variety of activities, including land use,
13 transportation, planning. They're involved in reviewing
14 A-95 Review Process in accordance with the Office of Manage-
15 ment and Budget, Circular A-95. They're involved in a
16 great deal of environmental matters.

17 Particularly in Ocean County I was responsible for
18 preparing and organizing the Ocean County 208 Program.

19 I was the technical person responsible for day-to-day
20 coordination of several consultants doing work within the
21 county, including solid waste management, air quality
22 planning, master plan programs.

23 We are involved in doing a great deal of work
24 on natural reserve inventory, demographic data, economic
25 development data, working with the Board of Freeholders, and

1 Jersey to attempt to bridge the traditional 701 land use
2 planning program with the new 208 planning program; and I
3 think that pretty well describes what we were trying to do
4 in that plan by marrying those two concepts together.

5 Q Did the concept plan contain a housing
6 element for planning further residential development in the
7 County?

8 A Only in general terms. It was general with density
9 of development and general locations of development, yes.

10 Q And is a copy of the concept plan available
11 from the County Government?

12 A Yes, the County Government has copies available.

13 Q I believe sometime late in 1975 the Mount
14 Laurel decision was handed down by the New Jersey Supreme
15 Court.

16 Did you or the County do any specific planning as
17 a result of that Court decision in 1975?

18 A No.

19 Q Was there any consideration given by yourself
20 or the County Planning Board to doing any formal analysis of
21 Mount Laurel housing issues in Ocean County?

22 A Yes. We did get involved in those type of dis-
23 cussions, and analyses partly on our own initiative, and
24 also because we were involved with other agencies which --
25 Tri-State Regional Planning Commission, for example, and

1 legislators were particularly interested in, and that was
2 the dilemma that Ocean County had faced at that time of
3 having several townhouse and garden apartment complexes which
4 were either only partially occupied or were totally abandoned
5 because of the lack of demand. So we were in reverse sit-
6 uation from the rest of the State.

7 Q Did you determine the reason why such certain
8 townhouses were --

9 A Yes, we did.

10 Q Just try to let me finish the question. You're
11 anticipating me.

12 A Yes.

13 Q -- were partially unoccupied or totally
14 abandoned? The reasons for these, lack of demand?

15 A Yes. Part of it was lack of demand. Discussions
16 with developers and realtors we also determined that the
17 location of these developments were such that people did not
18 want generally to rent or purchase the units in rural areas,
19 and was a dilemma that we explored.

20 Q Was there any specific analysis that you did
21 concerning low-income housing in Ocean County?

22 A We did analysis of low-income housing in a variety
23 of ways. We did not prepare, as I remember, a specific
24 report; but we were involved in evaluating the various types
25 of housing that came into the County, and as general

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1 analysis within the County Planning Department we would be
2 in touch with the Multiple Listing Service here in Ocean
3 County, and with realtors, cost of housing, type of housing
4 demands, and also the special work on the senior citizen
5 housing, adult community, which did result in a report.

6 We also were involved in again just general data
7 collection about the scale, the scope and the type of
8 housing that was found in the County.

9 Q Do you recall what your determinations were
10 as far as the availability of low-income housing in Ocean
11 County during this period of time?

12 A We did not make a detailed analysis in that regard
13 because there was a great deal of vacant housing in the
14 County at that time despite the fact that we were growing
15 rapidly. That comes about in a variety of ways.

16 Number one, there was an abundance, in different
17 parts of the County, selective parts of the County, an
18 abundance of the multi-family housing available; and there
19 was also a conversion process going on from seasonal to
20 permanent; and in Ocean County that was one of the major
21 concerns that we had.

22 We did do work, data gathering, if you will, for
23 various agencies on the availability of public housing and
24 the availability of apartments and so on on a selective
25 basis.

1 engineering staff either at the County end or the municipal-
2 ities.

3 Q Do you recall what the standards were for
4 evaluating the acceptability of these development proposals
5 in terms of their avails to existing developments?

6 A The standards varied depending on the project and
7 site location, obviously, and they ranged, I can tell you,
8 quite extensively. Such major projects as Great Adventure
9 which resulted in a major impact in a very rural area to
10 shopping centers, major, regional shopping areas to small
11 individual units to some of the largest planned unit de-
12 velopment, and adult community developments in the State of
13 New Jersey. So that we were involved obviously with a
14 great deal of traffic and broad concerns about major roadway
15 systems within the County.

16 We would work with municipal planning boards and
17 municipal engineers on specific details within the munici-
18 pality, but our responsibility was to be sure that, as de-
19 velopments occurred within the County that we would have
20 adequate regional roadways; and we would analyze some of the
21 regional impact in terms of signalization and traffic con-
22 gestion and so on.

23 Q As far as runoff, such as Great Adventure and
24 regional shopping centers, and P.U.D., these involved large
25 parking areas with substantial studies, would they not?

1 A That's correct.

2 Q Did you do any study on the water drainage
3 or in terms of polluted runoff or this type of analysis?

4 A I would be involved in conjunction with the engineer-
5 ing department. In those regards the specific engineering
6 of hydrology and drainage and pollutants would be accom-
7 plished by the technical staff, the engineering department.

8 We did generally work with the planning board on
9 policies relating to those types of activities.

10 Q Do you recall any specific policies in terms
11 of drainage and runoff?

12 A Sure. Two basic policies that we attempted to pur-
13 sue during my tenure, one was to establish concepts of zero
14 runoff for major developments, and correlated to that would
15 be regional detention ponds and basins when on site deten-
16 tion would be impractical.

17 We also attempted to establish a policy of surface
18 drainage which would eliminate extensive underground piping.

19 There were a lot of techniques involved in both of
20 these activities, but those are the two basic policies that
21 we attempted to implement.

22 Q When regional detention ponds were recommended,
23 that was because on site detention facilities would not be
24 sufficient, is that correct?

25 A That's correct. When you have a situation where

1 MR. ONSDORFF: I didn't know if it
2 was more than one.

3 A Oh, yes, it is.

4 Q I guess my interest would be in initially
5 any multi-family housing projects.

6 A I think the easiest way to answer the question is
7 yes, I have been involved in reviewing multi-family housing,
8 and housing developments. They basically break into two
9 areas.

10 When I am working as a consultant to a municipality,
11 I obviously am in the position of reviewing development
12 proposals.

13 If I'm working as a consultant to a private de-
14 veloper, I would be in the position, obviously, of promoting
15 or pushing or working with the developer on a particular
16 site plan.

17 So I'm involved in both sides.

18 Q From the developer's standpoint, have you
19 done consulting work for a developer of a multi-family
20 project?

21 A I'm involved in a project on a conceptual design
22 basis for a multi-family development in Burlington County.

23 Q What municipality is that in Burlington
24 County?

25 A That's in Pemberton Township.

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A Yes. The current zoning unit permits a range of two to three units per acre. The proposal has alternatives that we specifically reviewed in detail ranging from three units per acre on a gross basis down to two units per acre on a gross basis.

We also evaluated the possibility of a density which would exceed the current permitted density of three units per acre. I think we got up to probably 3.5 on the proposal.

Q What were the considerations that led you to evaluate going beyond the limits of the current zoning ordinance?

A The current zoning ordinance basically is a type of zoning ordinance which was specifically oriented toward single-family, detached housing. An assumption was made, and it was verified with the Planning Board, that that ordinance was based upon a conventional type of housing unit.

When we talk about an adult community, we're talking about actually a smaller per dwelling unit resident factory. Instead of perhaps three and a half persons per unit, we're talking down to two persons per unit, and we discussed informally with the Board. In fact, if we were to develop even with three point five dwelling units, that the actual number of persons potentially that would reside on that site would be lower than if it were a conventional single-family develop-

1 A The only -- basically no. We avoid any of those
2 areas which either in field surveys or in basis of soil were
3 less than four feet to try to avoid those areas.

4 Q Were you successful in avoiding these areas
5 or is this --

6 A The project is still under consideration at this
7 time because the whole process was delayed because of the
8 imposition of the pinelands moratorium.

9 Q What were the plans for water and sewerage
10 utilities for the development?

11 A The rationale for the proposal in the first place
12 was the fact that Pemberton Township recently had a major
13 interceptor located literally a few hundred feet from the
14 site.

15 One of the initial contacts that we made was with
16 the sewerage authority to determine whether it would be
17 feasible to tie in a project of this magnitude to that lo-
18 cation, and it was.

19 There's also public water available, and we dis-
20 cussed with the utilities authority about the possibility
21 of servicing the site with public water, and it was.

22 Q Now, as far as your consulting services for
23 municipal government units.

24 A Yes.

25 Q Do you recall reviewing specific multi-family

1 mately two to three feet. This was an extreme situation,
2 but that was the same.

3 As a result of that analysis, the building was re-
4 designed and any activity facilities which were even con-
5 sidered at that point to be developed below surface were
6 eliminated.

7 We also then considered flooding of the site, and
8 as a result of that analysis the project was evaluated
9 somewhat. Highlands were established and so on, but the re-
10 sult is that this building has no basic or no infrastructure
11 below the surface other than the sewer and water.

12 Q And based upon those re-design factors, this
13 project was found suitable for this site?

14 A This project was found suitable by HUD. It was
15 found suitable by CAFRA. It was found suitable by the local
16 planning board, board of adjustment, and basically by the
17 housing authority.

18 That area has sewer and water.

19 MR. REID: So your answer was yes?

20 THE WITNESS: Yes.

21 Q Did the high water table of two to three
22 feet below ground surface present any hazards or problems
23 in terms of heaving of pavement or parking areas or side-
24 walks or this type of consideration in approving the project?

25 A Yes.

1 Q What were your conclusions with regard to
2 those potential problems?

3 A Any of those areas which were to be surfaced were
4 required to have sub-surface drainage systems installed.

5 Q In addition to the factor of depth to water
6 table, were there any other factors which you viewed as
7 being relevant to the approval of this project as far as
8 its site suitability was concerned?

9 A Yes.

10 Q Could you elaborate on those?

11 A Yes. We, in addition to the sewer and water avail-
12 ability, which were critical, we also evaluated and con-
13 tacted various agencies relative to drainage and flooding.

14 We contacted energy groups including the New Jersey
15 Natural Gas, local oil dealers, Jersey Central Power & Light,
16 to determine the availability of utilities for energy pur-
17 poses.

18 One of the requirements from CAFRA was to evaluate
19 the potential impact of this facility on the adjacent area
20 in terms of everything from air pollution to shadows on
21 adjacent properties.

22 We evaluated the proximity of this facility to
23 shopping facilities, service facilities, and to other ac-
24 tivities within the Borough of Keansburg.

25 Q What were your conclusions in terms of the

1 the development potential of a specific site in addition to
2 soil borings?

3 A Yes. Topographically.

4 MR. REID: Are you asking what he
5 did on those particular sites or in
6 general what you can do to determine
7 suitability?

8 MR. ONSDORFF: This is a general
9 question as to what type of analysis
10 a developer has to make.

11 MR. REID: That's a different
12 question. What the developer has to
13 do and what can be done may be two
14 different things.

15 Q Well, in the case of the Pemberton site, in
16 addition to soil borings, what type of on-site evaluation
17 will the developer have to make in your opinion, Mr. Thomas,
18 to determine the suitability of that site for multi-family
19 housing development?

20 MR. REID: Objection to the
21 repetition. He spent about twenty minutes
22 on Pemberton and I think he told you every-
23 thing.

24 If you haven't told --

25 MR. ONSDORFF: This is on a conceptual

1 townhouse development as far as land use development that
2 you reviewed since 1977?

3 A Approximately six units per acre.

4 Q And what municipality was that in?

5 A Middletown Township.

6 Q What was the nature of your review on this
7 townhouse development?

8 A Same type of reviews I did on the garden apartments.

9 Q Do you recall what your conclusions were in
10 regard to the site suitability on this townhouse development
11 in Middletown Township?

12 MR. REID: Objection. He didn't
13 testify that he evaluated the site suit-
14 ability, but rather it's compliance with
15 zoning ordinance.

16 MR. ONSDORFF: In addition to com-
17 pliance with zoning ordinance, I under-
18 stand he evaluated the site plan's com-
19 pliance with the site plan ordinance.

20 A That's correct.

21 Q What was your determinations on that site
22 plan?

23 A The determinations were the same as the garden
24 apartment complex that I mentioned earlier.

25 Q Do you recall the name of this project?

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1 A No, I don't.

2 Q Now, what professional services have you
3 rendered on behalf of Harding Township?

4 A Professional services include the evaluation and
5 preparation of a report on planning and zoning in the town-
6 ship.

7 Q That was in the context of the present liti-
8 gation, is that correct?

9 A That's correct.

10 Q Other than the work that you have done on
11 behalf of the Township in the present litigation, have you
12 performed any professional services for Harding Township?

13 A None. I have not.

14 Q On what date were you retained to perform
15 this professional consulting work on behalf of Harding in
16 the present litigation?

17 A I don't remember the specific date.

18 Q Generally speaking when did your employment
19 begin?

20 MR. REID: I think we can stipulate
21 it was the time between Shanley & Fischer
22 got in the case and today.

23 A I would say it's the early part, first week or so
24 of December.

25 Q Since early December of last year?

1 A That's correct.

2 Q Could you briefly describe what your activities
3 were in preparing your report for the evaluation of the
4 zoning in Harding Township?

5 A Yes. I reviewed the preliminary documents, the
6 master plan, the zoning ordinance.

7 I also reviewed the Morris County Land Use Plan
8 Element, and various other documents that they have as part
9 of their master plan series.

10 I reviewed the natural resource inventories of the
11 Township, and also of Morris County. I reviewed soils
12 analysis by the Morris County Soil Conservation Service, the
13 New Jersey State Development Guide Plan, the Tri-State
14 Regional Planning Commission, planning documents relative
15 to land use and also to housing.

16 I also reviewed the proposed New Jersey Housing
17 Allocation Report. I've reviewed testimony, the depositions
18 of Alan Mallach and Mary Brooks, and other documents which
19 I could find related to Harding Township.

20 Q Did you do any field work in Harding Township?

21 A I did not do any specific field work in Harding
22 Township, no.

23 Q When was the last time you were in Harding
24 Township?

25 A I was through Harding Township in the fall of 1979,

1 approximately a month or so before I was retained by Shanley
2 & Fischer to work on the project.

3 Q Do you recall the purpose of your visit, if
4 it was a visit, or the last time you were in Harding
5 Township?

6 A It was physically going through the Township, through
7 Morristown, out 287.

8 Q You traversed the town?

9 A Traversed the town. That's correct.

10 Q Have you ever done any field work in Harding
11 Township?

12 A Yes. In 1973 I had an opportunity to do some field
13 work in Harding Township, and that was primarily as a result
14 of the case I think I mentioned earlier, the use variance
15 in Morris Township.

16 Q What was the nature of your field work in
17 Harding Township in 1973?

18 A It was an inspection of the area, primarily a
19 northern portion of the area in detail. As it turned out
20 I also traversed most of the Township along the major road-
21 ways.

22 Q Now, I show you this document and ask if you
23 can identify it.

24 A This is the record on planning and zoning which I
25 prepared in conjunction with this case.

1 MR. QNSDORFF: Why don't we have the
2 Court Reporter mark that as TTH-2 I believe
3 we are up to.

4 (Report on planning and zoning was received
5 and marked TTH-2 for identification.)

6 Q Now, preparing what's been marked for iden-
7 tification as TTH-2, what specific field of expertise did
8 you utilize in preparing this document?

9 A My general planning expertise in working with land
10 use and development plans and zoning ordinances.

11 Q Have you ever given expert testimony in this
12 same field of expertise in the State of New Jersey before?

13 A Yes.

14 Q Have you given such testimony since 1975?

15 A Yes.

16 Q Can you recall the specific cases in which
17 you presented such expert testimony?

18 MR. REID: You want cases in liti-
19 gation, cases, applications before the
20 local boards or anything?

21 MR. QNSDORFF: I indicated, I believe,
22 I framed the question in the context of the
23 State Courts of New Jersey, which in most
24 cases I think would be litigation.

25 MR. REID: I think you're right.

1 A Yes, I have.

2 Q Can you recall since 1975 the subject matter
3 and name of these litigations?

4 A Some, yes. Bucci v. Ship Bottom.

5 Q What was the year of Bucci v. Ship Bottom?

6 A 1975. Excuse me. That was a board of adjustment
7 case that never got into the Court system.

8 Duged v. Ship Bottom, that did get into the Court.
9 That was in 1979.

10 Q And what was the subject matter of your tes-
11 timony in Duged v. Ship Bottom?

12 A That was an evaluation of the planning and zoning
13 documents, and actions of the Ship Bottom Board of Adjust-
14 ment and Planning Board.

15 Q And did this involve any consideration of
16 residential housing in Ship Bottom?

17 A Yes, it did.

18 Q Did your -- prior to presenting testimony
19 in this case, did you prepare an expert report, a written
20 document?

21 A No documents were prepared other than notes and
22 field notes, and that type of thing.

23 Q Did you in this litigation evaluate a specific
24 site?

25 A Yes.

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A Yes, I have.

Q Can you recall since 1975 the subject matter and name of these litigations?

A Some, yes. Bucci v. Ship Bottom.

Q What was the year of Bucci v. Ship Bottom?

A 1975. Excuse me. That was a board of adjustment case that never got into the Court system.

Duged v. Ship Bottom, that did get into the Court. That was in 1979.

Q And what was the subject matter of your testimony in Duged v. Ship Bottom?

A That was an evaluation of the planning and zoning documents, and actions of the Ship Bottom Board of Adjustment and Planning Board.

Q And did this involve any consideration of residential housing in Ship Bottom?

A Yes, it did.

Q Did your -- prior to presenting testimony in this case, did you prepare an expert report, a written document?

A No documents were prepared other than notes and field notes, and that type of thing.

Q Did you in this litigation evaluate a specific site?

A Yes.

1 Q In terms of suitability for residential
2 housing?

3 A It was, yes.

4 Q What was the residential housing which was
5 proposed for the site in ShipBottom?

6 A It was a 24-unit luxury condominium project in
7 ShipBottom.

8 Q And what were the specific areas of your
9 evaluation of the site?

10 A Compatibility of adjacent land uses, accessibility,
11 parking, site design, utility availability, compatibility
12 with the zoning and master plan.

13 Q And were you presenting expert testimony
14 on behalf of the developer or the municipality?

15 A Developer.

16 Q Do you recall the outcome of this litigation?

17 A Yes. That's fairly recent. I have not read the
18 decision, but I understand the Superior Court Judge ruled
19 in favor of the municipality.

20 Q Were there any other cases where you pre-
21 sented expert testimony in the State Courts of New Jersey
22 involving evaluation of sites for suitability for residential
23 housing?

24 A Not since 1977, no.

25 Q Since 1975.

1 A '75, no.

2 Q Now, I'd like to show you this letter and
3 ask if you can identify it?

4 MR. REID: If you can.

5 A I've never seen the letter before.

6 Q You weren't sent a copy of it, is that cor-
7 rect?

8 A I don't believe so, no. I don't remember that
9 letter specifically.

10 Q The letter purports to be a letter of Mr.
11 Schmauder of Shanley & Fischer to Mr. Bisgaier of our office.

12 MR. ONSDORFF: Would you have any
13 objection to it being marked for identi-
14 fication as TTH-3?

15 MR. REID: No. In fact not only does it
16 purport to be a letter from Mr. Schmauder,
17 it is a letter from Mr. Schmauder.
18 (Letter dated February 7, 1980 was received
19 and marked TTH-3 for identification.)

20 (Discussion off the record.)

21 Q I would say it's a very brief record, so I
22 won't burden the record by quoting it.

23 "We are advised by Thomas A. Thomas, P.P., A.I.C.T.,
24 that in his opinion existing zoning in Harding Township
25 would yield a maximum of 395 additional dwelling units in

1 light of the amount of vacant developable land without
2 severe development constraints."

3 That's the body of TTH-3 for identification.

4 Do you recall the manner in which you advised Mr.
5 Schmauder as to the maximum number of additional dwelling
6 units which could be constructed under the current zoning
7 ordinance in Harding Township in light of the vacant de-
8 velopable land without severe development constraint in the
9 Township?

10 MR. REID: Objection to the form.

11 I don't think there's any testimony he
12 advised Mr. Schmauder.

13 MR. ONSDORFF: I'll ask the prelim-
14 inary question.

15 Q Did you so advise Mr. Schmauder as to that
16 statement which you just read?

17 A Yes, I did.

18 Q Do you recall the date of that advice?

19 A It would have been in early February, approximately
20 February 5 or 6, I believe.

21 MR. ONSDORFF: I think I have two
22 questions back pending because I asked
23 the two preliminary questions.

24 Could you?

25 (Whereupon, the pending question was read

1 back by the Reporter.)

2 A I didn't advise Mr. Schmauder directly. I spoke to
3 Mr. Charles Reid on the telephone concerning that number.

4 Q So the manner in which you advised the law
5 firm, Mr. Reid in particular, was a phone conversation?

6 A Yes. That's correct.

7 Q And in what manner did you arrive at your
8 opinion concerning the maximum number of additional units
9 that could be constructed in Harding Township under the
10 current zoning ordinance in light of the vacant developable
11 land within the Township?

12 A In light of the amount of vacant developable land
13 which had slight developable restrictions, I think there
14 was a qualifier. That was done by utilizing a variety of
15 plan documents.

16 We first of all evaluated and looked at the natural
17 resource inventories to determine areas which were deemed
18 to be suitable in those reports.

19 We also looked at area photographs of the Township
20 to determine areas which were developed. We looked at the
21 location of the developed areas in conjunction with topo-
22 graphic conditions and also restrictions of development
23 based on soil conditions; and we also looked at flood prone
24 information, depth of bedrock, depth of water table con-
25 ditions, areas which were open in terms of either vacant

1 opened or agricultural uses.

2 We then compared all of those factors and others
3 that we could observe from the various documents in con-
4 junction with the zoning districts as they currently exist
5 in Harding Township, and also a property map showing the
6 precise property lines for the Township.

7 Q Do you recall the acreage of the vacant open
8 or agricultural lands?

9 A I don't remember the specific amount of agricultural
10 lands. I don't think we broke down specifically agri-
11 cultural versus non-agricultural lands when we were looking
12 at areas that were generally opened in terms of not having
13 forest cover or extensive vegetation on them, or areas which
14 had vegetation, but not have severe development restrictions
15 in accordance with soil conservation classifications.

16 Q I think you're getting ahead of me.

17 All I was concerned is whether or not --

18 A No. I don't remember.

19 MR. REID: He wants a number.

20 THE WITNESS: I don't have a number.

21 Q The category which I think you testified to
22 initially was a comprehensive category of vacant open and
23 agricultural lands.

24 A Yes, it is, approximately 1100 acres.

25 Q Would it be correct to state this was the

1 floor or base that you began with to move forward on eval-
2 uating on how much of the vacant open agricultural lands
3 within Harding were developable without severe development
4 constraints? You had to know what lands were initially un-
5 developed.

6 MR. REID: Let him finish his ques-
7 tion before you answer because I think
8 it's going to be misleading.

9 Q In comparison to those lands that have al-
10 ready been constructed in comparison.

11 MR. REID: I'm afraid that question
12 is so confusing as to be objectionable as
13 to form.

14 Are you representing the 1100 figure?
15 That's how I thought I read the start of
16 your question, and I got it different as
17 you went along. I don't want the record
18 to be misread.

19 Q What was the 1100 acres as far as what did
20 it constitute as a starting point in your mind, Mr. Thomas?

21 A That 1100 acres constituted areas within the
22 Township which were not developed, which basically had
23 slight development restrictions in accordance with soil
24 conservation services which were acceptable, and which
25 generally were open in certain areas within that 1100 acres

1 that may contain some forest areas, but were primarily open
2 agriculture or agricultural areas.

3 Q Now, I think we are a little bit unclear.
4 The 1100-acre figure, is that the land that would support
5 the 395 additional dwelling units?

6 A Yes.

7 Q I assume in Harding Township there are vacant
8 open or otherwise undeveloped lands which have more than
9 slight development constraints? There's more undeveloped
10 land than the 1100 acres, is that correct?

11 A Yes, there is.

12 Q My initial question is, did you make a de-
13 termination as to the amount of open vacant undeveloped
14 land in Harding Township irrespective of what are their
15 physical characteristics, as far as development potential
16 was concerned?

17 MR. REID: Again, you're looking for
18 a number, did he determine a number of
19 acres?

20 MR. ONSDORFF: Generally.

21 A No.

22 Q Now, in evaluating the vacant developable
23 land without severe development constraints in Harding
24 Township, did you analyze those lands which may have been
25 in single ownership with a structure on, but had open spaces

1 contiguous to the particular site which were of such a size
2 that they would be susceptible to further subdivision under
3 the current zoning and planning documents in Harding Township?

4 A Yes. We did those parcels of land, the large par-
5 cels, the single-family dwellings are included in that ap-
6 proximately 1100 acres.

7 Q Do you recall the cutoff figure for a par-
8 ticular tract of land as to how much additional land there
9 had to be in the particular site with one single-family
10 home before it was put into the vacant as opposed to the
11 developed category?

12 A Well, approximately three acres which was the zoning,
13 most of the land -- most of the undeveloped vacant land,
14 large categories was three acres. We did not go into detailed
15 analysis of little parcels.

16 However, we were conservative in terms of the de-
17 velopment category somewhat, we included some areas that
18 were perhaps marginal in terms of development capability in
19 terms of that 1100 acres.

20 So I think it washed out. It would be about 1100
21 acres.

22 Q Now, in terms of your conclusion that these
23 1100 acres constitute vacant developable land without severe
24 development constraints, is that analysis an opinion limited
25 in any fashion to the type of development that might be

1 proposed for any particular site or tract of land within
2 these 1100 acres?

3 MR. REID: If you understand that
4 you can answer it. I don't know --

5 THE WITNESS: I don't quite under-
6 stand.

7 Q Well, is there any, for instance, density
8 cutoff as to the number of units that can be placed upon
9 these 1100 acres?

10 A Only in conjunction with the zoning ordinance.

11 Q To the extent that the zoning ordinance
12 permits what type of structure?

13 A The majority of that land permits single-family
14 homes on one-acre lots. I'm sorry, on three-acre lots.

15 Q When you say the majority, are there other
16 zoning districts within these 1100 acres which you evaluated?

17 A Yes, but relatively small acreages around New Vernon
18 and also along Route 202 there were some areas that per-
19 mitted smaller lot sizes.

20 MR. REID: Within the 1100 acres?

21 THE WITNESS: Yes.

22 Q And these lands were deemed to be developable
23 without severe development constraints in accordance with
24 these smaller lot sizes at these locations, is that correct?

25 A There were some areas where zoning ordinance, I

1 believe, permits one-acre lots. That was a limited amount
2 of land.

3 Q And what areas were zoned for one-acre lots?

4 A I don't remember specifically.

5 Q Now, in these areas which were zoned for
6 one-acre lots, the lands there could be developed at that
7 density without severe environmental constraints?

8 MR. REID: Objection. I don't be-
9 lieve he's testified that he's made an
10 analysis of the capability of the land
11 with the 1100 acres, but rather simply
12 applied the existing zoning regulation to
13 it. The question implies that he went
14 to the site and that he determined that
15 the site could develop.

16 For that reason I object.

17 MR. ONSDORFF: Are you instructing
18 him not to answer?

19 MR. REID: I object to the form of
20 the question.

21 If you understand the question you
22 can answer the question subject to my
23 knowledge.

24 You probably don't remember the
25 question.

1 THE WITNESS: I'm not sure I under-
2 stood the question anyway.

3 Q I'll try to clarify it, certainly.

4 My understanding of your analysis was in terms of
5 the present zoning ordinances you evaluated the lands to
6 determine their development potential at the densities
7 authorized in the current zoning ordinance initially indi-
8 cated that the majority of that land within the 1100 acres
9 was the density of one single-family dwelling unit on a
10 three-acre site. However, certain portions of the 1100
11 acres were zoned at one-acre lots; and my question was on
12 these one-acre lots, were these lands able to support the
13 development without any severe development constraints?

14 A We did not make a determination as to whether they
15 could support homes on one-acre lots. All we did was com-
16 pare those areas with the Soil Conservation Service which
17 indicated that on general basis there would be slight de-
18 velopment restrictions in conjunction with the zoning
19 ordinance. That's all.

20 Q Could you elaborate what you mean by slight
21 development constraints in comparison or in conformance
22 with the zoning ordinance?

23 A The Soil Conservation Service detailed soils char-
24 acteristic sheets, and characterization basically divided
25 all soils and areas that are studied into three broad

1 categories. Areas which have slight development constraints,
2 those that have moderate development constraints, and those
3 that have severe development constraints.

4 The constraints are based upon several factors, in-
5 cluding depth of the water table, depth of bedrock, flooding
6 characteristics, and so on. Those are the basic factors.

7 (Discussion held off the record.)

8 Q So is my understanding correct then that the
9 prime reason for evaluating the extent of development con-
10 straints in these 1100 acres was the soils conservation
11 survey on categories as to slight, moderate and severe
12 development constraints?

13 A That's correct.

14 Q And the full title of that soil survey, if
15 you know it?

16 A It's probably called Soil Survey of Morris County.

17 Q Do you recall the date of it?

18 A No, I don't.

19 Q Have you prepared any Exhibits for the trial
20 of this case?

21 A No, I did not.

22 Q I believe you indicated you reviewed the
23 master plan of Harding Township.

24 A Yes, I did.

25 Q I show this document and ask if that's the

1 master plan which you examined?

2 A Yes, it is.

3 Q Can you mark that as TTH-4?

4 MR. REID: I assume that's a complete
5 copy. I don't want the witness to count the
6 pages.

7 MR. ONSDORFF: I stipulate I have
8 removed nothing from it.

9 MR. REID: Okay.

10 (Master Plan was received and marked TTH-4
11 for identification.)

12 Q Now, there is a map following one other map
13 following Page 16 on the Master Plan of Harding Township,
14 of 1972, which is entitled Generalized Development Capability,
15 which in the legend shows three separate areas, good, fair,
16 and poor.

17 Did you analyze this in your development of the
18 advice you gave to Shanley & Fischer on February 7, 1980,
19 which appears in TTH-3 as to the 1100 acres in Harding
20 Township of vacant developable land without severe develop-
21 ment constraints?

22 A Yes, I looked at that.

23 Q In examining that, did you make any comparison
24 between it and those lands which are characterized by the
25 Soil Survey of Morris County which you examined?

1 A Yes, I did.

2 Q And did you form an opinion as to in what
3 manner the lands are evaluated in the Soil Survey as com-
4 pared to in this generalized development capability map
5 following Page 16 of the 1972 Master Plan?

6 A I didn't form an opinion. Basically we looked at
7 this and was not detailed enough for an evaluation of com-
8 parison of zoning with development constraints, and so we
9 utilized the Soil Conservation Service detailed soils map
10 and characteristics in conjunction with aerial photography.

11 Q In terms of zoning, this map does not show
12 anything as to what the area is zoned, is that correct?

13 A That's correct.

14 Q In terms of the land characteristics, however,
15 were you able to make a comparison as to whether or not the
16 same land on the Morris County Soil Survey maps which were
17 indicated as having slight development constraints were also
18 those areas as shown on the legend of this general develop-
19 able capability in the master plan?

20 MR. REID: Objection. You don't
21 know if he was able to do it. You want
22 to know that he did it. I'll accept that
23 as an amended question.

24 MR. ONSDORFF: Fine.

25 A Did I do it? No, I did not.

1 Q Was there a reason why you did not do that?

2 A Yes. I feel much more comfortable with the Soil
3 Conservation Service detailed soils map which I could look
4 at as a basic source of information, and also the aerial
5 photography.

6 This map appeared to me to obviously -- they've
7 taken some information and lumped it together and grouped
8 the data so that they came out with this title which is
9 probably a good title, Generalized Capability Development,
10 or Generalized Development Capability.

11 Q What additional information were you able to
12 glean from the area photographs not shown on this Generalized
13 Development Capability?

14 A The prime purpose of the area photography is to
15 look at specific locations of vacant lands as opposed to
16 areas which are heavily wooded and so on, and also to compare
17 the areas which specify existing development.

18 This map that's prepared called the Generalized
19 Development Capability Map does not show the relationship
20 of existing development with development capabilities.

21 Q What specific additional information were
22 you able to glean from the Morris County Survey Map which
23 is not reflected on this map entitled Generalized Development
24 Capability?

25 MR. REID: Objection. Asked and

1 answered several times.

2 You can tell him again.

3 A I will. It's the Soil Conservation Service as de-
4 tailed characteristics of soil characteristics and also
5 depth of bedrock, depth of water table, flooding character-
6 istics, erosion characteristics, and several other factors
7 which are presented.

8 This map does not indicate all of those factors and
9 particularly is -- it does not indicate, for example, in
10 terms of poor development areas, why they're poor, whether
11 it's topography, whether it's slope, depth of water table,
12 or depth of bedrock or any other characteristic.

13 So on that basis we went to more specific data.

14 Q I believe you testified previously that you
15 also examined the natural resource inventory documents
16 prepared for Harding Township, is that correct?

17 A That's correct.

18 Q I show you this document and ask that you
19 examine it.

20 A Yes. I reviewed this document.

21 MR. ONSDORFF: This document is en-
22 titled the Natural Resource Inventory Report,
23 prepared by the Harding Township Environmental
24 Commission, dated November of 1976.

25 I ask that we have that marked as

1 TTH-5.

2 (Natural Resource Inventory Report was re-
3 ceived and marked TTH-5 for identification.)

4 Q Now, accompanying the Natural Resource In-
5 ventory Report, TTH-5, there are a number of Exhibits. Num-
6 ber 4 is a map which is entitled the Critical Environmental
7 Areas.

8 Did you examine that map as part of the analysis
9 you did on Harding Township?

10 A Yes, I looked at this map also.

11 Q Did you draw any conclusion as to how that
12 map compared with the analysis you were able to glean from
13 the soil survey maps of Morris County?

14 A I did not make a detailed comparison or even a --
15 perhaps a very general comparison, but not a detailed com-
16 parison. No.

17 Q What, if anything, did you determine or glean
18 from your examination review of that Critical Environmental
19 Areas map, No. 4, attached to the Natural Resource Inventory
20 of Morris County?

21 A As I remember, I didn't do anything specific with
22 that. I knew that the map was available. I had reviewed
23 the map previously.

24 The basic problem that I had with utilizing this
25 map for the purpose of comparing the zoning, existing zoning

1 districts, was again the fact that there is no existing
2 development on this map.

3 In other words, we're trying to locate areas which
4 were vacant and developable and I couldn't do it with this
5 map.

6 Q Did the Morris County Soil Survey Maps show
7 existing development?

8 A Well, yes and no. Shows it in general. That's why
9 I utilized the aerial photographs from Morris County.
10 There's a separate set of maps. They're large scale photo-
11 graphs of Harding Township.

12 Q Now, I direct your attention to the report
13 of February 5, 1980, which we have marked as TTH-2, spec-
14 ifically Page 2 of that report, the paragraph under the
15 heading, Harding Township description.

16 A Yes.

17 Q It appears in the first paragraph of that
18 description that you have listed a number of characteristics
19 of Harding Township which purports to represent or embody
20 the rural character of the community, is that correct?

21 A Yes.

22 Q Are any of those which you have listed there
23 factors which inhibit or otherwise preclude further develop-
24 ment within Harding Township?

25 A Other than public sewerage, those are -- public

1 sewerage line for extension into other areas not presently
2 serviced in Harding Township?

3 A No.

4 Q On Page 4 of TTH-2, the next to last para-
5 graph on Page 4, next to last sentence, and I quote, "Many
6 of the Township roads are not surfaced, while those that
7 are surfaced are not designed or constructed for intensive
8 traffic."

9 In what way did you review the roadway system in
10 Harding Township?

11 A First of all I reviewed documents, the Master Plan
12 document, again, from which much of this is derived.

13 I also reviewed a document at the County level. I
14 don't remember the name of that document. It was the portion
15 that pertained to Harding Township, that was relatively brief,
16 but I do remember from my travels, particularly in early
17 '70's going through Harding Township about the limited cap-
18 ability of many of the roads, and particularly when I was
19 doing work in Morris County, I had the opportunity to
20 travel throughout -- well, through several of the roads in
21 Harding.

22 One can also determine, and we did in brief from
23 the area photographs in comparison with some of the data
24 that was in the Master Plan to look at where roadways or the
25 roadways and so on and finally discuss roadway conditions

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1 the roadway bed itself in terms of breaking up the pavement
2 and breaking up particularly the shoulders and the edge of
3 the roadway. It's primarily a safety problem.

4 Q On Page 5 of your report, first paragraph,
5 the statement appears, "While Interstate 287 and U.S. Route
6 202 extend through the west-central portion of Harding
7 Township, these roadways have not had major impact on the
8 Township of Harding in terms of major development."

9 A Yes.

10 Q Can you describe the development in Harding
11 Township along Route 202?

12 A Route 202 I'm very familiar with because I spent a
13 great deal of time on Route 202 several years ago, and also
14 within the last two or three years.

15 That is generally old commercial specialty shops in
16 Harding Township. They're, I think, in the report I de-
17 scribed. Also there are two other slight industrial or
18 service industrial facilities, including a telephone com-
19 pany storage yard and also electric company storage yard.

20 Most of the development along Route 202 is scattered.
21 It's on individual lots. There are very few uses that are --
22 where you have more than one use in the same structure, and
23 they're relatively small uses. There's no major shopping
24 center or department stores or other large scale facilities
25 along Route 202.

1 Q And the last paragraph on Page 5, the first
2 sentence reads, and I quote, "Extension of public utilities
3 within Harding Township is difficult due to environmental
4 constraints including shallow depth bedrock, shallow depth
5 water table, and topography."

6 Have you ever had the responsibility of the construc-
7 tion of extensions for public utilities?

8 A I have not had the direct responsibility, however,
9 I worked as county planner; and previously working in munic-
10 ipalities I worked very closely with engineers and public
11 utility organizations that are responsible; and so I am
12 familiar in general.

13 Also I have had courses in public utilities, civil
14 engineering courses, and so on about that type of activity;
15 and these are specific problems related to sewerage lines
16 and also to a certain extent to water lines.

17 Q In order to ascertain more specifically the
18 degree of difficulty that would be confronted by a utility
19 wishing to extend sewer lines, what type of analysis or
20 evaluation of lands would they have to perform in order to
21 determine this degree of difficulty factor?

22 A That is a fairly complex study. It has generally to
23 do, first of all, with drainage areas in terms of topography
24 since most sewerage lines are gravity systems, and if they're
25 not gravity systems, there's obviously a problem of pumping.

1 A second major factor is the conditions, the soil
2 conditions including depth of bedrock itself if bedrock is
3 involved.

4 It's a complex process of installation, and depending
5 on the depth that the sewer lines would have to be installed
6 and also the character of the rock formations, and finally
7 there's also the specific problem of shallow depth to water
8 table which requires a special type of piping and it also
9 requires special preparation.

10 It's very costly to go in to low, wet, marshy areas,
11 and so.

12 Q These types of engineering analysis, do they
13 involve the same or similar type of soil borings that de-
14 velopers have to do to determine land suitability for de-
15 velopment?

16 A That's correct.

17 Q Do you know in these types of engineering
18 analysis where soil borings had been performed in Harding
19 Township to evaluate the potential or degree of difficulty
20 that would be met in any attempt to extend the public
21 utilities throughout the Township?

22 A No, I have not.

23 Q You have not done that work?

24 A No, I have not done it; and I don't know specifically
25 whether anyone has done that, you know, with soil borings.

1 Q Following your engineering consideration, the
2 rest of the paragraph appears to characterize certain policy
3 considerations in the extension of sewerage, would that be
4 accurate to state?

5 A Yes, that's accurate.

6 Q Do you know if these policy considerations
7 prohibit or preclude a developer from constructing say a
8 package treatment plant to service a subdivision on a private
9 financing basis?

10 A In reference to that specific paragraph, we're
11 talking about the U.S. Environmental Protection Agency, and
12 their policies are primarily oriented toward utilization of
13 federal funding for sanitary sewer lines and sanitary
14 sewerage treatment facilities.

15 The package treatment plants are controlled by the
16 New Jersey Department of Environmental Protection, and they
17 have their own standards for those facilities.

18 Q And do you know if the New Jersey Department
19 of Environmental Protection has any policy regulation or
20 code which prohibits a developer from servicing a subdivision
21 through its private financing of the package sewerage treat-
22 ment plant?

23 A There are regulations which N.J.D.E.A. utilize in
24 determination of package treatment plants. I don't know all
25 the detailed considerations. Based on my experience in

1 working with sewerage authorities in various parts of the
2 State, I believe that each case is considered independently,
3 and depends a great deal upon -- there's a lot of factors
4 involved in when they do make a decision to permit such a
5 treatment plant about the design of the plant, how the
6 effluent is going to be treated, what happens with the
7 amount of water that is in streams and sensitive of stream
8 and background data on water quality in the stream and back-
9 ground in effluent discharge characteristics, and it's
10 generally a very complex review that they make in terms of,
11 but I can tell you that my impression is that generally the
12 D.E.P. attempts to discourage package treatment plants.

13 MR. QNSDORFF: Off the record.

14 (Discussion held off the record.)

15 MR. REID: Did you finish your answer?

16 THE WITNESS: I don't know.

17 Q You say they discourage.

18 A My impression is they tend to discourage package
19 treatment plants.

20 Q How did you get that impression?

21 A I got the impression because I dealt with the
22 D.E.P. on numerous occasions over the years, directly or
23 indirectly with the various utilities that we worked with.
24 I can tell you, for example, that there are numerous parts
25 of the State of New Jersey in which no package treatment

1 plants are permitted, in which there are sewer moratoriums
2 in effect, and it covers extensive areas of the State; and
3 I have dealt with the staff as part of the 208 Planning
4 Program as part of the Ocean County Sewerage System Plans.

5 I've attended numerous meetings in which discussions
6 have been held relative to sewerage treatment and so on; and
7 I'd say my conclusion on all of that is generally that they
8 tend to discourage package treatment plants.

9 I can also tell you specifically that I've worked
10 with developers who have attempted to develop package
11 treatment plants, and have been denied by the D.E.P. for
12 various reasons; and I've worked in municipalities as con-
13 sultant where major development projects have been delayed
14 because the State would not permit package treatment plants
15 to be constructed in that municipality or in that drainage
16 basin.

17 So generally I'd say that's the policy.

18 Q Have you ever consulted for a developer who
19 got a package treatment plant approved?

20 A I'm familiar with those that have gotten some ap-
21 proved, and most of the specific treatment plants that I'm
22 familiar that have been approved are long-standing treatment
23 plants. They have been around for a long period of time.
24 There are changes in policy going on constantly in the
25 D.E.P., and particularly in the E.P.A. relative to treatment

1 plants and so on; and part of this comes about primarily
2 since 1972 as a result of the U.S. Water Pollution Control
3 Act and Amendments of 1972.

4 Q Finally, on Page 9, second paragraph, the
5 first statement in it, "The combination of sensible physical
6 features in Harding Township results in limited prime de-
7 velopment areas on the basis of natural characteristics."

8 How did you define limited prime development areas
9 in the context of that sentence?

10 A The limited prime development areas would be a com-
11 bination of all of those factors that I talked about prev-
12 iously, the physical characteristics of Harding Township,
13 the limited vacant developable lands or lands that had only
14 slight development restrictions, and secondly the land use
15 patterns and facilities which are currently available within
16 Harding Township or adjacent to the Township.

17 It's an area which is very rural, does not have
18 public water, public sewer, does not have major roadways
19 with the exception of 202 and 287, and has limited shopping
20 and all of the other facilities which normally one would
21 consider as part of a development area or developing area.

22 Those are the prime considerations.

23 Q Well, would it be accurate to say that your
24 limited prime development area consists of the 100 acres
25 that you previously characterized for the development of the

1 395 additional development units.

2 A No. It would be less than that. It would be --
3 the areas which I identified which have slight development
4 characteristics are scattered throughout Harding Township.
5 Several of those areas are in close proximity to the Great
6 Swamp or in areas that are quite isolated from major thoro-
7 fares or from other intensely developed areas of Morris
8 County, particularly up in the north. Some of them are
9 totally inaccessible currently because there are actually
10 no roadways in that area. So that I would say in terms of
11 prime development areas, in my mind would be those areas
12 which either are or could easily be serviced by sewer and
13 water, which do not have deep slopes, shallow depth to
14 bedrock, shallow depth to water table, and are generally in
15 areas which have compatible land use density or patterns.
16 So I say there's a very limited prime development area.

17 Q With respect to compatibility to other areas,
18 are these limited prime development areas lands which can
19 be developed, that multi-family housing density, without
20 unreasonable damage to the environment?

21 A No. I don't think that there are any areas that I
22 noted in my research under current conditions that could
23 sustain or support intense development in Harding Township,
24 particularly intensive multi-family development.

25 Q What would be the unacceptable environmental

1 consequences of such development that you would foresee?

2 A Well, the major problem is the fact that there is
3 a lack of sewerage in several of the areas which are
4 physically suitable for perhaps, perhaps for multi-family,
5 are geographically isolated from shopping facilities, from
6 roadways, from other developments -- it would be they're
7 scattered. They're frequently in areas which would never
8 be sewered because of the long distance from either the
9 Bergen County Treatment Plant or from Morris Township
10 Treatment Plant, and several of those areas are adjacent to
11 the Great Swamp or upstream. And I think intensive develop-
12 ment in those areas would have an aggravating effect, I think,
13 on deterioration of the Great Swamp based upon what I have
14 read from the various documents both at the State level and
15 the local and County levels.

16 Q In what manner could they have an adverse
17 impact on the Great Swamp?

18 A Through non-point source pollution, through sedi-
19 mentation, through perhaps intensification of runoff if
20 not handled properly, which can also be a detrimental impact.

21 Q Are there any control techniques such as
22 retention ponds that could eliminate these potential impacts
23 on the Great Swamp?

24 A I think there are in terms of surface drainage and
25 also in terms, probably in terms of subsurface drainage there

1 are some techniques that could be utilized. You'd have to
2 look at each specific site, but in terms of drainage, yes,
3 there are certainly techniques that could be developed.

4 Q Isn't that correct with each open vacant site
5 in Harding Township as far as determining the actual environ-
6 mental impact you'd have to do a site specific engineering
7 analysis to determine actually what the environmental impact
8 of a particular development proposal would be?

9 A Yes. I think so. Particularly if you're talking
10 about an intensive development. If you're talking about
11 a low-density development, I don't think there's quite the
12 concern, but certainly whenever you're talking about exten-
13 sive development, when considerable site coverage and
14 stripping of soils and vegetation and so on, you would have
15 to consider that.

16 Q Now, in terms of the present zoning ordinance,
17 my understanding is that it speaks in terms of one single-
18 family detached homes on three acres.

19 A Yes.

20 Q Is there any limitation, however, as far as
21 impervious coverage or building square footage in the zoning
22 ordinance which would limit the amount of land coverage
23 that you would actually have even though you're building a
24 single-family detached home?

25 A I don't remember that specifically. I don't believe

1 so.

2 Q Would that have any relevance to determining
3 the environmental impact of the construction authorized by
4 the present zoning ordinance the amount of impervious ground
5 surface coverage that would be built in a single-family de-
6 tached home?

7 A I don't think the amount -- let's say, for the
8 typical single-family home with a driveway on a three-acre
9 lot, the amount of impervious soil you're talking about
10 would be a very, very small fraction of the site. The
11 critical problem on a single-family detached home in
12 Harding Township or any other area where you're talking
13 about large lots, is the capability of that specific site
14 for on-site septic systems; and, you know, septic disposal
15 systems. That seems to me to be the more critical problem.

16 I think that you probably handle most of the drainage
17 and runoff and so on and that's generally a very limited
18 amount of area. There are exceptions, obviously, but in
19 general I think that's not a severe problem on a large
20 acreage because you usually have a large buffer area around
21 the dwelling units.

22 MR. QNSDORFF: No further questions.

23 MR. REID: No questions.

24 (Depositions were concluded at 4:45 p.m.)

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I, NANCY RICH, a Notary Public and Certified
Shorthand Reporter of the State of New Jersey, do hereby
certify that prior to the commencement of the examination
THOMAS A. THOMAS 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 steno-
graphically by and before me at the time, place and on the
date hereinbefore set forth.

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 em-
ployee of such attorney or counsel, and that I am not
financially interested in the action.

Nancy Rich
Notary Public of the State of New Jersey

My Commission expires January 12, 1982

DATED: April 9, 1980

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