

CN - Orego Farms v. Two Cotts Neck

6/18/80

~~pages~~ Transcript of proceedings: Witness:

- Goodwin

- Wey

+ exhibits marked for

P-143

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ROBY GOODWIN

by Mr. Frizell

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HENRY NEY

by Mr. Frizell

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EXHIBITS MARKED FOR IDENTIFICATION

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1 MR. SAGOTSKY: At this point, I'd
2 like to add that this evening there was filed with me
3 in the matter of Orgo Farms and Greenhouses, Inc., an
4 application for variance a certification of the
5 reading of the transcript and listening to the
6 recording of the special meeting of May 29 as follows:
7 I, Gregory Brennan, a member of the Board of
8 Adjustment of the Township of Colts Neck, was not
9 present at the special meeting in the buffer matter
10 held at Colts Neck Township Hall on May 29, 1980. I
11 do hereby certify to the Colts Neck Township Board of
12 Adjustment that on the eighth and ninth day of June,
13 1980 I have read a typewritten transcript and
14 listened to the recordings of the May 29th meeting of
15 the proceedings of the special meeting of May 29th,
16 1980 as furnished by the State Shorthand Reporting
17 Service. Signed, Gregorory J. Brennan -- Gregory L.
18 Brennan, dated June 12th 1980.

19 This now is in my possession,
20 meaning the possession of the attorney for the Board
21 of Adjustment, Samuel S. Sagotsky, and will be filed
22 by the Clerk of the regular meeting as a part of the
23 proceedings to be used to qualify Mr. Brennan in time
24 for voting.

25 THE CHAIRMAN: Thank you. The

1 other members will certify as soon as they have
2 qualified themselves. I'd like to read from the
3 exhibit A-7 as a refresher to everyone here as to the
4 exact reason why this variance is being requested,
5 since the original application was not complete and
6 stated why they were requesting the variance.
7 contained in their proposal of the Colts Neck Village
8 Planned Unit Development. They have a use variance
9 request; a use variance by the Colts Neck Zoning
10 Board of Adjustment is requested in order to permit
11 the Colts Neck Village Planned Unit Development to be
12 developed in the present A-1 zone. In order for the
13 Zoning Board of Adjustment to act favorably on this
14 request it must determine that there exists special
15 reasons which allow it to grant a use variance and
16 adverse impacts, if any, are mitigated or not
17 substantial or unreasonable. The Applicants believe
18 that the four reasons listed below constitute the
19 special reasons which require the granting of the
20 requested variance.

21 Special reason number one, the
22 Colts Neck Village proposal satisfies the July 3,
23 1979 decision of the Superior Court of New Jersey,
24 Monmouth County, that has mandated that Colts Neck
25 Township must provide the least cost housing in a

1 variety of housing types.

2 Two, that there is a demonstrated
3 need in Monmouth County and Colts Neck Township for
4 the type of housing proposed in the Colts Neck
5 Village Application.

6 Three, that the 221 acre site of
7 the Colts Neck Village proposal is particularly well
8 suited for the Planned Unit Development.

9 And, four, that the proposal will
10 generate no "unreasonable adverse impacts".

11 I'd also like to remind the Board
12 and the Applicant that Judge McGann has asked that
13 both be very careful that they do not conduct this
14 hearing in an adversary relationship. We're here to
15 assure everyone that the Board certainly will not act
16 in an adversary manner. I certainly would hope that
17 the Applicant would not either.

18 We have on file a letter to the
19 Board from our Counsel which I think should be read
20 at this time and we discuss that to which it pertains
21 and we act on this now before we start the actual
22 hearing. And I'd ask our secretary, Mr. Brennan, if
23 he might read the letter and the proposal.

24 MR. BRENNAN: A letter from the
25 law offices of Samuel S. Sagotsky addressed to the

1 Board of Adjustment, Township of Colts Neck, dated
2 June 2, 1980, re: Orgo Farms and Greenhouses, et al.,
3 Colts Neck.

4 "Dear Board Member: The enclosed
5 copy of amendment was offered at the conclusion of
6 Mr. John Rahenkamp's testimony at the special meeting
7 May 29, 1980.

8 "I have since the meeting had an
9 opportunity to study it more fully and find that it
10 contains various substantial modifications in the
11 original application. It was noted as A-7A and was
12 not within the ruling of acceptance by Judge McGann
13 on April 24, 1980.

14 "The Adjustment Board should
15 consider that these changes should have been filed in
16 advance as part of the application and that all
17 requests in said A-7A should be shown not only in a
18 proper application but for site planning and for
19 deliniation on maps. The public should have a chance
20 to examine these proposed changes and notice to all
21 parties within 200 feet of the area should have
22 covered these changes.

23 "I advise that the Board consider
24 the proposed amendment very seriously and consider
25 rejection of the same.

1 "Very truly yours, Samuel
2 Sagotsky."

3 A copy of the letter referred to
4 is dated May 29, 1980, addressed to the Chairman of
5 the Board of -- Zoning Board of Adjustment of Colts
6 Neck Township.

7 "Dear Mr. Chairman: The
8 following list includes the revisions to the Colts
9 Neck Village land use plan since the last submission,
10 September 10, 1979.

11 "1. A small parcel has been
12 reserved in the northeast corner of the of the site
13 along route 537 for a commuter bus stop and related
14 services including a nursery school, convenience food
15 store and professional office space.

16 "2. The parcel adjacent to the
17 bus stop is now designated as patio homes instead of
18 in combination with town houses.

19 "3. Multiplexes (duplexes and
20 quadraplexes) have been eliminated entirely from the
21 range of housing types and replaced by a comparable
22 number of townhouses.

23 "4. The collector loop road has
24 been realigned to include the proposed road on the
25 township master plan, which connects the site from

1 route 34 to the eastern portion of the site. It has
2 been realigned from the township master plan to
3 conform to the character of the Colts Neck Village
4 collector roads.

5 "5. The commercial area on route
6 34, where the township master plan road connects, has
7 been eliminated for this submission.

8 "6. The Jersey Central Power and
9 Light Company easement is shown at its true width of
10 225 feet instead of the assumed width of 155 feet
11 previously shown, which will increase the open space.

12 "7. The commercial-office area
13 above the previously shown commercial area has been
14 eliminated. Subsidized housing, previously
15 designated as senior citizens' housing, has been
16 shifted into the area between the property boundary
17 and the electric company's easement. Instead of the
18 previous 50 low-rise units, the subsidized housing
19 has been increased to 120 mid-rise units. This
20 allows for the greater need of subsidized housing, and
21 makes it more economically feasible. The additional
22 70 units increases total number of units from 1067 to
23 1137.

24 "8. Townhouses have been added to
25 the parcel where senior citizens' housing originally

1 occurred.

2 "9. The loop road through the
3 garden apartment/condominium parcel along route 537
4 has been eliminated. This will discourage through-traffic
5 and create a less congested and more private
6 development for the residents. Circulation will
7 occur through the parking areas and entrances will
8 still occur at both ends of the complex along the
9 collector road and at the single family area.

10 "10. At the southwest corner
11 where the commercial area is located, the townhouse
12 parcel to the northwest has been slightly reduced to
13 allow for greater separation of uses.

14 "11. Two of the areas previously
15 designated as open space have been referred to as
16 detention ponds-utility areas. This is a functional
17 use and will not affect the character of the open
18 space.

19 "12. Other minor revisions in
20 shapes and sizes of the various parcels have occurred
21 due to the realignment of the collector roads.

22 "The revisions listed above are
23 minor in scope, and the conceptual locations of
24 housing types remain consistent with the land use
25 plan previously submitted for Colts Neck Village.

1 "Sincerely, John Rahenkamp and
2 Associates, Inc., Wayne Lucas."

3 THE CHAIRMAN: Is Mr. Lukas here
4 by any chance to explain this letter?

5 MR. FRIZELL: No, Mr. Lukas is
6 not here.

7 THE CHAIRMAN: Are you aware of
8 this letter?

9 MR. FRIZELL: Of course I am. I
10 submitted it last week, the last time I was here.

11 THE CHAIRMAN: I'd ask the Board
12 if they want to consider the letter and accept it as
13 is or take advice of Counsel and ask the Applicant to
14 submit a proper application and also for site
15 planning for deliniation on the map?

16 MR. FRIZELL: Let me --

17 MR. SAGOTSKY: May I just add, it
18 would involve a vote this evening of whether or not
19 you will reject this amendment or not, as part of
20 what was just stated by our Chairman, Mr. Schrumpf.

21 THE CHAIRMAN: Mr. Frizell?

22 MR. FRIZELL: Well, since I had
23 no notice of Mr. Sagotsky's advice, I'm sure you'll
24 give me a few minutes to look at the law on this.

25 THE CHAIRMAN: Fine. While you

1 are referring to that and researching the law on it,
2 do the members have any comment?

3 MR. DAHLBOM: I'd like Mr.
4 Frizell to give us a definition of what he means by
5 "subsidized housing".

6 MR. FRIZELL: Let me go back a
7 minute about the letter. Land Use Law, Section
8 40:55D-10(b).

9 MR. SAGOTSKY: 40:57?

10 MR. FRIZELL: D-10(b), in part:
11 Any maps and documents for which approval is sought
12 at a hearing shall be on file or available for public
13 inspection 10 days before the hearing date of the
14 hearing during normal business hours in the offices
15 of the administrative office. The Applicant may
16 produce other documents, records or testimony at the
17 hearing to substantiate or clarify or supplement the
18 previously filed maps and documents.

19 Now, the maps that we submitted
20 to the Planning Board, pursuant to Mr. Sagotsky's
21 request, were the maps that this letter refers to;
22 that is to say, that A-7 that was submitted to the --
23 excuse me -- to the Zoning Board of Adjustment
24 contained, as Mr. Rahenkamp testified, contained all
25 of these revisions. That's what this particular

1 document is.

2 MR. SAGOTSKY: Referring to A-7A?

3 MR. FRIZELL: Referring to A-7A.

4 Excuse me. I'm not sure. A-7, I think, was the
5 written description.

6 MR. SAGOTSKY: A-7 was the
7 original. A-7A was your amendment.

8 MR. FRIZELL: Yeah, all right.
9 The map you see, the map itself, had been submitted.
10 The application forms are the same and not changed.
11 What this is, is a verbal description, clarification,
12 of what is on the maps. And that's all it is. And
13 we submitted it at the hearing because it clarified
14 Mr. Rahenkamp's testimony, and what he was testifying
15 about. As I said, the map itself contained all these
16 revisions. It's not as if this came in after the map
17 came in. That's not the way it happened. It's not
18 as if the map came in after this came in. What we
19 have done here is pursuant to the law, in that we
20 have clarified a previously filed map for the Board.

21 It was the first hearing. I
22 don't understand how it would be a different question.
23 Issue if we had hearings already on a map which was
24 then subsequently changed. But, in any event, let me
25 say it's not in my view the prerogative of the Board

1 to reject things that are submitted by the Applicant.
2 You consider them for what they're worth. This is a
3 clarification of what we're applying for here. We
4 are the Applicant before the Board and we're simply
5 presenting as much information about this application
6 as we can, including A-7A. And it's there for your
7 assistance so you can go through it and if you were
8 reading A-7 you might want to refer to A-7A because
9 it does clarify some of the things in A-7 and does
10 supplement it.

11 The only change that makes any
12 difference really in A-7 is the change in the number
13 of units for the subsidized housing. Now, the reason
14 for that change I'm not going to testify about. But
15 we will get to that. That is as is set forth there.
16 It was necessary to add 70 units because the 50
17 low-rise units, upon close examination, were not
18 considered to be sufficient or adequate for achieving
19 the goal that was hoped to be achieved by that
20 section; that is, the subsidized section. But the
21 basic plan remained the same. By looking at it, you
22 would almost not be able to tell the difference
23 between the two. As you were here last week, the
24 area -- the areas on the map that this refers to were
25 simply marked. It had previously been marked "senior

1 citizens" and this time it was marked "subsidized
2 housing", which could be senior citizens,
3 incidentally. But I don't want to get into testimony
4 about the thing.

5 Now, I can't imagine a situation
6 where Judge McGann would have, if he had reviewed
7 this particular letter -- would have felt that that
8 made any difference in the application form itself.
9 If anything, it makes them more clear and more
10 complete than they were before when he looked at them.
11 So I really don't understand this.

12 MR. BRENNAN: Question, Mr.
13 Sagotsky. After the affected property owners were
14 notified they would have an opportunity to come into
15 Town Hall and examine the maps?

16 MR. SAGOTSKY: If this amendment
17 were filed when it should have been and the notices
18 then went out after the application was filed,
19 including this request for the 70 extra homes, if
20 that had been done, then the notice would have been
21 proper to all concerned, who could have come in to
22 examine the maps, including the request for 70 other
23 homes, including the requests as contained in A-7a.

24 MR. BRENNAN: Did the maps filed
25 with the Township reflect the clarifications, to use

1 your phrase?

2 MR. FRIZELL: Yes.

3 MR. SAGOTSKY: No, they did not.

4 MR. FRIZELL: Yes, they did.

5 Those are the same maps. This is a written
6 clarification of what had been submitted on those
7 maps that had already been brought down because those
8 were the only maps that we filed since Judge McGan's
9 Order. Those are the maps. Those maps were not
10 changed. Those maps -- what I asked Mr. Rahenkamp's
11 office to do was to take it and describe it verbally
12 because there had been some minor modifications in
13 the map since Judge McGann -- or since the original
14 application had been filed. I asked him to verbally
15 set it forth so the Board could see in black and
16 white what those modifications were. But those were
17 the maps that were on file here ten days before the
18 hearing.

19 MR LARKIN: Mr. Frizell, could we
20 have a copy of the map? Is it A-7 are we talking
21 about?

22 MR. FRIZELL: No. I think it's
23 A-3.

24 MR. SAGOTSKY: The amendment was
25 to A-7. You proposed the amendments to A-7.

1 MR. FRIZELL: The maps -- the
2 maps that were filed. This is a clarification of the
3 map that was filed ten days before the hearing.

4 MR. BRENNAN: A-3 is the plot
5 plan.

6 MR. FRIZELL: That's it.

7 MR. LARKIN: Do we have a copy of
8 that here?

9 MR. SAGOTSKY: I suggest that the
10 Planning Board could also help in clarifying this
11 question.

12 MR. FRIZELL: What does the
13 Planning Board have to do with this?

14 MR. SAGOTSKY: They were given
15 the privilege to examine beforehand, under the
16 Ordinance.

17 MR. FRIZELL: If you want to
18 swear someone in from the Planning Board to testify,
19 I have no problem with it, at the end of the hearings.

20 MR. LARKIN: This is the area you
21 are talking about as far as the subsidized housing?

22 MR. FRIZELL: Yes, sir. This is
23 the map that was on file.

24 MR. LARKIN: This says, "reserved
25 bus stop". This doesn't talk about any of the things

1 that are in here; convenience food store. The people
2 who live in this area would certainly be under the
3 impression, I think, looking at this map that you are
4 talking about an area reserved for a bus stop. And
5 this is a clarification of that particular area which
6 would include convenience store, nursery school and
7 professional office space. So this area here
8 certainly was not, I don't believe, defined as
9 anything more than just a bus stop -- unless it's on
10 one of the other maps further down.

11 MR. FRIZELL: Well, all right.
12 We can talk about that. Let's see what this is.

13 THE CHAIRMAN: First of all,
14 let's clarify. Where is this identified, entered
15 into evidence and called exhibit so-and-so? This map,
16 right here, this is the original one that Judge
17 McGann ordered us to accept into evidence.

18 MR. FRIZELL: It is not.

19 THE CHAIRMAN: It is not?

20 MR. FRIZELL: No, it is not
21 necessary --

22 MR. FESSLER: Here is the copy of
23 the map.

24 THE CHAIRMAN: I want the one
25 that Judge McGann ordered us to consider.

1 MR. LARKIN: This is the
2 appropriate sheet.

3 MR. SAGOTSKY: I had it marked.
4 I had made a mark, "original". This is the original.

5 MR. FESSLER: That is not the one
6 that was in Court.

7 MR. SAGOTSKY: There is a
8 duplicate of this in Court. This is the print that
9 was filed before this Board as part of the
10 application.

11 MR. FRIZELL: That's right.

12 MR. LARKIN: There was no
13 indication as far as the bus stop.

14 MR. FRIZELL: That's townhouses.
15 That's what it is. But it was deemed better to put a
16 bus stop in there for some reasons that I'm not going
17 to testify about but the engineers and the planners
18 would testify about that.

19 MR. LARKIN: The subsidized
20 housing on this one appears to be larger than it is
21 on this one

22 MR. FESSLER: The difference
23 between those two maps is exhibit 7A?

24 MR. FRIZELL: That's right.

25 MR. SAGOTSKY: This is the one

1 that was originally filed at the time, in the
2 beginning. This is part of the original application.
3 I'm pointing to the one that is marked and it can be
4 identified by some legend there.

5 MR. FRIZELL: Mr. Sagotsky, there
6 is no question about that.

7 MR. SAGOTSKY: And that's the
8 subsequent map then that should show the differences
9 in line -- I'm pointing to another legend in front of
10 Mr. Tischendorf.

11 MR. FRIZELL: Yes.

12 MR. SAGOTSKY: That was in line
13 with the alleged clarifications as you called them?

14 MR. FRIZELL: This is the map
15 that was filed with the Board before the last hearing.
16 This map that you are referring, which is unmarked at
17 this time but marked in evidence at the trial, is the
18 map originally filed. This was filed ten days before
19 the last hearing with those modifications.

20 MR. LARKIN: Was there any point
21 where the number of units in each section or in total
22 was shown?

23 MR. SAGOTSKY: Yes, in one of the
24 exhibits filed by Mr. Frizell there is a statement as
25 to how many units would be in the project. I believe

1 it alleged 1,035 and that is why in this amendment
2 A-7A it is now alleged that he wants in his
3 application, I believe, 1,070.

4 MR. LARKIN: 1,137 up from 1,067

5 MR. BRENNAN: 1,067 to 1,137

6 MR. FESSLER: The project
7 description discusses the old map not the new one.

8 MR. SAGOTSKY: The project
9 description was part of the original application

10 MR. LARKIN: And still is?

11 MR. SAGOTSKY: And still is.

12 MR. LARKIN: So this refers to
13 this map?

14 MR. SAGOTSKY: Yes.

15 MR. FRIZELL: That's correct.

16 MR. LARKIN: And this is the
17 clarification which would amend this?

18 MR. FRIZELL: Yes. Well, yes, it
19 would describe this, yes.

20 MR. SAGOTSKY: But the letter --

21 MR. FRIZELL: A-7A would describe
22 this is A-3, I believe, is that correct?

23 MR. TISCHENDORF: This is part of
24 the application, which is A-5, the land use plan.

25 MR. LARKIN: I'm reading from

1 page 19 of P-1 -- is that correct, P-1?

2 MR. SAGOTSKY: P-1, project
3 description.

4 MR. LARKIN: And this says 1,076
5 units. Maybe it's transposed.

6 MR. FRIZELL: What does that say?

7 MR. LARKIN: 1.067.

8 MR. FRIZELL: That's a
9 transposition.

10 MR. LARKIN: That should be 1,076
11 up to 1,137.

12 MR. FRIZELL: That's correct.

13 Let me say in general that in terms of all these
14 modifications, I expected in the conduct of this
15 hearing and I continue to expect in the conduct of
16 this hearing, that based on what the environmentalist
17 says, based on what the traffic man said, based on
18 what the planners might have testified about the
19 different people, that there may be further
20 modifications in these plans. It's the nature of the
21 application.

22 MR. SAGOTSKY: If we say it's
23 1,076, the difference would be 61 homes. If we say
24 1,067, the difference would be 70. The amendment
25 says 70, does it not, then if you make your

1 subtraction --

2 MR. LARKIN: It should say an
3 additional 61 units.

4 MR. SAGOTSKY: If 70 is correct,
5 then the original should be the 67 from 1,067 to
6 1,137 to make it 70. So the 1,067 should be correct.

7 MR. LARKIN: I think what we have
8 here, we're going from 1,076 plus another 50 units or
9 another 70 units. You are going up 70 units?

10 MR. FRIZELL: No, going to 1,137.
11 His arithmetic is wrong.

12 MR. LARKIN: This is going 50 to
13 120. Do you mean to go up 70 mid-rise units? Your
14 A-7A said 70.

15 MR. LARKIN: It's either 1,076 --

16 MR. BRENNAN: It's 1,076 in the
17 Lazarus appraisal. I'm sorry, feasibility study.
18 And the sub-total adds up to 1,076 units.

19 MR. LARKIN: So if you go up
20 another 70, then you are talking about --

21 MR. BRENNAN: 146.

22 MR. MARKS: Gerald Marks. If I
23 might?

24 THE CHAIRMAN: Let's -- I think
25 what we should do, Counsel, is if we have anybody

1 from the Planning Board that needs to be sworn --
2 attorneys testifying do not have to be -- would you
3 do that? Then if there is any testimony, it's sworn
4 testimony.

5 MR. LARKIN: Before you do that,
6 if I can just --

7 MR. FRIZELL: 1,137 is the number.

8 MR. LARKIN: So you are going up
9 61 units?

10 MR. FRIZELL: Seventy subsidized
11 units then losing 90.

12 MR. LARKIN: Okay, fine. So the
13 total is 1,137.

14 MR. FRIZELL: So everything he
15 said in the letter is right except the total.

16 MR. TISCHENDORF: Before we swear
17 anybody in, Mr. Sagotsky, maybe I can ask you the
18 question so -- just to take Mr. Frizell's point one
19 step further. He's indicating that there might be
20 further adjustments to these documents as we go along
21 with the environmental things and so forth. I think
22 if we're to have to make some kind of a ruling prior
23 to this -- in other words, if we can't accept this,
24 can we accept other modifications? If we do accept
25 this, must we then accept additional modification?

1 Again without notification.

2 MR. SAGOTSKY: I'd say that in
3 the future, anything that's offered without previous
4 notice -- so that if I had no chance for previous
5 study -- then I'd ask if the occasion requires and
6 that depends on the circumstances -- then I'd ask
7 that the matter be reserved and I be given an
8 opportunity to study it and give you a report on the
9 question. So if it's a question of whether it's a
10 substantial alteration or whether it's so serious
11 it's a new application, I can -- I could study that
12 and advise you and you make your decision accordingly.

13 MR. NIEMANN: Mr. Sagotsky, do
14 you have an opinion if this amendment qualifies as a
15 substantial alteration?

16 MR. SAGOTSKY: In my opinion it's
17 a substantial modification and it requires proper
18 notice and proper application and it does not come
19 within the definition of clarification. You can't
20 argue clarification of 1,067 or 1,076 units to 1,137
21 and other matters therein contained. There are a
22 number of changes referred to therein which could be
23 substantial; a change of a commercial is shown and
24 other matters therein referred to, in my opinion,
25 were substantial.

1 THE CHAIRMAN: The point I would
2 like clarified, Mr. Frizell was very clear saying
3 it's implied in the application that there will be
4 changes and they should be accepted. I'm not too
5 sure of that. I'd like an opinion on that, that the
6 application does imply that we are to accept changes.

7 MR. SAGOTSKY: Well, I'd have to
8 rule on it as the situation arises. He may offer
9 something -- Mr. Frizell may offer something that
10 comes within the classification he's described. He
11 may indicate something is for clarification. If the
12 Board thinks so, fine. If the Board --

13 MR. LARKIN: We have to ask you
14 to rule each case?

15 MR. SAGOTSKY: Well, it would be
16 your decision. I could give you my opinion but it
17 would be your decision.

18 MR. NIEMANN: Mr. Sagotsky, do
19 you have the statute available?

20 MR. SAGOTSKY: To all concerned,
21 if I sound like I'm shouting, it's because I'm trying
22 to amend the critique that's been made upon the
23 subject.

24 MR. MARKS: Mr. Chairman, I'd
25 like --

1 THE CHAIRMAN: Mr. Marks?

2 MR. MARKS: I would like a
3 clarification on the plat where we're currently
4 looking at. I think this is A-3?

5 THE CHAIRMAN: It doesn't quite
6 identify out as A-3.

7 MR. DAHLBOM: I think it is A-3.

8 THE CHAIRMAN: It should be A-3.

9 MR. MARKS: Is this the plat that
10 was on file within ten days of the hearing?

11 MR. SAGOTSKY: Try to identify it
12 with some legend.

13 MR. FRIZELL: A-3.

14 MR. DAHLBOM: Land use map, A-3.

15 MR. MARKS: Was this land use map
16 on file at the Clerk's office ten days prior to this
17 hearing?

18 MR. FRIZELL: Yes.

19 MR. MARKS: Do we have any
20 markings from the Clerk's office indicating that this
21 was the case? Is it customarily stamped in or --

22 MR. TISCHENDORF: Something here
23 in the corner. It possibly says, received 5/15/80.
24 I can't read it.

25 MR. SAGOTSKY: Well, this is

1 unusual. This is an unusual application. Our usual
2 application has a date and when it's discussed and
3 filed and so on. This is part of ten or 11 exhibits
4 which constitute an entire application.

5 MR. MARKS: When were the
6 exhibits filed? My concern is that this map is
7 different from the prior map.

8 MR. SAGOTSKY: Let's identify the
9 prior map. It has a legend. I want to identify your
10 prior map, right there. Is this the prior map? I
11 had a little mark, "original", on the prior map.

12 MR. FRIZELL: Is there any
13 disagreement? You want to find out whether or not
14 this particular map was on file ten days -- I don't
15 know how you are going to find out by referring to
16 that map.

17 MR. SAGOTSKY: It's different
18 from the original map.

19 MR. MARKS: That's the original
20 application that went up to Judge McGann; is that
21 correct?

22 MR. FRIZELL: Before we take too
23 much time --

24 MR. SAGOTSKY: The original map.

25 MR. FRIZELL: Whether this

1 particular map -- if it's necessary, we submitted
2 this map. This is the map that we brought down ten
3 days before the hearing to the Zoning Board of
4 Adjustment and filed here. This map, A-3, not the
5 one that went up no Judge McGann. It's that simple.

6 MR. LARKIN: I think we
7 established what Mr. Frizell is stating.

8 MR. FRIZELL: I'm representing
9 that this is the map that we submitted ten days
10 before that hearing knowing that this particular map
11 had some modifications to the original map which had
12 been -- after all, the original maps were here for
13 some time prior to that, as having been submitted on
14 September 10, 1979. Therefore, ten days before the
15 last hearing we brought this package down.

16 MR. MARKS: I'm satisfied. I was
17 confused as to whether one map was submitted and the
18 other one changed --

19 MR. FRIZELL: The other.

20 MR. MARKS: -- prior to the ten
21 day submission.

22 MR. FRIZELL: No, it was not
23 changed. Other maps remain. It's the same A-1 and
24 A-2 did not change. All those are the environmental
25 base map. I think the question is, what is the

1 effect of having submitted this map ten days prior to
2 the last hearing. It's that simple.

3 MR. SAGOTSKY: And which was not
4 the map approved by Judge McGann at the April 24th
5 hearing. That's the issue.

6 MR. FRIZELL: That's correct.
7 That is a different map and we have amended it and
8 clarified it.

9 THE CHAIRMAN: I think it's
10 pretty simple. Mr. Frizell stated he delivered it.
11 If we can just find out if that is true and who
12 received it and whether we had it in time to notify
13 the proper parties so that they had a chance to see
14 it.

15 MR. BRENNAN: I think there's an
16 issue that goes beyond that. The map which we are
17 referring to incorporates a bus stop in a portion of
18 that residential area.

19 Clarification may have peculiar
20 meaning under law as opposed to common English. It
21 seems to me you present a bus stop but we not only
22 have a bus stop now but we have expanded uses and
23 changed uses within that particular zone designated
24 as bus stop. So from a traffic viewpoint and from a
25 use viewpoint, I'd consider there to be a substantial

1 change. There are other changes on here that perhaps
2 would, with the proper testimony -- and that is
3 changing the nature of the density from patio to town
4 house or multiplexes to a range -- I'm sorry, to town
5 houses, if the square footage is the same, if the
6 price is the same, if the density has not been
7 changed and if its nearby amenities have not been
8 changed, that might not be a change of substance. I
9 think we ought to go through these things one by one
10 and determine what is significant and what is not and
11 see which way the preponderance of the weight falls.

12 MR. FRIZELL: Let me say just for
13 clarification and Mr. Brennan before -- and not to,
14 however, abuse that word -- just so we don't get
15 confused, A-7a, the written document, was submitted
16 as a clarification of A-3, all right, which was the
17 filed map within the ten days. Okay? So we don't
18 get confused. It's not that this was a clarification
19 itself. This was the submission.

20 Now let me just -- if you want to
21 go through them piece by piece, I'll be grateful.

22 MR. NIEMANN: Mr. Sagotsky, is
23 there a point in time that we have to accept the
24 amendment as substantive or do we have to make a
25 decision on that this evening or before we make our

1 final vote?

2 MR. SAGOTSKY: I believe, as a
3 matter of expediency, this Board may go on with the
4 hearing and come to a decision on this later on in
5 the evening or reserve some time to discuss it. It
6 would seem perhaps more expeditious at this time to
7 go on with the rest of the procedures, see if that
8 can be concluded early enough in the evening so that
9 you may come back to this. It may well be that the
10 testimony will be brief enough so you may be able to
11 do that and then make your judgment accordingly.

12 MR. LARKIN: I would like to
13 propose that that be done so we don't --

14 MR. BRENNAN: I think we would
15 like someone on the Applicant side to address the
16 issues that I raised as to changes in densities,
17 square footage, sales price per square foot, amenity
18 package within that particular package, things like
19 that. The change may be immaterial. I certainly
20 consider clarification number one to be a substantial
21 change and adding additional uses to that particular
22 segment.

23 MR. FRIZELL: I couldn't disagree
24 with you, Mr. Brennan, that the change from
25 residential on that strip to the reserved-bus stop

1 designation was a change from what had previously
2 been submitted. But, see, I don't have a problem
3 with that. We submitted this ten days before the
4 hearing. Anyone who wanted to come down and look at
5 it could come down and look at it and come down and
6 ask questions. If they had come down and asked
7 questions, which they had the ten days, they saw the
8 map. It was previously filed. Mr. Rahenkamp was
9 here to explain it. No questions like that arose.
10 We submitted this A-7A with Mr. Rahenkamp's testimony
11 and if anybody wanted to know exactly what was being
12 shown on that plan, that's why we submitted them.
13 Now, I think, just so we don't get confused, what's
14 shown on the plan is what was filed ten days ahead of
15 time and not the changes. I mean, we didn't change
16 it at the hearing. We changed it ten days before the
17 hearing. We came to the hearing and testified about
18 it and all his testimony incorporated all these
19 changes. All Mr. Kieffer's testimony incorporated
20 all these changes.

21 MR BRENNAN: That may be. But if
22 a person came down here to view the map, he would
23 have seen the designation "bus stop". And the point
24 that I'm making is that I think that you have an
25 expansion of uses in that site that have traffic

1 implications, if nothing else, because you now have
2 related services including -- and the letter doesn't
3 say it -- but you could infer, not necessarily
4 limited to a nursery school, a convenience food store
5 and professional office space. So I'm talking about
6 any person who came in and felt that they were only
7 going to have a bus stop there is now going to have a
8 much larger complex on this site. And I think that's
9 a significant change.

10 MR. FRIZELL: Well, I'd like to
11 deal with the rest of them because, quite frankly, I
12 can't -- that one I have to say you're right.

13 MR. BRENNAN: That's why I'd like
14 to go through these things because while I consider
15 that significant, in the totality of all of the
16 changes, that one significant thing may become less
17 significant.

18 MR. FRIZELL: Well, I view that
19 number one, I think it's number one, because he
20 viewed it as something that wasn't an actual change.

21 MR. SAGOTSKY: When you say "he",
22 you mean? When you say "he", by "he" whom do you
23 mean?

24 MR. FRIZELL: Mr. Rahenkamp.

25 MR. SAGOTSKY: All right.

1 MR. FRIZELL: All right. I'd be
2 glad to go through the numbers.

3 MR. SAGOTSKY: Whatever your
4 decision is. If you want --

5 MR. LARKIN: How long would it
6 take you to go through each one of these points?

7 MR. FRIZELL: I think five
8 minutes. Let me say generally, as to number two,
9 when you are talking about the patio homes instead of
10 "in combination with town houses", these are terms
11 used by planners for particular architectural things
12 there weren't -- you couldn't tell the difference on
13 the previous plan. It said town houses. The
14 difference between a town house and a patio home is a
15 matter of opinion between planners.

16 THE CHAIRMAN: I don't want to
17 interrupt you, Mr. Frizell. I still have a point I
18 want clarified before I go through every one of them.
19 This is addressed to Counsel and I want to be
20 eminently clear on this. This is a changed map,
21 ostensibly submitted ten days before the hearing.
22 Have we met our obligations to the public in
23 notifying them that there have been changes and they
24 have every right to see the changes? If we have not
25 I think we may be subject to suit from individuals in

1 not notifying them. That's the point I'm driving at.

2 MR. SAGOTSKY: Well --

3 THE CHAIRMAN: Did we accept this
4 and did we properly notify all the necessary people
5 that it was a change?

6 MR. SAGOTSKY: In bringing into
7 play one issue that you must decide, when I raised
8 this issue, as I have, I personally was not aware and
9 did not know and I don't know if the Board knew
10 whether or not the changed map that's -- shall we
11 call that A-3?

12 MR. FRIZELL: It is A-3.

13 MR. SAGOTSKY: A-3. I did not
14 know. I don't know if the Board knew that there was
15 any changed map filed in Township Hall. I, as
16 Counsel for the Board, took it for granted that when
17 Judge McGann decided what should be in the
18 application, the Judge decided that what should be in
19 the application was a map other than this A-3, which
20 was produced about ten minutes ago. There are
21 significant changes in the two maps. Now, it's up to
22 the Board as to that. The application, as I know it,
23 did not include these changes either by A-3 or by
24 A-7a in writing. Mr. Frizell now states that he did
25 file a map other than the one that was filed before

1 Judge McGann and that he filed it. And he states
2 that it was here in Township Hall ten days beforehand,
3 so that when his notices went out presumably his
4 notices would cover that map. And, therefore, if you
5 find that that map was filed then, of course, he
6 argues and contends that A-7A in writing clarifies
7 the changes set forth in the new A-3. Am I on target
8 with you, Mr. Schrupf? So it's up to you to make a
9 finding.

10 THE CHAIRMAN: But are we subject
11 to any recourse by citizens of Colts Neck by not
12 notifying them of these changes? I don't want this
13 Board responsible for misfeasance.

14 MR. SAGOTSKY: Mr. Frizell
15 represents that he filed them.

16 THE CHAIRMAN: Did we notify
17 everybody that it changed since the original filing
18 as ordered by Judge McGann?

19 MR. FRIZELL: No one preferred
20 any notices until that map was filed here. That map
21 was filed here on the day that those things were put
22 in the U.S. Mail. The notices went out in the mail.
23 It hit the Red Bank Register the same day and that's
24 the same day that the map was before the the Zoning
25 Board of Adjustment. Failure to give notice is as

1 destructive to the Applicant as to the Board, more
2 destructive. It deprives the Board of jurisdiction.
3 It would be grounds for complete nullification of all
4 the hearings and I appreciate that. I have no
5 problem with it. I filed the map. I'm satisfied
6 with it.

7 THE CHAIRMAN: And the notices
8 went out after this map was filed?

9 MR. FRIZELL: The notices were
10 put in the mail the same day that this map arrived
11 here in Colts Neck.

12 MR. SAGOTSKY: Was mailed or
13 arrived?

14 MR. FRIZELL: Mailed. The law
15 says you have to mail it ten days ahead of time.

16 MR. SAGOTSKY: And you represent
17 that A-3, constituting the amended map was mailed to
18 the Township Hall?

19 MR. FRIZELL: Not mailed, it was
20 hand delivered. The map was hand delivered. The
21 notices to the property owners were mailed by
22 certified mail the same day.

23 THE CHAIRMAN: And proof of
24 service the same day to all those within 200 --

25 Do we have the proof of service

1 that shows that ten days? I think that will satisfy
2 me.

3 MR. SAGOTSKY: Mr. Frizell, you
4 may show that again.

5 MR. FRIZELL: We have proof of
6 service the same day?

7 MR SAGOTSKY: I have no knowledge
8 of any changed maps. I only knew of the map filed
9 before Judge McGann. I have no knowledge that this
10 amended map was ever filed.

11 MR. TISCHENDORF: If I may read
12 from McGann, quote: I will rule for the purpose of
13 initiating the hearing what has been marked here as
14 exhibit P-1 through 10 with the exception of P-4
15 (that's the Colts Neck Zoning Ordinance) does
16 constitute a sufficient filing, a sufficient
17 application under the terms of the appropriate
18 ordinance.

19 So the way I read that is, he
20 says that constitutes a sufficient filing. He did
21 not say that it would not be a sufficient filing if a
22 former map, prior to our hearing again, was replaced
23 by this one. That he didn't address. We might have
24 to judge whether it's still a sufficient filing. He
25 did say it's a sufficient filing with the old map.

1 MR. LARKIN: Could I ask you a
2 question at this point? Are there any other changes
3 from what Judge McGann ruled on to begin with and
4 what was submitted ten days before? As Mr. Sagotsky
5 stated we weren't aware that this was a change. Are
6 there any other changes in any of P-1 or A-1 through
7 13 or however many numbers we have? Are there any
8 other changes?

9 MR. FRIZELL: No. That's why
10 A-7a was submitted, just to summarize those changes.

11 MR. TISCHENDORF: Is there any
12 implication in McGann's Order that we are obligated
13 to only accept the originals or can we accept changes?
14 I mean --

15 MR. NIEMANN: That's been my
16 question.

17 MR. SAGOTSKY: Repeat the
18 question.

19 MR. NIEMANN: Did the Judge
20 restrict our consideration to the map which was
21 introduced into evidence and considered by him when
22 he remanded it back to the Board of Adjustment or did
23 he say that the Applicant could expand and/or amend
24 that application and that map for our consideration
25 at this time.

1 MR. SAGOTSKY: The Judge left
2 that question open. He merely indicated that those
3 ten exhibits constituted a proper application, which
4 I construed to the effect that Mr. Frizell then would
5 not have to come before the Board to argue whether
6 any or all of those shall be considered a total
7 application. That was settled by the Court to
8 obviate that coming before this Board. Now, what was
9 omitted, meaning the amendment, then is a matter of
10 judgment by this Board.

11 MR. FRIZELL: Let me say that
12 during the course of the hearing -- it wasn't part of
13 his Judgment -- but I did -- in fact, Mr. Sagotsky
14 said, "What happens if we want more detail and we
15 want to see another more detailed set of these plans?"
16 I said, "We may proceed on the basis of providing
17 greater detail as we go along in this application."
18 Greater detail is required for certain types of
19 testimony like environmental testimony, and every
20 week here I don't expect -- let me say this, I don't
21 expect to change any use or designations of areas in
22 this application. But there will be greater and
23 greater levels of detail provided to the Board. That
24 pencil mark on A-3 says, "referred 5/15/80 at Board
25 of Adjustment meeting."

1 THE CLERK: Mr. Frizell, it just
2 means Board of Adjustment, not meeting.

3 MR. FRIZELL: 5/15/80 is two
4 weeks before the hearing. The hearing was May 29.

5 MR. DAHLBOM: The Court's ruling
6 also goes on to support Mr. Frizell, I believe, here
7 'cause there's an indication here. The Court: They
8 can't stop you there putting more in -- referring to
9 additional information -- but certainly it's more
10 than adequate as an application. If you want to
11 provide more studies you have a right to do it.

12 MR. FRIZELL: That's what he was
13 referring to. I had made that point. I don't know
14 that my testimony is there.

15 MR. SAGOTSKY: If it's
16 substantial, it's a new application. If it's a
17 clarification, that's something else again. That's
18 where your decision comes in.

19 MR. BRENNAN: At least with point
20 number one there is a change. In the letter
21 designated A-7A and the map designated A-3 shows only
22 a bus stop and this shows other uses at that location.

23 MR. FRIZELL: It says, reserved
24 as bus stop. Like I -- as he said, if you want to
25 deal with the other changes, everything other than

1 those uses as shown on the plan, I can't explain why
2 those particular designation is not shown on the plan.
3 It does say, "reserved-bus stop". Quite frankly I
4 think that those uses are more or less proposed uses
5 for the site. Depending on how you, you know, want
6 to go with this issue I'd proceed on the basis that
7 that the application -- that this particular -- I
8 can't argue with you that that application doesn't
9 tell you that there's a convenience store on that
10 site, for instance. And if that meant that that had
11 to be deleted in order to proceed, I'd have to bring
12 it up to my clients. I'm not going to argue about
13 that. I think everything else we're talking about
14 that's in there is shown on the plan.

15 MR. LARKIN: Except there has
16 been also an increase on the total number of units.

17 MR. FRIZELL: That's what's shown.
18 Those boundary designations are shown on there for
19 subsidized --

20 MR. LARKIN: I'm talking about
21 the total number of units within this complex is now
22 going to be 70 units more than when you originally
23 proposed it.

24 MR. FRIZELL: Yes, that's right
25 but that's -- that is not inconsistent with that map.

1 As Mr. Brennan points out, when you are talking about
2 reserved-bus stop, that's inconsistent with the map
3 because that doesn't give you any idea.

4 MR. SAGOTSKY: Mr. Larkin's
5 question was the 70 isn't shown anywhere on the map.

6 MR. FRIZELL: The application
7 doesn't have any.

8 MR. SAGOTSKY: Your application --
9 one of your exhibits which constitutes a part of your
10 application does show the number that you are
11 applying for.

12 MR. LARKIN: That's the first one
13 we just handed back to Mrs. O'Connor.

14 MR. SAGOTSKY: I think in exhibit
15 P-1.

16 MR. FRIZELL: My position is --
17 on that issue -- is that A-3, as filed, made those
18 changes. You see, a Planned Unit Development by its
19 nature -- I mean, when the law -- as the law existed
20 for 12 years in this state, a Planned Unit
21 Development never even showed anything near the level
22 of detail that we showed here. It designated
23 different areas for different uses and the Applicant
24 came in with final approval plans only after that
25 initial plan had been approved. That is designating

1 land uses. He would come in with, for instance,
2 subsidized housing at 150 units, 20 units, whatever
3 it was at a final stage. What we tried to do is give
4 enough information about those land uses and what
5 will be on them as early as possible.

6 MR. LARKIN: In other words, if
7 he came in in the past with that of plan and you
8 wanted to talk about 1,000 units and at the end it
9 held 2,500 units because of higher density of other --

10 Thanks.

11 MR. FRIZELL: There was a five
12 percent -- there was a five percent leeway between
13 the tentative --

14 MR. LARKIN: What you talked --

15 MR. FRIZELL: -- the tentative
16 plan and final plan. It basically talked about types
17 of uses; which by its nature gave you some parameters
18 as to how many units were going to be in there. And
19 typically there would be some type of information
20 about the uses. But it was built in the statute,
21 there was a five percent leeway one way or another.
22 Because what you would approve here -- just to put
23 things in context -- to what you approve or don't
24 approve, it's very possible that the numbers of units
25 in this project in a particular section may change.

1 Now our feeling is we cannot bring in more units than
2 what we set forth in the proceedings. We may have --
3 it may be necessary to bring in less units at some
4 particular stage because --

5 MR. LARKIN: I'm sorry. Would
6 you say that again? I didn't follow that.

7 MR. SAGOTSKY: And then I want to
8 add to that.

9 MR. FRIZELL: It's my feeling and
10 I've advised my client that he cannot bring more
11 units than he has set forth here in these proceedings.
12 But it may be necessary to bring in less units at
13 some stage. But that would happen at a final
14 approval.

15 MR. LARKIN: What number are you
16 referring to 1,076 or 1,137?

17 MR. FRIZELL: 1,137.

18 MR. LARKIN: Because that's more
19 than five percent right there versus what was in the
20 original application.

21 MR. FRIZELL: But this is still a
22 tentative application phase. It wouldn't be unusual --
23 I mean, if a particular type of a unit had a problem,
24 under certain circumstances in a particular section,
25 for instance environmentally, the examination was

1 that one of these sections that is designated for
2 garden apartments was at a fairly high density was in
3 one of those areas that Mr. Rahenkamp said were in
4 the woods we would have to reduce the number of units.
5 But that's why the 1,137. We have to start with
6 1,137.

7 MR. LARKIN: So 1,137 is what you
8 are stating right now would be the maximum number of
9 units and there will not be a further amendment which
10 would increase it again?

11 MR. FRIZELL: No.

12 MR. SAGOTSKY: At this point
13 there has been some litigation over the points that
14 are being raised tonight. The point being that if
15 there should be an approval it is to be based on the
16 application. And there has been a case where the
17 builder went out and he built other than what was in
18 the application, more than what was in the
19 application. And to settle the issue they had to go
20 back to what was in the application, what was the
21 decision and so that's another point that has bearing
22 that I'm making now, that has bearing upon your
23 decision as to whether there is a substantial
24 amendment or not. Because it is based on the
25 application for the units involved and all other

1 elements; that should there be a grant, should there
2 be a consent, then that will govern perhaps
3 thereafter no changes from that point on unless some
4 important issue arises as has been pointed out by Mr.
5 Frizell -- or some unusual issue, shall we say.

6 MR. FRIZELL: Let me just briefly
7 address the key issue on this number of units.
8 Originally there were 50 low-rise senior citizens
9 units shown. I'm not going to testify but I'll just
10 tell you what the testimony would tend to show, that
11 50 low-rise senior citizens units is not a marketable
12 product would not work. One hundred twenty units of
13 subsidized housing on that site as shown as enlarged
14 would provide the subsidized housing that we had
15 hoped we could provide in the form of some senior
16 citizens housing and would be economically feasible.
17 That is, it would be a product that could be
18 developed. And that's why it was changed, in order
19 to meet that subsidized housing need. The subsidized
20 housing anticipated on that site is 120 units.

21 MR. DAHLBOM: Could you define
22 what you mean by "subsidized housing"?

23 MR. FRIZELL: Subsidized housing --
24 I don't want to testify -- just to give you an idea
25 of what -- there would be witnesses about this --

1 subsidized housing can take the form -- many
2 different forms. It could be senior citizens housing.
3 Basically its programs are Section 8, Section 235,
4 Section 8 being a rental subsidy, Section 235 being a
5 subsidy to help someone purchase a unit. The basic --

6 MR. DAHLBOM: It's subsidization
7 by some other unit?

8 MR. FRIZELL: Yes. The basic --
9 for instance, a family below certain income ranges
10 should not pay more than 25 percent for -- in income --
11 for their housing. You either help them buy it and
12 lower the mortgage to the point where it's 25 percent
13 of his income or you can simply subsidize the rents.
14 That's really for the lowest end of the subsidized
15 range.

16 MR. SAGOTSKY: In a neighboring
17 municipality we have a large four-story apartment
18 house type complex that houses numerous people who
19 are permitted to pay different rents based upon their
20 income and the rents are subsidized by the Government.
21 I think that may be included in the explanation of
22 Mr. Frizell. I believe he covers that, too.

23 THE CHAIRMAN: I think we're at a
24 stage where we should consider each one of these
25 items in the letter in question and ask Mr. Frizell

1 to explain them as Mr. Brennan has requested.

2 MR. BRENNAN: You might want
3 someone with some more technical background, Mr.
4 Frizell.

5 MR. FRIZELL: He was here. Well,
6 let me go down them and if we do need more technical
7 background I'll try to find him. I think number one
8 is self-explanatory.

9 THE CHAIRMAN: The net result,
10 Mr. Frizell, is we're trying to rule on Mr.
11 Sagotsky's recommendation to us and proceed.

12 MR. FRIZELL: With the
13 understanding, as Mr. Sagotsky said, he didn't
14 realize when he wrote the letter that A-3 had been
15 submitted ten days ahead of time.

16 I'll be quite frank. If A-3 had
17 not been filed ten days ahead of time, I wouldn't
18 have a position.

19 MR. TISCHENDORF: Regarding
20 number one, it would be my interpretation that we
21 would not be approving a nursery school or
22 convenience food store or professional office space.

23 MR. FRIZELL: That's correct.
24 You would be approving the area which was reserved
25 and on which a bus stop would be located. Nobody

1 would build a three acre bus stop. The designation
2 should have said "commercial/bus stop" and then the
3 natural questions would be what commercial are you
4 referring to in that stage and then this would have
5 been a clarification. But it's not.

6 Number two, patio homes instead
7 of in combination with town houses. The previous
8 plan said patio homes and town houses and this one
9 now says patio homes. And I can't think that that's
10 any kind of a difference to anyone. It's really --
11 it gets down to architecture.

12 Number three, this is a name
13 change, multiplexes, quadraplexes, that's two units
14 together and four units together as a town house.
15 Mr. Rahenkamp refers to them as town houses but they
16 were never really designated that tightly on the plan.
17 It didn't show them, in fact. The previous plan said
18 town houses but in his vision of what this project
19 was going to look like it changed and that's why he
20 made the change.

21 MR. BRENNAN: Here, on two and
22 three combined, the overall density in the total PUD
23 will be increased 70 units. Addressing items number
24 two and three in A-7A, my question is after these
25 revisions are made will the density in the areas

1 referenced by numbers two and three be essentially
2 the same and will the blend of sales prices be the
3 same as measured in sales price per square foot?

4 MR. FRIZELL: Yes, yes. He was
5 very careful. He said it's a comparable number of
6 town houses, you see and then he talks about -- it's
7 designated as patio homes instead of in combination
8 with town houses. The numbers did not change there,
9 only his references really being more specific having
10 had more time to look closely at the plan about the
11 types of units they would put. I asked him, "Why
12 call them town houses?" He said because from the
13 standpoint of marketing the product it's better not
14 to have -- only call ten or 15 things town houses.
15 It just simply confuses it and he's thinking a little
16 too far ahead, in some ways; that is, if you only
17 have 15 town houses, 20 duplexes, it doesn't pay to
18 advertize the town houses.

19 MR. BRENNAN: But the aggregate --

20 MR. FRIZELL: The aggregate does
21 not change.

22 MR. BRENNAN: Sell out and
23 translated into sales price per square foot will also
24 be the same? In other words, you are changing the
25 nature of the units but your total sell out per

1 square foot should be the same?

2 MR. FRIZELL: Yes.

3 MR. BRENNAN: Okay.

4 MR. FRIZELL: Number four, the
5 collector loop has been realigned. The loop was
6 shown on the previous plan but all he did was take a
7 closer look at the Township Master Plan and line it
8 up with that, the Township Master Plan road that's
9 shown. It's a slight change in the road where it
10 hits 34.

11 The commercial area has been
12 eliminated. All right. That is the area that has
13 been changed, has been eliminated totally. It was
14 never really submitted.

15 MR. SAGOTSKY: What number did
16 you just refer to?

17 MR. FRIZELL: Five.

18 MR. SAGOTSKY: Okay.

19 MR. FRIZELL: That was really
20 never part of the submission but he's eliminated it.

21 MR. BRENNAN: A whole commercial
22 area you are saying as opposed to that covered by the
23 road that he's running through now?

24 MR. FRIZELL: Yes. It was just
25 simply eliminated on Route 34.

1 Number six, that, as he said,
2 increased the open space, doesn't make any difference
3 in the layout of the units. All that he's trying to
4 be is technically correct. Your tax maps and all the
5 maps that we had show that easement as 155 feet and
6 that's why it was shown 155 feet. We now have taken
7 a closer look at the actual easement deed. It's 225
8 feet wide. We just changed the map to show that. It
9 made no difference in the layout because there was
10 buffers and things.

11 MR. DAHLBOM: Is this an error on
12 the town maps?

13 MR. FRIZELL: Yes.

14 MR. DAHLBOM: That's something
15 that ought to be corrected.

16 MR. FRIZELL: I don't know. It's
17 shown as 150 or -- all right.

18 The commercial office area above
19 the previous shown commercial area was eliminated.
20 Subsidized housing previously designated senior
21 citizens has been shifted into the area between the
22 boundary --

23 MR. SAGOTSKY: Put your numbers
24 in.

25 MR. FRIZELL: Number seven. All

1 right? That refers to the subsidized area closest to
2 Route 34, all shown as subsidized. Now, there was a
3 commercial area in here near the major collector road.
4 It was replaced by a water utility and the subsidized
5 housing in order to give enough room to build 120
6 units. But the commercial area was eliminated.

7 MR. LARKIN: Where did that water
8 utility come from? Was it on the other map?

9 MR. FRIZELL: I think it was just
10 included in open space but he probably decided to
11 actually locate the utility. It's still open space --
12 well, it's not open space.

13 THE CHAIRMAN: In other words,
14 you have replaced senior citizens housing with
15 subsidized housing?

16 MR. FRIZELL: Yes.

17 THE CHAIRMAN: If I recall, in
18 your original testimony at one time you said there
19 was a dire need for senior citizens housing in Colts
20 Neck.

21 MR. FRIZELL: Yes, there is.

22 THE CHAIRMAN: While all of a
23 sudden there is no longer? There is a dire need and
24 you are putting in subsidized housing?

25 MR. FRIZELL: There is still a

1 need for senior citizens and senior citizens housing
2 is subsidized. It is to be one of our discussions
3 here based on the demographics as to that section as
4 to whether or not senior citizens housing is
5 appropriate there or standard Section 235 or Section
6 8 subsidized housing for families, family housing.
7 Quite frankly, we're prepared to offer or present
8 testimony about it in that particular section as an
9 alternative. But the senior citizens housing -- the
10 senior citizens housing is subsidized. It's
11 anticipated that it would be subsidized. So that
12 could be senior citizens housing. It's not
13 eliminated. That particular section will require
14 some further discussion.

15 THE CHAIRMAN: You feel that
16 definitely senior citizens need subsidies for housing?
17 Is that what you testified?

18 MR. BRENNAN: Or are you
19 testifying at least 50 in Monmouth County do?

20 MR. FRIZELL: One hundred twenty.

21 MR. BRENNAN: No. You had 50
22 seniors when it was called senior citizens.

23 MR. FRIZELL: That parcel could
24 be developed either for family housing, subsidized or
25 senior citizen housing, subsidized. There are 120

1 units. Could be either one.

2 MR. LARKIN: So all you are doing
3 is broadening the definition? That's all your saying?

4 MR. FRIZELL: That's correct. It
5 allows us to propose standard subsidized housing for
6 families and allow you to consider it. It still is
7 the same type of units but it's -- nothing changed.
8 We just simply designated an area where subsidized
9 housing could be located. I mean, the needs didn't
10 change. Town houses have been added to the parcel.

11 MR. SAGOTSKY: What's your next
12 number?

13 MR. FRIZELL: Number eight, where
14 senior citizens housing originally occurred. He's
15 referring to a small section of the senior citizens
16 housing which was on the other side of the
17 right-of-way. Over in here. The senior citizens
18 housing originally bridged, I believe. I think
19 that's correct.

20 MR. LARKIN: That's correct.

21 MR. FRIZELL: The nature of the
22 houses did not change. Incidentally, low-rise senior
23 citizen housing is town houses. It's nothing
24 different.

25 THE CHAIRMAN: They would not be

1 so-called "dedicated" to senior citizens; first come,
2 first served? It's possible that senior citizens
3 might not get anything?

4 MR. FRIZELL: That's not true.
5 It's either one thing or another. That's the way the
6 programs are set up. You have to designate for
7 senior citizens or not.

8 THE CHAIRMAN: In both of these
9 cases you have taken the designation away from senior
10 citizens.

11 MR. FRIZELL: Only in our
12 preliminary plan.

13 THE CHAIRMAN: That's all we have
14 to consider.

15 MR. FRIZELL: What I'm saying, a
16 particular unit will either be designated for senior
17 citizens or not for senior citizens.

18 THE CHAIRMAN: As it stands
19 before us right now you have taken it away from
20 senior citizens.

21 MR. FRIZELL: No. I don't know
22 how you can come to that conclusion. Senior citizens
23 is subsidized housing. Are you saying that we could
24 provide and not provide any senior citizens housing?
25 That's something for you to consider. If that's a

1 major concern then the result of that would be to --
2 to require it to be senior citizens rather than
3 standard subsidized housing. But we're proposing it
4 as either.

5 Number nine is a change in a loop
6 road. He explains his reasons for it. He felt that
7 it was better circulation.

8 Number ten, I think it says some
9 minor changes, town house parcel slightly reduced to
10 allow for a greater separation of uses in the southwest
11 corner.

12 MR. TISCHENDORF: Is that where
13 the nine units were reduced?

14 MR. FRIZELL: I think the nine
15 units were reduced in the bus stop 'cause it said
16 town houses. What I'm tempted to do is ask the
17 Applicant if he would just like to take out the bus
18 stop and go with it the way it was. I think that
19 once the subsidized housing had to be increased, in
20 order to do that some of the units were taken out.
21 Otherwise the increase would have been 70. All right?
22 Actually more than that.

23 Eleven, two of the areas
24 designated as open space referred to as detention
25 pond-utility areas. I don't think that's any

1 difference at all.

2 MR. SAGOTSKY: What number are
3 you on.

4 MR. FRIZELL: Number eleven. Two
5 of the areas previously designated as open space have
6 been referred to as detention pond-utility areas.
7 All that is is a further clarification because
8 detention pond-utility areas are, in fact, open space
9 and they are counted as open space. So he's really
10 picking nits here.

11 Number twelve, other minor
12 revisionss in the shapes and sizes of the various
13 parcels have occurred due to the realignment of the
14 collector roads. Basically Mr. Lucas is really cutting
15 it very close and telling you exactly what the
16 changes are. The shape of the parcels will change
17 when the roads change a little bit that's what it
18 comes down to.

19 THE CHAIRMAN: Any questions on
20 those items by any of the members? I think we're at
21 a point where we still have to either accept or
22 reject advice of Counsel on this and make a decision.

23 MR. LARKIN: Sam, why don't you
24 review for everybody what would happen if we reject
25 the amendment? what are the steps then for the

1 Applicant?

2 MR. SAGOTSKY: Well, first of all
3 you have to make a finding, if the amended map was
4 filed within time. If you find it was filed within
5 time then you will rule if the amendment A-7A is in
6 accordance with the clarification set forth on the
7 maps. And then you may rule on whether the amendment
8 is sufficient and having -- and is a qualified
9 amendment by virtue of the allegations by Counsel
10 that notice to the people within 200 feet did go out
11 at a time when the map showing the changes to A-3 was
12 filed. Now, your ruling then would depend upon your
13 finding.

14 MR. BRENNAN: It seems to me
15 there are two things that we should focus upon here.
16 One is that item number one in A-7A. Possibly we can
17 get over that hurdle just by deleting all the words
18 after "for a commuter bus stop", just put a period in
19 there and not reference the other uses. The second
20 item would be a significant change. I'm sorry. I
21 don't want to say "significant" but could be
22 considered a significant change would be the increase
23 in the number of units. However, if the number of
24 units is not noted on map A-3 but it is referenced in
25 the only document I've had an opportunity to read,

1 the Lazarus Feasibility Study. So I'd guess a person
2 who read the feasibility study or possibly other
3 documents that were in here would not have known of
4 the modification in A-7A increasing the density of
5 the total land by 70 units. So I think that if we
6 eliminate the other uses in the bus stop area we then
7 only have to address the issue as to whether or not
8 the increase of 70 units is substantial change.

9 MR. SAGOTSKY: And whether it
10 constitutes material change in the application.

11 MR. NIEMANN: I think Mr.
12 Brennan's analysis was right on point.

13 THE CHAIRMAN: Then any other
14 comments from any members of the Board or questions. ?

15 I'd accept a motion at this time
16 and a vote as to whether we accept this as being
17 minor in scope or is it major change?

18 MR. SAGOTSKY: Excepting item one -

19 MR. FRIZELL: Let me just address
20 this.

21 MR. SAGOTSKY: -- as to the 70
22 units and comments on the bus stop. The rest you
23 might characterize as being minor or not substantial
24 or by way of clarification or -- but as to item one
25 and item two, that is where the issue, a significant

1 issue, arises, a material issue arises. Vote on
2 those two categories.

3 MR. FRIZELL: As I believe the
4 result of such a finding would be I just simply would
5 to bring back Kiefer and Rahenkamp again and send out
6 the notices again for another meeting. I mean, if
7 that's what you are leading up to, I mean, that's,
8 you know -- but there's six of you and only a few of
9 us. And I don't, I mean I don't -- I have to come
10 back anyway. Rahenkamp will be here, in any event.
11 So it's not going to make that much difference.

12 THE CHAIRMAN: I don't see the
13 relativity of six to two. What does that mean?

14 MR. FRIZELL: Well, the level of
15 inconvenience is multiplied by three.

16 THE CHAIRMAN: Well, I think it
17 all boils down to who created the inconvenience.
18 That's --

19 MR. FRIZELL: You want to know
20 who created the inconvenience? This Board created it
21 when they lost all the maps. That's what happened.
22 Because anybody that would have to talk about anybody
23 coming down here and looking at the maps is absurd
24 since the maps were lost by the Board and I had to
25 bring down the extra ten copies. And that's when

1 they were changed.

2 THE CHAIRMAN: Is that a fact?

3 MR. SAGOTSKY: Well, that's --

4 THE CHAIRMAN: I'm not aware
5 of that.

6 MR. SAGOTSKY: That's a question
7 that arose even before Judge McGann. Mr. Frizell and
8 I had a few comments about that. Mr. Frizell made
9 that allegation and I said to him there in Court, "I'm
10 not aware but I'll look." And Mr. Frizell, when he
11 repeated it, I said, "I will look, I will inquire, I
12 will ask everyone to look." And I did, and I got a
13 report back that they were not found. We even spoke
14 to our former Clerk who was in the hospital, and I
15 believe to Mrs. O'Connor. We really did search. I
16 told Mr. Frizell I would and I did cause a search to
17 be made and they were not found.

18 MR. FRIZELL: We simply, quietly
19 produced more maps.

20 MR. SAGOTSKY: As a result of my
21 report to you.

22 MR. FRIZELL: As a result, that's
23 right. Now, in any event --

24 MR. TISCHENDORF: I'd like to see
25 number one solved somehow. But as far as arguing

1 over whether it's 70 units or these changes are major
2 or minor, it would be my opinion that Judge McGann
3 would expect us to hear the application, whatever
4 that argument might come out, whether it's major or
5 minor. So I say we would kind of like one to be
6 solved, clarified, amended. Amend item one in the
7 amendment. But I don't know about I don't think it's
8 worthwhile to debate whether or not we think this a
9 major or minor change because I think McGann's
10 position would be we should hear this regardless.

11 MR. SAGOTSKY: It is true that
12 you should hear and continue with hearing it. The
13 only issue is whether you will reject the amendment
14 or any part or all and put that on the record and
15 then go on with your hearing.

16 THE CHAIRMAN: I think that's on
17 target. There's no implication at all that this
18 would terminate or suspend a hearing. It's just one
19 very narrow point.

20 MR. SAGOTSKY: I want --

21 MR. FRIZELL: We will start over
22 if you find -- let me say that when I sent those
23 notices I didn't put the number in there I don't
24 really regard the number to be the key issue here.
25 When we sent the notices out, the public notice

1 doesn't have a number in it. If you find that the
2 application was so changed that there's something
3 wrong with it, at this point we're going to start
4 over. We're going to bring Rahenkamp and Mr. Kiefer
5 and we're going to re-notice and anyone who wants to
6 read about the 1,137 and then read the 1,036 and
7 that's -- I would have shown it if it was 1,176.

8 MR. TISCHENDORF: I'm certainly
9 not saying that, I'm saying if the public has not had
10 the opportunity to hear of the nursery school,
11 convenience food store or professional office space.

12 MR BRENNAN: We can address that
13 specific issue with a motion.

14 MR. LARKIN: Why don't we have a
15 motion?

16 THE CHAIRMAN: Well, I asked for
17 a motion.

18 MR NIEMANN: I just want -- Sam,
19 Judge MdGann say we had to consider just the
20 application before him or was the Applicant allowed
21 to amend it in this manner?

22 MR. SAGOTSKY: Judge McGann
23 merely approved the application and we had to hear
24 the one before him. And anything that occurs after
25 that is up to the Board. In other words, Judge

1 McGann decided on the issues before him, period.
2 After that, anything new or different is up to the
3 Board.

4 MR. LARKIN: Do you want to take
5 a crack at it, Greg?

6 THE CHAIRMAN: Entertain a motion.

7 MR. BRENNAN: Based upon
8 Applicant's Counsel's representations that the map
9 known as A-3 was delivered to the Board of Adjustment
10 at least ten days prior to the public hearing, and
11 that notifications were mailed to all affected
12 parties subsequent to the filing of the map known as
13 A-3 with the Board of Adjustment, the verbal
14 clarifications contained in exhibit A-7A are accepted
15 by the Board with the exception that item one shall
16 read: A small parcel has been reserved in the
17 northeast corner of the site along Route 537 for a
18 commuter bus stop, period, and the further language
19 in item one be deleted from A-7A. The Board of
20 Adjustment finds that the revisions contained -- the
21 other revisions contained in A-7A are consistent with
22 map A-3 and considers them in their totality minor in
23 nature. Therefore the Board accepts A-3 and A-7A as
24 amended.

25 MR. LARKIN: I second.

1 THE CHAIRMAN: Questions on the
2 motion?

3 MR. DAHLBOM: Second.

4 THE CHAIRMAN: We have two
5 seconds, the first coming from Mr. Larkin.

6 MR. LARKIN: No, I -- Mr. Dahlbom
7 was first.

8 THE CHAIRMAN: Is there any
9 question on the motion?

10 I would like to pose a question
11 on the motion so that we can proceed. You are saying
12 that the rest of this is considered minor including
13 the change in the units from one type to another and
14 including the number of units? They're considered,
15 in your opinion, minor in your motion?

16 MR. BRENNAN: Based upon the
17 representations that were made as to the total sales
18 price per square foot. Because I do greatly
19 sympathize with Mr. Frizell's problem because being
20 in real estate I have a terrible time distinguishing
21 between patio homes and town houses.

22 THE CHAIRMAN: Any other
23 questions on the motion? Call for a vote on the
24 motion.

25 MR. LARKIN: When I say I accept

1 the motion, I think you put it if I vote yes that
2 means --

3 MR. SAGOTSKY: You may have the
4 motion read back if you want.

5 MR. LARKIN: No. I don't -- just
6 let me know whether if I say yes, do I accept?
7 That's the main thing.

8 MR. LARKIN: Yes.

9 MR. BRENNAN: Yes.

10 MR. DAHLBOM: Yes

11 MR. TISCHENDORF: Yes.

12 THE CHAIRMAN: Yes.

13 MR. NIEMANN: Yes.

14 MR. SAGOTSKY: May I ask a slight
15 pause for a paper change?

16 (Whereupon a brief recess is
17 taken.)

18 THE CHAIRMAN: This meeting will
19 reconvene. Mr. Frizell?

20 MR. FRIZELL: Thank you, Mr.
21 Schrumpf.

22 I'm not sure what number we're on
23 but at the last meeting Mr. Rahenkamp told the Board
24 that he would provide a document that would describe --

25 MR. LARKIN: Excuse me. Could we

1 please? We're trying to hold a hearing.

2 MR. FRIZELL: A document that
3 would list the slides that he presented at the last
4 meeting. Would you please mark that "A" wherever we
5 are.

6 MR. SAGOTSKY: There is a
7 document offered by Mr. Frizell entitled, "Planned
8 Units Development shown by John Rahenkamp", and
9 represents a list of the slides that were shown at
10 the last meeting of May 29th and he asks that they be
11 marked.

12 (Whereupon a document, re:
13 slides, 6/12/80, is marked A-14 for identification.)

14 MR. FRIZELL: A-15, I'd offer Mr.
15 Sagotsky, is a brief resume also promised by Mr.
16 Rahenkamp, a written resume. I know he testified
17 about his credentials.

18 MR. SAGOTSKY: Mr. Frizell now
19 submits an exhibit marked John Rahenkamp, President
20 and he's offered to substantiate his testimony about
21 his credentials. Is that the purpose?

22 MR. FRIZELL: It's more detail on
23 his credentials.

24 MR. SAGOTSKY: Will be marked
25 exhibit 14. I'll mark it for identification.

1 (Whereupon a resume of John
2 Rahenkamp is marked A-15 for identification.)

3 MR. DAHLBOM: What is 15?

4 MR. SAGOTSKY: It goes on to
5 state his profession, his education, his community
6 activities, his educational activities, various
7 awards -- Mr. Rahenkamp, John Rahenkamp President of
8 RSWA, Incorporated -- continues with major
9 publications "Planning For Bike Trails" and other
10 data which relates to his background. It is
11 evidently offered as part -- I'd suggest it is be
12 permitted for identification. It evidently would not
13 be part of the evidence.

14 MR. FRIZELL: Well, I think his
15 qualifications are part of the evidence. I don't --
16 it is just a submission which we promised. He will
17 be back if anyone --

18 MR. SAGOTSKY: I will advise that
19 they both be marked for identification exhibit 14 and
20 exhibit 15.

21 MR. FRIZELL: I'm not sure what
22 that means but I'll accept it for now.

23 Now, I'd call Mr. Robert Goodwin.

24 MR. SAGOTSKY: I'd like you to
25 state your --

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MR. GOODWIN: My name is Roby Goodwin. I'm a land planner with the firm of John Rahenkamp and Associates. I live at 410 Pine Street in Philadelphia.

R O B Y G O O D W I N, a witness called on behalf of the Applicant, having been duly sworn according to law, testified as follows:

MR. SAGOTSKY: The witness is sworn.

DIRECT EXAMINATION BY MR. FRIZELL:

Q. Mr. Goodwin, how long have you been employed by RSWA?

A. Four and half years.

Q. And what is your position with them now?

A. I'm a project manager in the land planning section.

Q. And what are your duties and functions?

A. To direct the planning of land environmental analysis, infrastructure analysis, to direct staffs working on particular jobs, speaking to public representatives, organizing work flow, doing land

1 planning.

2 Q. Do you hold any degrees?

3 A. I have a degree in journalism from Rutgers
4 University. I have studied architecture at Drexel
5 University and I'm in the process of getting a Master
6 of City Planning from the University of Pennsylvania.

7 Q. Do you hold any licenses of any kind?

8 A. No, I don't.

9 Q. Now were you asked to work with Mr.
10 Rahenkamp in connection with the Orgo Farms project,
11 Colts Neck Village PUD?

12 A. Yes.

13 Q. And in what connection?

14 A. In the land planning connection.

15 Q. And did you make an analysis of the
16 potential open space uses?

17 A. Yes.

18 Q. All right. Can we mark that, Mr.
19 Sagotsky, please?

20 MR. SAGOTSKY: Marked for
21 identification, dated June 12, 1980, marked "Addendum
22 to open space system text in the Colts Neck Village
23 project description".

24 (Whereupon an addendum dated
25 6/12/80 is marked A-16 for identification.)

1 MR. SAGOTSKY: So marked.

2 MR. SAGOTSKY: Number 16, exhibit.

3 MR. MARKS: That is A-16?

4 MR. LARKIN: A-16.

5 MR. FRIZELL: Mr. Sagotsky, I
6 have here a document entitled "Open Space and
7 Recreation Plan", which I'd ask you to mark A-17.

8 MR. SAGOTSKY: A map is proposed
9 marked RSWA, James B. Kovacs, Abbington, Ney
10 Associates, further data surveys Atlantic aerial
11 survey, Sparta, New Jersey, 11/13/78. And that is
12 marked as A-16 for identification.

13 MR. FRIZELL: A-17.

14 MR. SAGOTSKY: A-17 for
15 identification.

16 (Whereupon an aerial survey map
17 dated 11/18/78 is marked A-17 for identification.)

18 BY MR. FRIZELL:

19 Q. Good. Now, Mr. Goodwin, did you work on
20 the preparation of A-16 and A-17?

21 A. Yes, I did.

22 Q. And what is A-17 intended to represent?

23 A. It's intended to show the elements of the open
24 space and recreation plan for the proposed Planned
25 Unit Development.

1 Q. And what is A-16 in connection with A-17?

2 MR. LARKIN: Excuse me. Could
3 you just move that board over a little bit closer.

4 THE CHAIRMAN: Maybe we can
5 position it so it's viewable by the audience plus the
6 Board.

7 BY MR. FRIZELL:

8 Q. Now, is A-16 a verbal description of
9 what's shown in A-17?

10 A. That's correct.

11 Q. Would you tell the Zoning Board of
12 Adjustment what A-17 shows?

13 A. A-17, this map, is a colored version of the map
14 that was submitted as A-17. It describes in verbal
15 terms the element of the open space system. The open
16 space system is designated in the dark green color.
17 The lighter green color, that's residential land uses
18 in the proposed Planned Unit Development. Within the
19 dark green color, that is designated open space for
20 the plan, the central organizing feature is the
21 pedestrian path system which runs through the open
22 space system allowing for pedestrian, bicycle
23 movement away from the roads for safety consideration
24 and because it's a nice place to move, in the open
25 spaces, pedestrian path system.

1 MR. SAGOTSKY: Could you stand on
2 this side, perhaps, and we all could see it and
3 perhaps you might turn it a little more toward the
4 audience?

5 MR. LARKIN: Everyone get a
6 chance to see this back here?

7 THE WITNESS: The open space
8 there's a central open pedestrian path network which
9 connects with smaller sections to the various
10 individual residential clusters in the cul-de-sacs
11 here in the town house and condominium clusters
12 throughout the proposed Planned Unit Development.
13 Also shown in this plan, are the various areas which
14 will be designated for active recreational use. The
15 orange colored circles and blobs here designate the
16 different kinds of uses that we would be proposing.
17 There are three: TL, Tot Lot; the NR, Neighborhood
18 Recreation; CR, Community Recreation.

19 Characteristically, in the Tot
20 Lot, we find recreational facilities oriented towards
21 small children, slides, swings, sandboxes, some
22 climbing instruments. They have been located in
23 conjunction with neighborhood recreation facilities
24 in various elements, in various areas in the plan
25 adjacent to various clusters.

1 Typical kinds of recreational
2 facilities that we would find in the neighborhood
3 recreational areas would be tennis courts, basketball
4 courts, possibly racquetball courts. Again, they are
5 located in four or five different -- four areas on
6 the plan.

7 In the community recreation area,
8 which is an area which is oriented towards the whole
9 development, we would find more active recreational
10 areas or kinds of facilities, for example, Little
11 League baseball field or soccer field.

12 That describes the intents of the
13 graphics of this map and the intents of our open
14 space plan, the textual description which is in
15 support of this explains in much the same way what
16 I've just said.

17 MR. SAGOTSKY: Is that color map
18 the copy of the A-17 map that was introduced for
19 identification.

20 MR. LARKIN: A-17 is not in color.

21 THE WITNESS: It is, that's
22 correct.

23 MR. SAGOTSKY: You have a color
24 reproduction on the Board of what is A-17 as
25 introduced here for identification?

1 THE WITNESS: That's correct.

2 MR. FRIZELL: Mr. Sagotsky I
3 don't think anyone -- I don't think we'll have any
4 argument that what is shown on A-17 is a further
5 detail.

6 BY MR. FRIZELL:

7 Q. This is, in fact, the same land use plan
8 as shown on A-3 which I think you had an opportunity
9 to look at?

10 A. Yes.

11 Q. That's the basic land use plan. What
12 this would do, show for the Board, is how the open
13 space shown on the land use plan would be used or how
14 it would be developed?

15 MR. LARKIN: I just want to make
16 sure, A-3 is the newly submitted --

17 MR. FRIZELL: Land use map.

18 MR. LARKIN: The one that is
19 different from the one that Judge McGann saw?

20 MR. FRIZELL: Yes, yes.

21 All right. So with that, Mr.
22 Sagotsky, I'd like to offer A-16 and A-17 and I have
23 Mr. Rahenkamp's office was good enough to supply
24 additional copies if anyone wants to look at them.

25 MR. DAHLBOM: Does that include

1 the statements as well?

2 MR. FRIZELL: Yes.

3 MR. SAGOTSKY: Are you including
4 in those sheets 14, 15?

5 MR. DAHLBOM: No, 16 and 17.

6 MR. LARKIN: Sixteen and 17.

7 MR. SAGOTSKY: All right.

8 BY MR. FRIZELL:

9 Q. Now, I know, Mr. Goodwin, you weren't
10 here when Mr. Rahenkamp showed the slides but I'm
11 sure you've seen the slides many times that he uses
12 to show an open space network which is intended to
13 separate it from a vehicular movement system?

14 A. That's correct.

15 Q. And is this plan intended to achieve
16 those goals?

17 A. That's correct. The pedestrian path system and
18 recreational facilities are located away from the
19 major collector network throughout the site.

20 Q. He indicated in his testimony that in
21 terms of usage that the usage of the pedestrian
22 network was probably the highest of all of the
23 recreational facilities that are shown on the plan in
24 existing PUD's. Is that also your own experience?

25 A. That's correct. It's used as the main

1 circulation element by people on foot or on bicycles
2 out of and away from vehicular circulation.

3 Q. And I note in the area designated town
4 houses, for instance, you show just a broad arrow
5 going into that area. Would that indicate that the
6 pedestrian network would stop there or would it also
7 be included within the site plan in that particular
8 area?

9 A. It would be included within the site plans for
10 each of the individual areas. It's meant to mean a
11 connection from the internal pedestrian path of the
12 various clusters to the prime pedestrian path system
13 for the entire site.

14 Q. Now, I note in all the designations for
15 recreational areas that you show on this map are
16 contained within the common, what is referred to as
17 the common open space, the 22 percent of the site
18 that is designated for common open space. Would this
19 necessarily comprise all of the recreational uses or
20 would it be possible that a particular site may be
21 developed with additional Tot Lot or whatever --

22 A. That's --

23 Q. -- within the individual sections?

24 A. That's not only probable it's very likely that
25 it would be developed within the individual clusters,

1 once detailed design has been resolved; small
2 recreational elements benches the path system that
3 we've talked about, and possibly additional Tot Lots.

4 Q. Now, did you attempt to relate the
5 number and types of the different units to the
6 particular project that we have before us?

7 A. We feel that this is satisfactory for the
8 number of units that is shown in terms of the kinds
9 of recreational facilities proposed and in terms of
10 potential numbers that are provided here. We haven't
11 specified at this time exact numbers and different
12 types of facilities in each of these areas. That
13 will be determined when we know better what the
14 actual market would be in each of these different
15 areas.

16 Q. Now, you are referring, for instance,
17 that in a neighborhood residential section, a
18 particular site may be developed for three tennis
19 courts and three or four basketball?

20 A. That's correct. Those numbers are kind of -- a
21 ratio or change is possible in each of these
22 different --

23 Q. Two and one?

24 A. That's correct.

25 Q. Either one in a particular area?

1 A. It might be two tennis courts in one section,
2 there might be one tennis and one basketball in
3 another. There might be two basketball courts and a
4 racquetball court in another cluster of recreational
5 facilities.

6 Q. And are those all those different
7 general types of facilities described in the
8 description?

9 A. In the back of the general textual description
10 are examples of some of the elements that we are
11 proposing. They're detailed descriptions. Almost
12 very schematic, not schematic, but detailed
13 descriptions of the kinds of units you'd find there
14 and how they would be constructed. These are
15 examples of things that we've been involved with in
16 other projects similar to this.

17 MR. FRIZELL: I have no other
18 questions for Mr. Goodwin.

19 MR. NIEMANN: Mr. Frizell, at
20 what point in time will we need specifics? I know
21 there's a lot of tentative intended. When do we
22 start finding the numbers of tennis courts, the
23 numbers of baseball fields, the locations and
24 specifics?

25 MR. FRIZELL: The locations you

1 are looking at. The numbers would be relative to the
2 locations.

3 BY MR. FRIZELL:

4 Q. How many tennis courts, for instance,
5 Mr. Goodwin, would you anticipate in one neighborhood
6 recreation center; two, three?

7 A. Two or three. It's possible that within this
8 central link it could be entirely tennis courts. But
9 it would be inappropriate. Eight tennis courts in
10 one solid area is probably too many for that one
11 particular location.

12 MR. FRIZELL: We will probably be
13 providing more detail on that. It's not in the
14 nature of this testimony. But we will be providing
15 more detail on that before the end of the hearings.
16 Certainly in the context of the law you would be
17 entitled to it before anything got built, before a
18 single house got built, because it would have to be
19 part of the final approval section.

20 MR. NIEMANN: Which we --

21 MR. FRIZELL: Which you have to
22 approve.

23 MR. LARKIN: I'm still not quite
24 sure what a land planner does, but that's for me. As
25 you evolve your choice, for example, the recreational

1 areas, what do you use as the basis for deciding
2 whether there should be -- I see six Tot Lots there,
3 for example. You've indicated there might be more as
4 you develop each individual one and two major
5 recreational areas and so forth. What is the basis
6 that you use to determine, for example, that six Tot
7 Lot and possibly more will be appropriate in this
8 complex?

9 THE WITNESS: That can be a
10 difficult question to answer, but it is -- it's
11 possible, given enough money, a Tot Lot could be
12 developed for every four units in a proposed plan.
13 We feel that with our experience that what we
14 provided here is minimally, minimally satisfactory
15 for the central open space, the common open space.
16 We would expect, and we have experienced that in the
17 development of the individual clusters, there are
18 additional features developed or provided.

19 BY MR. FRIZELL:

20 Q. Mr. Goodwin, in coming to the conclusion
21 that one, two, three, four, five, six Tot Lot in the
22 common open space as opposed to being those which may
23 be internal were satisfactory, do you land planners
24 take into consideration the numbers of and types of
25 units which would be -- which these Tot Lot would

1 service?

2 A. Yes. We take into account the numbers of units
3 and the numbers of bedrooms that we would expect to
4 find in here and the typical number of school age or
5 preschool age children that we would expect to find
6 in a garden apartment complex, which is where the Tot
7 Lot are generally located, next to the multi-family
8 housing, garden apartments or town houses. You
9 wouldn't expect or need to find Tot Lot too close to
10 single family homes because they have their own
11 provisions for play and outdoors.

12 MR. FRIZELL: The projected
13 number of children to be generated by this project
14 will be a matter of evidence, I know, in two weeks

15 MR. LARKIN: Thank you. I have
16 one other question. I assume that Joshua Huddy Drive
17 is going to be used as a road?

18 THE WITNESS: Yes.

19 MR. LARKIN: These paths cross.
20 Is there expected to be an overpass or how --

21 THE WITNESS: That's --

22 MR. LARKIN: -- are children and
23 other people getting back and forth, just walk across
24 or is there something provided to get them across?

25 THE WITNESS: We wouldn't expect

1 to have a pedestrian overpass over this road, at
2 least at this stage. This is only in terms of actual
3 development. If this were a major or county or state
4 road it might be appropriate to provide that. We
5 don't know when that road is going to come through.

6 MR. LARKIN: The road there
7 that's proposed that's not going to be a road?

8 THE WITNESS: This will be a road.

9 MR. FRIZELL: This is shown on
10 your Master Plan.

11 MR. LARKIN: But as a proposed
12 road. This will be an actual road?

13 THE WITNESS: This is an actual
14 road. This is shown in a dotted fashion because
15 there will be access to the senior citizen housing
16 here. But this alignment is how we would fit in this
17 road with the Master Plan, the proposed road.

18 MR. FRIZELL: I think what he's
19 referring to in terms of the county road, if the road
20 were built in accordance with the Master Plan and
21 became a major arterial of some kind --

22 THE WITNESS: Yes.

23 MR. LARKIN: That's what I was --

24 MR. FRIZELL: -- then you may
25 need an overpass.

1 MR. LARKIN: But that's not
2 planned at this point?

3 MR. FRIZELL: We don't have any
4 control over that. We put this area in here for
5 possibly extending the road and then lined it up.

6 MR. SAGOTSKY: I'm going to have
7 to swear you in Mr. Frizell.

8 MR. FRIZELL: I'm just telling
9 the Board what's on the plan, Mr. Sagotsky.

10 THE CHAIRMAN: So as it stands
11 now, all these recreational paths will grade cross
12 roads?

13 THE WITNESS: That's true.

14 THE CHAIRMAN: There could be a
15 hazard there.

16 THE WITNESS: Well, that's true.
17 But it's less of a hazard than having sidewalks
18 running parallel to the roads. It carries the
19 pedestrian away from the vehicular traffic. There
20 has to be a crossing in order to be continuity of
21 pedestrian movement through the whole project. The
22 handling of pedestrian crossing over a road crossing
23 is a design problem.

24 THE CHAIRMAN: Mr. Goodwin, you
25 said you were involved in several of these. Could

1 you let this Board know which ones are more closely
2 located to Colts Neck so we might look at them. I
3 like plans but I'd rather see one in operation and
4 see if there are hazards and so forth. Could you
5 identify some in New Jersey close to here that you
6 have planned?

7 MR. SAGOTSKY: Meaning a PUD?

8 THE WITNESS: A PUD.

9 THE CHAIRMAN: A PUD.

10 THE WITNESS: Pine Run, which is
11 located I'm not sure of the township -- but it's
12 located right off the Atlantic City Expressway or the
13 road leading in South Jersey, Narraticon.

14 MR. SAGOTSKY: And where, please?

15 THE WITNESS: Again it's in South
16 Jersey. I can give you the exact location at another
17 time, provide it on maps and so forth. Those are two
18 that I know of, that I'm aware of, that we've been
19 involved with in the last few years. There are
20 undoubtedly others.

21 THE CHAIRMAN: Yeah. Well, I'm
22 getting a little far afield probably. I'd like to
23 see one. Maybe Mr. Frizell can tell us of some that
24 are close to Colts Neck.

25 MR. FRIZELL: I think the most

1 famous PUD in history is Radburn in Fair Lawn, New
2 Jersey. We had a discussion, Mr. Schrupf, about
3 different PUD's and we did have some discussions
4 about that particular planned development. It is now
5 50 years old; planned in 1927 built in 1929. Last
6 year celebrated its 50th anniversary. That has a
7 very extensive pedestrian network.

8 THE CHAIRMAN: And that had
9 subsidized housing in it?

10 THE WITNESS: It has least cost
11 housing.

12 THE CHAIRMAN: You never did
13 define that, did you?

14 MR. FRIZELL: I will, Mr.
15 Schrupf.

16 THE CHAIRMAN: You will? Okay,
17 fine.

18 MR. BRENNAN: Doesn't necessarily
19 mean inexpensive. Things are relative.

20 MR. FRIZELL: I did not
21 anticipate Mr. Goodwin's testimony to be long and it
22 hasn't been.

23 MR. BRENNAN: May I ask Mr.
24 Goodwin one question? This is more point of
25 clarification. I read the transcript of last month's

1 meeting, got confused on one particular point. I
2 believe that approximately 20 to 22 percent of the
3 PUD is dedicated to a common area, which will be open
4 except for your amenity package that will be in there.
5 When Mr. Kieffer's testimony related to the remaining
6 78 percent to 80 percent, that's where it got a bit
7 confusing to me, 'cause I believe that the open area
8 within the clusters, within those sections, would be
9 60 percent. But I didn't know whether it was 60
10 percent of 80 percent or 60 percent of 100 percent.
11 I'm just trying to find out, given the clustering,
12 how much of this proposed PUD would be open area,
13 whether common to the PUD or common to the individual
14 sections?

15 THE WITNESS: I'm not aware of
16 Mr. Kieffer's testimony, so I'm not sure what his
17 point was. So I can't answer your question.

18 MR. FRIZELL: The coverage, I
19 think, is what you are talking about. I think, Mr.
20 Brennan, the coverage will change for different uses.
21 We'll provide, I promise, more detailed testimony on
22 the interior of these sections. What we're talking
23 about today and what Mr. Goodwin was here to describe
24 is the uses of the 22 percent and the possible uses
25 of the interior open space but not as to the amounts.

1 That's why, as I say, we also have a presentation
2 just a, for example basically, which will describe
3 how this is owned and how it is maintained by a home
4 owners association from within the community.

5 THE CHAIRMAN: Any more questions
6 from the Board members of Mr. Goodwin?

7 MR. SAGOTSKY: The Planning Board
8 might have some comments or questions.

9 MR. MARKS: No questions.

10 THE CHAIRMAN: Any questions from
11 Mr. Marks or Mr. Bessler?

12 MR. MARKS: No questions.

13 THE CHAIRMAN: Is there anyone in
14 the audience that might like to ask a question
15 relative to this exhibit?

16 MR. SAGOTSKY: I will note that
17 no one in the audience has arisen to make any
18 statement whatsoever in response to the offer to ask
19 questions.

20 MR. FRIZELL: Thank you, Mr.
21 Goodwin.

22 (whereupon the witness is
23 excused.)

24 MR. FRIZELL: Mr. Ney, please.

25 MR. SAGOTSKY: I'd like you to

1 give us your name and your position and your address
2 and spell your name, please.

3 MR. NEY: Henry J. Ney, N-e-y.

4 I'm a principal in the firm of Abbington, Ney
5 Associates, consulting engineers. The address of the
6 firm is 65 Gibson Place, Freehold, New Jersey. I
7 reside at 249 Hunt Road, Freehold, New Jersey.

8
9 H E N R Y J. N E Y, a witness called on behalf of
10 the Applicant, having been duly sworn according to
11 law, testified as follows:

12
13 MR. SAGOTSKY: The witness is
14 sworn.

15
16 DIRECT EXAMINATION BY MR. FRIZELL:

17
18 Q. Mr. Ney, what is your present occupation?

19 A. I'm a professional engineer and a professional
20 planner practicing in the area of traffic engineering
21 and transportation planning.

22 Q. Mr. Ney, how long have you been involved
23 in that business?

24 A. For approximately 20 years. Upon graduation
25 from college in 1960, I was engaged for five years

1 with the State of New Jersey as a senior and
2 principal traffic engineer. During that period of
3 time I was largely responsible for traffic
4 improvements at intersections along county and
5 municipal roadways, as well as traffic safety
6 evaluation of various intersections and roadways
7 throughout the State of New Jersey.

8 I took a one year sabbatical from my state
9 position to attend graduate school where I received a
10 graduate degree in traffic engineering from Yale
11 University in 1965.

12 I was employed by the Board of Freeholders of
13 Monmouth County as county traffic engineer, a
14 position which I held for a period of seven years.
15 During that period of time I was responsible for all
16 phases of traffic engineering safety investigations
17 and the like on the entire county highway system. I
18 also served during that period of time as Monmouth
19 County traffic safety coordinator. The function of
20 that position was to coordinate traffic safety
21 procedures within the 53 municipalities of Monmouth
22 County. I also, between 1970 and 1971, held the
23 position of Monmouth County engineer. In addition to
24 my responsibilities as traffic engineer I was
25 responsible for the various engineering functions

1 involving roads and bridges throughout Monmouth
2 County.

3 Since 1972 I have been engaged full time in the
4 consulting engineering practice with the firm of
5 Abbington, Ney Associates formerly Ackerman, Ney
6 Associates in Freehold, New Jersey. During that
7 period I'd say 95 percent of our business has been
8 involved with private clients in the development
9 sector involving commercial, residential,
10 developments of this type throughout New Jersey as
11 well as several other states.

12 I'm a Fellow of the Institute of Transportation
13 Engineers. I've taught traffic engineering at
14 Rutgers University. I'm a past president of the New
15 York, Metropolitan New York Chapter of the Institute
16 of Transportation Engineers, the national
17 organization involved in traffic engineering research
18 and evaluation.

19 Q. Mr. Ney, did you have an occasion to
20 examine the site known as the Orgo Farm?

21 A. Yes, sir, I have.

22 Q. In connection with the application
23 that's before the Board?

24 A. Yes, sir. That's correct.

25 Q. And what was the purpose of your

1 examination?

2 A. Our purpose was basically two-fold. One was to
3 evaluate the impact of the proposed PUD development
4 which consisted, as the plan shows, of some 1,137
5 dwelling units consisting of single family units,
6 condominium units and town house units as well as
7 senior citizens units. We were directed to determine
8 then feasibility of constructing the plan basically
9 as it's being presented before this Board to evaluate
10 the impact of that plan in terms of traffic on the
11 adjacent street system; to evaluate the overall
12 circulation within the plan itself and to evaluate
13 the compatibility of the proposed use with the
14 regional highway network.

15 Q. Are you finished Mr. Ney?

16 A. Yes.

17 MR. FRIZELL: Mr. Sagotsky, would
18 you mark that A-18, please?

19 MR. SAGOTSKY: Counsel for the
20 Applicant offers a map with the legend "Abbingdon, Ney
21 Associates, Consulting Engineers" further identified
22 as two 201-462-2414 listed thereon, RSWA, Rahenkamp,
23 Sacks, Wells and Associates and by way of further
24 legend, topography, Atlantic aerial survey, Sparta,
25 New Jersey, 11/18/78. And that is offered as exhibit

1 A-18?

2 MR. FRIZELL: Correct, Mr.

3 Sagotsky.

4 MR. SAGOTSKY: A-18 for

5 identification.

6 (Whereupon an aerial survey map

7 dated 11/18/78 is marked A-18 for identification.)

8 MR. LARKIN: Is this the same as

9 this?

10 MR. FRIZELL: Yes, sir.

11 MR. SAGOTSKY: The question asked,

12 is this the same as this, meaning is exhibit A-18 the

13 same as the exhibit which is now posted on the

14 bulletin board?

15 THE WITNESS: Yes, sir, it is.

16 MR. SAGOTSKY: And from which Mr.

17 Ney will testify?

18 THE WITNESS: That is correct.

19 Do you want this one?.

20 MR. FRIZELL: We don't want to

21 submit the colored maps.

22 MR. SAGOTSKY: He has the low map.

23 Will you represent what is being

24 testified to is a color duplicate of what has been

25 presented to the Board as A-18?

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MR. FRIZELL: I'll leave that to

Mr. Ney.

BY MR. FRIZELL:

Q. Is that, Mr. Ney?

A. Yes, sir, it is.

Q. Now, in connection with that purpose, what was first thing that you did?

A. The first thing we did upon receiving our assignment was -- I shouldn't say my first thing was to inspect the site, the surrounding area to evaluate the basic proposed means of access and their locations on 537 and Route 34. Following that I obtained traffic counts by placing automatic traffic recording devices on Route 34 in the vicinity -- actually between the proposed driveway and Delicious Orchards. I also placed a traffic counting device on county Route 537 in the vicinity of the proposed access drive. I also conducted peak hour counts at the intersection of Route 34 and County Route 537 between seven a.m. and nine a.m. in the morning and between four a.m. and six p.m.

MR. LARKIN: In the evening, six? You mean four p.m. and six p.m.?

THE WITNESS: Did I say --

MR. LARKIN: You said a.m..

1 THE WITNESS: I'm sorry, four
2 p.m. till six p.m. in the evening. In that
3 particular assignment I required the assistance of my
4 staff to conduct the traffic count. But I was
5 present when the counts were conducted and did
6 conduct part of the counts myself.

7 Following determination of the
8 traffic volumes that exist today on the surrounding
9 roadways, I obtained from the New Jersey Department
10 of Transportation their traffic volume maps which are
11 published annually and reviewed those maps as far
12 back as 1974 to establish the historic trend of
13 traffic volumes in the area; that is, the amount of
14 growth that the area roadways have been experiencing
15 over the years. I also obtained relevant traffic
16 information from the County regarding 537 and work
17 that they have done further to the west of the
18 subject property, where the county has a permanent
19 traffic counting station to determine the traffic
20 characteristics on 537.

21 Following the information
22 gathering stage I then, based on the various types of
23 land use, utilizing publications of the Institute of
24 Transportation Engineers determined the amount of
25 traffic that would be generated during the morning

1 peak hour and the evening peak hour by the various
2 types of planned uses that are proposed. I might add
3 that where we have numbers that are relative and
4 higher than the figures Institute of Traffic
5 Engineers projects in their publications, for example,
6 with patio houses, we consider them to generate
7 traffic similar to single family units. We utilized
8 the higher traffic generations to project a maximum
9 traffic impact from the proposed development. We
10 then, in discussion with Mr. Rahenkamp's office,
11 determined that there was approximately a five year
12 build out of the project. Based on that, we expanded
13 or projected current traffic volumes through to the
14 year 1987 as an annual growth rate along both Routes
15 34 and 537 of three percent per year. I might add
16 that in the past two and half or three years the
17 traffic volumes have actually dropped on Route 34 and
18 537; partially, I'm sure, because of the fossil fuel
19 crisis and partially, I'm sure, because of the
20 completion of Route 18 to the Garden State Parkway
21 but we still felt it appropriate to approach the
22 project from a conservative standpoint and project
23 increases in traffic through 1987. The three percent
24 figure was based upon the information we received
25 from the County with regard to their permanent

1 counting station on 537, which is actually just west
2 of Route 18, which would pick up all of the traffic
3 coming off 18 into the Freehold area and coming back
4 on to 18 from the Freehold area.

5 Following that, we surcharged or
6 added the traffic that would be generated by this
7 development to the two accessways that are proposed.
8 We added our initial analysis, assumed that the
9 connection to Route 34 that is shown on the map as
10 future, in accordance with your Master Plan, would
11 not be in place in the foreseeable future to
12 determine the percentage of traffic that would
13 utilize the various roadways surrounding the site. I
14 consulted the Monmouth County Housing Studies, 1971,
15 which dealt basically with overall housing throughout
16 the the county by planning area; and Colts Neck is in
17 Planning Area five. So, specifically, I looked at
18 those figures. By the way, that study projects,
19 based on interviews, the number of people that work
20 in the New York area, the number of people that work
21 in Richmond County, the number of people that work in
22 Staten Island, New York and then break down the
23 number of people working within Middlesex, Monmouth
24 Counties and the southern portion of the state. I
25 also consulted the Monmouth County Multi-Housing

1 Study, multi-family housing study, which was
2 published in 1973 which has a similar breakdown from
3 multi-family housing, which would be basically the
4 condominium and town house units that are proposed
5 within the site. By reviewing that information,
6 establishing employment trends, I was able to assign
7 the percentage of traffic, for example, that would
8 utilize Route 18, the percentage that would proceed
9 south on 34, north on 34, and east and west on County
10 Route 537. I added the traffic in proportion, in
11 addition to the street traffic as expanded to 1987,
12 the computed the capacities along 537 as well as
13 handling Route 34 and most important, at the
14 intersection of the 537 and Route 34. Based upon
15 those projections I developed a series of recommended
16 access designs for the two driveways and recommended
17 off site improvements in order to maintain the
18 current levels of capacity that exist along 537 and
19 Route 34.

20 BY MR. FRIZELL:

21 Q. Now, after having made that analysis of
22 the site itself, did you attempt to put the site in a
23 regional context?

24 A. Yes, sir, I did.

25 MR. FRIZELL: Maybe you ought to

1 mark that also, Mr. Sagotsky.

2 MR. FRIZELL: Entitled, "Regional
3 Traffic Plan of Colts Neck Village".

4 MR. SAGOTSKY: Do you have the
5 date?

6 THE CHAIRMAN: 6/11/80.

7 MR. SAGOTSKY: And prepared by
8 whom?

9 THE CHAIRMAN: Abbington, Ney
10 Associates, specifically Henry Ney, Professional
11 Engineer.

12 MR. SAGOTSKY: It will be marked
13 A-19 for identification.

14 (Whereupon a regional traffic
15 plan dated 6/11/80 is marked A-19 for
16 identification.)

17 BY MR. FRIZELL:

18 Q. Did you prepare A-19, Mr. Ney?

19 A. Yes, sir, I did. It was prepared by a
20 draftsman under my supervision.

21 Q. And what does that show?

22 A. A-19 was utilized by me for principally one
23 major reason, and that is to display the regional
24 setting of the subject property with relationship to
25 the surrounding highway networks. The site is shown

1 in a dark shaded blue area shown on the plan and
2 appears as a series of percentages which, based upon
3 the housing studies I mentioned before, depict the
4 percentage traffic movements from the site. For
5 example, the major movement from the site we would
6 see is a northbound movement on Route 34 amounting to
7 approximately 55 percent of the site traffic.
8 Eighteen percent of the site traffic would utilize
9 537 with five percent proceeding westerly and 13
10 percent easterly. With regards to Route 18, we saw
11 five percent of the traffic proceeding easterly on
12 Route 18 towards the Garden State Parkway and 17
13 percent proceeding what would be northerly and
14 westerly on Route 18 towards the major employment
15 areas along Route 287 and in the Middlesex County
16 area. And finally five percent of the traffic being
17 designated as south on Route 34.

18 I think the important aspect of this display is
19 to set the regional settings of the subject property.
20 County Route 537 is one of the major 500 series in
21 the state. The 500 series are part of the World War
22 II national defense system. 537 runs from the
23 Delaware River in the City of the Camden to the
24 Atlantic Ocean in the City of Long Branch, basically
25 a northwest roadway with the exception of the

1 easterly portion of the Monmouth County where from
2 Freehold to Long Branch roadway predominantly is an
3 east-west direction. It ties in directly with Route
4 36, with Route 35 and with the major employment areas
5 located in that area, such as Monmouth Shopping
6 Center, EAI Associates along Route 36 and other
7 associated industries such as Bendix and Fort
8 Monmouth, east of the subject property. Route 18 has
9 been recently completed to the Garden State Parkway
10 and in a northerly and westerly direction ties in
11 especially once the bridge is finished, within the
12 next year or two, will flow directly into 287 which
13 is a major employment area in Planning Area five of
14 Monmouth County. Route 34 ties in with Route 9 and
15 the Garden State Parkway, at two locations. One is
16 114 in the Holmdel-Middletown area and the other is
17 the interchange at Route 9 as well as the possibility
18 of the interchange at Cheesequake. These are major
19 routes servicing the New York, North Jersey
20 metropolitan area. To the south, Route 34 ties in
21 Wall Township and Point Pleasant I have, I think, as
22 you can see in looking at the subject property with
23 the access to Route 34 and 537, it has access to all
24 of the major highways in Monmouth County and in this
25 area.

1 Q. Now, after having done this analysis,
2 did you come to any conclusions regarding the use of
3 the property as proposed by this application?

4 A. Yes, sir, I did.

5 Q. And what were those conclusions?

6 A. My conclusions are that basically the proposed
7 land use is compatible with the existing highway
8 system especially from a regional network. From a
9 local standpoint, there are a number of
10 recommendations that we have developed and made to
11 our clients which we feel will maintain the current
12 levels of traffic service in the area.

13 Now, I've used that term twice and perhaps I
14 can explain it. The term "level of service" is a
15 term utilized to perhaps more easily quantify and
16 qualify the term "capacity". A roadway has a
17 theoretical or a maximum capacity that roughly is two
18 thousand vehicles per hour for an undivided two lane
19 roadway. However, at those volumes speeds drop very
20 low. There is an extreme amount of congestion during
21 the peak hours. There are delays that are associated
22 with left turn movements because of the difficulty of
23 making those movements and the condition that I
24 described would be a level of service "E", which is
25 the lowest level of service that a roadway can

1 function at. Below that, the roadway actually breaks
2 down with the number of vehicles carried are actually
3 below the capacity. An example of a breakdown would
4 be the Garden State Parkway. Everybody looks at the
5 northbound flow on Sunday evening and thinks it's
6 carrying a lot of traffic. But, in point of fact, if
7 you count the number of cars moving at a given point,
8 there will be more traffic moving southbound. That's
9 a level of service "F" condition or breakdown
10 condition. A level of service "A" is the other end
11 of the spectrum. That would be a condition where,
12 for example, at a signalized intersection such as
13 Route 34 during the the peak hours the only chance of
14 motorist being stopped is one of random selection if
15 he hits the traffic light when it happens to be red.
16 The motorist would have a little problem if making a
17 left turn because of oncoming traffic of an
18 intersection. On a free flow road conditions traffic
19 would be moving at a very high rate of speed. There
20 would be a minimum of interference and motorists
21 would pass other motorists virtually at will and
22 turning movements into driveways and side streets
23 would not impede traffic flow.

24 As an ideal situation from a design standpoint
25 as a traffic engineer, when one takes a project such

1 as this and expands current traffic volumes and then
2 adds the volume that's anticipated from the
3 development on top of it, any traffic engineer would
4 look to have a level of service "C". It is
5 considered a satisfactory design condition.

6 In other words, to maintain a level of service
7 "C" or better we developed a series of
8 recommendations. Those recommendations are with
9 regard to the main access roads. We have recommended
10 that beginning approximately at the more easterly
11 property line the roadway be widened proceeding in a
12 westerly direction to provide for a through lane and
13 a sheltered left turn lane which, depending on the
14 County's requirement, would either be placed with a
15 concrete median or a painted left turn lane. For
16 traffic proceeding eastbound, we would recommend one
17 through lane and a right turn lane to accomodate
18 traffic entering the proposed development. We then
19 in looking at the volume of traffic that would be
20 carried between Route 537 and and the intersection
21 with Village Boulevard and Route 34 have recommended
22 that the roadway be widened across the frontage to
23 the intersection to provide for specifically, at
24 least three lanes at the intersection of Route 34 and
25 537. Those three lanes would be one leaving the

1 intersection and two lanes entering the intersection
2 one for the through and left turn movements and one
3 lane for right turn movements. I'd note in viewing
4 the plan and the site that all of this widening would
5 be accomplished on the south side of the roadway and
6 without damaging any of the existing trees at the
7 Colts Neck Elementary School which is the only
8 property that would be involved, other than the
9 Applicant's since the corner is owned by the State of
10 New Jersey and by a shopping center which is already
11 dedicated through a site plan approval. There is
12 sufficient right-of-way to do that widening at the
13 intersection of Route 34. We provide at this point
14 only a right turn-in, right turn-out movement because
15 we are in the area that is divided along Route 34.
16 There is currently a curb cut shown on this property
17 as existing there. It would be our intent to design
18 that curb cut to provide for a channelized right turn-in,
19 right turn-out movement basically through the use of
20 a triangular island. With regard to the intersection
21 of Route 34 and 537, we would recommend that at some
22 future time, but by the time this project is through
23 with major construction, perhaps 50 or 60 percent,
24 that the state be asked to put a leading green for
25 the left movement from southbound onto 537. And this

1 is really a demand situation. As the demand builds,
2 the state would then react to that demand and add a
3 left turn phase to the signal. If the extension of
4 Joshua Huddy Drive, is it, or whatever --

5 MR. SAGOTSKY: Sounds right.

6 A. -- is completed in there, then there would not
7 be a necessity to widen between the intersection of
8 Route 34 and the subject property because the
9 northbound movement accounting for 55 percent of the
10 site traffic, the predominance of that movement would
11 be made here, as is the left turn movement also be
12 made there, thereby reducing traffic demand. So our
13 analysis is based again on the conservative premise
14 that we will not have the extension of the roadway on
15 the Colts Neck Master Plan completed to Route 34.

16 I have, in my analysis, broken down all of the
17 traffic volume turning movements at the various
18 intersections that are the basis for our conclusion.
19 I have also summarized all of the traffic counts that
20 we have taken and have shown the basic data sheets to
21 the Monmouth County Planning Board's surveys of
22 places of employment as well as in all of the traffic
23 counts.

24 MR. FRIZELL: Do you have an
25 extra one of those?

1 Can we have that marked, Mr.
2 Sagotsky, please?

3 MR. SAGOTSKY: How many sheets
4 are there in here? Should I count them?

5 MR. FRIZELL: Well, I think --

6 THE WITNESS: I believe there are
7 25 sheets.

8 MR. SAGOTSKY: I'll just mark
9 this for the moment and put: An outline of Testimony
10 of Henry Ney entitled "Colts Neck Village",
11 consisting of 25 sheets which is offered for
12 identification as being compatible with the testimony
13 of Henry Ney who is now testifying and apparently
14 offers A-20 for the purpose of giving an outline of
15 his testimony. I recommend that it be marked A-20
16 and accept it as such for identification.

17 (Whereupon a 25 page document,
18 "Colts Neck Village" is marked A-20 for
19 identification.)

20 BY MR. FRIZELL:

21 Q. Now, Mr. Ney, with the recommendations
22 that you have just described, did you form an opinion
23 as to whether or not the traffic generated by this
24 project would reach unacceptable levels of service?

25 A. Yes, I have.

1 Q. And what's that opinion?

2 A. My opinion is that with the improvements that
3 we've recommended, without the construction of the
4 roadway known as Joshua Huddy Drive on the site plan,
5 that with the improvements the intersection of Route
6 34 and 537 would operate at a "C" level of service
7 with the entire project completed and the expanded
8 traffic through 1987. And that the roadway between
9 the subject property and the access on 537 to Route
10 34 would operate in the "B" to "C" level of capacity.

11 And that to the east of the subject property the
12 current levels of capacity would not affect the --
13 nor would the capacity levels be effected on Route 34.

14 Q. Now having examined those roads, are
15 those all the roads that, in your opinion, should be
16 examined for potential impacts in connection with
17 this project?

18 A. Yes. If I might explain, the reason why what
19 happens to traffic, as, for example, leaves a
20 development and we have a percentage going south on
21 Route 34, a percentage will peel off at other
22 intersections, such as the Route 547. Similarly,
23 proceeding northbound a percentage of the traffic
24 would peel off at Phalanx Road because of the
25 construction of the new Bell Labs office building

1 which will employ 1,600 people. That will be located
2 on Middletown-Lincroft Road. Another percentage will
3 drop off at Keyport-Holmdel Road to go towards the
4 Prudential and towards the Bell Labs and other
5 employment areas. So traffic tends to disperse as it
6 gets further and further away from the site. I think
7 the best example of that is that a regional shopping
8 center, such as Monmouth Mall, will generate about
9 30,000 traffic movements on a peak Friday or Saturday.
10 I'm not talking about Christmas. The movements would
11 even be higher. If one is familiar and has utilized
12 that area frequently, generally the intersections
13 that are one and two and three removed from the
14 shopping center do not have the congestion and the
15 impact or feel the impact that the shopping center
16 exhibits, for example, on the intersection of Route
17 36 and Wyckoff Road, on the Eatontown circle, on the
18 intersection of the jug handle of Route 35. As you
19 proceed further north or south on Route 35, the
20 traffic impact is dissipated. As you proceed east or
21 west on Route 36, the impact is dissipated. So that
22 in looking at the critical areas, once we've
23 accomodated those, it's standard practice that,
24 within the traffic engineering profession, to look
25 that far and to evaluate those and, in effect, to

1 take care of your traffic at your points of impact.

2 MR. FRIZELL: I have no other
3 questions of Mr. Ney.

4 Excuse me. I do have one more.

5 Q. Did you include the traffic counts in
6 the --

7 A. Yes, all of the traffic counts.

8 Q. A-20?

9 A. I might also add --

10 MR. SAGOTSKY: Are included in
11 what?

12 MR. FRIZELL: A-20.

13 A. Also, the last sheets, which is unidentified,
14 is a Xerox copy of the 1979 State's annual average
15 daily traffic maps which, in point of fact, were
16 received in our office today. They were printed last
17 week and received in our office today and there is a
18 complete count in terms of average daily traffic at
19 the intersection of 537 and Route 34, as well as
20 several of the ramps on Route 18. And I was happy to
21 see that the 1979 average daily traffic volumes are
22 in fact, extremely compatible with our own personal
23 traffic counts that were taken at this intersection.

24 Q. Did you do anything else in the analysis
25 of this site?

1 A. Yes, we did. There are two other things that
2 we did that I think are particularly important. We
3 did look at the accidents along 537 at the site
4 frontage along down to Route 34 as well as the
5 accidents at Route 34 and 537. There was one area
6 that we found to have a high incidence of accidents.
7 That was the intersection of Cranbury Road and 534.
8 For example, there were four accidents and, I believe,
9 six or eight injuries.

10 One of the factors I wish to point out, with
11 the widening that the Applicant proposes we will be
12 easing that curve, which I think is a major
13 contributory factor in the accidents happening in the
14 intersection area. There was no major accident
15 pattern at the intersection of 34 and 537. The
16 predominance of accidents are the type that occur
17 with a traffic signal. Most of the public don't
18 realize that when a traffic signal is installed you
19 trade right angle accidents for same direction
20 accidents. And the pattern at this intersection is
21 basically same direction accident pattern at Route 34
22 and 537.

23 In addition, we worked with Mr. Rahenkamp's
24 office in establishing the minimum width of the
25 internal street pattern which are shown in the legend

1 to the right-hand side of the map. Just basically to
2 review that, on Village Boulevard the roadway is
3 intended to be divided down to and just past -- I
4 believe it's Greenhouse Drive, which exits out to
5 Route 34. That roadway might have an 18 foot wide
6 center median, 20 foot lane widths, with a four foot
7 graded area, as a shoulder area, and then a seven
8 foot area for the pavement swales. There are also a
9 series of two-lane divided collectors which extend
10 beyond the subject property, beyond the town house
11 property along Village Green. And it basically is
12 intended to provide just two lanes with a median, and
13 again there would be 12 foot lanes with six foot
14 shoulders, 18 feet in width. On the median we have a
15 series of two lane collector roadways which would be
16 Joshua Huddy Drive as well as the entrance roadway
17 within the commercial office area from Route 34.
18 Those are within the 60 foot right-of-way with 24
19 foot pavement, six foot shoulders on the other side
20 and then a 12 foot area for drainage swales. And
21 finally in the cul-de-sacs where we've shown a 50
22 foot right-of-way. Those are all of the roadways
23 marked in red or orange. Those roadways would be
24 basically two nine foot lanes with an eight foot
25 parking area flanking one side of the roadway. And

1 that parking area would loop around the cul-de-sac.
2 And then end so there would be only be parking on one
3 side on the residential cul-de-sacs and then there
4 would be a 12 foot graded layer off of that. Now,
5 these roadway standards were developed in accordance
6 with the standards of the overall development; and
7 that is to present a development plan that will work,
8 will not be excessive pavement, can be surfaced
9 drained and can provide sufficient roadway width and
10 right-of-way to accommodate the anticipated traffic.

11 MR. SAGOTSKY: At this point what
12 you have just testified to in response to the last
13 question, is that all set forth in A-20?

14 THE WITNESS: If A-20 is
15 the circulation plan, yes, sir, it is.

16 MR. FRIZELL: No, I'm sure it's
17 not. A-20, Mr. Ney, is your -- I believe is the
18 traffic analysis of the impacts on surrounding roads.

19 THE WITNESS: The internal
20 circulation is discussed but the plan, which I don't
21 know what the number specifically, spells out what
22 the widths are and what the design criteria are.

23 MR. SAGOTSKY: Nothing further.

24 MR. FRIZELL: I have no other
25 questions of Mr. Ney.

1 EXAMINATION BY THE BOARD:
2

3 MR. LARKIN: How would you
4 describe the level of service on 34 and 537 on an "A"
5 and to an "F"?

6 THE WITNESS: Approximately ^{a "B"} ~~to be~~
7 to a "C" level right now; surprisingly to me, because
8 I've been using this intersection for 16 years.
9 Spending, I'd say, at least six hours at this
10 intersection just parked watching traffic and counting
11 traffic, I was surprised that the level of service is
12 as high as it is. The one measure of level of
13 service, by the way, is how many times a vehicle has
14 to wait to get through a traffic light. This traffic
15 light is a density light. It has an extremely wide
16 variability cycle where you can go as much three
17 minutes between -- from green time to green time
18 again. The signal will clear as many, for example,
19 on Route 34, one cycle I counted 28 vehicles clearing
20 in a cycle. I have counted in excess of 30 vehicles
21 clearing on a cycle on Route 537. Because the cycle
22 is so long, the queues of traffic tend to get long.
23 But based on my observations, all of those queues
24 cleared during the cycle with one exception and that
25 exception occurred when two semi trailers were

1 beginning to turn left to go north on Route 34 from
2 the Colts Neck Inn. And the first trailer had to
3 wait for through-traffic to clear going westbound.
4 The second trailer stopped behind to turn left and no
5 one was able to bypass the left-turning vehicles.
6 Under that one condition, as I said, in about six
7 hours of observation that I did observe vehicles wait
8 more than one cycle to clear the intersection.

9 MR. LARKIN: Your testimony is
10 this widening would therefore create a situation
11 would be --

12 MR. NEY: "C".

13 MR. LARKIN: No worse than --

14 THE WITNESS: No worse than Route
15 537 and Route 34 had been.

16 I think you have to remember
17 there has been a drop in volume. For example, in
18 1974, the volume just north of the intersection was
19 14,100 vehicles a day in 1974 and today, on the maps
20 that we just received from the State, the volume is
21 11,100 vehicles per day. So I think you would see
22 similar conditions that have existed and do exist at
23 that intersection today.

24 The widening, of course, is the
25 critical factor. If Joshua Huddy Drive is not built

1 and the widening is not accomplished at the
2 intersection then the level of service will go very
3 high, into the "D" to "E" range without this roadway.
4 I have projected all of the northbound movements to
5 come to the intersection and make a right turn with
6 the exception in a small percentage that would go out
7 in this direction because the driveway is closer.
8 That northbound movement requires its own separate
9 lane for right turns.

10 MR. LARKIN: You've talked about
11 dispersing the traffic that leaves. How about the
12 reverse of the flow?

13 THE WITNESS: The reverse is also
14 true. The more opportunities to enter a property or
15 a development the less chances are there will be
16 excessive congestion at one major point.

17 MR. LARKIN: If you are taking,
18 for instance, all the flow moving and 50 percent go,
19 like you said, was going north on 34, if 50 percent
20 comes back and is added to the former flow that's
21 normal and has to make left-hand turns --

22 THE WITNESS: This is correct.
23 That, also, I indicated. And I think you'll see in
24 my report -- if the Board wants more copies I'll be
25 happy to run them -- the volume of left-turning

1 traffic would go to approximately 364 vehicles in a
2 one hour period as opposed to approximately 100 right
3 now. That volume can be accommodated providing the
4 proper leading interval is utilized.

5 MR. LARKIN: So you are assuming
6 in this analysis there is a left-hand turn?

7 THE WITNESS: There would have to
8 be one added at some point and in time. It's really
9 a question I find as to more controls and a
10 municipality working with the State on these
11 different issues. If the municipality does not call
12 these things to the State's attention, it will take a
13 long time to change a modification to a signal phasing
14 network. In conjunction with the State, then it
15 would take a lesser time. For example, on projects
16 that are built all at once, such as shopping centers,
17 usually it's my function, as part of my review of the
18 plan, to take it into the State agencies and if a
19 phase change is needed with the signal to develop the
20 phase change at the time preliminary plans are drawn.
21 With a residential project, because they take a
22 number of years to develop, the State is not as
23 lenient in installing traffic control devices. There
24 are many developments that have taken 15 years to
25 build instead of five and things of that nature.

1 THE CHAIRMAN: Mr. Ney, isn't it
2 a fact that Monmouth County is classified "F" level
3 of service at that intersection, as bad already
4 before we even think about this?

5 THE WITNESS: I don't know
6 whether they have or not.

7 THE CHAIRMAN: I think they have
8 under the existing situation. I ask you that because
9 of your experience with them.

10 THE WITNESS: Generally, to
11 answer the question, unless it were -- first of all,
12 the area is out of any of the topics work that was
13 done back in 1971 through, I guess, about '74. Colts
14 Neck, as a rural area, was not included as part of
15 the topic study. Secondly, the County, at least my
16 tenure with the County, did not evaluate State
17 intersections with County roads. Those are State
18 jurisdiction. s I don't know what they have
19 classified this as.

20 THE CHAIRMAN: I thought -- I'm
21 pretty sure I'm right, too, that the County had
22 complained to the State of the level of service.

23 THE WITNESS: I can check that
24 out.

25 THE CHAIRMAN: And the effect was

1 one per light -- was as low as ten per light change,
2 which contravenes perhaps what you are study
3 indicates?

4 THE WITNESS: I invite any member
5 of the Board to spend seven to nine and four to six
6 p.m. with me because I've done it about three or four
7 times now since I received this assignment. And as I
8 indicated, I was quite surprised by the counts to the
9 extent that I debated whether to count the
10 intersection again. I counted it on two separate
11 occasions, June 2 and June 3 and until I received the
12 results of my automatic traffic recordings on 537 and
13 the state maps which all reinforced our actual
14 turning movement counts and, I might add, I looked
15 today for the first time, at a report that was
16 apparently prepared by a consultant for the Township.
17 And his traffic volumes basically are in the same
18 range that mine show. I don't feel that I'm out of
19 line with the volume I have done. And my
20 observations of the intersection have shown that we
21 do not have a major problem with traffic flowing
22 through the intersection in terms of the number of
23 cycles. I might add that the signal controller may
24 have been changed in the last few years, but I can
25 recall when the control lever would get hung up on 34

1 or 537 and not change and it is a density detector.
2 And if the detectors were not working properly -- and
3 I recall personally that I had run the light because
4 it wasn't changing.

5 THE CHAIRMAN: That has happened,
6 yeah.

7 On these recommended changes in
8 widening and so forth, who is to make these changes
9 and who is to bear the expense of the changes --

10 THE WITNESS: It is my --

11 THE CHAIRMAN: -- to be assured
12 that the County and the State will approve the
13 changes?

14 THE WITNESS: It is my
15 recommendation that the Applicant would undertake
16 these improvements as part of the off-site
17 improvements in accordance with the Municipal Land
18 Use Law. He is, in effect, adding the traffic that
19 would be incorporated, I would assume, through our
20 offices, at the time of the preliminary engineering
21 plans with the State and the County.

22 THE CHAIRMAN: Is it your
23 experience that they always approve these?

24 THE WITNESS: Yes. With median
25 changes, for example, they may wish to see 12 foot

1 lanes where we show 11. They may wish to have
2 physical channelization and we've suggested painted
3 channelizations. Generally when a Applicant intends
4 to upgrade the road system, the County and the State
5 goes along with them. The nearest -- all of the
6 improvement on Wyckoff Road and Route 36 was done by
7 the Monmouth Shopping Center when they expanded in
8 1974 or five.

9 THE CHAIRMAN: Have you ever made
10 an traffic impact study on any other PUD's or is this
11 a hypothesis?

12 THE WITNESS: I have done traffic
13 counts for much of our trip generation rates at Twin
14 Rivers. I have been since the project has been
15 underway since 1972. I have one supplementing work
16 for that, the first instance, American Standards and
17 now we are phasing in connection with different
18 segments that they've done. We have done PUD
19 applications; I'd say somewhere between a half a
20 dozen and a dozen throughout New Jersey. So we are --
21 they are not new to us.

22 THE CHAIRMAN: I didn't mean on
23 the applications, I meant after they were in place?

24 THE WITNESS: Oh, yes, yes.

25 THE CHAIRMAN: Does the count

1 actually jibe?

2 THE WITNESS: Most times, less.
3 For example, we've been using, for town house
4 projects, a trip generation of about 0.6 or 0.7 trips
5 per dwelling unit during the peak hour. We just
6 finished a count of Sheffield Mews, a project in
7 Middlesex County. That particular project is now
8 fully occupied. And we had trip generation per
9 occupied dwelling unit of about 0.51 or somewhere in
10 that range. So, yes, they've borne out. As a matter
11 of fact, I refer you to Voorhees Township where we
12 did the regional mall. The Chief keeps talking about
13 how right we were about the traffic volumes.

14 It's not magical. In addition to
15 those studies, I have done the town house projects
16 and apartment projects and single family projects.
17 For example, a town house project right in Freehold,
18 the Hovnanian project located in Freehold Borough off
19 of Route 9, we have done studies. There are other
20 traffic engineers across the country as well as
21 throughout New Jersey who do traffic counts in
22 different types of land use. And these are submitted
23 on forms through the local section, which is approved
24 as being attested to as true traffic counts, and then
25 sent down to Washington where each year the trip

1 generation book is upgraded to reflect how many more
2 traffic counts were done at fast food restaurants, of
3 apartment projects. So there have been many, many
4 studies and essentially that are very, very
5 consistent throughout the the country.

6 MR. DAHLBOM: Mr. Ney, do you
7 have any information on whether the State has any
8 future plans for building any of their famous jug
9 handles at the 34-537 intersection?

10 THE WITNESS: Not if it -- I'd
11 hope they would not build a near-side jug handle at
12 the intersection. I would hope that the State has
13 learned that that transfers the problem up the street
14 where there's no control. They do have the
15 right-of-way on the corner.

16 MR. DAHLBOM: I know they do.
17 That's why I asked the question.

18 THE WITNESS: I'd hope they would
19 look at a far-side loop around the Exxon station.
20 That would certainly eliminate the crossing problem
21 that's normally associated.

22 MR. TISCHENDORF: Were the levels
23 of service that you testified to, was that your
24 average or peak?

25 THE WITNESS: That's peak hours,

1 sir. For example, we found the peak hour in the
2 morning to occur between seven-thirty and eight-thirty
3 a.m. The total intersection carried about 2,200 or
4 2,300 vehicles during that period; and in the
5 evenings between four-thirty and five-thirty p.m.

6 MR. TISCHENDORF: Your definition
7 of "peak" is an hourly definition?

8 THE WITNESS: Yes, sir. That's
9 correct

10 MR. BRENNAN: What about
11 seasonality?

12 THE WITNESS: Summer versus the
13 like?

14 MR. BRENNAN: You have a lot of
15 people heading to the beach.

16 THE WITNESS: I tried to level
17 the traffic off. Generally, May and June are
18 slightly higher than the average condition; July and
19 August higher than over May and June. The rest of
20 the months fall below the average condition. I tried
21 to level them off for seasonal variation which I must
22 admit is an estimate; because without having a full
23 program, it's hard to make an estimate. But there
24 are standard methods. Once I found an average, I
25 then jacked it up by three percent per year.

1 MR. BRENNAN: So then assuming to
2 maintain your desired level of service, assuming your
3 recommendations are implemented, that would be
4 maintaining the level of service at the peak points,
5 say, in July and August?

6 THE WITNESS: That's correct.

7 MR. BRENNAN: You are talking
8 about peak volume?

9 THE WITNESS: I think, however,
10 what you've got to understand, we're talking about a
11 one hour period. Within a one hour period, there can
12 be a momentary surge where your level of service
13 would drop. But over the course of the --

14 MR. TISCHENDORF: Are these only
15 the working days of the week?

16 THE WITNESS: Yes. The maximum
17 impacts of the residential development, any
18 residential development, is felt during the morning
19 and evening peak hour during the weekday.

20 MR. TISCHENDORF: It seems like
21 all of us have experienced level "E" on Friday night
22 or Sunday evening.

23 THE WITNESS: Sunday night
24 probably there would not be -- well, sometimes Monday
25 morning, maybe. But that would not be reflective of

1 the normal seven to eight and four-thirty or four to
2 five p.m. peak traffic. Again, the occasional -- I
3 have used an average July figure, an average August
4 figure. I have not used a peak. There will be and
5 can be peaks within an hour, in any given period of
6 time. I think one point that's rapidly happening
7 within the area is, now that 18 is open, it's
8 becoming a fairly substantial diversion from 537 over
9 to 18. I use it frequently. I see more and more
10 traffic utilizing it as people begin to know it's
11 there and it's available.

12 MR. TISCHENDORF: So you are
13 saying now the level of service you are testifying to
14 for peak seasonality, namely, July, but daily average?
15 It would be peak average, if you will?

16 THE WITNESS: Let me -- the
17 standard is the 30th peak hour that's utilized at a
18 design criteria. The 30th peak hour basically means
19 that's 29 hours during the year that will carry more
20 traffic than the 30th peak hour. Conversely, there
21 are 24 hours times 365 minus 30 that will carry less
22 traffic. We try to estimate that 30th peak hour as
23 closely as we can. And, therefore, there will be
24 more hours in the week during the heavy seasonal
25 period, which might be Christmas, it may be the

1 summer period, where we will have more traffic than
2 that which is projected. However, again, from the
3 standard, normal -- it's considered normal to utilize
4 the 30th peak hour for an estimate thereof.

5 MR. TISCHENDORF: Thirty hours
6 out of 124?

7 THE WITNESS: Thirty out of --
8 out of the year. Yes, sir.

9 MR. TISCHENDORF: Okay.

10 MR. SAGOTSKY: I would like to
11 ask a question.

12 MR. NIEMANN: What would be your
13 projected volume capacity ratio after the
14 construction of this project on 537 and Route 34 and
15 that intersection?

16 THE WITNESS: I haven't computed
17 volume capacity ratio. With regards to the free flow
18 condition, the volume capacity ratio to the west of
19 the site -- I'm sorry -- east of the site would be
20 about -- would be about 75 percent, 0.75 perhaps 0.80.
21 However, at the intersection, if you are referring to
22 the Highway Capacity Manual, it's so bad that I
23 recommend you don't refer to it. It's still a
24 standard text, however.

25 I'll give you an example. We

1 just finished a study for the Borough of Hillsborough,
2 where the theoretical maximum capacity for Route 206
3 is 1,800 vehicles per hour. We've counted 2,150
4 vehicles per hour on that roadway. That's a free
5 flow condition. And if you know 206, there are
6 numerous driveways along there. 2,150 vehicles per
7 hour and the speed they run during the morning and
8 evening peak hours, including the signal stoppages,
9 we're averaging 30 miles an hour. We're doing 40 to
10 45 in the free flow. The Capacity Manual of 1965 is
11 so far off as to be almost worthless in utilization.
12 And the reason for that is that that manual was
13 published -- and you'll see in the opening pages --
14 by O. K. Norman, who was the basic founder. O.K.
15 Norman was promising the Capacity Manual before we
16 graduated. It came out three years later. The base
17 data for that capacity data was collected from 1948
18 or nine through 1954 or '55. However, 50 or 60
19 percent of the cars at that time were standard shifts.
20 The headways were much greater; that is, the spaces
21 between cars 'cause we didn't have as much traffic in
22 1946 or '48.

23 What I utilized for the
24 intersection itself was a method called "critical
25 lane analysis" which has been accepted in the State

1 of Maryland. It's accepted by the Department of
2 Transportation as a logical analysis. And the
3 critical lane analysis basically takes the critical
4 approach and adds the left turn in the non-critical
5 approach to that and by looking at the critical lanes
6 if the critical lane analysis shows a value and a
7 range and 12 to 1,250 you are at a "C" level; 1,450
8 is about the top of the "D" level. And then the
9 maximum capacity intersection on a critical lane
10 analysis is 1,600. I have not computed the 1,600.
11 But the critical lane analysis was used at the
12 intersection.

13 MR. NIEMANN: Have your
14 projections been higher or lower than the 0.75?

15 THE WITNESS: On the free flow I
16 show about 1,400 vehicles to the west -- I'm sorry,
17 to the east of the subject property, which is today's
18 traffic expanded plus the right and left turn traffic
19 from the development and the capacity -- which I have
20 computations in the book -- is about 1,700; 400 plus
21 over 1,700 would give you the volume capacity ratio.

22 MR. NIEMANN: That's an
23 acceptable ratio; slightly higher or slightly lower?

24 THE WITNESS: I would say at
25 1,400 vehicles you are operating in the range.

1 Current volume is about 1,100 today.

2 MR. NIEMANN: So it would be
3 significantly --

4 THE WITNESS: It's jumped from a
5 "C" to a "D" level. It's changed, yes. It has
6 changed to the east. But in terms of the need for an
7 additional lane, I don't feel the conditions warrant
8 it. Again, the analysis would be subject to county
9 review because it is a county road. And if
10 additional widening is required, the Applicant will
11 have to pay his fair share.

12 MR. BRENNAN: Did I understand
13 you, Mr. Ney, to say that your projection is 75
14 percent of the traffic originating from this site
15 would go north on 34?

16 THE WITNESS: Yes, sir.

17 MR. BRENNAN: That sounds like a
18 rather speculative --

19 THE WITNESS: I'm sorry?

20 MR. BRENNAN: It sounds rather --
21 rather speculative that 55 percent of the people who
22 might move in here would move up 34. What's the
23 reasoning process? I would like to test the
24 sensitivity of it if 55 percent headed east or south
25 or west instead of north. How solid are those

1 percentages?

2 THE WITNESS: If you look at the
3 Monmouth County 1971 housing reports, they show 67
4 percent of the traffic movement and employment to be
5 outside of Monmouth County to the north. Okay?
6 Twenty-five percent of that 67 would be Middlesex,
7 Union, Somerset and Richmond. Union would be
8 northbound movement; Middlesex and Somerset would
9 convert to a westbound movement on Route 18. If you
10 look at the 1973 employment survey, in Planning Area
11 five we had about 15 to 18 percent northbound and
12 about 50 percent of apartment dwellers in this area
13 in the Monmouth County area. What I did was, I
14 looked, tried to look, at the major employment
15 centers in Monmouth County; those which are north,
16 those which are east, those which are west. And then
17 I tried to work with these to get a reasonable
18 assumption. To answer -- to answer your question, if
19 I had had a higher percentage turning right -- my
20 critical analysis is at 34 and 537 -- I would be
21 delighted if I had had a higher eastbound movement.
22 I'd be delighted if I had greater utilization for
23 Route 18.

24 For example, everybody coming
25 from northern New Jersey and New York who are

1 serviced by the Parkway will come down 34. In point
2 of fact, they can continue south on 9 and pick up 18
3 and at the development bear a series of right turns.
4 I tried to take what I considered a conservative
5 approach I could run numbers in other directions and
6 probably wind up with better levels of service on the
7 roadway.

8 MR. SAGOTSKY: Basically, when
9 all is said and done, your projection is based on an
10 increase in population in the Township of Colts Neck
11 in that area of how many people?

12 THE WITNESS: I don't pick the
13 number of people. It's based on a per dwelling unit.
14 My analysis is based upon 1,137 dwelling units broken
15 down.

16 MR. SAGOTSKY: Well, from that do
17 you make any conclusions as to people and automobile
18 traffic? You must have some basis.

19 THE WITNESS: The generator is
20 number of units. Okay?

21 MR. SAGOTSKY: Well, that
22 generates particularly?

23 THE WITNESS: That generates the
24 number of vehicular trips. There is not a
25 distinguishing between one and two bedroom apartments.

1 for example; for distinguishing between a three
2 bedroom house or a four bedroom house. Single family
3 is a single family unit, normally setting on a
4 detached lot, separate lot, with front yard setbacks,
5 side yards and the like.

6 MR. SAGOTSKY: Well, how many
7 vehicles are you then considering in your projection?

8 THE WITNESS: Vehicle ownership?

9 MR. SAGOTSKY: Vehicles to add to
10 the --

11 THE WITNESS: One point one trips
12 per unit during the evening peak hour and, I believe,
13 0.7 or 0.8 during the morning peak hour.

14 MR. SAGOTSKY: Does your analysis
15 include the other elements that are proposed here?

16 THE WITNESS: Yes, 484
17 condominium apartment units.

18 MR. SAGOTSKY: Yes. How about
19 the senior --

20 THE WITNESS: One hundred twenty
21 seniors and I believe 381 or 181 town houses. I
22 forget the exact number.

23 MR. SAGOTSKY: How about the
24 commercial?

25 THE WITNESS: No, 361 town houses.

1 We have not seen a development plan for the
2 office/commercial or office/industrial. When a plan
3 is developed that will generate the square footage.
4 Then we would take that into account.

5 However, just as a point of fact,
6 as far as offices is concerned and industrial,
7 traffic movement is, in fact, the reverse of the
8 outbound movement from the residential area. In
9 other words, we're looking at a peak outbound through
10 the intersection which were accommodated. When that
11 peak outbound, for example, in the morning is
12 northbound, any southbound traffic coming to the
13 office/commercial or office/industrial would be
14 counter-flow and would not add to the peak hour
15 traffic that is generated out. That would be in the
16 opposite direction.

17 MR. SAGOTSKY: Do you feel you've
18 answered the question with reference to what would
19 the flow generation be from this plan which
20 encompasses the commercial aspects. Here a shopping
21 center apparently is to be provided -- to servicing
22 this area?

23 THE WITNESS: I have estimated
24 traffic flow from the 1,137 units. I have not had a
25 development plan at this time from the

1 office/industrial or office/commercial.

2 MR. SAGOTSKY: That hasn't been
3 furnished to you by the client?

4 THE WITNESS: That's correct. I
5 have looked at it in terms of the traffic impact.
6 And the flow is counter-cyclical and with the same
7 levels of improvements, that traffic could be
8 accommodated. Because the inbound, for example, is
9 opposite the outbound. If you are accommodating the
10 outbound flow, you can accommodate the inbound flow.
11 In other words, under a critical lane analysis you
12 are looking at the major flow. Once you establish
13 the major flow the secondary flow can be accommodated
14 in addition by providing a four-lane addition on 537
15 across the frontage of the site. The capacity does
16 not double. In fact, it's probably a four-fold
17 increase. The capacity, theoretically, on a two-lane
18 highway is 2,000 vehicles per hour total, in both
19 directions. The capacity of a multi-lane highway,
20 four or six, is 2,000 vehicles per lane per hour. So
21 that the theoretical maximum in going from a two-lane
22 to a four-lane road goes from 2,000 vehicles per hour
23 to 8,000 vehicles per hour.

24 MR. SAGOTSKY: I have nothing
25 further.

1 (Whereupon a brief recess is
2 taken.)

3 THE CHAIRMAN: We'll reconvene.

4 I'd like to announce at this time
5 that this meeting will -- tonight's phase -- will
6 terminate at 11 o'clock, which is eight minutes from
7 now. It's quite obvious that Mr. Ney will have to be
8 recalled for the next meeting on June 17th, perhaps
9 because of his great extent of knowledge, next
10 Tuesday. Perhaps it was my fault. I, maybe, let you
11 go on a little too long, Mr. Ney.

12 MR. SAGOTSKY: Please, Mr. Ney,
13 don't volunteer. I ask you, when you come back and
14 you are asked a question, this volunteering and going
15 beyond the call of the question really, really gets
16 into a long record. And we spend a lot of time --

17 THE WITNESS: I apologize.

18 MR. SAGOTSKY: I ask you, please,
19 don't do that.

20 THE WITNESS: I'm only trying to
21 answer the question to the best of my ability. I
22 apologize.

23 THE CHAIRMAN: I'm aware of the
24 fact that the Planning Board Chairman and their
25 attorney has some questions which will take more than

1 the time tonight. So that's why we'll have to recall
2 you.

3 However, in the remaining few
4 minutes, is there anyone from the audience that would
5 like to ask a questions of Mr. Ney?

6 MR. RALEIGH: Jim Raleigh, 15 The
7 Enclosure. I have a couple quick questions. I
8 missed the point as to why the Sunday night
9 northbound shore traffic on Route 34 can be disregarded
10 as a peak load problem?

11 THE WITNESS: It's disregarded as
12 far as this development, sir, because Sunday night is
13 not the peak entering for exiting from a residential
14 development.

15 MR. RALEIGH: I think that road
16 on Route 34 will be totally useless on a Sunday
17 evening.

18 THE CHAIRMAN: At this point, Mr.
19 Raleigh, please ask your questions. Your statements
20 are really not part of the question, although --

21 MR. RALEIGH: Eighteen percent of
22 the traffic from this development goes east and west.
23 What is the impact of the proposed bus stop on the
24 traffic flow?

25 THE WITNESS: The bus stop has

1 not been designed. The intent of the bus stop would
2 be to provide a parking area for a bus stop and a
3 sheltered bus stop area so that it would be off the
4 road not to have an impact.

5 MR. RALEIGH: Will it reduce the
6 traffic flow?

7 THE WITNESS: It has that
8 potential. I have not considered that in my analysis.

9 THE CHAIRMAN: Perhaps by next
10 Tuesday you may be able to consider?

11 THE WITNESS: Unfortunately, the
12 gas crisis is new to America and right now bus
13 transportation would account for perhaps one percent
14 of the trips. And the idea -- and I hope I'm not
15 volunteering too much -- that providing these
16 facilities, van pooling and car pooling and bus stops,
17 will reduce the actual impact of all developments in
18 terms of impact.

19 THE CHAIRMAN: Any other members
20 of the public, audience, have a question they would
21 like to ask Mr. Ney? Members of the Board?

22 I have one question and guess
23 we'll close.

24 Mr. Ney, you mentioned there are
25 53 municipalities in Monmouth County when you

1 mentioned that you had connections with them when you
2 worked for the County. To your knowledge, have you
3 made any studies or are there any PUD's in any of the
4 53 Monmouth County municipalities?

5 THE WITNESS: To my knowledge
6 there are no classic PUD's in Monmouth County.

7 THE CHAIRMAN: I have a reason
8 for asking, quite obviously. I want it on the record.
9 I thought perhaps we had some close to home and I
10 guess we don't. We're in a very, very unique
11 situation and that lends rise to my question as to
12 why Monmouth County was picked out. But that
13 question can come later of Mr. Frizell. It's not
14 within your purview.

15 THE WITNESS: I can't answer.

16 THE CHAIRMAN: All right. We
17 will reconvene seven p.m., June 17th.

18 MR. BRENNAN: I'd like to make a
19 motion that this meeting be adjourned.

20 MR. DAHLBOM: Second.

21 MR. SAGOTSKY: The next meeting
22 will be June 17th, here.

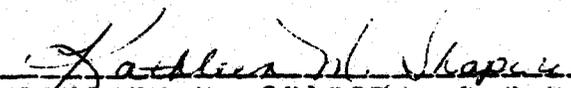
23 (Whereupon the hearing is
24 adjourned at 11:00 p.m.)

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CERTIFICATE

I, KATHLEEN M. SHAPIRO, a Registered Professional Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the proceedings as taken before me stenographically on the date hereinbefore mentioned.


KATHLEEN M. SHAPIRO, R.P.R., C.P.

Dated: June 18, 1980
My Commission Expires on
June 7, 1983