

CN - Origo Farms v. Two Colts Neck

6/24/80

Transcript of proceedings : witnesses

• Henry Ney

• Gale S. ~~Mc~~ McDonald

10/6/

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THE ZONING BOARD OF ADJUSTMENT OF COLTS NECK TOWNSHIP
COLTS NECK, NEW JERSEY

(201) 531-9500
(800) 392-6823

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IN THE MATTER OF THE APPLICATION : TRANSCRIPT
OF ORGO FARMS AND GREENHOURS, : OF
INC. and RICHARD A. BRUNELLI, : PROCEEDINGS
for a variance. :

x ----- x

Tuesday, June 17, 1980

B E F O R E:

- J. SCHRUMPF, Chairman
- L. LARKIN
- J. TISCHENDORF
- C. DAHLBOM
- T. FERER

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

SAMUEL S. SAGOTSKY, ESQ.,
For the Board.

FRIZELL, POZYCKI & WILEY, ESQS.,
BY: DAVID J. FRIZELL, ESQ.,
For the Applicant.

MARKS, HOLLAND & LaROSA, ESQS.
BY: GERALD A. MARKS, ESQ.,
For the Planning Board of Colts Neck.

STATE SHORTHAND REPORTING SERVICE

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Frederick J. Johnson, III, C.S.R.,
President

BY: PHILIP V. MORICI



I N D E X

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| <u>Name of Witness</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> |
|------------------------|---------------|--------------|-----------------|
| HENRY NEY | | | |
| By Mr. Marks | | 53 | |
| GALE S. McDONALD | | | |
| By Mr. Frizell | 85 | | 152 |
| By Mr. Marks | | 134 | |

E X H I B I T S

| <u>NUMBER</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EX</u> |
|---------------|--|-----------|-----------|
| A-21 | Feasibility Report Dated June, 1980 | 87 | |
| A-22 | Sewerage Facility Plan | 88 | |
| A-23 | Water Facility Plan | 88 | |



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THE CHAIRMAN: I would like to call this meeting to order and make an announcement.

(Notice of Meeting is read by the Chairman.)

(Roll call.)

MR. SAGOTSKY: May I have the swearing in of our transcriber?

THE CHAIRMAN: Mr. Sagotsky will swear in the transcriber.

(Court Reporter sworn.)

THE CHAIRMAN: Before we continue where we left off the other evening, I would like to remind the members that if they have missed any meetings, that they must qualify themselves by either reading the transcript of the meetings they missed or listening to the tapes or both. Two members so far have already done that. Do you have the record of that, Mr. Sagotsky?


MR. SAGOTSKY: In my report, I do have a certification from Mr. Gregory L. Brennan that he has read the transcription and the recording of the meeting of the 7th and 9th of June, that's on the 7th and 9th, he did read and did hear the record of May 29th.



1 1980 Special Meeting. I also have filed
2 with me this evening by John L. Schrupf,
3 Chairman of our Board, stating that he does
4 certify that on the 17th day of June he
5 has read a typewritten transcript of the
6 May 29th, 1980 meeting of the proceedings
7 of the Special Meeting of May 29th, 1980
8 as furnished by the State Shorthand Reporting
9 Service. It's the ruling of this Board
10 that the meeting which Mr. Schrupf missed,
11 namely on May 15th, in re: Orgo Farms,
12 was not a regular meeting for the purpose
13 of hearing Orgo Farms, that matters were
14 discussed and there was no testimony taken
15 nor any matters sworn, purely an organization
16 set up. And, consequently, it's the
17 ruling that there is no need for certifica-
18 tion by Mr. Schrupf, that he had read the
19 recording or the tape, or heard the tape
20 recording of that meeting.

21 If there are any objections or
22 confirmation, Mr. Frizell is here, he may
23 so state.

24 MR. FRIZELL: I have no objection
25 to this proceeding, Mr. Sagotsky. I concur



1 with the ruling.

2 MR. SAGOTSKY: Thank you. So that
3 the next meeting -- or instead of the next
4 meeting, our Shorthand Reporter be requested
5 to state that when he has the transcript
6 of the last proceeding of the 12th, and he
7 expects to have the transcript tomorrow, that
8 he will personally have delivered a copy of
9 that transcript to Mr. Ferer, who missed the
10 last meeting, and if necessary, to any
11 other person who requests a copy. As it
12 stands now, one copy will be delivered to my
13 office in Freehold, one copy here at
14 Township Hall for the purpose of more
15 copies to be made, and one copy to the home
16 of our Board member I just mentioned. I
17 will try my best to follow to see that either
18 the recordings or the transcript of the
19 testimony taken of any meetings that have
20 been missed by any member, that that member
21 will have available to him such a transcript
22 for the purpose of qualifying for the final
23 vote.

24 THE CHAIRMAN: Thank you, Sam.

25 It became obvious at the last meeting that

1 we would have to recall Mr. Ney, since there
2 were several questions indicated forthcoming
3 from the Chairman and the Attorney for the
4 Planning Board. We asked Mr. Frizell if
5 he would have Mr. Ney returned this evening
6 and continue his testimony. It's my under-
7 standing, since he has already been sworn,
8 it's not necessary to reswear him. So, Mr.
9 Frizell.

10 MR. FRIZELL: I just have one
11 preliminary matter, Mr. Schrupf, that I
12 would like to bring to the Board's attention
13 and then Mr. Ney is available for cross-
14 examination.

15 I have discussed this with my
16 client during the course of the proceeding
17 and we would like to offer at this time that
18 the Zoning Board of Adjustment consider
19 the appointment of an independent planning
20 expert somewhere to review the transcript
21 of these proceedings prior to their determina-
22 tion and prior to their consideration.
23 And when I say "independent" I mean someone
24 from outside, obviously outside of the
25 Township that has no connection with the

1 Township. This is within the discretion of
2 the Board. We certainly offer to share
3 the expenses of such independent expert.
4 We suggest that it be a professional
5 planner or a planning expert as opposed to
6 some other technical expert because I think
7 the main issues here are broad planning issues.
8 Obviously this is the first time I suggested
9 it to the Board and I don't expect to have
10 an answer tonight. But I think some time,
11 say, prior to the July 17th meeting, which
12 we expect to conclude our presentation,
13 we would ask you to consider this. I think
14 that an independent planner could read the
15 transcript, could attend possibly a hearing
16 some time in August to propose questions
17 to any witnesses. So, I offer that for
18 your consideration. I would like to know
19 whether or not we can have an expert appointed
20 some time at the end of this month. As I
21 said, I just offer that and I would ask the
22 Board to take it up at some point in time.
23 This is a procedure that has been taken in
24 the past at various places, I would suggest
25 that whoever is appointed be done pursuant

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to procedure, that it be done with the consent of the Applicant and of the Board and of, possibly, the Planning Board. That is let them name a series of names, three names, the Applicant offers three names and the planner who could review these things objectively, and that would be the person who would be appointed. And I think I would insist that this Board in its function as a quasi-judicial body, we would hope that these proceedings would not proceed in an adversary manner. As I said, I simply offer it for your consideration.

And, prior to Mr. Ney commencing his testimony, he did point out to me just before this hearing, that in the Outline of Testimony, which was introduced and was going to be a matter of record and now is, he did discover a typographical error in it that he would like to correct.

THE CHAIRMAN: Before we do that, I would like to respond for the Board as to your request on an independent planning expert and also reiterate what you mentioned as mostly these hearings should never be



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conducted in an adversary manner on either side. And I want to assure you that we are making every endeavor to conduct ourselves in that manner. And in view of your request, I would suggest on behalf of the Board, that perhaps you present some names of planning experts who you feel might be independent and totally not involved in this at all, and I would also like the names of some planners suggested by our Planning Board that they feel might be independent and in no way connected with the Township and from those names we can select one.

MR. FRIZELL: I would certainly offer, Mr. Schrupf, to communicate with Mr. Marks, perhaps in a less formal manner because we could go down the list of 20 names in a matter of 10 minutes.

THE CHAIRMAN: I would suggest, to expedite matters, that perhaps you and Mr. Marks do confer informally and come up with a list of names that we could consider.

MR. FRIZELL: Thank you very much, Mr. Schrupf. I appreciate that.

THE CHAIRMAN: Any members of the



1 Board find any objection to that procedure?

2 MR. LARKIN: May I ask if this then
3 would require appointing someone by going
4 through the process?


5 THE CHAIRMAN: No, once the names
6 are suggested, we still have to decide if
7 indeed we would use one of the services of
8 an independent planner. Certainly that
9 would help us in our consideration to have
10 some names.

11 MR. TISCHENDORF: That would not
12 remove the planning consultant that the
13 Township has, it seems to me, from possible
14 involvement, maybe for future testimony or
15 something?

16 MR. SAGOTSKY: No, definitely
17 it will not.

18 MR. FRIZELL: No, that was not
19 my intention.

20 MR. TISCHENDORF: No, I am just
21 saying we are going to have probably some
22 input from our planning expert, I would
23 imagine, another planning expert that the
24 Township retains. I don't know that for a
25 fact.



1 MR. WRIGHT: Mr. Quaele was here
2 at the first meeting, I expect he will be back.
3 Because while the whole point, we have
4 to make sure if we have a
5 committee, a third party is simply to offer
6 an independent report

7 MR. WILLIAMS: Mr. Maras, does that
8 sound feasible to you?

9 MR. MARKS: No, it doesn't. Of
10 course, I will consider it. But just at the
11 first time, it seems to my opinion to serve
12 a good portion of the function of the
13 Board, since the Board rightly has its own
14 right to determine whether it wants to
15 have the services of an independent planning
16 expert or what should certainly be the
17 Board's function. The Planning Board is
18 here for a very specific reason. Pursuant
19 to Ordinance and pursuant to Statute, they
20 are seeking our advice and counsel. The
21 Applicant has presented testimony of his
22 expenses. I feel that what the Applicant is
23 in essence saying is, well, we presented
24 testimony of our expert and we are on one
25 side of the table, and you don't really have



1 to believe him at all. So get another
2 expert and a third expert, we can bring in
3 a third and a fifth expert. I think it's
4 the function of the Board to decide the
5 merits of this project. Plus, I think the
6 Board has to narrow its scope. I don't think
7 we are talking about planning in a very broad
8 function, we are talking about a narrow piece
9 of property which, very frankly, a planner
10 from another jurisdiction is not familiar with
11 that property that you gentlemen of the
12 Planning Board -- of the Zoning Board are.
13 It would seem to me that the best interest
14 of the Township should be decided by those
15 who are most familiar with it. So, I
16 at this juncture certainly have great
17 reservation about the idea and in fact would
18 go on record at this point as saying that I
19 would not agree to that and I would not so
20 counsel the Planning Board. And that's
21 the position I'd like to take as of this
22 moment.

23 MR. FRIZZELL: Just so there is no
24 misunderstanding, it certainly would be
25 within the discretion of the Board to partially




1 accept or partially reject anything. The
2 scope of his review would be obviously to these
3 proceedings. I didn't mean to say before
4 that he has to plan the whole town. He is
5 simply going to review these proceedings
6 and these proofs and these transcripts
7 and make a report, and no more, no less.
8 Well, in any event, that's for the Board's
9 consideration. I personally don't think that
10 the Planning Board's consent is required, in any
11 event.

12 MR. SAGOTSKY: Then, I'll take it
13 under advisement.

14 THE CHAIRMAN: We will take it under
15 advisement, but I most certainly will state
16 no matter how many planners we have, this
17 Board will make their own decision and no way
18 will be influenced by whoever the planner is.

19 MR. SAGOTSKY: Mr. Frizell, after
20 your last remark, do I conclude that you --
21 that's a hint for me to talk a little
22 louder. Do you state that in the event we
23 have an independent planner and the Board
24 made its decision and either side if it
25 chose to take it up to whatever appellate



1 tribunal would nevertheless be in a position
2 I assume to quote from it? I assume you
3 would quote from it and I assume we would?

4 MR. PRIZELL: Of course.

5 MR. SAGOTSKY: And I assume that's
6 the purpose. So, it would be a basis for
7 quotation. It would be an arrangement to the
8 fact, well, the planner for the Board was
9 bias, presumably, the planner presented
10 by the Applicant was bias, presumably or
11 maybe. Each side pays for its planner,
12 that's part of our adversary system. The
13 proposition that's made is, let's get
14 somebody that both sides pays for it. He
15 presumably would be neutral. Whatever
16 decision has to be made, and it goes up to
17 an Appellate Tribunal, that alleged independent
18 planner would be greatly quoted. In that
19 sense, in that sense, it might detract
20 from the decision of the Board from being
21 the sole judge. I say it might, it's some-
22 thing to think about. I am taking no other
23 position at the moment, I would leave it
24 totally for your future consideration.

25 THE CHAIRMAN: We will take that



1 under advisement.

2 MR. FRIZELL: Thank you very much,
3 Mr. Schrupp.

4 Mr. Ney would simply like to point
5 out, I think, the typographical error in
6 the Outline of Testimony --


7 MR. SAGOTSKY: It was not an outline
8 of testimony it was -- I believe it was marked
9 for identification, what you are referring
10 to.

11 MR. FRIZELL: It's entitled Outline
12 of Testimony of Mr. Sagotsky. It's A-20.

13 MR. SAGOTSKY: Well, A-20 was
14 marked -- I believe I have it. I don't
15 have it in my notes at the moment, but I
16 believe that was marked for identification.
17 I don't believe that's in evidence.


18 MR. FRIZELL: Well, that, Mr.
19 Sagotsky, all of the matters then, marked
20 for identification last week, I was then
21 offering to the Board because it's our
22 intention to have them as part of the
23 record.

24 MR. SAGOTSKY: I state my objection
25 to them going into evidence, on the theory



1 and on the reason that only that goes into
2 evidence which is testified to. To permit
3 a 20 or 30 page report, which is not subject
4 to cross-examination, which is not even
5 covered in direct and which isn't intended
6 to be and which perhaps was intended to be
7 part of the application is not evidential.
8 I am not going to object to you correcting
9 that exhibit on the basis that it's an
10 exhibit, but I will strongly advise this
11 Board not to accept it as evidence, but to
12 accept as evidence only that which has been
13 testified to.


14 MR. FRISELL: Well, let me ask you,
15 Mr. Satogsky. For instance, in this parti-
16 cular document, there are dozens of numbers,
17 traffic counts, et cetera, all of which lead
18 to certain conclusions which are stated in
19 the report, and which conclusions were
20 stated by Mr. Ney in his testimony, all we
21 are offering it for is the purported numbers.
22 Now, for instance, if you look at the summary
23 sheet, this one, this one, this one, shall
24 we have Mr. Ney read these documents simply
25 as a matter of oral testimony. Why can't he



1 simply submit the traffic counts as evidence.
2 That's what they are.

3 MR. SAGOTSKY: That's just the point,
4 they were originally -- originally when you
5 offered A-7A and when you offered other
6 documents, they were as part of your applica-
7 tion, I did not consider them in evidence.
8 I consider only in evidence that which is
9 sworn to, that which has been testified to,
10 that which has the basis of cross-examination.
11 I cannot permit an entire report of many
12 many pages just to go into evidence just by
13 stipulation.

14 MR. FRIZELL: Well, I am not
15 stipulating. Mr. Ney testified that he
16 prepared that himself and that he made all
17 of these numbers. And if it were necessary
18 to read these documents into the record,
19 that's what we'll have to do. But I
20 personally, Mr. Sagotsky, can't imagine what
21 could be gained. Certainly this material is
22 subject to cross-examination. Anybody who
23 wants to read them as part of the record, they
24 can come and read it, and if they have any
25 questions of Mr. Ney, that's why we brought



1 him back, he could answer the question. But
2 the data on which his report is based and
3 on which the prior testimony of Mr. Robbie
4 Goodwin, you know, I offer as evidence
5 simply because they prepared them and it's
6 documentary and it contains the materials
7 from which his testimony and the conclusions
8 were based. I might say, Mr. Sagotsky, that
9 in terms of the rules of evidence that the
10 entire Onco Farms litigation was tried
11 on the basis of evidence exactly like this.
12 We put into evidence in that case things
13 like the U.S. Census, we didn't read the
14 entire census into the record.

15 MR. SAGOTSKY: That's because the
16 Court took judicial notice.

17 MR. FRIZELL: No, he didn't take
18 judicial notice. They are relevant material
19 to this application here or to the case
20 that was before the Judge and therefore -- and
21 they were proofed either by testimony or they
22 were proofed by self proof.

23 MR. SAGOTSKY: Well, that could be
24 judicial notice.

25 MR. FRIZELL: No, it's not judicial



1 notice, it's authentication procedure. Here
2 we don't ask for any authentication, we
3 have a man that prepared the document and
4 it's simply a traffic study which he prepared
5 and he put a lot of numbers into it. As a
6 matter of fact, Mr. Sagotsky, in the
7 Orgo Farms litigation, the resume of
8 William Whipple, which is four pages long,
9 General Whipple is the author of 158 publica-
10 tions, when they began to examine his
11 credentials, Mr. O'Hagan offered the
12 written resume in evidence, and it was
13 accepted by Judge Lane. He said I can't
14 imagine why you would want to read those 158
15 publications into the record, here they are.
16 And we simply marked it and it was accepted.
17 Now, I am simply following the same kind
18 of procedure here. I don't -- as I said,
19 it's an expert's report, and I certainly
20 followed this procedure several times before
21 without difficulty. I am well aware that
22 any material in here that has to be subject
23 to cross-examination, it has to be available
24 for any interested party that wants to
25 examine them. That's why we submit them.




1 I really have nothing further to offer
2 at this time.

3 MR. SAGOTSKY: Well, first on your
4 theory, we wouldn't have to have the witnesses
5 here. You could bring these reports and put
6 them into evidence and they --

7 MR. FRIZELL: No, I still need the
8 man to come in and swear that he prepared
9 it, that he did the numbers. He would still
10 testify for the Board as to his conclusion
11 and the methods in which he prepared the
12 report, and I would still make him available
13 for cross-examination of the full report.
14 And that's the procedure that we follow here,
15 that's really the procedure we intend to
16 follow. I might say that we scheduled 13
17 hearings for these proceedings, of which we
18 anticipate using six or seven. And if we
19 had to read every single document into
20 evidence on which the data forming the
21 basis of this application, we would still
22 be here in 1981. And I don't see where
23 it gains anybody anything by doing that.

24 MR. SAGOTSKY: Well, you originally
25 offered them as part of the application.




1 MR. FRIZELL: No, these are
2 materials -- I don't have my copy --

3 MR. SAGOTSKY: And furthermore --

4 MR. FRIZELL: -- of the application
5 that was supplemented at the hearing with
6 additional material. Now, I can't -- if this
7 had been part of our original application,
8 which could have been, we could have made
9 ten of these and submitted them as part of
10 our original application. What difference
11 would it have made? The application is part
12 of the record.

13 MR. SAGOTSKY: Well, if you wish
14 to consider it part of your application,
15 then that's something that the Board in its
16 discretion could read and with reference
17 as far as the application, but not by way of
18 evidence. The evidence is what you produce
19 here. If they were evidential, you wouldn't
20 have to have your witness here.

21 Secondly, as far as Mr. O'Hagan
22 consenting to Mr. Whipple, we often do that
23 at a trial by stipulation, we concede to his
24 qualifications. We don't have to go into
25 all his qualifications, we concede to his




1 qualifications, and that goes in by stipula-
2 tion, and that's all I am saying. At this
3 point I don't wish to stipulate they are
4 evidentiary. If you want to put it in as
5 part of the application, if the Board wants
6 to as part of the application, but I do not
7 regard them as evidential. If you do, you
8 might not as well have your witnesses,
9 throw it in writing and leave.

10 MR. FRIZELL: Yes, except they are
11 here for cross-examination as to the material
12 that's in the report.

13 MR. SAGOTSKY: Which the Committee
14 hasn't gotten the benefit of. The Committee
15 hasn't read these reports.

16 MR. FRIZELL: Well, it would take a
17 lot less time for the Board to read the
18 report than for us to sit here and go through
19 the report. I think we will all be sleeping
20 by the end of that hearing. I think that
21 they can certainly examine Mr. Ney on some
22 of the assumptions that he might have made,
23 but the data, the hard data which he relies
24 on to make an opinion, I think is evidential.

25 MR. SAGOTSKY: Well, why not leave it



1 as part of your application, the Board
2 would read them, and if they want to cross-
3 examine on some of the matters, let them do
4 it. But, at this time I have to object.

5 MR. FRIZELL: I think it matters.
6 The rules provide that at the hearing they
7 should provide supplemental materials to
8 support the application. The application
9 itself is defined as those things which the
10 Board or the Town has established by
11 Ordinance to be part of an application. Now,
12 we put in not only that, but much additional
13 material. This is material which is
14 supplementing the proof for those who make
15 the proof which are necessary to make as
16 part of this proceeding.

17 MR. SAGOTSKY: And not subject to
18 cross-examination, right?

19 MR. FRIZELL: Yes, it's subject to
20 cross-examination.

21 MR. SAGOTSKY: If they haven't
22 read it? It's not part of the application,
23 it's the first time it was brought to their
24 attention. It wasn't covered in the testimony.

25 MR. FRIZELL: It was covered in



1 the testimony, and they are free to read it
2 and cross-examine him.

3 MR. SAGOTSKY: If you say it's
4 covered in the testimony, then they will read
5 it when they get the transcript or they have
6 heard it.

7 MR. FRIZELL: Well, --

8 MR. SAGOTSKY: I did mark them all
9 for identification.

10 MR. FRIZELL: I understand, and
11 they were here.


12 MR. SAGOTSKY: And I did that
13 purposely to let them go in for identification.
14 Evidential, no. It may not make any practical
15 difference, that will be determined --

16 MR. FRIZELL: I don't think it can
17 make any practical difference.

18 MR. SAGOTSKY: At the moment, no.

19 MR. FRIZELL: They are supplemental
20 or part of the application, I think it makes
21 little difference. They become part of the
22 administrative record, that's all I am
23 concerned about.

24 MR. SAGOTSKY: That may be, but
25 they are not evidential at this time.



1 MR. FRIZELL: In any event, the
2 record does reflect that A-20 was provided
3 to the Board at the last hearing, Mr. Ney
4 provided copies to the Planning Board. And
5 if there is anyone else here that wants a
6 copy, an additional copy of this, Mr. Ney
7 can get additional copies made and they are
8 available now. So, if you would like to have
9 additional copies, if anyone wants to take
10 it home --

11 MR. SAGOTSKY: You started to make
12 your correction, I have no objection to the
13 correction. But on the basis that it's
14 evidential on the basis of the exhibit, I
15 don't want to repeat myself. If you want to
16 correct some error on that as a matter of --

17 MR. DAHLBOM: If you have copies,
18 maybe we can get them. We don't have copies.

19 MR. LARKIN: If we had them last
20 week, he wouldn't be back here today.
21 We didn't have a chance to read this material
22 prior to his testimony.


23 MR. FRIZELL: I appreciate that.

24 MR. LARKIN: And I don't want to
25 argue the legal point of the law, but it



1 certainly seems to me if it's going to be
2 presented to us as part of the evidence we
3 are hearing, at least we ought to have the
4 opportunity for anyone here who attends the
5 hearing to read it and have an opportunity to
6 question.

7 MR. FRIZELL: Any expert that comes
8 in with a report on the evening of his
9 testimony -- and sometime these reports
10 are constantly being marked on, they are
11 constantly being refined, and sometime I
12 simply can't get them before the hearing.
13 But I will surely send them down. Any expert
14 that brings his report in on the night of the
15 hearing, I will volunteer to you that I will
16 bring him back at any length of time that you
17 need to review the materials and be subject
18 to cross-examination; two weeks or two days,
19 we will bring him back and we will simply
20 reschedule for a hearing after you have had
21 an opportunity to look at it. Because, quite
22 frankly, I think it's doubtful even without
23 the benefit of the report ahead of time, if
24 the expert does tell you what's in the report,
25 what's the conclusion.



1 MR. LARKIN: If anything, a summary
2 of what he is going to testify to, I think
3 that would at least give us a chance to
4 understand.

5 MR. FRIZELL: I'll try to do that
6 in the future.

7 THE CHAIRMAN: All right. Let's
8 make the correction on this, then we can go
9 through the testimony of Mr. Ney.

10 MR. NEY: On page --


11 MR. MARKS: Mr. Chairman, if I may --

12 THE CHAIRMAN: Mr. Marks.

13 MR. MARKS: I have a question.

14 THE CHAIRMAN: Yes, sir.

15 MR. MARKS: Concerning the nature
16 of Mr. Frizell seeking to submit as evidence,
17 I would just like to point out a practical
18 matter. It's been said very loosely here
19 that, well, perhaps some of the members of
20 the Board may want to read it. I don't know
21 whether there is a mandatory obligation on
22 the part of the members of the Board to read
23 it. But let's assume possibility number one,
24 that there is an alternative whether you can
25 read it or not. That means some of the



1 Board members may have a benefit of what's
2 in those reports, secondly they may not.
3 Secondly, let's assume that there is a charge
4 to our Board members that you must read it.
5 Well, I submit a very, very important part
6 of the open testimony process is the interplay
7 that the Board members have amongst themselves
8 when a witness is here. So, that if a thought
9 comes to the mind of one particular Board
10 member, it may be implied or modified by
11 another Board member. Reading solely in an
12 individual capacity without the witness
13 being available, I think detracts very much
14 from the fact finding process. I can see no
15 problem of someone submitting a summary of
16 what they are going to testify to, although
17 their testimony should be clear enough to
18 bring it out. But to say, well, that's
19 evidential, I think that's disrupting the
20 actual process of the judicial -- of the
21 quasi-judicial process and the interchange
22 amongst the jurors, or the quasi-jurors of
23 this Board. I don't think that going along
24 and reading on a Sunday night or maybe reading
25 two or three or screaming at one, I think we




1 are all human and I think we need the benefit
2 of everybody being at the same place at the
3 same time listening to the same two lips
4 bringing out particular points of testimony
5 and being able to be examined by the other
6 members of the Board.

7 Another thought came to my mind
8 that perhaps one member of the Board will
9 miss a particular section. Part of your fact
10 finding process is to assess the credibility
11 of a witness. I don't think that you find
12 very much in the way of credibility testing
13 if you read a report. I think you probably
14 have formed an impression of some of the
15 witnesses you have seen up to this point.
16 Whatever those impressions are, I dare say
17 that you are not going to form those same
18 impressions by reading in black and white.
19 I think the in person open testimony route
20 is the route that the Board should consider.

21 MR. LARKIN: Mr. Marks, what's
22 your suggestion?

23 MR. MARKS: Well, my suggestion is
24 that these reports should not be continued
25 in evidence, and rather than reading everything



1 into the record, I am sure it can be
2 presented in testimony form just as anyone
3 can. Otherwise, I think Mr. Frizell is
4 very right, every one of his witnesses can
5 come in and say I prepared this report,
6 here it is and walk out. And then we will
7 call one back one week and one back another
8 week and it's going to be a very disjointed
9 fact finding process.


10 MR. FRIZELL: I didn't say that.

11 MR. MARKS: Well, that's what it
12 amounts to.

13 MR. FRIZELL: I said --

14 MR. SAGOTSKY: State your name on
15 the record.


16 MR. FRIZELL: Frizell here. If
17 the witness will come in, he will explain how
18 he does his profession, how he prepared his
19 report, what assumptions he made, the data,
20 the arithmetic, going through the arithmetic
21 in this A-20 is, in my opinion, is totally
22 unnecessary. It will put us all to sleep.
23 And I am not suggesting that the man not be
24 subject to cross-examination. Mr. Ney is
25 here, in fact, he is here because Mr.



1 Sagotsky asked him for a copy of his report,
2 additional copies of his report for the
3 purpose of cross-examining him tonight. And
4 we brought him back here tonight, I think
5 it's fine. I have no problem with Mr. Ney
6 being cross-examined after the Board has had
7 an opportunity to examine this report there
8 in detail. In fact, they had an opportunity
9 to take this report and have their expert
10 analyze it, and I think that's the fact
11 finding process. And he is here, and let's
12 go along with it. Let me say this, I
13 certainly would not omit any major conclusions,
14 I would not alter a written report and slide
15 them in, that's why he is here. But I am
16 referring to the data, the arithmetic in each
17 of these reports, the calculations. For
18 instance, in Mr. Renhenkamp's report, they
19 were simply drawings of tennis courts and
20 drawings of basketball courts, et cetera,
21 and tot lots.

22 MR. SAGOTSKY: On your map.

23 MR. FRIZELL: Not only on the map,
24 but in the document that we had marked,
25 that's what that was primarily.



1 MR. SAGOTSKY: You qualified your
2 map for evidence.

3 MR. FRIZELL: And the map --


4 MR. SAGOTSKY: Qualified it then by
5 referring to it and the benefit was had by
6 the full Board of seeing by the outline
7 everything that was disclosed. That was
8 evidential, not a 25 page report.

9 THE CHAIRMAN: I think we should
10 proceed with the matter. It's already been
11 concluded, if I haven't made it clear on
12 behalf of the Board, that this Outline of
13 Testimony by Henry Ney will not be evidential
14 unless you satisfy two attorneys on that.
15 We may not satisfy Mr. Frizell, but I think
16 we are on solid ground there. And I think
17 we can elicit enough in his testimony
18 in cross-examination tonight to develop
19 everything that's on this report that we want
20 to know. So, let's proceed.

21 MR. LARKIN: Can I just ask for
22 your indulgence?

23 THE CHAIRMAN: Mr. Larkin.

24 MR. LARKIN: We have some people
25 in the audience who weren't here last week,




1 maybe if I took a very brief resume and just
2 read these pages, they aren't marked, but this
3 is the Outline of Testimony by Henry Ney in
4 terms of traffic impact. Number one, County
5 Route 537 be widened to Village Boulevard
6 and a left-turn lane for westbound traffic
7 and a through and right turn lane for east-
8 bound traffic.

9 2. County Route 537 be widened
10 from Village Boulevard to Route 34 to provide
11 for four moving lanes of traffic. This
12 widening can be accomplished on the south
13 side of the road without disturbing significant
14 properties.

15 3. With the proposed widening, the
16 intersection that Route 537 and Route 34
17 will operate at "C" level of traffic service.
18 Without the proposed widening, the inter-
19 section will operate at "D" level of
20 service, and Route 537 experiencing queuing
21 conditions for the westbound traffic.

22 If I just could very quickly go
23 back to the description of the level of
24 service and read it to the audience and
25 other members of the Board. Level of service




1 "C" is still in the zone of stable flow,
2 but speeds and maneuverability are more
3 closely controlled by the higher volumes.
4 Most of the drivers are restricted in their
5 freedom to select their own speed, change
6 lane, or pass. The relatively satisfactory
7 operating speed is still obtained, with
8 service volumes perhaps suitable for urban
9 design practice.

10 Is that a fair summary?

11 MR. FRIZELL: Yes. If Mr. Ney can
12 correct that typographical error.

13 THE CHAIRMAN: Would you do that,
14 Mr. Ney.

15 MR. NEY: Yes. Henry Ney speaking.
16 On the foot page of the outline you will find,
17 if you have the copies that were submitted
18 tonight, a revised data day. In reviewing the
19 material, the third line of traffic numbers
20 under the 361 Townhouse units, in the
21 original outline my secretary has typed the
22 total trip generation from the 172 single-
23 family units to 484 apartments, and the
24 351 townhouses. That line should read
25 A.M. street peak hour, the third line, 36




1 in-bound, 181 out-bound movements, for a
2 total of 217 movements. This has been
3 corrected. During the evening peak hour, the
4 in-bound movement for the townhouses should
5 be 181, the out-bound movement, 72, for a
6 total of 253. The daily traffic flow would
7 be 2,022 vehicles. If you happen to have
8 the original copy, if you take the numbers
9 I just read, substitute and add them up, you
10 will see they will add up as to what they
11 typed as the third line.

12 I might just also add all returning
13 movements, charts that reflect the avenue's
14 condition, are based upon the correct number.
15 There is no need to correct the returning
16 movements charts that follow, I guess, on
17 page 6, 7, 8 and 9.

18 THE CHAIRMAN: Before we ask the
19 Planning Board if they have any questions,
20 and I am sure they do, I would like to review
21 what was said the other night. We are
22 at "C" level at that intersection right
23 now?

24 MR. NEY: Yes. No, right now
25 you are operating at what I consider a



1 "B" level of traffic service.

2 THE CHAIRMAN: "B" level?

3 MR. NEY: Yes, sir.

4 THE CHAIRMAN: Without any traffic
5 improvements, it would be reduced to a
6 "C" level, was that your testimony?


7 MR. NEY: To a "D" level.

8 THE CHAIRMAN: To a "D" level?

9 MR. NEY: Yes.


10 THE CHAIRMAN: My question is, and
11 I repeat it from the other night, how can
12 we be assured that the improvements that you
13 would recommend would be implemented and be
14 approved by the State and the County?

15 MR. NEY: As a condition of site
16 plan approval and off site improvement, and
17 I feel, based on past experience with
18 applications such as this, the improvements
19 in fact would be made to the County road.
20 Not to the State highway, although it would
21 be involved. And there would not be a
22 problem in obtaining State Highway approval,
23 they are very happy these days to get
24 improvements. As a matter of fact, they are
25 now requiring it among their own policy.



1 THE CHAIRMAN: The question that
2 arose in my mind, probably they are not
3 adverse to getting these improvements, but
4 their approval of them sometime is lagging
5 in time, sometime it takes an awful long
6 time for them to say yes. When I say an
7 awful long time, maybe months and months,
8 and in the meantime, we would then be
9 stuck indeed with a "D" level of service.

10 MR. NEY: If I may just explain.
11 This report shows the condition as it is
12 today followed by the condition as it will
13 exist in 1987 when the entire project is
14 completed, assuming one year, two years
15 for approval and five years for a build out
16 of the entire project. We have not tried
17 to develop exactly when these improvements
18 should be implemented, but they would not
19 be needed after the first phase of the
20 project. But it could be stipulated, say,
21 perhaps completed by the second phase, by
22 so many units. This is normally how on
23 County facilities and State facilities, when
24 they are building shopping centers or office
25 complexes with certain -- with certain




1 figure requirements on the part of the
2 developer. And it was not our attempt to
3 get into that kind of detail as to exactly
4 when these improvements will have to be in
5 place. I would say that the report is merely
6 to demonstrate that these improvements would
7 have to be in place by the time the project
8 is completed to maintain satisfactory level
9 of service.

10 THE CHAIRMAN: Under ordinary
11 conditions without this at all the situation
12 at that intersection will regenerate just
13 of its own weight, will it not?

14 MR. NEY: Yes, it will. I did
15 indicate that the traffic counts that the
16 State has and that we have taken show that the
17 past three years they have decreased in volume
18 at the intersection because, as I indicated,
19 a combination of two factors. The completion
20 of Route 18, at least to the Parkway, and
21 also because of the curtailed travel due to
22 the possible fuel shortage.

23 MR. TISCHENDORF: Mr. Ney, you
24 indicated that the improvements would be
25 accomplished on the south side?



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MR. NEY: Yes, sir.

MR. TISCHENDORF: Would you estimate with the improvements how far the roadway would be from the front of the elementary school?

MR. NEY: The widening is between 16 and 20 feet in width of the road itself. So, it would be 16 to 20 feet closer to the elementary school.

MR. TISCHENDORF: Do you think that would be under 50 feet, under 100 feet? I have my own rough idea how close that might be.

MR. NEY: I don't know. I don't have the map. I think there is three or four large streets in front of the school and I thought the widening could be accomplished without removal of those trees, although some of the branches might have to be trimmed, which would extend over the roadway.

MR. TISCHENDORF: We have certain regulations set back, I would think the school should meet any regulation or setback that were required in a commercial zone or maybe residential.



1 MR. NEY: I think the commercial
2 setback is 75 feet or 70 feet, I am not sure.

3 MR. TISCHENDORF: I could look at
4 it. It seems we are getting that school
5 very close to the road.

6 THE CHAIRMAN: Before I call on the
7 Planning Board, is there anyone in the
8 audience that would like to ask any questions?
9 I particularly address myself -- I think there
10 is someone here from the school that may have
11 some questions. Why don't you step forward,
12 identify yourself and ask your questions,
13 please.

14 MR. LARKIN: Do we have to swear
15 in witnesses when they are questioning?

16 MR. SAGOTSKY: Yes, to be technical
17 about it, I think we should. Please come up
18 to the mike and will you state your name
19 and address.

20 MR. NOLAN: Kenneth Nolan, Tinton
21 Falls, Principal of the Elementary School.

22 MR. SAGOTSKY: And your name?

23 MR. UNGER: I am Roy Unger, Rumson,
24 Superintendent of Schools.

25



1 KENNETH NOLAN and ROY UNGER,

2 Sworn.

3 MR. SAGCTSKY: Both witnesses are
4 sworn.

5 MR. FRIZELL: Mr. Schrumpf, I
6 only ask -- certainly they are free to come
7 and testify at the conclusion of the
8 Applicant's case, but tonight this is for the
9 purpose of questioning the witness only.
10 We are not going to take testimony.

11 MR. SAGOTSKY: I am assuming on this
12 theory that I don't know what they are going
13 to say. If it's testimony, they are sworn;
14 if it's not testimony, then it's within the
15 definition of what you just said.

16 MR. SCHRUMPF: I will set the ground
17 rules on that. I think the swearing was
18 proper.

19 MR. FRIZELL: Yes.

20 MR. SCHRUMPF: I think their purpose
21 here tonight is to question Mr. Ney.

22 MR. SAGOTSKY: I have done it as
23 a precaution, that's all.

24 THE CHAIRMAN: So, who is first?

25 MR. UNGER: I apologize, I don't



1 know Mr. Ney.

2 MR. SAGOTSKY: Just announce your
3 name again that you are speaking.

4 MR. UNGER: My name is Roy Unger.

5 MR. SAGOTSKY: Thank you.

6 MR. UNGER: Mr. Ney, I would just
7 like to confirm what I believe I heard, if I
8 may, please. My understanding is that
9 Highway 537 would be widened to four lanes,
10 as far west as Highway 34 and this specifi-
11 cally would cover the area in front of
12 the elementary school?

13 MR. NEY: Yes, that's my recommenda-
14 tion subject to the County's and the
15 Township's approval.

16 MR. UNGER: My understanding also
17 is that the additional width would be
18 approximately 16 to 20 feet?

19 MR. NEY: Yes, sir.

20 MR. UNGER: May I ask if there is
21 an awareness among the members of the Board
22 that there is a septic tank in the front
23 yard of the elementary school?

24 MR. NEY: I am not aware of that.
25 I might say I haven't designed the road,



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my suggestion was that the widening could be made most easily on the south side of the road. If there is a septic system, the State requires that the system be no closer, I believe it's ten feet to the public driveway. It may be 20, but it's somewhere in that length. Obviously it would have to be rebuilt, if it was decided to widen the road.

MR. UNGER: Would it be possible for the widening to take place on the other side of the road?

MR. NEY: I don't believe entirely. I have not measured all of the properties, but there are a number of properties that are much closer in proximity to the road. I think if it were not possible to accomplish the widening on the south side, then the widening would have to be balanced equally on either side of the road, eight to ten feet on either side of the road.

MR. UNGER: And my last question to do with the increased traffic of volume anticipated. What will the percentage of increased traffic flow be?

MR. NEY: I have not calculated it



1 on a percentage basis.

2 THE CHAIRMAN: While Mr. Ney is
3 calculating that, Mr. Unger, at last week's
4 meeting, Mr. Ney did testify on the traffic
5 count, and so forth, but he didn't come up
6 with a percentage. We have traffic flow
7 anticipated as opposed to traffic flow at
8 the present time. I might say that the
9 Planning Board might, as part of their
10 presentation possibly recall you and Mr.
11 Nolan for testimony. So restrict your questions
12 to questions now and you can make testimony
13 later, if they would like to have you do so.

14 MR. NEY: I can still work a slide
15 rule. 23.6 percent, the A.M. peak hour,
16 which would be the highest influence which
17 would be the outbound movement.

18 MR. UNGER: That's 26 --

19 MR. NEY: 23.6. It would be slightly
20 less during the evening peak hour because
21 537 carries more traffic.

22 MR. UNGER: My final question, if
23 I may, is there a procedure whereby the
24 interest of the Board of Education may be
25 expressed before this Board in a manner that



1 would hopefully be effective in causing to
2 whatever conclusion it would see fit to make?
3 I am not familiar with the procedure, people
4 have an interest and we are trying to develop

5 THE CHAIRMAN: If I understand your
6 question correctly, we do indeed hear every-
7 one from the audience and we will welcome
8 testimony later from witnesses called by
9 such as the Planning Board.

10 MR. UNGER: Thank you.

11 THE CHAIRMAN: So I have every
12 thought that probably you will be back.
13 That's why I asked you to restrict yourself
14 to questions tonight rather than testimony,
15 as Mr. Frizell also requested.

16 MR. TISCHEENDORF: Excuse me.
17 Since they are within 200 feet, isn't it also
18 within their right that they can be heard
19 on this as opposed to just ask questions?

20 THE CHAIRMAN: Oh, yes, the Board
21 of Education is within 200 feet of this
22 project and I am sure you got a notice of
23 these hearings.

24 MR. UNGER: Yes.

25 THE CHAIRMAN: And certainly you can



1 be heard at any and all times. You can be
2 heard on this individually, whether you are
3 called for another body or not.

4 MR. UNGER: Thank you very much.

5 MR. TISCHENDORF: If I may answer
6 that. It's within the prerogative, in my
7 opinion, of the Board of Education, if this
8 matter were reported to them, to take any
9 interest if they so see fit by way of
10 retaining counsel, reading records or any
11 procedure that they wish to take to fully
12 look into the matter for an actual disclosure
13 and appraisal in coming to a conclusion to
14 which they want to make the recommendation.

15 MR. LARKIN: Can we make sure that
16 interested parties see part of the trans-
17 cript, will have a chance if they missed
18 the meeting to see the transcripts? Where
19 can they pick up copies of the transcripts?


20 MR. SAGOTSKY: We are going to have
21 one in Borough Hall.

22 MR. UNGER: Thank you very much.

23 MR. NOLAN: I have no questions.

24 THE CHAIRMAN: No questions.

25 MR. SAGORSKY: All right.



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THE CHAIRMAN: But you do understand the position that the Board of Education holds, in that they are within 200 feet and if you do have something, you will present it.

MR. UNGER: Thank you very much.

THE CHAIRMAN: Thank you.

MR. LARKIN: Mr. Chairman, before the Planning Board has a chance to ask questions, the definition of road surface consists of peak hours or is that an average of a traffic flow during the day?

MR. NEY: The peak hour.

MR. LARKIN: This is a definition of the description of what the peak hour is?

MR. NEY: Yes, sir.

MR. LARKIN: During that time.

MR. NEY: That's correct.

MR. LARKIN: This is not "D"?

MR. NEY: Without improvements to the intersection.

MR. LARKIN: Without improvements?

MR. NEY: That's correct.

MR. LARKIN: If you improve the intersection to the point of widening it right



1 to the end and putting in the turn signal,
2 right and left-turn signal, what would that
3 do to the level of service, in your judgment?

4 MR. NEY: Well, the level of service
5 would be maintained. The reason I have
6 recommended the widening in between Village
7 Boulevard and 537 is because I don't know if
8 Jushua-Huddy Drive or Street whatever, be
9 extended under your Master Plan to Route 34.
10 I pointed out at the last meeting, if that
11 was extended, that would eliminate the
12 need for widening in front of the school --


13 MR. LARKIN: Let's assume that
14 doesn't extend at all.

15 MR. NEY: Then, all I want to see
16 is widening at the entrance to the project
17 and then an additional lane to provide for
18 the right turn movement on 537 to Route 34.

19 MR. LARKIN: In other words, there
20 is an interim -- I mean, there is a middle
21 ground here. It doesn't have to go all the
22 way to the widening of four lanes?

23 MR. NEY: Yes.


24 MR. LARKIN: And that would maintain
25 a "C" level of service?



1 MR. NEY: At the intersection, that's
2 correct. In between also, the intersection and
3 Village Boulevard.

4 MR. DAHLBOM: Ask a question as to
5 what improvements would be necessary in order
6 to raise it from a "C" to say, a "D" level?
7 It doesn't maintain at its present level, it
8 doesn't seem to be adequate, it's pretty
9 bad right now. So, if all you do is maintain
10 what we have at the present time, I don't know
11 that that would be adequate.

12 MR. NEY: To a "B" level at the
13 project, it would be necessary to add a left-
14 turn lane for the southbound to eastbound
15 traffic movement. You could then, once you
16 have widening the northerly side of Route 34,
17 provide a complimentary of the left-turn
18 lane on the northbound or southerly side so
19 that you could maintain two traffic lanes
20 on Route 34 and get the left turn out of the
21 way and still desirably have two approach
22 lanes, not necessarily two receiving lanes
23 on 537. For example, at the Exxon station,
24 you would have a right turn lane and a
25 through and left lane, and in the opposite



1 direction you have a left-turn lane and a
2 through lane.

3 MR. LARKIN: Are we talking the same
4 level? What Mr. Ney I believe testified to is
5 that right now he considers 537 to be at a
6 peak condition; is that correct?


7 MR. NEY: That's correct.

8 MR. LARKIN: So that what you are
9 saying is -- I don't want to restate what
10 you said, you are making a comment that you
11 feel it's unsatisfactory, you are talking
12 about not even getting it back to where it
13 is now even with the four lane margin, if
14 I am --

15 MR. NEY: Based on the peak hour.

16 MR. LARKIN: On a peak hour?

17 MR. NEY: I think I indicated one
18 of the things that surprised me is the
19 traffic volumes have dropped, because when
20 I actually made my observation in the counters,
21 I went back a number of times because I
22 thought the level of service would be worse.
23 And I think what happened over the years is
24 that we are all referring to 537 before 18
25 was opened, and they were substantial congestion




1 during peak periods. And that does not
2 appear to be as great today as it was a
3 number of years ago before the road was
4 completed. So, I think if anything in the
5 last year or two because of Route 18, the
6 level of service has improved at the inter-
7 section.

8 MR. TISCHENDORF: We have "B" now,
9 if we wish to maintain or keep "B" does that
10 mean we need six lanes or four lanes?

11 MR. NEY: Four lanes and a left turn.
12 You have to add one lane to Route 34 because
13 there are four there now at the intersection
14 and you have to add one lane to each approach
15 of 537. So, you wind up with a three lane
16 approach, a three lane approach and then a
17 fifth lane approach.

18 MR. DAHLBOM: Would you expect the
19 State in giving its approval to such a
20 project that they might insist in widening
21 this to six lanes?

22 MR. NEY: The State normally
23 considers -- they have a review now of all
24 projects which have planning review of all
25 projects that have a major impact. I don't



1 know if their review would come into play
2 with this project. Actually, with the excep-
3 tion of Greentree Road, they don't have an
4 access situation on 537. But if they were
5 to review it, the State considers a "C"
6 level of service to be acceptable. They
7 generally will accept one reduction in grade
8 of traffic service to a development. They
9 can't tell you what they will do, but it's
10 their policy so far if you are in a "C"
11 range, they consider that to be acceptable
12 or they may ask for additional improvements.


13 THE CHAIRMAN: Mr. Ney, are you aware
14 of the calendar date for the widening of
15 Route 34, forgetting the development under
16 consideration?

17 MR. NEY: Personally, I'm not aware
18 of the calendar date for widening of Route 34.

19 THE CHAIRMAN: It has been
20 widened from time to time. I thought there
21 was the projected time for finishing the
22 widening.

23 MR. NEY: 34 or 18?

24 THE CHAIRMAN: 34 down to the
25 Collingwood Circle.



1 MR. NEY: That had been a date
2 about 12 years ago and I personally haven't
3 checked it. It may have a date on the
4 Master Plan today, but the date was about
5 19 -- I think 1980. And the last I looked
6 at Route 34 was within the Matawan area about
7 a year ago, and the State would give no
8 plans for improvement in that area at this
9 time. I felt that Colts Neck being that much
10 further away would be less likely to be
11 scheduled at this time. I might add, it's
12 getting hard to predict when a funded project
13 will be built, let alone a Master Plan project.

14 MR. SAGOTSKY: True. True.

15 THE CHAIRMAN: That's for sure.

16 Any Board members have any questions?

17 (No response.)

18 All right. Planning Board.

19
20 H E N R Y N E Y, having been previously sworn,
21 testified further as follows:

22
23 CROSS-EXAMINATION BY MR. MARKS:

24 Q Just before we get started, Mr. Ney, you
25 had last week the original map. Do you still have that



1 with you?

2 A Yes, I do.

3 Q Would you be good enough to put that up,
4 maybe I think that would be somewhat helpful to us.

5 MR. SAGOTSKY: Would you mind
6 pausing a moment, we will try to get more
7 light.

8 Q (Continuing) You were talking last week,
9 I believe, about the generalization of trips from the
10 project. If I can take you back to that portion of your
11 testimony, in particular that portion which dealt with the
12 morning flow. I think we have all agreed that you have
13 one access on that Route 34 and then another that may or
14 may not be billed, it's on the Township's Master Plan
15 road. But assuming that the Route 34, the second Route 34
16 access is not completed, could you describe the flow of
17 traffic in the morning, where it starts and where it's going
18 to go to?

19 A In order to assign traffic into the road, they
20 are really one major restraint. We only have a right turn
21 out and a right turn in from Green Tree Lane, which is
22 access to Route 34. If the Board recalls, it's divided --

23 Q Why don't you lift the regional map up for
24 a minute, you can see it better.

25 A I am pointing to the area along the bottom of the map.



1 which was prepared by RSWA, and our office circulation plan.
2 And it's the lower portion which shows the two lane collector
3 intersection, Route 34. It also shows approximately 900
4 feet, a thousand feet to the south interchange or inter-
5 section of Route 18 and Route 34.

6 Q Now, you --

7 A At that time it was made by taking the southbound
8 traffic on Route 34 in the morning that would be leaving
9 the site and having it exit on to Route 537, making a left
10 out of the entrance to 537 and then making a left on to
11 Route 34 to go south on Route 34. A total of 22 percent
12 of the traffic would either go northwest bound on Route 18
13 or northwesterly on County Route 537. That 22 percent
14 of the traffic made a right turn -- a left turn out of
15 537 access, and I felt that no one would make a left turn
16 to go up southerly because of Route 18, but would continue
17 through the intersection to where 18 and 537 intersect,
18 which has a full interchange, the 17 percent going north-
19 westerly on Route 18 would make a right turn there, the
20 remaining five percent going towards the Borough of
21 Freehold or going towards the Princeton-Hightstown area.
22 The 55 percent of the traffic that would proceed north
23 on Route 35, would proceed to Holmdel to the Bell Labs,
24 Prudential complexes and the other complexes that are
25 located along Route 35, would continue northerly to Matawan



1 with regard to the Parkway. So, in the morning I assigned
2 a total of, if my addition is correct, two percent of the
3 traffic to the driveway on Route 537, the remaining 18
4 percent would consist of the five percent that would have
5 gone westerly on Route 18 -- I am sorry, not westerly,
6 towards the Wayside Road interchange and the Garden
7 State Parkway, and the 18 percent would proceed on 537,
8 a portion would pull off on Phalanx Road to go north,
9 northeasterly towards the Middletown area, some going
10 through to Route 36. One correction. If you look at the
11 plan to the northbound flow, 55 percent going north on
12 Route 18, on Route 34 because of the proximity of the right
13 turn out, I took that vehicle -- those vehicles generated
14 roughly by the lake area and put an additional line across
15 those people crossing Green Tree Road going north, going
16 out this way, the remainder would take this route out.

17 Q How did you arrive at the particular figures,
18 what did you use to calculate the five percent or the
19 17 percent?

20 A I used the combination of the 1971 Monmouth County
21 Housing study for planning area five and the 1973 Monmouth
22 County Planning Board multi-family housing for planning
23 area five. There is a substantial difference that I
24 pointed out last week. In the multi-family area of
25 planning region five in Monmouth County, 50 percent of



1 the people interviewed worked in Monmouth County. That
2 percentage was much lower in the housing studies of 1971.
3 So that in planning region five, multi-family housing
4 is a considerably different composition. So, I tried to
5 take a conservative approach by assuming that the northbound
6 flow would still be predominant, which is shown -- I think
7 the northbound flow in single family housing in the '71
8 study was 84 percent, if I recall. Let me see. Planning
9 area five, total New York City-Northern New Jersey was 67
10 percent. However, there is a little fallacy in there because
11 they consider Middlesex, Union, Somerset Counties as
12 northerly, so, actually with Route 18 it became northwesterly
13 flow. So, we still have a northbound movement. Then we
14 have planning area five. In the northern area it only
15 accounts for roughly 15 percent of the traffic flow for
16 multi-family housing. So, I tried to take as a conservative
17 approach as I possibly could by putting the maximum influx
18 to Route 34 northbound, because you have a left turn out
19 and could flow between the property and Route 537 and
20 Route 34. And then you have a predominance of northbound
21 and complimentary return in the evening, and we don't have
22 access to Green Tree to use a left turn back. Now, in
23 point of fact, if we were closer to the multi-family, 1100
24 units, we would probably have put more equal distribution
25 on 537 east and west, which would tend to reduce the



1 impact. I tried to put the number together with a conser-
2 vative figures. I looked at the employment area in Monmouth
3 County, Bell Labs, Prudential, office developments along
4 Route 35 and the Holmdel-Middletown Township area as well
5 as the State Hospital in Marlboro, so I tried to balance
6 the numbers to reflect a conservative approach to dramatize
7 the worst condition.

8 Q Of all the traffic that's generated by the
9 site in the morning, it would seem to me that you have 55
10 percent going northbound on 34 through the intersection of
11 537 and 34; is that correct?

12 A Yes, sir.

13 Q You also have an additional five percent
14 going through that intersection to go westerly on 537;
15 is that correct?


16 A Yes, sir.

17 Q What other additional movements would be
18 generated through that, you know, of 60 percent of that
19 project going through 537 and 34?

20 A In addition, you would have the five percent south-
21 bound on Route 34, since there is no left turn access.
22 The 17 percent northwest bound on Route 17, since there
23 is no left turn access --

24 Q Route 17?

25 A I am sorry. Route 18. The 17 percent northwesterly



1 on Route 18, since there is no access to Route 34. So,
2 that would work to 82 percent.

3 Q So, 82 percent. So, in the morning 82 percent
4 of this project would therefore go out through 537 and
5 Route 34?

6 A Yes, sir. That's my estimate.

7 Q That's your estimate. Now, the 55 percent
8 figure, and the other two components, is that -- does this
9 site in any way further increase the access of cars to
10 537 and Route 34 beyond the 82 percent?

11 A Well, also it would be the potential development
12 of the office -- the commercial located on Route 34
13 and the office industrial also located on Route 34.

14 Q Is that what you described as the reverse
15 flow the other night?

16 A Yes, sir.

17 Q So, in actuality, then, this reverse flow
18 would not have the effect of reducing the amount of traffic
19 going through 537 and Route 34, but would in fact increase
20 the number of cars because of this site?

21 A Oh, it does increase it, yes.

22 Q So do you have any estimate as to how much
23 it would increase it?

24 A Percentage?

25 Q Percentage.



1 A I have it on the revised report, or the outline
2 given -- I have estimated, and again I have tried to be
3 conservative, there is 4.5 acres remaining in the office
4 commercial zone adjacent to Route 35 in Green Tree Lane after
5 you put the road there. I have estimated 10,000 square
6 foot per acre for commercial space and I have estimated
7 in the office industrial zone, which has 12 acres, 10,000
8 square foot of office space per acre. And I might add,
9 industrial generally specifically generates less traffic than
10 the office use. And, just to give you an idea what
11 10,000 square feet per acre means, in commercial that's
12 probably a site that's about 85 percent coverage of parking
13 and building and --

14 Q Let me see if I can understand you. If 82
15 percent of this project goes -- exits out in the morning --

16 A Yes.


17 Q -- what does that translate to in terms of the
18 number of cars entering that intersection?

19 MR. FRIZELL: Excuse me, Mr. Marks.

20 I think Mr. Ney was finishing the previous
21 question.

22 A You asked me what the volume was, and I was going
23 to give it to you.

24 Q Okay. I just would like to know the trans-
25 lation, before you continue. 82 percent equals how many



1 cars through that intersection?

2 A It equals -- I will give you the numbers in terms
3 of total. 108.

4 Q Let me see --

5 A Plus 324.

6 Q 108 plus 324?

7 A In the morning peak hour. Plus the return movement,
8 which I quite frankly -- 78 in the return. That would be
9 an inbound flow in the morning.

10 Q So, that's 324. 510; is that correct?

11 A 78 plus 108, whatever that is.

12 Q 510 cars?

13 A I can't add on the slide rule.


14 Q Okay. Do you want to go over those figures
15 again. The left turn out of the development in the morning
16 peak hour area, 324 vehicles. Those who pass through the
17 intersection is this proportion that you mentioned; 78
18 vehicles will enter the project at Village Boulevard via
19 a right turn in in the morning, it would be coming again
20 in the reverse proportion to the intersection.

21 Village Boulevard, that's not the industrial exit?

22 A Village Boulevard is the access to Route 537.

23 Q Right.

24 A And 108 vehicles during the morning peak hours would
25 exit from Green Tree Drive, which is the Route 34 access



1 north of the Route 18.

2 MR. LARKIN: Where are you reading
3 these numbers from?

4 THE WITNESS: What I am doing is,
5 I am taking the figures of Route 34 and Green
6 Tree.

7 MR. LARKIN: This is not the
8 trip generation?

9 THE WITNESS: No, what I have done
10 is, once I have established the trip genera-
11 tion on page -- I guess it's the fourth or
12 fifth page. Following that, there are a
13 series of four figures which break down those
14 trips to each driveway. As you can see,
15 the first box is the peak hour you see 108
16 vehicles making a right turn out of the project
17 they would proceed northerly towards Route
18 537. The next page has Route 537 and Village
19 Boulevard, which shows 324 vehicles turning
20 left of there in the morning peak hour. They
21 would be destined towards 537 and the Route 34
22 intersection.

23 MR. LARKIN: This all happens at
24 7:30, 8:30 time; is that correct?

25 THE WITNESS: Roughly, yes. We have



1 assumed that the peak hour from this develop-
2 ment would occur at the same time that the
3 street peak hour would occur. And there are
4 78 vehicles making a right turn into the
5 development. Those three numbers would give
6 you the total number of vehicles that
7 entered the intersection. And the next figure
8 has all of the turning movements that occur
9 through the year 1987 with the entire develop-
10 ment there at the intersection of Route 34 and
11 537.

12 BY MR. MARKS:

13 Q Okay. You now have 510 cars entering the
14 intersection that exit from the project?


15 A No, exit and entrance.

16 Q Exit and entrance?

17 A Yes.

18 Q What about the traffic or the cars, vehicles,
19 entering the industrial and commercial?

20 A Those would have a slightly different orientation.
21 I can't give you -- there is a figure in my report which
22 I have dated 6/17 on 537 with the retail. I considered
23 no industrial development because industrial generally has
24 a lighter trip generation than office. I can break it down,
25 it would take me probably an hour, an hour and a half to do it.



1 What I have done, I have taken the numbers with the 1137
2 units and added to that the traffic flow for both the
3 morning and the evening from the office industrial or office
4 and retail area. And I think probably the best way to do it
5 is to take the figure dated 6/12 to Route 537 to Route 34
6 and the figure dated 6/13, there are a total of 24 numbers,
7 you can subtract the numbers from each other and get the
8 impact. If you want me to do that, I will start doing it.

9 Q Well, I think we arrived easily at the first
10 10 figures. But I wanted to see how much more would be
11 added on top of that. How many more cars does that mean in
12 the morning going into the office commercial and the
13 industrial?

14 MR. LARKIN: Without being really
15 precise, can you just give us an estimate,
16 a rough estimate?

17 Q (Continuing) Do you want to calculate it?

18 A We have in the morning peak hour about 70 vehicles
19 proceeding southerly through the intersection. During the
20 P.M. peak hour, about 57 vehicles proceeding southerly
21 through the intersection on Route 34. The increase in the
22 537 eastbound would be in the right turn, it would be an
23 additional 11 trips in the morning and an additional
24 four trips -- I am sorry, an additional four in the morning
25 11 in the evening. And then we have the leftturn increase

1 from 537 in the morning, it's approximately 41 vehicles,
2 and the right turn increase from Route 34 to 537 westerly
3 would be an increase of approximately 54 vehicles in the
4 evening and 13 in the morning. The left turn increase
5 from Route 34 to westerly on 537 would be four vehicles in
6 the morning, eight vehicles in the evening. All right.
7 I have 262.

8 A Whatever it is.

9 Q Okay.

10 MR. FRIZELL: That's both, A.M.
11 and P.M.

12 Q (Continuing) Okay. So we divide that by two,
13 we get 131, and we add that to our five --

14 MR. LARKIN: I am not sure it's
15 divided by two.

16 A And, I am not sure it would divide by two. But
17 take 60 percent or 70 percent, something.

18 Q If I divided by two and I added it to the
19 510, it comes out to 641. So, I guess, can we agree to
20 625?

21 A I would say 700, probably.

22 Q Okay. 700.

23 A I might add, Mr. Marks, all my assumptions are made
24 on the fact that there would be no completion of Joshua-
25 Huddy Drive, and no breaking of the median for left turn



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movement.

MR. FRIZELL: So I don't get lost, we are now establishing the total number of vehicles somehow will cut that intersection at the A.M. peak hour?

THE WITNESS: Yes.

Q (Continuing) 700, will that number increase at night?

A Yes, it will probably be slightly higher. Do you want me to go through the numbers again?

Q No, just give us the percentage.

A No, actually it doesn't for one important reason. At night the in-bound trip from homeward bound traffic becomes predominant, even outbound trip from the commercial. And at night traffic can, even in a northwesterly direction, get off at the right turn at Green Tree. Traffic coming southwesterly or southeasterly on Route 18 can reverse route and get to the property. Traffic can, for example, coming out of the large -- of the twelve acre office industrial park utilize fully the interchange of Route 18 and Route 34. So, the impact in the evening is not as great as it is in the morning on the intersection.

MR. LARKIN: Mr. Ney, are you talking about getting off Route 18 on 34?

THE WITNESS: The intersection.



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MR. LARKIN: When you come off 34 --
when you get off you are facing south; is
that right?

THE WITNESS: No, you can go --

MR. LARKIN: You have to retain --
that's not going back north again?

THE WITNESS: Going where?

MR. LARKIN: I believe if you're
going towards the ocean on 18 --

THE WITNESS: Yes.

MR. LARKIN: And you come off, you
are going south?

THE WITNESS: No, you can go south
or north.

MR. FESSLER: Now, you can go under
and go north?

THE WITNESS: My point is, all of the
traffic that would use 18 either easterly
or northwesterly, really can't get there
because they have to go back up 34. So, you
know, they probably make a right turn out
to go easterly, a left turn to come through
the intersection to go northwesterly.
However, that's not a turn in the evening.
So I take roughly 27 percent of the traffic



1 that I have assigned to the intersection in
2 the morning off because of the convenience
3 of Route 18. And, if Jushua-Huddy Drive
4 were completed, that percentage would drop
5 even more dramatically in the morning.

6 BY MR. MARKS:

7 Q The impact that the additional 700 cars will
8 have in the morning, does this have a progressive
9 degenerative effect on the intersection as opposed to
10 just an addition effect, in case 700 more cars ~~gr~~ does
11 it in fact make the difficulty of turning off or passing
12 through that intersection, does the difficulty increase?

13 A Well, without improvement to the intersection, the
14 difficulty increases. And, that's basically why roads
15 are generated to level of service. For example, to go from
16 A, B to A, C, means there might be a percentage of the
17 traffic that has to wait more than the cycle of the light
18 to get on through the intersection.

19 Q And that would cause a back-up?

20 A Right. For example, to go to the A, B level of
21 service, you utilize the amber phase of the traffic light
22 for left turn, unless there is a special phase in the
23 light. So, yes, it would mean a deterioration in service
24 without the improvement that I recommend.

25 Q Now, when you say the improvement that you



1 recommend, could you specify the improvement? Do you mean
2 the widening of 537 and the widening of 34?

3 A No, 537 specifically, I consider a "C" level of
4 service acceptable. I was asked the question to remain
5 at a "B" level, what do we have to do? And, I indicated
6 we have to widen 34, also.

7 Q I see. And, right now you feel that the level
8 of service at 537 and 34 is at a "B" level?

9 A Yes, sir, I do.

10 Q Do you have an opinion as to how many
11 additional cars are added to the amber cycle of 537 during
12 the peak hour?

13 A I don't understand the question.

14 Q Well, you are aware during the amber cycle
15 so many cars will be waiting to turn, turn, let's say,
16 left on 537 northbound on to Route 34.

17 A I am not aware of that.


18 Q You are not aware of that?

19 A I don't know -- I don't understand what you are
20 driving at.

21 Q Okay.

22 MR. SAGOTSKY: That's an assumption
23 you are asking him to make, aren't you?

24 MR. MARKS: Yes. I think he doesn't
25 understand my question. Let me rephrase it.



1 Q (Continuing) During the peak A.M. and P.M.
2 -- let's stay with the A.M. hours. During the peak A.M.
3 hours, is there an increase of the cars that are stacked
4 up waiting to make turns?

5 A Yes, there would be an increase.


6 Q And would that be more pronounced on Route 537
7 than on Route 34?

8 A No, in the instance that this development, because
9 as I indicated last week or whenever it was, the -- until
10 Joshua-Huddy Drive is extended, or if Joshua-Huddy is
11 extended, all inbound movements coming from New York both
12 have to make a left turn on Route 34 and 537. In other words,
13 turning from Route 34 southbound and Route 537 eastbound.
14 So, in all probability the cue, if there is an increase in
15 cue, will occur on Route 34. And, I indicated, probably
16 at some point in time it will be necessary to install a
17 leading green phase for Route 34 at 537.

18 Q Turning your attention to the evening for a
19 moment, if someone were to be coming south on Route 34,
20 were turning to the 34 access, that's not Joshua-Huddy
21 Drive, how would one go about making that? Would that be
22 a direct left turn into the project?

23 A No, it would be a left turn at 537.

24 Q No, I said coming south on Route 34 going
25 into the townhouse area.



1 A That's correct, it would be a left turn from Route 34
2 southbound.

3 MR. FERER: You mean after you cross
4 537?

5 MR. MARKS: After you cross 537.

6 A You don't get there.

7 Q Why don't you get there.

8 A Let me say this: It's possible. I have not assumed
9 any diversion of traffic, it's possible to go through the
10 intersection to loop on to 34 towards the shore and then
11 to loop off again.

12 Q Right.

13 A But I haven't assumed that at all.

14 Q You haven't assumed that?

15 A No, I have assumed everybody coming southbound
16 would make a left turn and then make a right turn into
17 Village Boulevard.

18 Q In other words, there would be increased
19 traffic on Village Boulevard in the evening as opposed to
20 what would be exiting in the morning?

21 A No.

22 Q How do you account for the cars would be
23 exiting directly on Route 34, then?

24 MR. FERER: From Green Tree Drive.

25 A All right. I have done this twice, I'll do it again.



1 I have indicated in trying to create the worst traffic
2 condition in the morning, I roughly assumed that everybody
3 from this proposed area in the morning that northbound flow
4 would exit Green Tree Drive. All other traffic would
5 really have to exit on Village Boulevard either to go
6 easterly on 537 or westerly where 34 makes a left turn or
7 a right turn or straight through. In the evening, because
8 we have a full interchange at 34 and Route 18, traffic
9 that would utilize Route 18 can do so and never enter this
10 intersection where in the morning I put them in there.
11 Traffic coming from the Somerset County area, all the
12 development along 287, New Brunswick comes down Route 18,
13 loop around the interchange, make a right turn on 18, never
14 impact the intersection.

15 Q Now, assume that some individual works at
16 Prudential or who works at the Bell Labs facility would
17 come down 34, pass by 537, how would they enter the town-
18 house area?

19 A Well, if they wanted to they could make a double
20 loop on Route 18.

21 Q And, you were saying, you feel it would be
22 preferable to go on 537 and come down Village Boulevard?

23 A What I said, Mr. Marks, is when I do an analysis
24 like this, I try to take the worst approach I can to make
25 traffic conditions the worse, I don't try to white-wash



Ney - cross

1 anything. So I have assumed they do that. Obviously it's
2 a free choice. For example, if you are coming from Bell
3 Labs, if you want to, there isn't any reason why you can't,
4 you can cut over on to Phalanx Road, if you want to. In
5 fact, with the new facilities 1500 employees at Bell Labs
6 and Lincroft Road, they could come down Phalanx Road into
7 537 and never enter this intersection. I just never made
8 that assumption.

9 Q Would you tell me where Phalanx Road and
10 537 merge?

11 A They don't merge. You can cut over Heyers Road.

12 Q Heyers or Creamery?

13 A Heyers or Cremery. That would --


14 Q That wouldn't necessitate the left turn
15 across traffic on 537?

16 A That's right.

17 Q Would that not be a less than safe condition?

18 A Not necessarily. You have a traffic light several
19 thousand feet away which will provide gaps in traffic.
20 And I have recommended a left turn lane be provided so that
21 if cars have to make a left turn, they will be shielded
22 through traffic.

23 Q Okay. Let's continue on that vein. Assume
24 that traffic wants to reach, I believe it's the industrial
25 area, how would they reach that area?



1 A Right now the industrial area is only accessible
2 to northbound traffic on Route 34, it would be necessary
3 for all southbound traffic to make a U-turn or for the State
4 to provide some U-turn facility when that property
5 develops.

6 Q First of all, taking part of the question,
7 where would a U-turn be made and would it be a proper
8 thing?

9 A Right now it would not be.

10 Q Let's not assume breaking the law.

11 A I think in the planning range -- you know, quite
12 frankly, if you want my opinion from an access standpoint,
13 it would take a considerable period of time for a commercial
14 property, industrial property to develop because accesses
15 have to be worked out with the State. In the long run,
16 I would say the Jushua-Huddy Drive having a U-turn
17 facility and I would see the intersection of the
18 Earle Road and Route 34 having a U-turn facility constructed
19 there. So that a median could be extended -- for example,
20 I worked for a period of time trying to develop a
21 median access because they have left-turn problems, they
22 generate considerable more traffic than would be generated
23 by the commercial-industrial zone. But you would have to
24 work out a detailed access plan with the State.

25 Q You say you would, okay? And if. Right now



Ney - cross

1 there is no plan to put a jug handle at the Earle inter-
2 section; is that correct?

3 A That's correct. And there are no plans to build a
4 given number of office space. Most of our work, for
5 example, is done for private developers when they want to
6 invest money and they want access, we start off with
7 negotiations with the State and County.

8 MR. SAGOTSKY: May I interrupt by
9 way of supplementing the answer to Mr. Ney.
10 Would Mr. Ney consider that an off-site
11 improvement to which a contribution would be
12 made by the developer in negotiating with the
13 State?

14 THE WITNESS: Whoever develops the
15 office uses, would have to develop an
16 acceptable access design with the State
17 and the State would have to -- would require
18 the developer to pay for it. In other words,
19 if you are going to develop, as I indicated,
20 120,000 square feet of space here, you would
21 have to work out an access plan with the State.

22 BY MR. MARKS:

23 Q Assuming you were able to -- you were willing
24 to consider the cost of it, that doesn't necessarily mean
25 that the State would agree because of a private enterprise



1 to put in a jug handle; is that correct?

2 A No, it doesn't, Mr. Marks. But just again --


3 Q Why not?

4 A What happens at the State level is that the State
5 heretofore would allow a developer to come in without
6 even -- for example, right on this property and not even
7 give consideration to any access. They gave him the drive-
8 way permit, if he needed one, and then worry about the
9 traffic afterwards. Under their new policy, which is about
10 a year old, under their new access regulation, they require
11 a traffic impact study and they require the questions to be
12 raised and answered.

13 Q So, really, then you don't have an answer at
14 this point whether it was qualified for a jug handle or
15 not?

16 A No, we don't have a specific proposal. I made some
17 assumption as to square footage. Obviously as this project
18 develops and as demand is created for our office or retail
19 development, then the plan would be developed for those
20 particular properties. We have no detail as to exact
21 development. I can think of very simple ways to do it.
22 For example, there is a median there and the State --

23 MR. SAGOTSKY: I would like at this
24 time to present a word of caution. I have a
25 feeling, and if I am wrong, please stop me.



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I have a feeling we are going into voluntary considerations that aren't called for and that would lengthen the proceeding. Please confine yourself as nearly as you can in answering the question without volunteering.

MR. LARKIN: Thank you, Mr. Sagotsky.

MR. FRIZELL: Thank you, Mr. Sagotsky.

BY MR. MARKS:

Q Mr. Ney, in fact when the project, or if the project is completed and there is the inception of this industrial area which does exist as well as commercial, is it not correct that any traffic flowing south on 34 would then have to go as far as the Collingwood Circle to enter?

A No.

Q Why not?

A Because any traffic destined to the office commercial could U-turn utilizing the interchange of Route 18.

Q What about the industrial?

A It would have to go as far as the Collingwood Circle.

Q Okay. When you did your traffic analysis, was there a study of the traffic flow?

A Yes.

Q Was this flow across a particular point in the



1 road?

2 A Yes, as well as the turning movement counts.

3 Q Where was that point in the road, do you recall?

4 A There were two traffic recording devices placed on
5 Route 34, they were north of Route 18, between the inter-
6 section of 537 and Route 18. There was one traffic count
7 placed 250 feet west of Creamery Road, which would put it
8 between Creamery and the intersection of Route 34.
9 In addition, there was a turning movement count conducted
10 by myself at the intersection of Route 537 and Route 34
11 and also a turning movement count conducted at the inter-
12 section by the State of New Jersey last year.

13 MR. LARKIN: Might I ask one
14 question?

15 MR. MARKS: Yes.

16 MR. LARKIN: You said there was a
17 counting device on 537 below 34?

18 THE WITNESS: 600 feet.

19 MR. LARKIN: So it was above
20 Village Boulevard?

21 THE WITNESS: But the intersection
22 counts were not.

23 MR. LARKIN: The intersection counts
24 were not, but the traffic --

25 THE WITNESS: The automatic recording



1 device was, yes.

2 MR. SAGOTSKY: Let me make another
3 interruption. Mr. Frizell, I don't recall if
4 the map to which Mr. Ney is referring is the
5 small map, it's marked Regional Traffic Plan
6 of Colts Neck and it's dated 6/11/80, and it
7 has mentioned a revision or another date of
8 June 17, 1980, to which reference has been
9 made. Do you want to clear up the reference?

10 THE WITNESS: I think it was marked.

11 MR. FRIZELL: They were marked. The
12 Regional Traffic Plan was A-19, that's the
13 small map showing the regional network of
14 traffic.


15 MR. SAGOTSKY: I have my hand on a
16 small map, it says Colts Neck Village, that's
17 June 19, 1980. What designation was that,
18 Mr. Frizell?

19 MR. FRIZELL: A-19.

20 MR. SAGOTSKY: All right. The
21 Circulation Plan.

22 MR. FRIZELL: The Circulation Plan,
23 Mr. Sagotsky, is A-18.

24 MR. SAGOTSKY: A-18, A-19 have been
25 marked for identification for purposes of any



1 clarification with reference to the testimony
2 of Mr. Ney and the questions by Mr. Marks,
3 just for clarification. Continue.

4 BY MR. MARKS:

5 Q Okay. I think you were just at the point where
6 you were saying where the automatic traffic devices were.
7 Your study was in essence a traffic count, was it not?

8 A No.

9 Q What was the nature of your study?

10 A The nature of my study was an impact evaluation of
11 the proposed development.

12 Q An impact on what?

13 A On the surrounding roadway network.

14 Q Was it in fact -- did you in fact formulate
15 the impact on the intersection?

16 A Yes, sir.

17 Q Do you have those figures with you?

18 A The one on the critical lane analysis, I don't know
19 if they are in the report or not.

20 MR. SAGOTSKY: Would you excuse me,
21 please.

22 THE CHAIRMAN: I'll declare a five
23 minute's recess while finding this report.

24 (A five minute's recess is taken.)

25 THE CHAIRMAN: We will resume from



1 our recess and ask Mr. Marks to continue
2 his interrogatory.

3 MR. SAGOTSKY: We can have the
4 Reporter read back for you, if you like.

5 MR. MARKS: No, I think I know
6 where we were. I had asked Mr. Ney his
7 calculation on the capacity of the inter-
8 section.

9 THE CHAIRMAN: All right.


10 A On the intersection, yes. I utilized the critical
11 lane method of capacity and just roughed it out. With the
12 improvements, the volume on the critical lane basis is
13 1250 vehicles, which is a C level of service.

14 Q Is the critical lane theory just one element
15 of the capacity study or are there other elements?

16 A No, it's the element of the intersection capacity
17 service. I also looked at the free flow capacity of 537
18 and 34.

19 Q Is there another way of calculating the
20 capacity of that intersection?

21 A Yes, there is a method aligned in the Highway
22 Capacity Manual, but I believe I spent some time last week
23 explaining that the methodology has proven to be extremely
24 inaccurate and the critical lane method is now being utilized.
25 And, as a matter of fact, this up-dated capacity manual



1 which is forthcoming will be the method of giving inter-
2 section capacity.

3 MR. MARKS: I have no further
4 questions.

5 MR. FERER: I have just two short
6 questions.

7 THE CHAIRMAN: Mr. Ferer.

8 MR. FERER: You spoke of Region five -

9 THE WITNESS: Planning area five.

10 MR. FERER: What?

11 THE WITNESS: Planning area five.

12 MR. FERER: How big an area was that?

13 THE WITNESS: That area covers roughly
14 from Colts Neck westerly, including Colts
15 Neck, Manalapan, Marlboro, Freehold Borough,
16 Freehold Township, which are the predominant
17 areas of planning area five.

18 MR. FERER: And will that reflect the
19 easterly movement very much?

20 THE WITNESS: Will it reflect
21 easterly movement in planning area five?

22 MR. FERER: Including all of Colts
23 Neck, including Tinton Falls?

24 THE WITNESS: Yes. It was a survey
25 done by the Planning Board.




1 MR. FERER: Do you believe that's
2 accurate in this area, knowing of the growing
3 region that exists to the east along the shore
4 up and down both ways, Fort Monmouth and all
5 that? That study shows most of the jobs
6 north and west, you say?

7 THE WITNESS: Within the housing
8 element, which was predominantly the single-
9 family market, the predominant movement was
10 two-thirds northbound. And part of that
11 northbound movement is considered to be Somers-
12 set and Middlesex Counties, which is not
13 quite northbound from this area, it's more
14 westerly. Within the apartment survey,
15 it showed that 50 percent of the people
16 living in multi-family housing, in planning
17 area five, were employed within Monmouth
18 County. It did not differentiate the
19 eastbound flow from the westbound, from the
20 northbound or southbound within the County
21 itself, it just had a category of Monmouth
22 County.

23 MR. FERER: That's all.

24 THE CHAIRMAN: The Board Members have
25 any questions?



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(No response.)

Anything further?

MR. FRIZELL: No questions.

THE CHAIRMAN: Okay. Thank you,

Mr. Ney.

(Witness excused.)



1

1

MR. FRIZELL: Gale McDonnell,

2

please.

3

4

G A L E S. M c D O N N E L L, being first duly sworn

5

according to law, testified as follows:

6

7

DIRECT EXAMINATION BY MR. FRIZELL:

8

Q Mr. McDonnell, by whom are you employed?

9

A Elson T. Killam Associates, Millburn, New Jersey.

10

Q And what is Elson T. Killam?

11

A We are environmental and hydraulic engineering firm.

12

MR. LARKIN: I am sorry?

13

THE WITNESS: Environmental and

14

hydraulic engineering firm.

15

Q (Continuing) And how long have you been

16

employed by the Elson T. Killam firm?

17

A Approximately two years.

18

Q And in what capacity?

19

A Project Engineer presently.

20

Q And, Mr. McDonnell, what's your educational

21

background?

22

A I have a Bachelor in Civil Engineering from Ohio

23

State University.

24

Q Do you hold any licenses or any other

25

designations in the State of New Jersey?



1 A Yes, in New Jersey Professional Engineering
2 license.

3 Q And in terms of Project Engineer position
4 with the company, Mr. McDonnell, what's your responsibility?

5 A I have prepared numerous engineering planning
6 reports, conceptual engineering studies and waste water
7 treatment facilities, and some design of waste water
8 treatment facilities and sewerage.

9 Q And how long have you been in the business
10 of examining feasibility of waste water treatment
11 facilities?

12 A For approximately five and a half years.

13 Q Mr. McDonnell, have you ever testified
14 in the State of New Jersey?

15 A Yes, I have.

16 Q Now, Mr. McDonnell, were you asked to
17 prepare a feasibility study with respect to the Colts
18 Neck Village Development?

19 A Yes.

20 Q And do you have a copy of the report here?

21 A Yes.

22 Q Does it also include a report other than
23 your own?

24 A Pardon?

25 Q Other than the one you prepared?



1 A I prepared this report, it's a feasibility study
2 on cemetery sewerage and potable water supply facilities.
3 I prepared the portion on the cemetery sewerage facility,
4 another member of our firm prepared the portion on
5 potable water supply facilities.

6 MR. FRIZELL: Mr. Sagotsky,
7 could we please mark these three documents?
8 One is called Feasibility Report Upon
9 Cemetery Sewerage and Potable Water Supply
10 Facilities, dated June, 1980, and
11 secondly --

12 MR. SAGOTSKY: Let me mark
13 that down.


14 MR. FRIZELL: Yes, sir. That
15 would be A-21.

16 MR. LARKIN: Sam, are these
17 going to be handled the same as A-12
18 and so forth, were handled?

19 MR. SAGOTSKY: Yes, for
20 identification.

21 (Feasibility Report dated
22 June, 1980 is received and marked Exhibit
23 A-21 for identification.)

24 MR. SAGOTSKY: A-22 is
25 Colts Neck Village --



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MR. FRIZELL: I would call it the Sewerage Facility Plan.

MR. SAGOTSKY: Entitled Sewerage Facility.

(Sewerage Facility Plan is received and marked Exhibit A-22 for identification.)

MR. FESSLER: What's the number?

MR. SAGOTSKY: A-22

MR. FESSLER: Exhibit 1.

MR. SAGOTSKY: Exhibit 1 on th map.

A-23 is now being unfolded; is that right, Mr. Frizell?

MR. FRIZELL: A-23 is the Water Facility Plan.

MR. SAGOTSKY: A-23, also for identification, Water Facility Plan.

(Water Facility Plan is received and marked Exhibit A-23 for identification.)

MR. SAGOTSKY: Can I have that one? Do you have any more?

THE WITNESS: Sure I have.

MR. FRIZELL: You only have a



1 few copies? I want you to put one up of
2 the Sewer Facility.

3 BY MR. FRIZELL:

4 Q Mr. McDonnell, in your preparation of the
5 feasibility study A-21, what was the purpose of the
6 study?

7 A The purpose of the study was to determine the
8 feasibility of providing sanitary sewerage collection
9 and treatment and disposal for the Colts Neck Village
10 PUD project.

11 Q Did you assume --

12 MR. SAGOTSKY: Is everybody in
13 a position to hear this or shall I ask the
14 witness to turn a little bit your way?
15 The request is to speak up a little bit.

16 THE WITNESS: Okay.

17 Q (Continuing) Mr. McDonnell, were you
18 provided with a copy of a project description by RSWA
19 and with various plans which would designate the proposed
20 development for the property?

21 A That's right, we got input from the consulting
22 firm that you mentioned and plus Jim Kovacs.

23 Q Now, in terms of evaluating the feasibility
24 of providing sanitary sewer service to the development,
25 what did you do?



1 A. First we took the planning for what was provided
2 to us by our client, developers -- planners and we determined
3 what the estimated waste water flow would be from this
4 development. We looked at the mix of the housing,
5 residential housing in this development, the commercial
6 development that may be constructed in this development,
7 various units, such as subsidizing housing to develop
8 the water flow. We estimated the number of residents
9 within the residential type dwelling and the per capita
10 waste water flow that may be generated by those types
11 of residential units. And from that we projected a
12 waste water flow from the entire development.

13 Q Without going back into the waste water
14 flow, we will go back into that later. After determining
15 a waste water flow, which I understand is a volume number --

16 A. A daily volume number.

17 Q Of the total amount of the waste water
18 that would have to be treated as a result of this
19 development?

20 A. That's right.

21 Q After establishing that figure, then what
22 did you do?

23 A. Then we established what discharge -- what the
24 treatment standard would be for treatment of the sewerage
25 and discharge to surface water streams in the vicinity of



1 the treatment plant site.

2 Q And using the waste water flow and the
3 treatment standards, then what did you do?

4 A Then we looked at the topography of the site,
5 the manner in which the development was going to be
6 constructed, built, the road pattern, if you will, and
7 developed a collection network to collect sewerage from
8 each of the planning areas within the site, the various
9 residential-commercial areas within the site to convey
10 them to a central sewerage plant location. And that
11 sewerage plant location is on the south side.

12 Q I am sorry, I might have missed it, but
13 did that include the collection system?


14 A The preliminary design of the collection system.

15 MR. LARKIN: I am sorry, I
16 didn't hear.

17 MR. FRIZELL: Collection system.

18 Q (Continuing) After establishing the
19 conceptual design of the system and treatment facility,
20 then what did you do?

21 A Well, we made a preliminary design of the
22 collection facility and then we looked at the discharge
23 standards and the various options we had of treating
24 the waste and disposing of the treated sewerage. We
25 looked at the four alternative treatment syst
ems, we



1 ruled one out as being infeasible for this project and
2 we evaluated -- we did preliminary design, a treatment
3 option and prepared project test 403, pliable treatment
4 and --

5 MR. LARKIN: I am not sure you
6 are answering the question. Can I ask a
7 question? What was the one you rejected?


8 THE WITNESS: Spray irrigation.

9 MR. LARKIN: Spray irrigation?

10 THE WITNESS: Yes. Basically
11 it's a type of project where you treat the
12 water at a fairly low level and then spray
13 it over large areas of ground. You can
14 spray crop lands or golf courses, things
15 such as that.

16 Q (Continuing) Now, in terms of obtaining --
17 developing waste water flow projection, what's the
18 methodology for that?

19 A What we did is, the State actually -- the State
20 Department of Environmental Protection actually determines
21 how you must treat your waste water in order to discharge
22 through surface water in the State of New Jersey. What
23 we did is consulted with the Department and established
24 the sampling program from the Hockhockson Brook. People
25 from our firm went out in the field, collected a sample



1 of the stream, we ran analysis of the sample we collected
2 and we submitted the results of the entire program to the
3 New Jersey Department of Environmental Protection. The
4 State people reviewed the data, determined what they feel
5 the discharge standards should be for this facility with
6 this Hockhockson Brook.

7 Q And that waste load allocation is set forth
8 on Page 7 of your report?

9 A Page 6.

10 MR. LARKIN: You have another

11 extra copy?

12 Q (Continuing) How many of those do you
13 have?

14 A One extra copy.

15 Q And what were the waste load allocations
16 which are set forth on Table 2, Page 6 of your report
17 which were developed from your communication with the
18 DEP?

19 A Five day BOD of 2.9 mgs per liter; total
20 suspended solids, 7.5 migs per liter; total Nitrogen,
21 2.5 mgs per liter, total Phosphorous, 0.2 mgs per
22 liter; dissolved oxygen, 6.0 mgs per liter; fecal
23 coliform 14 per 100 milliliters; turbidity, 80. mgs per
24 liter, total solids 97 mgs per liter.

25 Q Now, what's the methodology for establishing



1 waste water flow estimates for the project?

2 A Well, we took the residential mix that's proposed
3 for the Colts Neck Village Project, we were given the
4 number of units of single-family homes, for instance --
5 for instance, single-family homes, town houses, condo-
6 miniums. We were also given the bedroom counts break
7 outs for those -- each of those residential buildings,
8 dwelling types. When we were given those, we estimated
9 the number of people that would probably be living in a
10 typical unit and then we also estimated what the typical
11 sewerage flow would be on a daily basis for each person
12 within those units, from that we developed a total
13 residential flow.

14 Q And are those set forth on Table S-1 of
15 your report?

16 A Yes.

17 Q What's --

18 MR. SAGOTSKY: What page, if I
19 may interrupt?

20 THE WITNESS: Page 4.

21 Q (Continuing) What's the total flow that
22 you estimated on a daily basis from this project?

23 A Two hundred and twenty thousand eight hundred and
24 eighty-five gallons per day.

25 Q Did you add possible additional flow for



1 further development of the commercial area?

2 A Yeah, we made an estimate of commercial flow based
3 on the plans of square foot of commercial development
4 that would occur and we derived the commercial flow.

5 Q And did you also add infiltration and
6 inflow into this system?

7 A Yes, we added a component for that.

8 Q And what was the total flow that you estimated
9 should be designed for in connection with this project?

10 A 250,000 gallons per day.

11 THE CHAIRMAN: I missed the
12 estimate of the commercial flow, would you
13 give me that, please?


14 THE WITNESS: Yes. The commercial
15 flow is estimated at 15,875 gallons per
16 day.

17 Q (Continuing) Did you also --

18 MR. FERER: Does this allow
19 for total development and full capacity,
20 full occupancy, total occupancy?

21 THE WITNESS: That's correct.
22 That was the square footage we were given.

23 MR. LARKIN: Can you just
24 tell me what BOD is? Maybe I shouldn't
25 ask.



1 THE WITNESS: No, it's a term.
2 It's a method of measuring -- it stands
3 for Biological Oxygen Demand and it's
4 really a way of measuring the amount of
5 organic material in the waste water that's
6 able to be metalized by micro organism
7 commonly found in sewerage treatment.
8 Basically, it gives you a measurement of
9 how polluted the water is.

10 MR. LARKIN: Let me ask you
11 what might be a foolish question. But if
12 I went to Hockhockson Brook and I took
13 a cup of water, could I drink it?

14 THE WITNESS: The water?

15 MR. LARKIN: The water that's
16 coming out of this treatment plant, I
17 mean that's flowing into Hockhockson?

18 MR. SAGOTSKY: First treatment?
19 You are talking about first treatment?

20 THE WITNESS: Yes, that's
21 right.

22 MR. SAGOTSKY: That's the
23 question, first treatment.

24 THE WITNESS: The standards
25 that are established herewith -- it's




1 not drinkable quality, no. For instance,
2 the fecal coliforms 14 per hundred milli-
3 meters, I would not drink that because that
4 means that there are actually organisms
5 in there that are active at approximately
6 body temperature. In a normal stream --
7 however, you go down to Hockhockson Brook,
8 and I believe when we tested Hockhockson
9 Brook, the fecal coliforms that were present
10 in the stream at that time that we sampled
11 were in the range of this number. It's
12 there everywhere, so to speak.

13 MR. FRIZELL: I was going to
14 ask you, Mr. McDonnell, how does the waste
15 water effluent limitation compare to the
16 present quality of Hockhockson Brook at
17 this time?

18 THE WITNESS: It's approximately
19 the same.

20 MR. FERER: Are these limitations
21 those established by the State of the
22 limitations of your facility, the maximum
23 that your facility would deliver?

24 THE WITNESS: They are generally
25 one and the same.




1 MR. FERER: Does the State
2 provide a range?

3 THE WITNESS: No, they gave a
4 figure, and this is the figure that we
5 must meet. So they are basically --

6 MR. SAGOTSKY: Can you hear
7 him back there?

8 MR. FERER: Okay. Your system,
9 though, has the flexibility of coming under
10 these and formally would determine the
11 extent because these are the maximum?

12 THE WITNESS: Yes, that was
13 it. Now, they didn't say whether these
14 are 30 day maximum or seven day maximum.
15 It's -- that will have to be established
16 by the State when they finally issue a
17 permit for this facility. I think I would
18 like to mention here that any plan that we
19 plan for, build and operate, all of those
20 three steps and even construction must be
21 accomplished under the direction of the
22 New Jersey Department of Environmental
23 Protection. It goes all the way along the
24 line, from conception, all the way along
25 the operation. So they are involved in this



1 So, basically, the material that we
2 included in this report would meet the --

3 MR. FRIZELL: Can you just
4 roughly for the Board tell them whether or
5 not, for instance, the Earle facility that
6 is now discharging into the Hockhockson
7 Brook is meeting their limitation?


8 THE WITNESS: No, they are
9 meeting those limitations. But they
10 don't have to. I would like to mention,
11 I don't want to leave it just at that,
12 they aren't required to meet these limitations.

13 MR. FRIZELL: I didn't mean to
14 imply that they were.

15 THE WITNESS: No, they don't.
16 But their permit permits them to discharge
17 substantially greater amounts of pollutant
18 in terms of concentration.

19 MR. DAHLBOM: Is there a reason
20 for that?


21 THE WITNESS: The plant was
22 built at a later time under different
23 standards and they are operating under
24 an older permit. It's very possible that
25 these -- that these permits come up for a



1 renewal periodically, it's possible that
2 as their permit comes up for renewal that
3 there may be some modification to it. But
4 that's really a state function and I really
5 can't say for certain whether they will. It
6 has happened in the past.

7 MR. FERER: How are these
8 limitations monitored?

9 THE WITNESS: That will be
10 required when the plant becomes operational.
11 It must be operated by a licensed operator
12 who is licensed by the state, who takes a
13 state examination, and he must see to it
14 that the plant is operating and maintained
15 in a satisfactory fashion. As a part of
16 this operating permit, the plant operator
17 is required to sample the raw waste and
18 plant effluent on periodic basis. It may
19 be once a day, it may be once a week, it
20 may be once a month, it really depends
21 on the size and the type of the facility.
22 And the frequency of the analysis is also
23 established and determined. The sample
24 of an effluent must be tested by a
25 certified laboratory and the results of




1 that analysis is put on a monthly reporting
2 form that goes to the state and they are put
3 on a quarterly reporting form and it goes
4 to the U.S. EPA. The permit is a U.S. EPA
5 permit, it's a national permit, it's not
6 a state permit, although the state is in
7 the process of taking that permit system
8 over.

9 MR. DAHLBOM: Can I ask a
10 question? What sort of odors or smells
11 might be associated with this kind of plant?

12 THE WITNESS: Really, you can't
13 go on the manner -- if a plant is properly
14 operated, designed and maintained, there
15 are some odors generated. But if it's
16 properly maintained, operated, designed,
17 the odors are really minimal. I visited
18 plants where people live across the street
19 and the odors are not noticeable. Others
20 are operated poorly, it creates a problem.

21 THE CHAIRMAN: Is Earle regulated
22 by the same authority in granting permits
23 that this project would be?

24 THE WITNESS: Yes, exactly
25 the same.



1 THE CHAIRMAN: Earlier you
2 said you built them?

3 THE WITNESS: No, we don't build
4 them, they would be built by private
5 contractors.

6 MR. FRIZELL: You mean the
7 actual construction?

8 THE WITNESS: The actual
9 construction.

10 THE CHAIRMAN: Construction,
11 yes. I thought he said we built them.

12 BY MR. FRIZELL:

13 Q Your company would be involved in the
14 construction process?

15 A Yes, we design the treatment facility and then
16 we may supervise the construction of those facilities
17 to make sure it's constructed properly.

18 Q Now, in terms of the cemetery sewer
19 collection system, is that shown on A-22, which is the
20 sewer plan?

21 A Yes, that's right.

22 Q And in your examination of the topography
23 of the site, what findings did you make with respect to
24 the feasibility of the sewer collection system to the
25 site?




1 A Based on the way the site is laid out as shown
2 on this map, the roadway pattern, the development pattern,
3 the development pattern, we determined it would be feasible
4 to construct a gravity collector system to serve the
5 entire site, basically. You have a low point in the site
6 around here, we would come around -- this would be the
7 upstream section of the system, we would come around,
8 collect the sewerage from these on the other side, then
9 it would go to the easterly side of the development
10 and then follow an easement down to the sewerage treatment
11 facility. This area of the site would be collected in
12 this manner, and collection of the trunk sewer here. And
13 this area, the bridge line, approximately there, it
14 would be conveyed to the trunk sewer at this location.

15 THE CHAIRMAN: That would all
16 be gravity fed, no pump?

17 THE WITNESS: No, no pump,
18 entirely gravity fed.

19 THE CHAIRMAN: How do you plan
20 to get across 18?

21 THE WITNESS: Okay. Right here
22 we would be jacking a larger diameter sleeve
23 or casing to meet Route 18. It's a fairly
24 common procedure. And what you do is,
25 actually you excavate a little bit ahead of



1 it and put a larger diameter casing underneath the road,
2 generally it's a sealed casing underneath the road and
3 you just progress it underneath the highway and then any
4 voids that are on the outside of the casing, you can
5 pressure grout those so there is no settlement of the
6 foundation of the road. And then you slip your sewer
7 pipe into this casing, which is a larger diameter, and
8 fill the space ground of the casing pipe in the smaller
9 collector sewer with sand or peat gravel.

10 THE CHAIRMAN: All of this

11 I guess would require permission of the
12 state to cross 18?


13 THE WITNESS: Oh, sure.

14 THE CHAIRMAN: Are you assured
15 that that permission would be granted?

16 THE WITNESS: We have done it
17 on numerous occasions in other areas of
18 the state and I don't see any reason why
19 they wouldn't grant a permit in this case.

20 BY MR. FRIZELL:

21 Q Mr. McDonnell, in connection with the
22 design of that collector system, did you encounter -- you
23 indicated already that there were no pumps required, did
24 you encounter any particular engineering difficulties
25 or did you find that the site is well suited for the



1 installation of a system like that?

2 A No, any time you can get a system that's fed
3 by gravity, you are one step ahead of the game. You have
4 a low point near 537, there are some in this location,
5 the sewer is located fairly deep cuts up to 30'. But
6 when this system is constructed you might say we are
7 first in; there wouldn't be any roads, there wouldn't
8 be any houses, we will be first in. So your construction
9 of a deep sewer is fairly easy. We can wide cut it
10 and it doesn't become a real problem for us.

11 Q All right.

12 THE CHAIRMAN: Mr. McDonnell,
13 this is a primary treatment plant, not
14 secondary?

15 THE WITNESS: Oh, no, this would
16 be advanced over and above secondary because
17 of the standards.

18 THE CHAIRMAN: Well, there are
19 three, aren't there, primary, secondary and
20 tertiary?

21 THE WITNESS: Right.

22 THE CHAIRMAN: This would be a
23 tertiary.

24 BY MR. FRIZELL:

25 Q Did you estimate the cost of that sewer



1 collection system?

2 A Yes.

3 Q And what did you do in estimating that
4 cost?

5 A Well, we looked at the amount of flows that
6 would be required to convey and provide service for all
7 the areas in this development, the jacking operation,
8 which I imagine that's more expensive than putting it
9 in an open trench and combined all those factors and
10 estimated the cost of the system.

11 Q Did you use engineering standards in
12 terms of the cost of material and the cost --

13 A That's right.

14 Q -- And the cost of labor?

15 A We estimated the cost of material and the cost
16 for excavation and proper bedding for the pipe.

17 Q And what was the figure that you came to?

18 A The construction cost was six hundred and --

19 MR. SAGOTSKY: What page?

20 THE WITNESS: Page 9. The
21 estimated constructed cost was \$655,000.

22 Q (Continuing) Now, in terms of the waste
23 water treatment, you indicated that would be located on
24 the southerly side of Route 18?

25 A That's right.



1 Q And is that designated on A-22 as well?


2 A Yes. It's the crossed hatch area that designates
3 the treatment facility.

4 Q Was there a reason for selecting that side
5 of the highway for the location of the waste water treatment
6 facility?

7 A Yes. It does abut Hockhockson Brook, we feel it
8 doesn't just discharge into the Swimming River Reservoir,
9 we feel that's an advantage. And also Route 18 provides
10 a buffer for the site between it and the main portion of
11 the development. There is also an undeveloped area on the
12 south side of Route 18 to the east -- east and west of the
13 site and further to the south, it abuts the undeveloped
14 reservoir, it's wooded, Earle Reservoir. It's very well
15 buffered.

16 Q Now, you indicated that you had examined
17 what you considered three viable alternatives and you
18 eliminated spray irrigation. What were the three alterna-
19 tive treatment systems that you examined?

20 A One was to provide physical chemical treatment, no
21 biological treatment processes at all, totally physical
22 chemical. The second treatment option was a biological
23 treatment system, a physical chemical tertiary treatment,
24 and the fourth alternative was a biological secondary
25 treatment.




1 Q Would you describe the difference between
2 biological treatment and a physical advance waste water
3 treatment?

4 A Yes. Take out the -- let's go back. Take out the
5 organic faction of the pollutants that make up the
6 sewerage stream and some of the solids, you can remove
7 by either adding chemicals to the waste and settling
8 them out. Or you can rely upon micro organism and
9 settling them out. That's the basic difference. But
10 you can only go so far with that process and then you
11 have to follow with further physical or chemical treatment
12 methods, such as filtration and other methods such as
13 that.

14 Q Are these systems referred to, commonly,
15 as a package treatment plant?


16 A Yes, they -- well, there are package treatment
17 plants that provide various physical chemical scheme,
18 biological treatment scheme, or they can design and
19 construct it at the site. Basically what a package
20 treatment plant is -- perhaps to explain, is a plant
21 that's essentially factory fabricated and it's brought
22 out to the site in various degrees of assembly and
23 assembled partially at the site. Or a conventional
24 treatment facility is totally constructed at the site
25 with various components brought in and placed in operation.



1 THE CHAIRMAN: What's the
2 maximum capacity of this plan you project
3 gallons per day?

4 THE WITNESS: The average daily
5 design capacity is a quarter million gallons
6 per day. Now, there will be fluctuations
7 during the day. As you can imagine, you
8 aren't going to get a constant flow into
9 a treatment facility, particularly one
10 as small as this. During the morning hours,
11 you are going to get more flow and as the
12 morning proceeds, the flows taper off, and
13 towards the end of the dinner hour late
14 at night you get another peak flow. And
15 then, after midnight, the flows drop down
16 drastically.

17 THE CHAIRMAN: I had a reason
18 for asking that. Your capacity would --
19 your capacity from the residential area
20 was so much and then you estimated what
21 the commercial flow would be, and that added
22 up to 250. And that seemed to be your
23 capacity. Now you base your estimate on
24 the developer's estimate of the number
25 of residents. Supposing his figures are




1 way off and there are a lot more people
2 in this than you estimated, you don't seem
3 to have a capacity to handle a mistake you
4 might have made.

5 THE WITNESS: We have been given
6 a number of dwelling units and we can pretty
7 well predict how many people are going to
8 be willing to live in that type of mix
9 of housing. For instance, you may have
10 one single-family home that may have six
11 people in residence and you may have another
12 home that has only two people in residence,
13 and they tend to average out.

14 THE CHAIRMAN: I don't mean
15 to say that there was any intention to
16 underestimate. But I don't see how you
17 could possibly control who is going to live
18 there and control the number of people that
19 would occupy the units.

20 THE WITNESS: That's right, you
21 can't. That's why we call it an estimate.

22 THE CHAIRMAN: And if your
23 estimate is low, you got an inordinate
24 situation and I think we would be in trouble,
25 wouldn't be?



1 THE WITNESS: Well, your permit --
2 let's go back to the permit. The permit that
3 you get to operate the facility tells you
4 that you cannot exceed -- in this case it
5 would be 250,000 gallons per day. If for
6 some reason, and it may not only be because
7 of the number of people but it may be because
8 of the amount of water that the sewerage
9 will generate, if your flow exceeds that
10 250,000 gallons per day, the state immediately
11 requires you to commence studies to determine
12 what you have to do to upgrade or expand
13 your facility to accommodate those flows
14 and meet your permit requirement. That's
15 an automatic thing. They can also require
16 those types of study if your treatment
17 plant comes on line, for some reason it
18 doesn't meet the state's requirement.

19 MR. FRIZELL: Mr. McDonnell,
20 let me go back to Table S-1 for a moment.
21 How many people did you estimate would --

22 THE CHAIRMAN: Are you
23 referring to my question, Mr. Frizell?

24 MR. FRIZELL: Yes, I am.

25 THE CHAIRMAN: I had a couple --



1 I wanted to amplify a little more. Thank
2 you.

3 BY MR. FRIZELL:

4 Q In your Table S-1, how many people did you
5 estimate would occupy the three bedroom single-family
6 units?

7 A Three bedroom single-family unit, four persons.

8 Q Four persons per unit?

9 A Yes.

10 Q Were you in the courtroom when Mr. Quaele
11 testified that there was an average of 1.1 children
12 per household in Colts Neck?

13 A No, I wasn't.

14 Q Did you take into account and reduce the
15 number from four to 1.1?

16 A No, I didn't.

17 Q All right. Now, the figures that you used,
18 for instance, for three bedroom town house, what was
19 the figure that you used?

20 A Three and a half.

21 Q Now, does your firm have experience in this
22 field in terms of estimating the amount of effluent
23 that would be generated by the particular type of units?

24 A Yes. They are really standard.

25 Q Can you estimate for me how many systems



1 Elson T. Killam Associates has been involved in the
2 design in New Jersey?

3 A I really couldn't estimate it. It's numerous.

4 Q Is it over ten?

5 A Yes.

6 Q Is it over fifty?

7 A I really couldn't say if it's over fifty, but it's
8 well over ten.

9 THE CHAIRMAN: That was one of
10 my questions. Do you have previous experience
11 designing for a similar project, similar
12 PUD?

13 THE WITNESS: No, not similar
14 project.

15 THE CHAIRMAN: So what you are
16 saying would be a guesstimate. You don't
17 have previous experience to fall back on?

18 THE WITNESS: The firm as a whole
19 has worked with PUD developers at various
20 stages in the development.

21 MR. FRIZELL: Have you ever
22 encountered, Mr. McDonnell, a situation
23 where your firm made an estimate based
24 on a number of persons per unit for a
25 particular housing type for a large develop-




1 ment, I am not referring now particularly
2 to a PUD but large scale residential
3 development, whether they call it a PUD,
4 whether it's a mix of town houses, single-
5 family or whatever they call it, where
6 the figures were found to be substantially
7 inaccurate?

8 THE WITNESS: I am really -- I
9 am really not certain. Generally, like I
10 say, the estimates are based on our
11 experience and very rarely -- I never
12 encountered a situation where we put a
13 system on line and the flows have really
14 exceeded the projected design.

15 MR. LARKIN: Maybe the question
16 should be, if it exceeds a thousand gallons
17 per day, what would you have to do?

18 THE WITNESS: It depends at
19 what stage that situation would occur. You
20 are saying after the treatment plant was
21 built and then the flow was found to be
22 greater, what we would be required to do
23 would be to look at the plant, determine
24 what should be required. This is -- this
25 would be a study that the state would




1 require to do, what would be required to
2 upgrade or expand that plant so that we would
3 meet the discharge requirements.

4 THE CHAIRMAN: In other words,
5 you could expand this if necessary to
6 accommodate?

7 THE WITNESS: That's right.

8 MR. FERER: How long would the
9 state give you to correct that?

10 THE WITNESS: What they do is
11 actually as you approach capacity, they
12 put you on notice and they give you a,
13 I believe -- I have worked -- they call it
14 a max-min report that they give you. I
15 really can't recall the time frame, I would
16 say within 90 days, I believe the one I
17 worked on to prepare the report. And
18 then they give you a reasonable amount of
19 time obviously to put any recommended new
20 facility in line. You can't obviously put
21 a new facility on line within a 90 day
22 time frame. But they do give you an
23 implementation. As part of the max-min
24 report you recommend an implementation
25 program and they either accept or they ask



1 you to amend the implementation program.

2 THE CHAIRMAN: In other words,
3 the development is not completely occupied
4 and you are on capacity, do they have the
5 authority to say no more occupancy until
6 it's corrected?

7 THE WITNESS: Absolutely. They
8 can truncate right there. Or they can
9 tellyou, they put the building ban on any
10 further connection. So anything that's
11 not connected to this system, it can't
12 be connected. They will put a building
13 ban on it.

14 MR. SAGOTSKY: Building ban,
15 did you say?

16 THE CHAIRMAN: Ban.

17 THE WITNESS: Building ban.

18 MR. FERER: Is it not customary
19 to design to handle greater capacity than
20 anticipated?

21 THE WITNESS: No, you try to
22 estimate what the full capacity of the
23 plant will be. Now, in the actual plant
24 itself it's capable of handling flows in
25 excess of this hydraulically. If the



1 flows for one reason or another did exceed
2 in any amount, this plant would not mal-
3 function, it would still be handled
4 hydraulically.

5 THE CHAIRMAN: Do they have any
6 problem, to your knowledge, in Twin Rivers?

7 THE WITNESS: I don't know of
8 any problems with that.

9 THE CHAIRMAN: Are you cognizant
10 of the fact that there was a distinct odor
11 problem in Wall Township and they couldn't
12 solve it for months and months?

13 THE WITNESS: No, I am really
14 not aware of that.

15 THE CHAIRMAN: You are not
16 aware of that. This is in West Belmar,
17 actually Wall Township.

18 THE WITNESS: What's the name
19 of the plant, do you know?

20 THE CHAIRMAN: No.

21 THE WITNESS: South Monmouth
22 I am aware they have some odors.

23 THE CHAIRMAN: They had a report
24 on it in the Asbury Park Press.

25 THE WITNESS: Monmouth? If you



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are referring --

THE CHAIRMAN: Yes, it does refer to Monmouth.

THE WITNESS: I am not informed, but I am aware that there was a problem.

MR. DAHLBOM: Are these solids completely liquid or are they solids that have to be carted away as well?

THE WITNESS: There will be solids that will be generated.

MR. DAHLBOM: And are they carted away?

THE WITNESS: Yes, in a plant of this size usually the most effective way of handling is to higher a scavenger to pick up and dispose of the waste in the various landfills.

THE CHAIRMAN: There aren't too many around here, are there?

THE WITNESS: Not too many.

THE CHAIRMAN: They are pretty far afield?

THE WITNESS: There is one in Ocean County.

MR. TISCHENDORF: Mr. McDonnell,



1 could you translate the 250,000 gallons
2 a day into how many inches that might raise
3 Hockhockson Brook during an average flow?

4 THE WITNESS: No, I really can't
5 answer that.

6 MR. TISCHENDORF: Is it a matter
7 of inches or feet or --

8 THE WITNESS: It would be inches.

9 MR. TISCHENDORF: So you don't
10 think this would change any definition
11 of the flood plains or affect anything?

12 THE WITNESS: No, it wouldn't
13 affect any definition of the flood plains.

14 THE CHAIRMAN: We interrupted
15 you with a lot of questions. Get done with
16 your presentation.

17 BY MR. FRIZELL:

18 Q Okay. Mr. McDonnell, in analyzing the
19 three available alternatives that you analyzed, did you
20 come to any conclusion as to whether or not it would be
21 feasible to construct a sewer plant at the site that you
22 indicated which would handle the capacity, the waste water - -
23 the waste water volume that you estimated and treated to
24 the standards established by DEP at the site in question?

25 A Yes, we believe any one of the three would be



1 feasible to construct.

2 Q And in terms of the actual physical
3 construction of the plant, does that become a matter of
4 bringing -- laying a pad out and bringing the plant
5 to the site or constructing the plant on the site?

6 A It depends. It may be more complicated than that.
7 It depends if you want to go to a factory fabricated
8 unit. But the area that we have on there, the treatment
9 facility on there, alternate two and three would not take
10 up that entire space that just shows the general area
11 where the treatment facility would be. They would only
12 take up a fraction of that area, where the land rapid
13 infiltration system would take up a larger area of the
14 site although not the entire site.

15 Q And did you estimate the cost of construction
16 of the system?

17 A Yes, we did.

18 Q And in estimating the cost, what did you
19 do?

20 A Well, we looked at the various unit processes
21 themselves, which would be required in sequence to provide
22 us the level of treatment and then we make estimates
23 to construct each of those units, each of those unit
24 processes.

25 Q Do you basically follow the same procedure



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1 in cost estimating the material and labor construction or
2 is it more of a looking at a package through experience
3 for similar plans have cost in the past?

4 A Well, we look at -- EPA publishes a considerable
5 about of information to give us good guidelines to
6 develop preliminary costs, a whole range of treatment
7 plant facilities, and for the purpose of this report
8 we used those guidelines to develop the costs.

9 Q You say EPA, you mean the Federal --

10 A Yes, U.S. Environmental Protection Agency.

11 Q And what was the total cost of the complete
12 facility?

13 A Well, in the range given, the treatment option,
14 the treatment options that we looked, it ranges between
15 2.3 and 2.7 million dollars. That's construction cost.

16 Q Now, Mr. McDonnell, are you familiar
17 through your association with the firm of the requirements
18 regarding a franchise, in order for a privately owned
19 operated treatment sewer facility to be established?

20 A Not intimately, but I know some general terms.
21 I am not sure.

22 Q Do you know what the first step is in
23 terms of obtaining a franchise from a private company?

24 A I am really not that versed in it.

25 MR. PRIZELL: All right. I have



1 no other questions of Mr. McDonnell.

2 MR. FERER: Does the state
3 have any restriction as to regard with
4 treated waste being discharged into a
5 stream?

6 THE WITNESS: Yes, when they
7 give you a load allocation, that's based
8 on the care of the stream and the volume
9 of treated effluent that you will be
10 discharging to the stream, both of those
11 things are taken into account.

12 MR. LARKIN: If I can just
13 ask this one question. If I were to
14 come to you as a developer for the site
15 and I ask you to design for me a facility
16 that would handle the same type of discharge
17 we are talking about here, you would then
18 approach it from the standpoint of what
19 the particular site was and develop a
20 plant that would fit that site; is that
21 correct?

22 THE WITNESS: Yes, that's
23 correct.

24 MR. LARKIN: So, I believe the
25 question was asked before, a statement was



1 made that this was an ideal site, this
2 facility. I don't want to take your
3 question and make it different, but I believe
4 the question was asked -- the statement
5 was made that this was an ideal site or
6 well-suited site for this particular
7 arrangement.

8 THE WITNESS: Uh-huh.


9 MR. SAGOTSKY: Are you talking
10 about the gravity?

11 MR. LARKIN: Yes, the gravity.
12 The point was that this was designed for
13 the piece of land as it was.

14 THE WITNESS: That's correct.

15 MR. LARKIN: As opposed to
16 the land being ideal to the town. I am
17 trying -- do you follow my meaning? I
18 am saying, if you could take a site that
19 was completely different from this and
20 develop an ideal sewerage treatment --

21 THE WITNESS: Well, some sites --
22 yeah, I am getting the drift of your
23 questions. Some sites may be the topography
24 or the way that the site has to be
25 developed and various natural conditions




1 at the site, say, lakes and streams or
2 perhaps habitats and whatever, may require
3 a pumping station to collect -- a various
4 number of pumping stations to collect
5 sewerage through a central facility. This
6 isn't the case in this site. So in terms
7 of that, in terms of the fact that we can
8 collect it all by gravity it's a favorable
9 site.

10 MR. LARKIN: You mean it's the
11 less expensive way -- in other words, the
12 pumping station --

13 THE WITNESS: It's more expensive
14 to construct the pumping station.

15 MR. LARKIN: It's not any better
16 to do it by gravity than --


17 THE WITNESS: It's better to do
18 it by gravity, in that you don't have the
19 reliability factor. Pumps can break down,
20 you can have a power outage, although we do
21 have standby generators, inner gravity
22 systems they are pretty well trouble free.
23 You do have to maintain them. You do
24 periodically have to check them to make
25 sure you are not getting solid deposits in



1 the lines themselves. Grease builds up,
2 things of that nature. But in general,
3 the gravity system is more reliable than
4 a pumping facility.

5 THE CHAIRMAN: Aren't there
6 some gravity systems that get backed up
7 with pumps in a case that you mentioned?

8 THE WITNESS: No, usually
9 you don't back them up with pumps if it's
10 a gravity system, usually they are maintenance
11 free. There may be a peculiar condition.
12 For instance, there was one client of
13 ours, there was a restuarant just upstream
14 of a place where grease continually was
15 building up in the sewer and it was a
16 maintenance problem because evidently
17 they were disposing a lot of their grease
18 at the end of the day down the sink and
19 it was collecting the sewer, it would
20 start clogging up the sewer. So, the
21 authority had to go out periodically with
22 degreasing agents. But generally gravity
23 sewers are very reliable. They are
24 designed so that water would flow fast
25 enough so you won't get undue solids build



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up and material.

MR. TISCHENDORF: Do you know the sea level contour of the site?

THE WITNESS: The low point of the site is 587, I believe that's the elevation.

MR. TISCHENDORF: How about the plant where the facility is?

THE WITNESS: I am not very sure what the elevation of that is.

MR. TISCHENDORF: I may not understand the gravity system, but I am surprised you can get that to work.

THE WITNESS: Well, when it gets to the plant it's deeper than when it started upstream. There is approximately four feet, six feet below the ground, by the time it gets to the plant it's going to be very steeper than that. So you have to lift that water, you will have a pump at the plant. But that's where it will be. We just have one there at the treatment plant.

MR. FRIZELL: Mr. McDonnell, in addition to the fact that there is a



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gravity flow, for instance, in Mr. Larkin's question he posed a hypothetical, if you had a plant on top of a mountain. If you had a plant on top of a mountain, would you still have to find a place, number one, where you have to put -- in order to have gravity at the lower end of the mountain -- water still flows downhill. But in addition to that, you still have to have a place to put the effluent after you treat it, would you not?

THE WITNESS: Okay.

MR. FRIZELL: And the fact that the stream was at the site, it was part of your --

THE WITNESS: That was one of the reasons we put it in that area.

MR. FRIZELL: And of the two streams that traverse the Hockhockson Brook and the Slope Brook, the Slope Brook travels to the Reservoir?

THE WITNESS: That's right.

MR. FRIZELL: And the Hockhockson Brook would be a favorable alternative?

THE WITNESS: Yes.



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THE CHAIRMAN: Earlier, Mr. Frizell, I think you estimated or gave an exact figure of the number of children per household in Colts Neck.


MR. FRIZELL: I only asked Mr. McDonnell. Mr. Quaele testified to that fact.

THE CHAIRMAN: Okay. And that was how many?

MR. FRIZELL: 1.1.

THE CHAIRMAN: And what's the estimate of children per household in this overall development?

MR. FRIZELL: Well, you have to realize I believe that Mr. McDonnell -- I think what I tried to point out in my question to him are sewer engineers figures. And Mr. Rahenkamp will be back, they are extremely general within in terms of the productivity of the people in this development. You have to -- in other words, the engineers are extremely conservative in their estimate. Mr. Rahenkamp or someone from his office I think will be here on Thursday night on the physical impact



1 analysis and they will use much more precise
2 figures based on their broader experience
3 in analyzing this thing. But I think the
4 engineers are extremely conservative. They
5 estimate four persons in a three bedroom
6 single house, four persons in a three
7 bedroom patio home, I think you will find
8 that Mr. Rahenkamp would indicate that those
9 figures are extremely genuine.

10 THE WITNESS: It's never been
11 my experience that once a family came on line
12 that the facility was operating at over
13 capacity. Generally the situation occurs
14 in older systems or systems that --
15 municipal systems that have been designed
16 and just exceed the projection. In a project
17 like this you have a very high degree of
18 control over how much development you are going
19 to get. As long as as the development is
20 full, residential units remain within that
21 capacity, it's my opinion that we will be
22 within this 250,000 gallons per day figure
23 without any problem.

24 THE CHAIRMAN: The point I was
25 trying to make in a round rather about way,



1 I guess, I think it's rather difficult to
2 compare the residents that you are going to
3 generate from this type of development to
4 the residents that you currently have in
5 Colts Neck in the family construction. It's
6 going to have an entirely different segment,
7 I am absolutely sure of that. So I don't
8 think we can draw a comparison as to the
9 number of children in a household.

10 MR. FRIZELL: I was referring
11 to the largest family unit to be constructed.

12 THE CHAIRMAN: I would think
13 particularly in subsidizing housing you
14 would probably generate a lot more children
15 than you estimated. That's an hypothesis
16 on my part.

17 MR. DAHLBOM: Can I ask one
18 question. You gave two costs, one for
19 665 and 2.7 million dollars. What was the
20 665?

21 THE WITNESS: That was for
22 the sewer.

23 MR. DAHLBOM: Just the sewers
24 themselves?

25 THE WITNESS: Just the sewer.



1 MR. SAGOTSKY: That does not
2 include the 665,000 dollar estimate?

3 MR. FRIZELL: Correct. Those
4 are additional.

5 THE WITNESS: Together the
6 construction cost ranges from 2.9 to
7 3.3 million.

8 THE CHAIRMAN: Are you done,
9 Mr. Frizell?

10 MR. FRIZELL: I am finished.

11 THE CHAIRMAN: Any more questions
12 from the Board?

13 (No response)

14 I am sure we have some from
15 Mr. Marks. I plan to provoke the curfew
16 again, which gives us just about a half
17 an hour. It's 10:33.

18 MR. MARKS: I don't have any
19 problem. We can get started now.

20 THE CHAIRMAN: Okay. Is there
21 anyone in the audience who cares to be
22 heard on this? Yes, sir?

23 MR. SAGOTSKY: Would you please
24 come up near the mike and state your name.
25 We know you have been here before, but for



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the record restate it.

MR. RALEIGH: My name is Jim
Raleigh, Colts Neck.

What sort of peak sewerage can a
plant like this take?

THE WITNESS: The hydraulics
of the plant will be designed to take peak
flows of approximately four times the
250,000 gallons per day, or approximately
one million gallons per day on a peak basis.
Now, in the preliminary design, the figures
that are shown are -- also include
equalization facilities. What that would
be, it would be a basin, it would take those
peak flows that are coming through the
collection system of, say, a million gallons
per day, it would hold them and then it
would be metered out to the plant on a more
uniform base. In the actual treatment unit,
we will not see that peak flow of one million,
it may see a peak flow just, for instance
of, say, a half a million gallons per day.

MR. RALEIGH: Do you think you
covered the T.V. commercial phenomena?

THE WITNESS: What's that?



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MR. RALEIGH: You are not aware of the T.V. commercial phenomena?

THE WITNESS: No.

MR. RALEIGH: Sewer system design doesn't work anymore because everybody sits and watches T.V. and when a commercial comes on the sewer plants constantly get overloaded.

THE WITNESS: Okay. No, I wasn't aware of that.


MR. RALEIGH: Thank you.

MR. FERER: What kind of a holding facility is that million gallons?

THE WITNESS: It wouldn't be holding the million gallons.

MR. FERER: It would just --

THE WITNESS: You are talking about peak. You would be getting a peak flow of a million gallons a day, but that would only occur for a period of let's say, two or three or five minutes. So actually a million gallons you would be getting -- you would have to run your arithmetic out. It would be only in the range of thousands of gallons. So you wouldn't be holding



1 a million gallons.

2 THE CHAIRMAN: Any other persons
3 in the audience that care to be heard or
4 have any questions?

5 (No response.)

6 Mr. Marks and Mr. Fessler.

7 I would like to commend you,
8 Mr. McDonnell, for your presentation.

9
10 CROSS-EXAMINATION BY MR. MARKS:

11 Q Mr. McDonnell, you were talking about stream
12 sampling that you took from Hockhockson Brook. When did
13 you take the samples?

14 A They were taken -- I can't be too precise because
15 I don't have the file with me. They were taken approxi-
16 mately in November of 1979, in that vicinity.

17 Q And how were they taken, what was the method
18 that was employed?

19 A Standard sampling procedure. We sent a person from
20 our lab down to the stream. And he went down to the stream
21 and took the stream water samples at the mid point of the
22 stream -- it's not a very large stream -- at the mid point
23 of the stream and I believe he collected two gallons of
24 stream water on each of the occasions he was out there.

25 Q How many times was he out there?



1 A In the time around November he was around there
2 seven times. We also sent -- in fact, it was me. I was
3 out there and took samples earlier in the year, and I
4 really don't know what month it was, but it was early in
5 November.

6 Q The data which you submitted to the DEP,
7 it takes how many samples?

8 A Eight.

9 MR. SAGOTSKY: Did you say
10 eight or eighty?

11 THE WITNESS: Eight.

12 MR. SAGOTSKY: That's eight two
13 gallon jugs or quantities?

14 THE WITNESS: Yes, that's right.

15 BY MR. MARKS:

16 Q I believe, looking at S-2, Page 6 of your
17 report, you give certain figures as to the BOD concen-
18 tration, et cetera. That BOD concentration is at different
19 times of the year?

20 A In terms of what?

21 Q Well, I guess it was 2.9 mgs --

22 A Per liter.

23 Q Per liter?

24 A Yes.

25 Q Would it ever be a worse mixture, in other



1 words 3.9 grams per liter?

2 A Are you talking in terms of stream quality?

3 Q Yes.

4 A Yes, stream quality will vary throughout the year.

5 Q How will it vary throughout the year?

6 A Well, it will depend on a variety of factors. It
7 will depend on the amount of stream flow at a particular
8 point in time, it will depend on whether it has rained
9 recently, it will depend on how the Earle Treatment Plant
10 is operating, those things will determine what the
11 quality in that Brook will be.

12 Q Is it fair to say -- is there any particular
13 time of the year where you can get an average reading
14 in the winter as opposed to summer or spring as opposed
15 to fall?

16 A Not really. I don't really think you can say that
17 there is any one time of the year that's really repre-
18 sentative.

19 Q Could this figure virtually double this
20 2.9?

21 A It's conceivable.

22 Q Now, you say these are effluent charge
23 limitations?

24 A What do you mean by limitation, that they can
25 double?



1 No, the limitation won't double, the quality of
2 the stream may be worse than this.

3 Q I see.

4 A The limitation will remain the same.

5 MR. FERER: These aren't that
6 relative, the quality stays the same?

7 THE WITNESS: Yes, these are.

8 MR. FERER: These are?

9 THE WITNESS: These are. What
10 the state did is, they took our analysis
11 of the quality of the stream and they --
12 I can't say that they averaged the values,
13 but they looked at the values and they
14 decided what the quality of that stream
15 was and then they established these
16 limitations. So, it's directly related to
17 the quality of that Brook.

18 MR. LARKIN: Taken from the
19 samples that you took?

20 THE WITNESS: Taken from the
21 samples that I took.

22 MR. FESSLER: Let me ask a
23 question. Indeed if those were taken in
24 November, which is not necessarily on dry
25 season, the middle of a long dry spell would




1 be the worst condition in the stream as
2 far as the quality of water is concerned.
3 Did they take, the November, which is starting
4 in the winter, which is not exactly a dry
5 season, the November figures and tried to
6 predict what it might be on a year round
7 average? Did they take any samples in the
8 middle of August the stream would have
9 shown drastic numbers.

10 THE WITNESS: I really can't
11 answer that. I know it took them a long
12 time between the time that we submitted
13 our data to them and the time that they
14 came back with our limitation, it was
15 quite a long time, I believe around two
16 to three months. So I really can't say
17 what analysis they did during that time,
18 no.

19 MR. LARKIN: May I ask a
20 question relating to that? Based on your
21 experience in other discharge numbers,
22 are these numbers high or low?

23 THE WITNESS: These are low,
24 yes. It's a stringent limitation.

25 MR. FRIZELL: Low meaning --



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MR. LARKIN: Stringent?

THE WITNESS: Stringent, yes.

MR. FESSLER: Could you describe the stream? Physically, the samples were taken near where the discharge was?

THE WITNESS: Yes, they were taken right here right before it leaves the site, that's where we took the samples.

MR. FESSLER: How wide are the --

THE WITNESS: Oh, the stream itself was about, I would say, six to eight feet wide in the center. The stream at the time I sampled it it was approximately, I'd say, one and a half to two feet deep and the water looked like it was flowing, oh, about one to two feet per second.

MR. MARKS: I am looking at a study that was prepared by your firm in January, 1979.

THE WITNESS: Right.

BY MR. MARKS:

Q I think you are familiar with it?

A Yes.

Q And there is a very great difference



1 between the parts per liter and some of the other measure-
2 ments. For example, on the coliforms you have 14 parts
3 per 100 milliliters, I guess?

4 A Yes, that's right.

5 Q In the June study. And here you have --

6 A I think it's 200.

7 Q Two hundred?

8 A Two hundred, yes.

9 Q How do you explain the difference in that?


10 A On the coliforms the 200 per 100 milliliters is
11 pretty much the rule of thumb as far as sewerage treatment
12 plants go. In the past virtually every treatment plant
13 was given that standard to meet, and when we prepared that
14 report, we didn't have this allocation at that time. So
15 we would assume it would be that standard. But based on
16 the quality of Hockhockson Brook they wanted to get the
17 coliforms down to 14.

18 Q So, in other words, the first set of figures
19 you prepared was without the guidance of the limitations
20 set by DEP?

21 A That's right. We had to make our own judgment in
22 that report.

23 Q Are you -- you said your company designed
24 this sewer treatment plant; is that correct?

25 A Among other things.



1 Q Do you also operate them?

2 A No, we do not operate any treatment plants.

3 Q Do you have anything to do with them after
4 they are completed?

5 A Yes. We are consultants to a number of sewer
6 authorities and as consultants to those sewer authorities
7 on many occasions, on many occasions we go see if the
8 plant is operating properly or if they want to upgrade
9 that plant, on many occasions we go in and review the way
10 the treatment plant is being operated.

11 Q But your company does not at all operate
12 the plant?

13 A Not on a full term basis. We have people on our
14 staff who have operator's licenses and we -- I know of
15 several occasions where we have had a man go in and help
16 with the supervision operation, but not on a full time
17 basis.

18 Q Has your company applied to the DEP for
19 permission to operate this particular proposed sewer
20 plant?

21 A No.

22 MR. MARKS: I have no further
23 questions.

24 MR. FERER: Where do you apply
25 for a permit?



1 THE WITNESS: I am glad you
2 asked that. I would like to outline this
3 procedure as we go through this point. The
4 first thing we do is we prepare a conceptual
5 sewers' report before we go into any
6 great -- we have to select a process, we
7 have to go into a very high level of detail
8 of terms of a preliminary design of the
9 actual treating process, the state has to
10 approve that report. At that point in
11 time, we have authorization to submit a
12 design. And during that step one conceptual
13 approval, we generally try to consult with
14 the state so that we will give them a
15 report that they are not going to accept.
16 We work pretty much hand in hand with them
17 during the conceptual design phase. Then
18 we go into the preparation, detailed plans
19 in construction. When that's completed,
20 we give them to the state, they review
21 them. Once we get their approval on the
22 design of the treatment facility, they give
23 us the permit to construct. Once that
24 permit to construct is obtained, then the
25 client can go out and accept bids for




1 construction of the treatment facility.
2 At that point in time, in most cases we
3 are retained to supervise the construction
4 of the facility. Once the treatment plant
5 is gone -- it's completed, rather construction
6 is completed, then you must go to the state
7 and the EPA and obtain your operating permit.
8 Once you have that operating permit in hand,
9 then you are able to operate your treatment
10 of water. So it's a three step procedure.

11 MR. LARKIN: Does your permit
12 have any liability in case the design
13 doesn't work properly, and so forth? I
14 mean, is it like a car, you get a warranty
15 for 12 months, you know?

16 THE WITNESS: I know what you
17 are saying.

18 MR. LARKIN: Really, what I
19 am trying to get to is, is there someone
20 responsible if this thing doesn't work who
21 would be potentially accountable and so
22 forth?


23 THE WITNESS: Well, generally when
24 a plant goes on line in some instances
25 everything just doesn't work properly. Like



1 everything else, it's a debugging, it's
2 a start up procedure. With municipal
3 clients we generally supervise in the start
4 of that facility and if there are any
5 particular problems during that start up,
6 we make recommendation as to what can be
7 done to correct any such problem. After
8 that start up, after that start up period
9 is completed, then the plant is operating
10 satisfactorily and then if we are not
11 retained on a continuing basis as consultants,
12 we are pretty much out of the process. But
13 there is that start up procedure and that
14 can last as long as one year on a large
15 plant. On a plant of this size, I would
16 expect it to last nearly that long, but we
17 are involved in that.

18 MR. MARKS: If I might ask
19 one other question. What would the cost
20 of sewer service be to a homeowner for a
21 private plant as opposed to a municipal
22 plant, would it be more, would it be less?

23 THE WITNESS: It really depends.
24 You can't -- it's hard to generalize. It
25 really depends on the size, the cost of




1 all these conveyance facilities. It's
2 very hard to generalize.

3 MR. MARKS: Are you familiar
4 with municipal cost in Cherry Hill?

5 THE WITNESS: No.

6 MR. MARKS: Would it surprise
7 you to learn that a municipal plant in
8 Cherry Hill a public utility rate would
9 be \$96 per year as opposed to a small
10 facility such as you are proposing, \$334 per
11 year?

12 MR. FRIZELL: Mr. Marks, let
13 me object to this. First of all, I think
14 what would surprise Mr. McDonnell or what
15 would not surprise Mr. McDonnell is totally
16 irrelevant, number one. Number two, you
17 are quoting figures that were totally
18 rejected by Judge Lane in litigation as
19 being incredible. And you are trying to
20 resurrect the report that was attempted to
21 be brought into the trial and the same
22 figures were available then and it's just
23 as incredible now. But more important,
24 what would surprise Mr. McDonnell or what
25 would not surprise Mr. McDonnell I don't



1 think has anything to do with what we are
2 talking about.


3 MR. MARKS: I think it does.

4 MR. FRIZELL: If you are asking
5 Mr. McDonnell his experience with his
6 treatment facilities, please ask him. But
7 don't ask him what surprises him or what
8 doesn't surprise him.

9 MR. MARKS: I think it's germane.
10 After all, you are bringing these costs
11 of housing and it would be a very interesting
12 cost factor to know that a private sewer
13 system might cost nearly four times as much
14 as a municipal system.

15 MR. FRIZELL: Well, if the
16 Township of Colts Neck chooses to institute
17 a comprehensive utility service plant as
18 part of its master plan, I am sure that
19 could be taken into consideration. In any
20 event, as Judge Lane said, this is irrelevant.

21 MR. MARKS: Of course, I wasn't
22 at the trial and what's making it incredible
23 and irrelevant may be very germane. After
24 all, this inquiry is a little bit different
25 than the other trial. I would like a ruling.



1 MR. FRIZELL: I think that
2 Mr. McDonnell has already said that it
3 depends on the size of the system and
4 it depends on the nature of the operation
5 of the system and the cost of installation.
6 In any event, as I said, I don't see what
7 point it raises to ask what surprises
8 Mr. McDonnell. It certainly doesn't
9 surprise me, if that's of any help.

10 MR. MARKS: Well, I don't
11 think you are an expert.

12 MR. FRIZELL: I mean, it
13 doesn't surprise me that some plans
14 operate more expensively than others.

15 MR. MARKS: Would it surprise
16 you that --

17 MR. FRIZELL: Don't ask me,
18 ask Mr. McDonnell.

19 MR. MARKS: If you know. Mr.
20 McDonnell, do you know?

21 MR. SAGOTSKY: A small plant
22 of 300 -- by way of assumption, I am just
23 picking these figures out. Three hundred
24 consumers, a municipality supplying 1200
25 consumers, for example?



1 THE WITNESS: Let's take it
2 hypothetically. It's easier to work in this
3 case with an hypothetical example. If you
4 are talking about building a brand new
5 treatment system that's going to serve
6 12,000 people versus a brand new treatment
7 system that's going to serve 1200 people
8 and provide the same level of treatment,
9 the unit cost for the larger plant is
10 going to be less. But then you also have
11 to consider that plant is going to be
12 served by a collection system. In this
13 instance here, they have a very compact
14 service area and the cost of collection is
15 very inexpensive relative to maybe a 12,000
16 person development, where you have to bring
17 in a much larger collection system that
18 spreads over a very much larger area. And
19 so those costs may tend to balance out. And
20 in the cost you cited, it may be that the
21 cost of the Cherry Hill system -- I am
22 not familiar with it at all, but it may
23 have been constructed many years previously
24 where the construction costs were very much
25 lower than the new smaller system that was



1 constructed more recently.

2 MR. MARKS: We are not talking
3 about economy to scale, we are talking about
4 the economy. If you know. If you don't
5 know --


6 THE WITNESS: It's hard to
7 generalize, really. I am not trying to
8 evade your question at all, but --

9 MR. MARKS: If you can't answer,
10 that's okay, too.

11 THE WITNESS: You have to get more
12 specific, you just can't get a blanket
13 statement.

14 MR. MARKS: So it wouldn't
15 surprise you, or it would surprise you? If
16 the economy to scale are the same, you would
17 be surprised that a private utility cost
18 more than a public utility?

19 THE WITNESS: Let me put it
20 this way, if you are talking about a private
21 utility serving 1200 people versus a public
22 utility service 1200 people, I don't see
23 why the rate should be significantly
24 different. If they are serving the same
25 development, the rate should not be




1 significantly different. But if one is
2 serving 12,000 people and the other is
3 serving 1200 people, then it wouldn't,
4 I think.

5 THE CHAIRMAN: I think you
6 made your point on that. I would like
7 one question answered. Mr. Frizell said
8 a Judge said it was incredible. What
9 did he say was incredible, the figure?

10 MR. SAGOTSKY: Bearing in
11 mind the issues may have been different.

12 THE CHAIRMAN: Yes. He did
13 say it was incredible?

14 MR. FRIZELL: Yes. Not only
15 incredible, by virtue of its relationship
16 to the fact it was on trial he rejected
17 it because he said -- I can get the
18 transcript out. He said that had nothing
19 at all to do with the issue whether or not
20 Cherry Hill could build -- the plant he
21 is talking about is in Pennington. The
22 fact that Cherry Hill could provide services
23 cheaper than Pennington as forming a basis
24 of a professional opinion rendered the opinion
25 itself incredible. Now, on top of that, the



1 issue was whether or not in Colts Neck there
2 could be devised a less expensive system
3 somewhere in the town and still provide for
4 the housing that was acquired by the law.
5 And that was the issue that he wanted to
6 address. If Colts Neck wants to have a
7 10,000 house sewer system it has capability
8 of building one and providing it. But
9 that's not the issue. If you want a scale
10 of 25,000 people, that's within Colts Neck
11 power to provide for zoning. But that's
12 not really what the issue was.

13 THE CHAIRMAN: Understood.

14 MR. FRIZELL: I just have one
15 or two questions.

16 MR. MARKS: Just one second.
17 I'd like to amplify on that.

18 THE CHAIRMAN: Mr. Marks.

19 MR. MARKS: I think you have
20 to understand the scope of Judge Lane's
21 inquiry. Township-wise it was not what
22 we are discussing here. In fact, Judge
23 Lane did not want to hear testimony as it
24 pertained to this particular parcel. That
25 suit was strictly concerned with the



1 constitutional of the Ordinance, that
2 was it, and not what we are discussing here.
3 We are discussing a very narrow piece
4 here compared to the very general broad
5 question of the constitutionality in Colts
6 Neck.

7 THE CHAIRMAN: I think we
8 understand. That was constitutionality
9 of the zoning?

10 MR. MARKS: Yes.

11
12 REDIRECT EXAMINATION BY MR. FRIZELL:

13 Q Mr. McDonnell, are you aware -- when
14 you were asked questions of your company, you are
15 referring to Elson T. Killam?

16 A Yes.


17 Q Killam is a subsidiary of several larger
18 companies, is it not?

19 A Yes.

20 Q And what's the next highest company that
21 owns Elson T. Killam?

22 A I believe probably you should ask that of Nick,
23 he will be testifying later and he is more familiar
24 with it.

25 Q But the company that owns Elson T. Killam



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is --

A. Grace, W. R. Grace.

Q. So if W. R. Grace was in the process of obtaining DEP approval or whatever approvals were necessary in order to own or operate this particular sewer system, you would not be aware of that yourself?

A. That's right.

MR. MARKS: I think that gives me a substantial different answer.

MR. FRIZELL: I think what we have established really is that Mr. McDonnell doesn't have that knowledge about that --

MR. MARKS: Are you saying that the parent company did apply for a license?

MR. FRIZELL: I am not here to testify, I am only here to establish what Mr. McDonnell's knowledge of the subject matter is.

MR. MARKS: I think the Board wants to know what you know, if that's a fact, because that would certainly bear somewhat on the testimony, very frankly, and --



1 MR. FRIZELL: Yes, I would
2 offer to you that Mr. McDonnell's company,
3 Elson T. Killam is interested, since you
4 asked me, is interested in owning and
5 operating this particular system.

6 MR. MARKS: Have they in fact
7 applied for more permission to operate
8 the plant?

9 MR. FRIZELL: I don't believe
10 so.


11 MR. MARKS: You don't believe
12 so?

13 MR. FRIZELL: I don't believe
14 so, no. But they have applied to the
15 Township of Colts Neck for a franchise.

16 MR. SAGOTSKY: They have
17 already?

18 MR. FRIZELL: They have, yes.
19 And they have asked the Township to act
20 on a Township Resolution to provide a
21 franchise for this particular area.

22 MR. SAGOTSKY: If that's so,
23 I hope the Township realizes that application
24 or any application for a franchise means
25 a lot to a company financially. I made



1 that comment from past experience.


2 MR. MARKS: Well, I think it's
3 important here because it does bear upon
4 some of the self interest that his company
5 may have in the project.

6 MR. FRIZELL: I find that to
7 be very interesting, since Mr. McDonnell
8 didn't even have any knowledge of it. But,
9 in any event, that's not for your argument,
10 that's for mine. And I am finished with
11 Mr. McDonnell.

12 THE CHAIRMAN: Is there any
13 reason why we would have to recall Mr.
14 McDonnell, anybody?

15 (No response)

16 Now, the next meeting is July 17th,
17 which is also a regular public -- June
18 17th, which is also a regular public meeting
19 night, which we have other matters to
20 consider. So the time frame allocated to
21 this is rather tight, and I would like
22 Counsel to discuss this and maybe you can
23 sit in with your witness that you would like
24 to present in the time allocated next
25 week.




1 MR. SAGOTSKY: I have spoken
2 about this to Mr. Frizell, if it can be
3 arranged and if it meets the approval of
4 the Board, if this special meeting could
5 be continued for the purpose of the Orgo
6 matter until 8:00 o'clock. At 8:00 o'clock
7 the other matters could be heard and time
8 allocated to them as briefly as possible
9 within the framework to take care of those
10 projects, whatever comes up before the
11 Board. And immediately upon completion,
12 say, of reading the Benninger Resolution,
13 I think that's coming up, immediately
14 upon the completion of that, if we can
15 go right into this meeting for Orgo and
16 work that up to completing what you can.
17 And if you can estimate how long you might
18 be on the Orgo, that even might give an
19 estimate to Mr. Frizell as to what he might
20 be able to accomplish and what area he
21 might explore during that time. But I
22 am eager that you do use the next meeting
23 for the purpose of taking care of these
24 matters. And in the meantime, I will
25 explore this with Mr. Wells and Mr.



1 Stockton what their side is, perhaps they
2 will not be ready to proceed at the next
3 meeting, which means that if they are not,
4 if the Board would consent to go along
5 with them to extend the time for them,
6 then that time could be devoted to this
7 project. So, at the present time, I don't
8 know, unless somebody here does, like our
9 Planning Board Chairman, what Mr. Wells
10 is going to do and what Mr. Stockton is
11 going to do. They have not communicated
12 with me as to their intention to the next
13 meeting on Thursday.

14 THE CHAIRMAN: Can you help us?

15 MR. FESSLER: The Stockton
16 application has submitted new plans both
17 preliminary and final which is subject to
18 further inspection, but they appear to be
19 probably complete. They have submitted
20 bonds and those bonds have been submitted
21 to the Township Committee. So unless there
22 are objectors or others in the audience
23 have a lot of questions, it doesn't appear
24 that Stockton should take very long, five,
25 ten minutes.



1 MR. LARKIN: But didn't they
2 submit, Sam, to you a whole list?

3 MR. SAGOTSKY: Well, those
4 presumably have been examined by Mr.
5 Fessler who will now give a report that all
6 is well. For example, that will be
7 approved by the Township Committee.

8 MR. FESSLER: That will not
9 be approved this coming meeting. You will
10 be in a position to approve preliminary
11 site at this meeting. Final will not be
12 granted until the Township approves the
13 bond, which will be one more month.


14 MR. SAGOTSKY: Then I could
15 ask for more time from the Applicant?

16 THE CHAIRMAN: Why even bother
17 to bring him in?

18 MR. SAGOTSKY: Give them more
19 time to get an extension from them.

20 MR. FESSLER: There is no way
21 to get the bond approved by the Township
22 Committee.

23 THE CHAIRMAN: I direct that
24 you contact and arrange that. Colts Neck
25 Motel.



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MR. FESSLER: I believe they are going to, if they have not, ask for a delay.

THE CHAIRMAN: And it's possible that outside a small business --

MR. LARKIN: And the Resolution.

THE CHAIRMAN: And the Resolution --

MR. FESSLER: Colts Neck Motel had appeared before our meeting and discussed our report and wanted further time to work with us on that. They were going to ask us for a delay.

THE CHAIRMAN: You might get three hours, Mr. Frizell. Can you arrange your witness for that long?

MR. LARKIN: Are you going to bring your expert witness?

MR. FRIZELL: I had planned on Mr. DeMicallo (phonetically), Mr. McDonnell's associate, he has been here all evening.

Are you coming on Thursday?

MR. DEMICALLO: Next Thursday.

MR. FRIZELL: So we are going to have to split up the water.

MR. LARKIN: My only request is that if for some reason, Sam, Stockton is



1 going to take a lot longer and Colts Neck
2 Motel doesn't ask for the extension, we
3 will try, I am sure, to horn in the physical
4 thing.

5 MR. SAGOTSKY: I am going to
6 make an effort.

7 MR. LARKIN: Can we find out
8 tomorrow, can we find out for sure whether
9 the Motel people are not --

10 MR. SAGOTSKY: I hope to do
11 it the first thing in the morning.

12 MR. LARKIN: The only thing is,
13 I just don't think we should try to squeeze
14 something in, put the witnesses in part here
15 and then stop, go back and then only have
16 a little bit of time and so forth. Maybe
17 there is another witness that might be able
18 to fit into that.

19 THE CHAIRMAN: Reasonably, you
20 could have about three hours. There being
21 no further business, I will accept a motion
22 for adjournment.

23 MR. FERER: So moved.

24 (Meeting Adjourned)
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THE ZONING BOARD OF ADJUSTMENT OF COLTS NECK TOWNSHIP

COLTS NECK, NEW JERSEY

x - - - - - x

IN THE MATTER OF THE APPLICATION OF : C E R T I F I C A T E

ORGO FARMS AND GREENHOUSE, INC., AND :

RICHARD A. BRUNELLI, FOR A VARIANCE. :

x - - - - - x

I, PHILIP V. MORICI, a Shorthand 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.



PHILIP V. MORICI
Shorthand Reporter

Dated: June 24, 1980
My Commission Expires on
April 15, 1983.

