

CN - Orego Farms v. Cotts Neck

7/9/80

transcript of proceedings: witness

- DeNichilo
- Sendell
- Orego

Piles

* first 3 pgs difficult to read, rest are okay

CN 000 011 S

1 ZONING BOARD OF ADJUSTMENT
 2 TOWNSHIP OF COLTS NECK
 3 NEW JERSEY

4 x----- x

5 In the matter of:

6 The Application of
 7 Orjo Farms and Greenhouses,
 8 Inc., and Richard J. Brunelli,
 9 for a Variance.

TRANSCRIPT
 OF
 PROCEEDINGS

10 x----- x

11 Thursday, June 26, 1980, 7:00 p.m.
 12 Township Hall, Colts Neck, NJ

13 B L O C K S:

14 J. BRIDGEMAN, Chairman
 15 T. FLAHERTY, Member
 16 C. FREEMAN, Member
 17 L. LANNAN, Member

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

19 SAMUEL S. SAGOTSKY, ESQ.
 20 for the board.

21 FRIZELL, POZYCKI & WILEY, ESQS.,
 22 BY: DAVID J. FRIZELL, ESQ.
 23 for the Applicant.

24 MARKS, HOLLAND & LA ROSA, ESQS.,
 25 BY: GERALD A. MARKS, ESQ.,
 26 for the Colts Neck Twp. Planning Board.

27 CARTON, MARY, WITT & ARVANITIS, ESQS.,
 28 BY: JAY R. HERMAN, ESQ.,
 29 for the Colts Neck Twp. Board of Education.

30 BY: KATHLEEN M. SHAPIRO, RPR, CP
 Registered Professional Reporter

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF COLTS NECK
NEW JERSEY

x-----x
Re: Application of
The Application of
Large Larder and Food Services,
Inc., and Richard J. Trucelli,
for a Variance.
x-----x

TRACED BY
DATE: 1989

Thursday, June 27, 1989, 7:00 P.M.
Township Hall, Colts Neck, NJ

MEMBERS:

- J. [Name], Chairman
- T. [Name], Member
- L. [Name], Member
- L. [Name], Member

APPEARANCES:

Robert W. [Name], ESC.
for the Board.

[Name], [Name] & [Name], ESQS.,
BY: DAVID N. [Name], ESQ.
for the Applicant.

MARKS, HOLLAND & LA ROSA, ESQS.,
BY: [Name] & [Name], ESQ.,
for the Colts Neck Twp. Planning Board.

CARTON, MARY, LITTI & ARVANITIS, ESQS.,
BY: JAY R. [Name], LSC.,
for the Colts Neck Twp. Board of Education.

BY: RUTHLEEN M. SHAPIRO, TEA, CP
Registered Professional Reporter

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I N D E X

WITNES DIRECT CROSS

NICHOLAS DE NICHILO

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by Mr. Parks		156

STUART SEWELL

by Mr. Frizell 80

ERNEST CRUD

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EXHIBITS MARKED FOR IDENTIFICATION

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1 THE CHAIRMAN: I would like to
2 call this special meeting to order.

3 (Whereupon compliance with the
4 Open Public Meetings Act is noted.)

5 THE CHAIRMAN: Roll call, please.

6 MR. SCHRUMPF: Here.

7 MR. LARKIN: Here

8 MR. BRENNAN: Here.

9 MR. FERER: Here.

10 THE CHAIRMAN: We are to continue
11 to where we left off at the last meeting

12 Before we do that, Mr. Sagotsky,
13 do you have any statements to read as to
14 qualification of the reading of minutes of the
15 previous meetings?

16 MR. SAGOTSKY: Yes. I'd like to
17 read the certificate that follows. It's a
18 certification of the reading of the transcript of the
19 special meeting of June 12 by Thomas Ferer in the
20 matter of Orgo Farms: I, Thomas Ferer, a member of
21 the Board of Adjustment of the Township of Colts Neck
22 was not present at the special meeting of the above
23 matter held at the Colts Neck Township Hall, June 12,
24 1980. I hereby certify to the Colts Neck Township
25 Board of Adjustment that on the 24th and 25th day of

1 June, I have read a typewritten transcript of the
2 June 12th, 1980 meeting of the proceedings of the
3 special meeting of June 12 as furnished by the State
4 Shorthand Reporting Service, and signed, Thomas Ferer,
5 and, dated June 26th, 1980.

6 Furthermore, I have a written
7 certification of reading of the transcript of the
8 special meeting of June 19th in the matter of Orgo
9 Farms by John L. Schrupf: I, John L. Schrupf, a
10 member of the Board of Adjustment of the Township of
11 Colts Neck was not present at the special meeting in
12 the above matter held at the Colts Neck Township Hall,
13 June 19th. I certify to the Colts Neck Township
14 Board of Adjustment that on the 25th day of June,
15 1980, I read a typewritten transcript of the June
16 19th meeting of the proceedings of the special
17 meeting of June 19th, 1980, as furnished by the State
18 Shorthand Reporting Service, signed, John L. Schrupf,
19 dated, June 25th, 1980.

20 And further, a written
21 certification of reading of the transcript in the
22 matter of Orgo Farms by Gregory Brennan: I, Gregory
23 Brennan, a member of the Board of Adjustment of the
24 Township of Colts Neck was not present at the special
25 meeting -- at the above special meetings in the above

1 matter held at the Colts Neck Township Hall on June
2 17 and 19, 1980. I certify to the Colts Neck
3 Township Board of Adjustment that on the 26th day of
4 June, 1980, I have read a typewritten transcript of
5 the June 17th and June 19th, 1980 meetings of the
6 proceedings of the special meetings of June 17th and
7 June 19th, 1980, as furnished by the State Shorthand
8 Reporting Service, dated, June 26th, 1980; signed by
9 Gregory L. Brennan.

10 That concludes my remarks on
11 certifications.

12 THE CHAIRMAN: Thank you, Mr.
13 Sagotsky.

14 Since this meeting is narrowly
15 confined to the issue at hand, we will continue from
16 last meeting. If I recall, Mr. Frizell, you had a
17 witness that had not completed his presentation.

18 MR. FRIZELL: That's right, Mr.
19 Schrupf. Unfortunately, Mr. Radway could not be
20 back tonight. He will be back on the 15th, I believe,
21 either the 15th or 17th.

22 THE CHAIRMAN: There's a meeting
23 on the 15th of July and there's also a meeting on the
24 17th.

25 MR. SAGOTSKY: I'd like to call

1 your attention -- I don't ask you do consider this --
2 but I'd like to call to your attention that one of
3 the experts with the -- that the Board of Adjustment
4 would like to call will be available on July the 15th,
5 and, he will come under subpoena. And I'd like to
6 share that meeting of July 15th with Mr. Frizell, if
7 he has anyone that evening. I'm assuming that the
8 witness that I hope to have on the 15th will not take
9 the full evening. But if he does and somewhere along
10 the line if Mr. Frizell feels that we have not given
11 him enough time, then somewhere and somehow we can
12 compromise and switch some of the time. I have
13 called this to the attention of Mr. Frizell for the
14 purpose of being able to work something out.

15 THE CHAIRMAN: Have you already
16 done that?

17 MR. SAGOTSKY: No, I haven't.
18 This is something I was planning to do.

19 THE CHAIRMAN: This is the first
20 time?

21 MR. FRIZELL: Mr. Sagotsky
22 mentioned -- who is the expert?

23 MR. SAGOTSKY: Mr. Halsey from
24 the --

25 MR. FRIZELL: Halsey?

1 MR. SAGOTSKY: Halsey.

2 MR. FRIZELL: I have no objection
3 to taking Mr. Halsey out of turn.

4 MR. SAGOTSKY: That's what it
5 would amount to.

6 THE CHAIRMAN: That's fine. Then
7 you are directed to subpoena him and have him appear
8 on the 15th.

9 MR. SAGOTSKY: Fine.

10 THE CHAIRMAN: Good. All right.
11 It's all yours, Mr. Frizell.

12 MR. FRIZELL: Thank you, Mr.
13 Schrumpf.

14 Well, first I have two things.

15 MR. HERMAN: Mr. Chairman, excuse
16 me just for a second? I'd simply like to introduce
17 myself. My name is Jay Herman, partner in the firm
18 of Carton, Nary, Witt and Arvanitis. Our firm
19 represents the Board of Education in Colts Neck. And
20 at this moment, I'd merely like to say that the Board
21 of Education has authorized me to attend these
22 meetings and to participate, the feeling being that
23 the Board of Education does have substantial interest
24 in the impact of this application. And I intend to
25 make no substantive comments at this point and I beg

1 your indulgence to merely recognize us as an
2 interested party. And if there are copies of
3 correspondance or the testimony, et cetera,
4 circulating among the parties, we would respectfully
5 request that we be included. At some appropriate
6 time we would like to participate in the meeting,
7 perhaps in the form of examination and
8 cross-examination of witnesses; although, at this
9 point, I'd like to keep my interruption as brief as
10 possible and simply state that for the record.

11 THE CHAIRMAN: Well, your
12 presence or someone on behalf of the Board of
13 Education was expected and anticipated and at this --
14 to be elicited at a later time. So you are most
15 welcome to participate tonight in the manner which
16 you just stated and we will be calling you later.

17 MR. HERMAN: We thank the
18 Applicant's indulgence for the interruption.

19 THE CHAIRMAN: I think Mr.
20 Frizell had already known --

21 MR. HERMAN: Fine.

22 THE CHAIRMAN: Thank you.

23 MR. FRIZELL: We welcome Mr.
24 Herman's participation.

25 I have just one preliminary

1 matter -- I think, actually, there was two.

2 One, there was some discussion at
3 an earlier meeting about the access to the southern
4 parcel of this tract. Mr. Sagotsky pointed out to
5 the Board that the access road was a matter of
6 litigation.

7 MR. SAGOTSKY: Before Judge
8 Yaccarino.

9 MR. FRIZELL: Judge Yaccarino
10 issued an Order on the 24th directing the State of
11 New Jersey Department of Transportation to provide
12 access to the southern parcel by acquiring and
13 constructing the access road as shown on our plans.
14 So the litigation was successful. He ordered them to
15 do so within 30 days, so that that matter's cleared
16 up as far as the Applicant's concerned.

17 THE CHAIRMAN: He ordered them to
18 do it within 30 days of what date?

19 MR. FRIZELL: Within 30 days of
20 the Order, commence that activity within 30 days.

21 MR. SAGOTSKY: Who is to build it?

22 MR. FRIZELL: The State
23 Department of Transportation.

24 MR. SAGOTSKY: Was that based on
25 the finding that that was within the original promise

1 of that original understanding?

2 MR. FRIZELL: Yes.

3 MR. SAGOTSKY: Before the judge
4 who tried it? Was that his finding?

5 MR. FRIZELL: That's correct, Mr.
6 Sagotsky. I see you read the briefs.

7 MR. SAGOTSKY: Yes, I did. I
8 read them.

9 MR. FRIZELL: The other matter
10 was to remind the Board that we had requested the
11 Board to consider the appointment of an independent
12 planner. The Planning Board objected to that and the
13 Board indicated that it would take it under
14 advisement. I don't know if you've had an
15 opportunity to do that or to make a decision on that;
16 but, if it's going to have any effect, it's obviously
17 the sooner the better in terms of getting an
18 independent planner involved in reviewing the
19 transcripts that are now available.

20 THE CHAIRMAN: We did take that
21 under advisement. We haven't made a decision on it
22 yet, Mr. Frizell, mainly because we would like to see
23 what develops from the visit of Mr. Halsey from the
24 Monmouth County Planning Board, if he could provide
25 enough information. If he can't, we will still

1 consider your request.

2 MR. FRIZELL: Well, Mr. Halsey's
3 position in this was, I think, made pretty clear in
4 the earlier litigation before Judge Lane. I,
5 personally, don't view Mr. Halsey as an independent
6 planning consultant. But, in any event, I just
7 wanted to bring that to your attention now.

8 Mr. DeNichilo, please.

9
10 N I C H O L A S D E N I C H I L O, a witness
11 called on behalf of the Applicant, having been duly
12 sworn according to law, testified as follows:

13
14 THE WITNESS: My name is Nicholas
15 DeNichilo. I'm employed by the firm of Elson T.
16 Killar Associates. We're consulting engineers,
17 primarily environmental and hydraulic engineers and
18 we were engaged to prepare a feasibility report upon
19 the sanitary sewer and potable water facilities for
20 the project in question.

21
22 DIRECT EXAMINATION BY MR. FRIZELL:

23
24 Q. Mr. DeNichilo, what is your current
25 position with Elson T. Killam?

1 A. I'm an associate with the firm.

2 Q. How long have you been with Elson T.
3 Killam?

4 A. Approximately five and half years.

5 Q. And how long have you been involved in
6 the -- in engineering altogether?

7 A. Seven years.

8 Q. Do you hold any degrees?

9 A. I have a Bachelor of Science in civil
10 engineering from Newark College of Engineering and a
11 Master of Science in civil engineering from the New
12 Jersey Institute of Technology, which was formerly
13 Newark College of Engineering.

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

15 A. I'm a licensed professional engineer of the
16 State of New Jersey. I also a hold a water
17 distribution operator's license in the State of New
18 Jersey.

19 Q. What are your responsibilities with the
20 firm, Elson T. Killam?

21 A. Primarily a project engineer involved in design
22 of water supply distribution and treatment systems.
23 I'm involved the preparation of design reports; also
24 involved in construction supervision of the projects
25 which we have designed.

1 MR. FRIZELL: Would you mark that
2 A-28? A-28 that's the DeNichilo --

3 MR. SAGOTSKY: A-28, marked for
4 identification alleging to be the DeNichilo -- resume
5 of his background?

6 MR. FRIZELL: Yes.

7 (Whereupon a resume of N.
8 DeNichilo is marked A-28 for identification.)

9 BY MR. FRIZELL:

10 Q. Mr. DeNichilo, is A-28 a brief resume of
11 your background in the field of engineering?

12 A. Yes, it is.

13 Q. All right. Now, Mr. DeNichilo, were you
14 requested to work on a feasibility study with respect
15 to the proposed Colts Neck Village Planned Unit
16 Development?

17 A. Yes. Primarily -- I should say solely on the
18 water supply end of it. Mr. McDonald of our firm,
19 who had testified previously, had prepared the
20 engineering report upon the feasibility of the sewer
21 system.

22 Q. What do you do in terms of -- what is
23 your goal in terms of doing a feasibility study for
24 water supply?

25 A. Well, before you can even prepare a feasibility

1 report or study for a water supply, the first thing
2 you have to do is develop the estimated water demand
3 for a particular project. In this particular case,
4 we've utilized -- the water consumption requirements
5 for the development were estimated utilizing the
6 waste water flow projections developed for the
7 project. As a base, the waste water flow projections
8 developed for this particular project was about
9 250,000 gallons per day.

10 Q. Are those the flows that were developed
11 by --

12 A. Mr. McDonald, right. Now, as far as the water
13 demand, we've assumed that the waste water works
14 collect approximately 85 percent of all water
15 produced since, you know, some of the water that's
16 produced, for instance, will ultimately be used for
17 lawn sprinkling and car washing and for putting out
18 fires and things of that nature. Therefore, the
19 amount which was assigned for the sewers, we assumed
20 that 85 percent of it is the amount of water which
21 would be pumped from the supply well. Using that as
22 a base, our annual average demand which we have
23 developed for this particular project amounts to
24 280,000 gallons per day. As far as a rate, that
25 equates to approximately 195 gallons per minute.

1 Once you've developed your base, which is your annual
2 average water demand, you can begin considering the
3 feasibility or the sizing of a particular system; and,
4 also you have a handle as to what the maximum
5 anticipated water demand would be for a project. For
6 this particular project, we've assumed that the
7 maximum daily demand which would normally occur --
8 that would be the maximum day in any given year,
9 which in most instances would occur in July or August --
10 we've assumed that the ratio would be twice the
11 average daily flow. In this case, that would be
12 560,000 gallons per day, which is equivalent to
13 approximately 390 gallons per minute.

14 It's always -- it's also necessary to develop
15 what would be your estimated peak hourly demand. And
16 for this particular project, we've used a ratio of
17 five to one which would amount to approximately one
18 point four million gallons per day as a peak hourly
19 rate.

20 Q. What is the purpose of the peak hourly --
21 of establishing the peak hourly demand?

22 A. The reason you need the peak hourly demand,
23 that's primarily necessary in sizing the water
24 distribution mains within a system. The maximum
25 daily demand is necessary to determine the size of

1 the physical plant, the treatment plant, the supply
2 well and the storage facilities.

3 Q. Are there -- you established -- are
4 those all of the demand figures that you need to
5 establish the size and design of the system?

6 A. Yes. We need the average daily demand, maximum
7 day demand and the peak hourly demand.

8 Q. After you've established the demand,
9 what is the next thing you do?

10 A. Once you've got the demand -- I should add that
11 besides the demand that I've spoken, because with
12 predominantly domestic uses you also have to have an
13 estimation of what would be your anticipated fire
14 demand, for this particular project we've estimated
15 that the fire flow for this -- for the particular
16 project will be on the order of 2,500 gallons per
17 minute for a two hour duration. And we've developed
18 this figure by following the guidelines of the
19 National Fire Protection Association.

20 Q. And what was that figure in terms --

21 A. It's 2,500 gallons per minute. As far as
22 another way of looking at it, as far as three point
23 six million gallons per day, once these figures were
24 established then you can commence with the studying
25 the feasibility of designing the supply of the

1 project and distribution end of the project.

2 Q. So after you know how much water you
3 need, you have to find a place to get it?

4 A. Right.

5 Q. And what do you do in terms of looking
6 for a place of water supply?

7 A. That brings us to the next section of my study,
8 that's the water supply. As far as water supply,
9 Colts Neck Township is a relatively large community
10 located in a central area of Monmouth. As far as the
11 central area of Monmouth County -- I'm including
12 communities such as Howell Township, Farmingdale,
13 Freehold Township, Freehold Borough, Marlboro,
14 Manalapan Township and Englishtown Borough -- most of
15 this area is either served by privately owned water
16 facilities and the primary source of supply is from
17 the ground, ground water. The State of New Jersey,
18 back in 1968, developed a comprehensive report upon
19 ground water resources in Monmouth County. That
20 report is known as Special Report Number 23.

21 MR. SAGOTSKY: What year, please?

22 THE WITNESS: Excuse me?

23 MR. SAGOTSKY: What year?

24 THE WITNESS: It was prepared in
25 1968. It's known as Special Report Number 23. It

1 was prepared by the Department of Environmental
2 Protection in cooperation with the United States
3 Geological Survey. And in that particular report,
4 which is primarily a ground water related report, the
5 report states that there are two predominant aquifers
6 in this general area upon which you can derive a
7 water supply of the magnitude that we would need for
8 this particular project. These two aquifers -- an
9 aquifer is a water bearing formation which is located
10 below the ground -- the Englishtown formation and the
11 Raritan formation. As far as the depth, I have
12 estimated that the depth of the Englishtown formation
13 in this particular area is approximately 300 feet
14 below the ground surface and the Raritan formation,
15 I'd say, is somewhere on the order of 700 feet below
16 the ground.

17 I'm somewhat familiar with Howell
18 Township. I've done work on supply wells in Howell
19 Township and Freehold Borough. I've done work in
20 Roosevelt and they're relatively -- and Lakewood, and
21 they're somewhat far from this particular area, but
22 all those communities do derive their water from the
23 Raritan formation. So, as far as the question,
24 whether, in fact, if you drill a hole on this
25 particular site will you find the water, I'd say, yes.

1 the water is there. And the water would be more than
2 likely the water -- we would derive the water from
3 the Raritan formation. The reason why I've kind of
4 concentrated on the Raritan formation, there's a few
5 reasons. The average yield of large producing wells
6 in the Englishtown formation -- when I say "average"
7 I'm talking about large -- I'm not speaking about
8 domestic wells -- is approximately 400 gallons per
9 minute. That's contained in this Special Report
10 Number 23 prepared by the State. The report goes on
11 further to state that the average yield of large
12 producing wells in the Raritan formation is somewhere
13 on the order of approximately 700 gallons per minute.
14 Since we've projected that the maximum daily use for
15 this particular site is on the order of 390 gallons a
16 minute or 500 -- which equates to 560 gallons per day,
17 it's certainly much more feasible to assume that you
18 are going to get the water from the Raritan formation
19 since it's been demonstrated that a well from that
20 particular aquifer can draw 700 gallons per minute,
21 approximately one million gallons per day.

22 I've also --

23 BY MR FRIZELL:

24 Q. Excuse me, Mr. DeNichilo. Didn't you
25 say that the Englishtown formation has an average

1 yield of 400 gallons?

2 A. The average yield for large well is 400 gallons
3 per minute.

4 Q. And that's only 300 feet deep?

5 A. I'd say it's about 300 feet deep, right.

6 Q. Why did you then go forward and
7 concentrate on the 700 foot deep aquifer in the
8 Englishtown formation?

9 A. A few reasons. First of all, when you design a
10 pumping station or a supply well, you have to design
11 it such that it can meet the site's maximum daily use.
12 We've estimated that the maximum daily use for this
13 particular site is 390 gallons per minute. Now, some
14 judgment develops. That's just an estimate of the
15 anticipated water use. Now, when you design a pump,
16 you want to make certain that you can provide the
17 pumping capabilities to meet that need. We've -- for
18 the purposes of this report, we've estimated that we
19 will need a pump that can pump 400 gallons per minute.
20 Now, once you have a pump that can pump 400 gallons a
21 minute, the Division of Water Resources of the State
22 of New Jersey requires that the safe yield of the
23 well be in excess of 20 percent of the permanent
24 installed pumping capacity. So, if you've got a well
25 pump that can pump 400 gallons per minute, you would

1 have to develop as a minimum, a safe yield, of the
2 well at 480 gallons per minute.

3 We're going to assume that we develop these
4 wells at 500 gallons a minute, which is greater than
5 the average yield in the Englishtown formation. And
6 with that in mind, we felt we have a better chance of
7 developing the amount of safe yield water out of the
8 Raritan formation.

9 Another reason why we've elected to develop
10 water out of the Raritan formation, I had a
11 discussion, various discussions, with the State of
12 New Jersey Water Allocation Unit, Mr. Raymond Webster,
13 and, I had asked them what's the -- what's the
14 State's position as far as developing additional
15 water supplies from the Englishtown. And they had
16 indicated that the State doesn't look too favorably
17 about pumping any more water out of the Englishtown
18 because, in his opinion, that particular aquifer is
19 essentially over-pumped right now; and, that it's
20 much more desirable to request diversion rights out
21 of the Raritan formation.

22 MR. SAGOTSKY: Permit the
23 interruption?

24 MR. FRIZELL: Sure.

25 MR. SAGOTSKY: Perhaps the Board

1 the Board doesn't have to be involved in these
2 technicalities at the moment. Perhaps if you can
3 still make your point, in the interest of brevity, it
4 of being shorter, perhaps you can still carry on
5 without these technicalities -- unless the committee
6 feels they would like to have it.

7 MR. BRENNAN: Unfortunately, I
8 have my foot stuck in one technicality, and that's a
9 translation of 390 gallons per minute. To save me
10 the mathematics, that relates back to your maximum
11 daily demand of 560 gallons per day?

12 THE WITNESS: Per day.

13 MR. BRENNAN: Thank you.

14 MR. SAGOTSKY: I can also say
15 that Freehold has tapped the aquifer pretty heavily.
16 I have knowledge of that.

17 BY MR. FRIZELL:

18 Q. So, you've concluded from your
19 investigations and discussions from the State and
20 your own experience and experience of the firm that
21 the Raritan formation was the feasible --

22 A. Is the spot to take the water out of, yes.

23 THE CHAIRMAN: Could I interrupt?

24 MR. FRIZELL: Sure.

25 THE CHAIRMAN: In other words,

1 that's your conclusion. Did the State actually say
2 you can't take it out of the Englishtown formation?

3 THE WITNESS: No. There is no
4 imposed moratorium that says you can't. But from my
5 experience and discussions with the State, they don't
6 look at it as a very favorable consideration.

7 Certainly taking water out of the Raritan formation,
8 subject to Water Policy and Supply Council decisions

9 THE CHAIRMAN: So to condense
10 what you are really saying, Englishtown just can't
11 cut it it; won't do the job?

12 THE WITNESS: For this particular
13 job it won't.

14 THE CHAIRMAN: Okay. So you are
15 going to Raritan.

16 BY MR. FRIZELL:

17 Q. And what's the next -- after having
18 found what the supply of water is --

19 A. Once you know where the supply is, the next
20 thing to do is, if necessary, you would have to treat
21 the water before you pump it to the system and
22 ultimately send it to the consumers. In this
23 particular area, the Raritan formation, the water is
24 of acceptable potable quality with the exception that
25 there is a relatively high iron content in the water

1 thereby requiring the need to treat the water before
2 you can ultimately deliver it to the consumer.

3 Q. So that you would have a deironization -

4 A. You would have -- an iron removal plant would
5 be necessary.

6 MR. BRENNAN: That's much better
7 wording.

8 BY MR. FRIZELL:

9 Q. Are there any other treatment facilities
10 other than the removal of iron that would be
11 necessary?

12 A. The only other thing that would be necessary
13 was chlorination for disinfection, possible pH
14 adjustment, which would mean adding a chemical like
15 lime to condition the water. It's very difficult to
16 determine the exact mode of treatment which would be
17 necessary until you first sink a well and take a
18 water sample. Then once you have a water sample, you
19 know what the constituents of the water are and then
20 you can effectively design the most effective plant.

21 Q. You figured in at least the iron removal
22 treatment process and the ordinary treatment
23 processes that makes water -- like chlorination?

24 A. Yes. I feel that you will certainly need an
25 iron removal plant.

1 MR. SAGOTSKY: Which would not be
2 necessary if you tapped the Englishtown strata?

3 THE WITNESS: The Englishtown
4 strata is also known to contain iron in high
5 concentrations which require treatment for removal of
6 iron. It's true that the iron levels are much less
7 in the Englishtown, but not low enough to preclude
8 treatment.

9 BY MR. FRIZELL:

10 Q. After establishing the necessary
11 treatment facilities, what do you do then?

12 A. After you've established the supply and the
13 treatment, all that is required is the storage
14 facilities and the distribution facilities. For this
15 particular project, we've estimated that the amount
16 of storage necessary for this project would be
17 approximately 300,000 gallons. The reason we've come
18 up with the 300,000 gallons, as a general rule of
19 thumb, you should have enough storage able to meet
20 your annual average daily water consumption; since,
21 as I had stated previously, the annual average daily
22 water consumption which we have developed was 280,000
23 gallons per day. And I'm indicating that more than
24 likely the storage requirements for the particular
25 project would be approximately 300,000 gallons.

1 You could look -- when you look at storage, you
2 also have to make certain you have enough of storage
3 volume to put out a fire. And the storage size for
4 this particular project does take in account the fire
5 demand that I had stated previously and the maximum
6 day use also. To put it simply, you have -- it's
7 very possible that you could have a major
8 conflagration during the summer when you are pumping
9 the most amount of water out of the well. And the
10 storage, this size, will accommodate both those needs.

11 After you've completed with the storage, the
12 next step in the design of the system would be to
13 design your distribution mains or arterial mains,
14 which are your primary loop lines. I have a map over
15 here.

16 MR. FRIZELL: This has already
17 been marked, Mr. Sagotsky.

18 THE CHAIRMAN: Might I ask a
19 question?

20 MR. FRIZELL: Certainly.

21 THE CHAIRMAN: Your peak demand
22 you said was twice that 280,000?

23 THE WITNESS: That's the maximum
24 day demand.

25 THE CHAIRMAN: Which might occur

1 during the summer months? Suppose you do have that
2 maximum daily demand you only have 300,000 in the
3 storage tank and your pumps don't work, where are you
4 going to get water from?

5 THE WITNESS: Well, first of all,
6 the State requires tht the total installed pumping
7 capacity in a system has to be such that you can meet
8 the maximum daily demand with the largest single unit
9 out of service. So ultimately this site would
10 require two wells. So, you know, if you had a
11 mechanical failure with one well, the other well has
12 to be sized and equipped with the best pump to
13 provide that demand.

14 In addition, the treatment plant
15 site or the central facility would also be -- would
16 also contain an emergency generator in the event you
17 had an electrical outage. Certainly that's possible
18 and it does occur and you have to have an auxiliary
19 means of providing power to power pumps.

20 MR. BRENNAN: You say you have to
21 have a redundant system?

22 THE WITNESS: You do. The State --
23 see, this is a feasibility report, you know, but it's
24 subject to the State's approval. You can't get a
25 permit to construct unless the State approves it and

1 basically relating the states rules and regulations
2 governing the approval of a public water supply.

3 THE CHAIRMAN: That report you
4 had out here, Mr. DeNichilo, is that the latest one
5 published? 1968 seems a little old to me. That's 12
6 years ago.

7 THE WITNESS: It's a very
8 comprehensive report. These reports they don't do
9 every other year. It's my understanding that that is
10 the latest. If there is any later than that, I'm not
11 aware of it.

12 THE CHAIRMAN: You have a
13 tremendous growth in Monmouth County and I'd say the
14 use of that report should be a little more
15 contemporary. But that's the last one that's
16 available to you?

17 THE WITNESS: That's the last
18 test.

19 THE CHAIRMAN: To your knowledge?

20 THE WITNESS: To my knowledge. I
21 am -- I am also familiar with Monmouth County as far
22 as ground water supply. And the State is still
23 granting diversion rights out of the Raritan
24 formation. You know, there is no imposed moratorium
25 so you can't derive any more water out of it.

1 THE CHAIRMAN: I just had one
2 more question. Your demand estimate is hypothesis or
3 based on an actual similar project that you are aware
4 of the demand or is it merely hypothetical?

5 THE WITNESS: I'd say it's
6 hypothetical for a site of this magnitude. You know,
7 you have to have the average daily demand as a base
8 and for an average daily demand of approximately
9 280,000 gallons per day, the ratio, the maximum day,
10 is approximately twice that of the average daily
11 demand. That is a number or a ratio which is
12 developed in many engineering text books.

13 I tried to nail it down a little
14 further and I didn't want this to be a city type of a
15 system. The larger municipalities are much less than
16 two to one. The smaller system, the more variable
17 would be the demand. In communities with as much as
18 17,000 would have a demand of one point -- the ratio
19 is one point five to one. I've also tried to see if
20 the government had any information regarding that
21 particular ratio. And I did come across a report in
22 our office which was prepared by the -- I think the
23 Federal Housing Administration. And that particular
24 report, the report by FHA, was entitled, "A Study of
25 Residential Water Use". And that particular report --

1 BY MR. FRIZELL:

2 Q. Excuse me, Mr. DeNichilo. You are
3 referring to A-21. What page?

4 A. On page 12. The Federal Housing Administration
5 also feels that a maximum daily demand of 200 percent
6 of the average demand is a recommended amount.

7 THE CHAIRMAN: I might be ahead
8 of myself. I don't want to deter you too much. I
9 just thought maybe you could say a project in such
10 and such community is very similar and now that it's
11 been operation, our report was correct or they are
12 using more than than I anticipated.

13 THE WITNESS: I know a few larger
14 ones that are less than a two to one ratio.

15 I'd like to point out that even
16 though we assigned the maximum or anticipated day as
17 being twice the average daily flow, the well stations
18 for this particular site are 400 gallons per minute
19 each. Four hundred gallons a minute is 576,000
20 gallons per day. Now you can pump both wells. The
21 treatment plant would be designed not only to meet
22 the maximum day use but at a rate higher than that.
23 I believe we've assigned it at 600 gallons per minute,
24 which is somewhere on the order of 860 gallons per
25 day. So, in fact, the capabilities of pumping is

1 about three times the average daily flow although we
2 have assigned the maximum day use as being twice the
3 average daily flow.

4 BY MR. FRIZELL:

5 Q. Mr. DeNichilo, and just to follow up as
6 Mr. Brennan pointed out, the system is redundant,
7 that is, it's designed to have the absolute maximum
8 use on the hottest day of the summer and at the same
9 time have a major conflagration?

10 A. You've got to do that, yes. You have to size
11 your mains for that.

12 Q. So, in order to test whether or not that
13 itself was accurately sized, you would have to have
14 that occurrence in experience? That is, are you aware
15 of any situations where that has ever occurred; that
16 is, that the system had -- was required to meet that
17 test? That is, the hottest day of the summer and at
18 the same time the whole place was burning down?

19 A. Not -- there are many systems right now that
20 are on water restrictions because of people -- you
21 can put as much storage as you want and put a supply
22 well and they just sprinkle so many lawns it becomes
23 a burden.

24 MR. BRENNAN: Mr. DeNichilo, back
25 in the mid-sixties -- you look so young it probably

1 would be a hearsay response -- in New York, we had to
2 order a glass of water because the reservoirs were
3 low and problems with the water in the Delaware and
4 three states arguing. Over here and north of here,
5 up in the Matawan area, they also had to go on
6 alternate day sprinkling back in the mid-sixties.
7 Even though you would be down in the Raritan
8 formation here, is it still possible that if you had
9 the general condition existing such as it existed in
10 the mid-sixties with the shortage of water you would
11 have to place constraints upon the users of the Colts
12 Neck Village water system?

13 THE WITNESS: Well, I don't know
14 exactly what the particular case was back in the
15 sixties, whether it was a surface water supply --

16 MR. SAGOTSKY: If you know.

17 THE WITNESS: I -- you know --

18 MR. SAGOTSKY: Because we're
19 taking a record and if you conjecture, and if you want
20 to get into a lot of volunteering, we kind of clutter
21 up. Fine, if you don't.

22 THE WITNESS: I really don't know
23 if you would have that problem.

24 BY MR. FRIZELL:

25 Q. It's possible?

1 A. Yeah, it's possible. I guess if you had a very
2 extended drought and the levels have gone down in the
3 ground water, you may be faced with a situation where
4 you've got to restrict maybe a water sprinkling,
5 things of that nature. But that's a main factor in
6 the summer as far as water use.

7 Q. Mr. DeNichilo, is A-23 for
8 identification, that is exhibit 2 to your A-21
9 feasibility study, is that the water distribution
10 system that you referred to earlier?

11 A. Yes.

12 Q. And was this prepared in your office?

13 A. Yes.

14 Q. What is -- what are the principles,
15 generally? Could you just give us the general
16 principles of designing a water distribution system?

17 A. Well, when you design -- did you want me to put
18 this up or is this fine?

19 THE CHAIRMAN: I think we can all
20 see it.

21 THE WITNESS: Okay. When you
22 design a distribution system, it's -- the most
23 important thing is make certain that the size of the
24 lines are adequate to meet the maximum demand imposed
25 upon the system. The maximum demand which would ever

1 be imposed upon a system is what is known as the
2 coincident graph, which is the fire flow plus the
3 maximum day use. And you have to have the system
4 sized adequately to meet that demand and not lower
5 the pressure in the lines below 20 pounds per square
6 inch. That's a State requirement. And these lines
7 will be sized to adequately provide for that.

8 BY MR. FRIZELL:

9 Q. Did you develop, in addition -- after
10 having designed the treatment facilities, the pumping
11 facilities, the storage facilities, the distribution
12 facilities, did you develop a cost estimate for the
13 system?

14 A. Yes.

15 THE CHAIRMAN: If anyone in the
16 audience would like to see this, we'll post it. You
17 are welcome to come on up and take a look.

18 MR. SAGOTSKY: It's basically the
19 design of the water distribution system? Is that
20 what you are --

21 THE WITNESS: I've got a cost
22 estimate here. The estimated construction cost for
23 the supply, storage and treatment end I've estimated
24 that to be approximately one point three million
25 dollars. The distribution system, which is the water

1 mains delineated on the map which Mr. Frizell had
2 made reference to, that's estimated to cost,
3 construction cost, approximately \$550,000, for a
4 total amount of one million eight hundred fifty
5 thousand dollars. We've allowed a reasonable
6 contingency for construction contingencies,
7 engineering and legal. And we feel the total
8 estimated project costing would be two million one
9 hundred twenty-seven thousand dollars.

10 MR. BRENNAN: Is that 1980
11 dollars?

12 THE WITNESS: That's -- yes,
13 that's right. This report was prepared in June, this
14 month.

15 BY MR. FRIZELL:

16 Q. Mr. DeNichilo, assume for the moment
17 that a property owner within a few hundred feet of
18 this site has a well that's 50 feet down in the earth.
19 Can you tell us whether or not, in your opinion,
20 taking water out of the Raritan formation would have
21 any impact or effect on that well?

22 A. In my opinion there would be no effect
23 whatsoever, if the well is, in fact, only 50 feet
24 deep.

25 Q. What if the well were 100 feet?

1 A. I'd say there still would be no problems.

2 Q. What if the well was 150 feet?

3 A. Still no problems.

4 Q. What is the reason that there would be
5 no problems between the two wells?

6 A. Because we're drawing water from aquifer. An
7 aquifer means it's a water bearing formation. It's
8 located approximately 700 feet below the ground and
9 above it you've got various other aquifers.

10 Q. Does that Englishtown -- you mean --

11 A. Yes, the Englishtown is about 300 feet from
12 ground surface; I'd say about 400 feet above the
13 Raritan formation. And I can't see how drawing water
14 out of the Raritan formation would have any effect
15 whatsoever to a well that's, you know, a few hundred
16 feet deep.

17 Q. Or above the Englishtown?

18 A. Well, even the Englishtown for that matter.
19 The Englishtown is a separate formation. If you draw
20 water out of the Raritan formation at that particular
21 site you are not going to have an effect on the
22 Englishtown formation because it is a particular
23 aquifer and it is separated by aquicludes, which are
24 dense clays which have no permeability and separate
25 the two aquifers.

1 MR. LARKIN: I'm not an engineer.
2 I understood that there was something called leakage
3 which occurs despite the fact there might be
4 significant sand barrier between the two aquifers.
5 Is this inaccurate or accurate?

6 THE WITNESS: Well, leakage
7 between --

8 MR. LARKIN: Between aquifers?

9 THE WITNESS: I guess you can
10 have leakage between aquifers. Normally that occurs
11 as far as if there would be -- I don't know if
12 there's any leakage between the Englishtown and
13 Raritan formation at that particular site. I don't
14 believe there is. I don't think that you would have
15 a leakage problem in this particular area.

16 MR. LARKIN: I understood that
17 there were some people in the State that were
18 concerned about this question of leakage.

19 THE WITNESS: I'm not familiar.
20 See, each aquifer is different and in some areas you
21 get a leakage which -- I wouldn't really say in the
22 outcropping areas -- but where the aquifers start to
23 come closer to one another, you know, you may have a
24 situation --

25 MR. LARKIN: How close are they

1 here?

2 THE WITNESS: I believe they are
3 about 400 feet apart, the thinness of the Englishtown
4 formation as opposed to the Raritan formation. And
5 although I'm not familiar with the construction
6 details of any domestic wells in this particular area,
7 if the domestic wells don't even tap the Englishtown
8 formation, which is 300 feet, if they're only 50 feet
9 deep or 200 feet deep, I can't envision how you would
10 have any leakage problems.

11 As far as leakage, I don't know
12 if you mean -- you have recharge and when it rains
13 the water percolates into the ground.

14 MR. LARKIN: I mean leakage,
15 water coming physically from one aquifer to another
16 in a drop-down pattern.

17 THE WITNESS: I don't believe you
18 have that particular situation in this particular
19 area.

20 MR. LARKIN: Are the aquifers
21 that you are talking about, the Raritan and the other
22 one, 400 feet and -- or 300 feet and 700 feet
23 uniformly throughout the county?

24 THE WITNESS: In my report here,
25 I'm referring to page 16, I tried to get some kind of

1 indication what the depth of the wells in the Raritan
2 formation are within some distance of this particular
3 site. And we were able to find out that a well
4 that's about 21,000 feet north by northwest from this
5 site, which is owned by S.S.White and Company, which
6 is a division of the Penn White in Holmdel, that
7 particular well is in the Raritan formation. That's
8 700 feet deep, approximately. So you are a pretty
9 good distance away. I'm familiar with a well in
10 Freehold Borough and they draw water out of the
11 Raritan formation and they're about, I'd say, on the
12 order of 600 and 700 feet deep. I'm also familiar
13 with well in Howell Township, first-hand. I designed
14 the well down there and their wells are around the
15 same magnitude. I've also been involved with a well
16 as far west in Monmouth County in the Borough of
17 Roosevelt. And that also draw waters out of the
18 Raritan formation. And that particular well is on
19 the order of 600 feet and 700 deep. So
20 geographically, the areas westerly and southerly and
21 the wells -- the aquifers exist and it is that
22 particular depth. So I'd imagine that the general
23 underground topography would be relatively constant.
24 At this particular site we're talking about 700 feet
25 or so down.

1 BY MR. FRIZELL:

2 Q. The aquifers generally -- I've seen
3 pictures of the aquifer's outcrops and it generally --
4 slope gradually up in a northerly, westerly direction
5 in New Jersey, that is. Englishtown, for instance,
6 surfaces somewhere around Englishtown?

7 A. The Raritan formation mostly outcrop in the
8 Raritan formation. What they mean by outcrop is,
9 you've got this material 700 feet below the ground at
10 our site, and what I mean by outcrop, where does that
11 material surface, how far away. In that particular
12 report, Special Report Number 23, it indicates that
13 most of the outcrop area for the Raritan is outside
14 of Monmouth County. And that's where the aquifers
15 recharge by means of precipitation. And the
16 precipitation and recharge occurs predominantly at
17 the outcrop area, which is not in this particular
18 site.

19 Basically, what I'm trying to say is, if you go
20 ahead and develop this site and put roads in and you
21 create impervious barrier, you are not going to cause
22 any unfavorable effect or detrimental effect to the
23 recharge of the aquifers because the recharge is
24 obtained, in essence, outside of the Monmouth County.

25 MR. LARKIN: What is the process

1 of the State does this -- as a well is drilled in
2 something like the Raritan formation, since there are
3 areas where there are a salt water problem since you
4 are closer to the ocean and so forth -- how do they
5 monitor as these well are drilled and do they survey
6 this well and monitor afterwards?

7 THE WITNESS: The State? Well,
8 steps -- before you can draw any water out of the
9 well -- well, first you have to drill the well. You
10 have to test the well. Then before you've --

11 MR. LARKIN: Do you need a permit
12 for that?

13 THE WITNESS: Yes, you have to
14 get a permit to drill the well from the Bureau of
15 Geology and Topography.

16 MR. LARKIN: That's the a State
17 Bureau?

18 THE WITNESS: Before you can
19 divert any water out of the well for domestic use,
20 you have to obtain diversion rights permits. And
21 that's a pretty -- it's a relatively large procedure
22 involved. And that you have to go before the Water
23 Policy and Supply Council and you've got to
24 demonstrate for them that the amount of water you're
25 drawing out of the well will not cause any potential

1 to contamination, for instance, with salt water
2 intrusion or you are not adversely affecting any
3 other water supply system. You've got to go through
4 quite a bit of information before the State allows
5 you to even, you know, divert the water.

6 MR. LARKIN: Have you had any
7 preliminary discussions with the people at the State
8 on this particular project?

9 THE WITNESS: As a matter of
10 fact, today I spoke to -- I don't know if you are
11 familiar with Mr. Raymond Webster. He's from the
12 State of New Jersey Department of Environmental
13 Protection. And I had asked him about this, you know,
14 this particular project in question. The indication
15 I got from him is that, you know, you are better off
16 going into Raritan because, you know, Englishtown is
17 over-pumped. And as I stated previously, they don't
18 look too favorably towards taking the water out of
19 that particular aquifer.

20 BY MR. FRIZELL:

21 Q. On an ongoing basis, the Public
22 Utilities Commission would be involved in the water
23 supply system. They're regulated, not in terms --

24 A. They're not involved in construction details
25 and the potability and whether you are building

1 plants or wells that are, you know, safe. I think
2 the Board of Public Utilities are more involved in
3 the rate-making decision.

4 Q. And the DEP regulates the quality of the
5 water?

6 A. You've got -- to even drill the well, you've
7 got to get an additional permit from the Bureau of
8 Potable Water. You've got to give them the
9 construction details of the well. They want to make
10 sure that you case the well properly and grout it
11 properly thereby reducing the potential of
12 contamination from above entering the source of
13 supply. You've got to go --

14 MR. SAGOTSKY: There is no longer
15 a commission?

16 THE WITNESS: It is -- what is --
17 the Water Policy and Supply Council. That, I believe,
18 is the proper terminology of that Board that you have
19 to go before for diversion rights. You don't have to
20 go before them for a permit to construct the well.
21 That you go to the Bureau of Potable Water, which is
22 more involved with the actual construction details;
23 but, not only the well, the well, basin, the storage
24 tank, the distribution mains and everything else in
25 connection with the water system.

1 MR. BRENNAN: Mr. DeNichilo, I
2 believe the project's scope can be broken down into
3 three major components -- and I know Mr. Frizell will
4 correct me if I'm wrong on this -- residential,
5 industrial, commercial and something that to my
6 recollection has really not been discussed very much
7 before this Board, a shopping center or a community
8 type stores.

9 When you measured the average
10 daily demand, peak demand and then the peak per
11 minute, does your study encompass all three
12 components of the proposed PUD?

13 THE WITNESS: Okay. I believe
14 that was covered at the previous testimony not by
15 myself or Mr. McDonald --

16 MR. BRENNAN: I think Mr.
17 McDonald testified sewerage exclusively.

18 MR. FRIZELL: They calculate for
19 sewerage first and they based the water demand, so
20 that they don't duplicate the work. That's where the
21 85 percent came in. They assume --

22 MR. BRENNAN: That's what's got
23 me confused, because I thought after saying 85
24 percent, you would then reference residential or
25 something?

1 THE WITNESS: No. The amount
2 that was estimated for waste water flow included the
3 various housing types which were residential and it
4 also included commercial and it also included the
5 nursery school which is proposed for the particular
6 project. So it was all-encompassing.

7 MR. BRENNAN: Would it include
8 the proposed shopping center?

9 MR. FRIZELL: That's the
10 commercial.

11 MR. BRENNAN: That's the
12 commercial? I'm sorry.

13 MR. FERER: The average yield
14 figures that you gave for the Englishtown and Raritan
15 aquifers, were they 1968 figures or current figures,
16 the 400 gallons per minute and 700 gallons per minute?

17 THE WITNESS: They're -- I guess
18 it's contained in the report -- 1968's.

19 MR. FERER: Are current figures
20 available, mainly to indicate if there's any change,
21 you know, based on new commercial wells?

22 THE WITNESS: From my own
23 personal experience, that well down Howell Township
24 that pumps also 400 gallons a minute, draws water out
25 of the Raritan formation. I've been involved in

1 wells in Freehold Borough which draw water as much as
2 1,000 gallons per minute; and, I'm presently
3 completing a design in Roosevelt Borough. And the
4 demand isn't big there, but the well is 400 gallons
5 per minute. So --

6 BY MR. FRIZELL:

7 Q. In the table we're into, on page 16, are
8 these from the Special Report 23 or are those
9 independently developed?

10 A. They were independently developed. We had
11 contacted these particular --

12 Q. So these are recent? These are recent
13 figures?

14 A. We contacted them, I believe, in late 1979 as
15 far as these particular owners over here.

16 MR. BRENNAN: Since you have the
17 book, we're at some what of a disadvantage. Could
18 you just read off the names of the people that you
19 contacted?

20 THE WITNESS: Certainly. We had
21 the S.S.White Company, Laird and Company, and Earle
22 Naval Ammunition Depot.

23 MR. BRENNAN: So you bracketed
24 the proposed site?

25 THE WITNESS: Yeah. I tried to

1 get a reasonable cross-section. I didn't indicate
2 the others which I had previously stated, because I
3 have personal knowledge and have worked on them
4 personally. And I had given you those figures.

5 THE CHAIRMAN: They all draw from
6 the Raritan?

7 THE WITNESS: No. One of them is
8 the Englishtown. That's Laird and Company. That
9 well is 331 feet, by the way, and the yield of that
10 well -- they don't really firm it up. I have a plus
11 and or minus, they felt was somewhat on the order of
12 200 gallons a minute. As you can see, that doesn't
13 mean they couldn't draw more because that's all they
14 need. You don't put a 1,000 gallon a minute well in
15 if you only need 200 gallons per minute because the
16 cost becomes prohibitive over design.

17 MR. FERER: When you addressed my
18 question, you mentioned a range, say 400 to 1,000
19 gallons per minute, that's probably based on pumping
20 capacity. If that's the case, a commercial well in
21 1968 with a given pumping capacity, would that still
22 deliver the same yield say in 1980 is it did then?

23 THE WITNESS: Sure. We've got a
24 well in Freehold Borough drilled in the sixties,
25 1,000 gallons a minute well, and still draws 1,000

1 gallons a minute today.

2 MR. FERER: So no well drilled in
3 the aquifer would effect present yields?

4 THE WITNESS: You will have some
5 an effect. It stands to reason over the years, the
6 more you you pump, the more development you have, you
7 would have a lowering of the water table. Okay? And
8 normally what happens in a case like that, if they
9 find that the levels in the well are going down some
10 lower the setting of the pump. What I mean, after
11 you drill a well 700 feet down, you don't put a pump
12 700 feet down. The pump may go down 300 feet because
13 the Raritan formation is what is known as an artesian
14 well. Although the water is 700 hundred feet down,
15 it's under pressure. And once you put that hole in
16 the ground, that water is going to rise is stabilize
17 at about 200 feet or so. So you would install your
18 pump maybe 300 feet down. And if you get a situation
19 where the level drops down, what they normally do,
20 they simply add another column on the pump so you can
21 continue to pump the same capacity.

22 MR. BRENNAN: Well, in your
23 experience, if there was increasing demand placed
24 upon the Raritan formation over time that it got to
25 the point where the aquifer was running low, wouldn't

1 the State or some governmental body restrict future
2 development within the area?

3 THE WITNESS: Right. Well,
4 that's up to the State. The State looks at each case.
5 Each case is unique to them. But, you know, they're
6 philosophy is, you know, overall water resource
7 planning. They don't meet a situation where you put
8 too many wells in an area and over-pump them. I
9 personally feel the State does an excellent job at
10 controlling that, you know. But in this particular
11 area, I feel very confident that, you know, there
12 won't be a problem in obtaining the necessary
13 diversion rights for this particular site.

14 MR. FRIZELL: I just have one
15 more question.

16 Would you mark this A-29, please?
17 It's the whole thing. This is supposed to be
18 attached. It's all right. Just mark it. This is a
19 letter requesting franchise to the Township Committee.

20 MR. SAGOTSKY: Marked for
21 identification letter to the Township Committee
22 requesting a franchise.

23 MR. FRIZELL: By Walter Rinehart
24 on behalf of the Elson Killam Associates.

25 MR. SAGOTSKY: Concerning the

1 Township of Colts Neck?

2 MR. FRIZELL: Yes.

3 MR. SACOTSKY: Going with A-29,
4 being part and parcel of it, a professional
5 experience report.

6 MR. FRIZELL: Yes. It's referred
7 to in the first part here, Mr. Sagotsky, and it was
8 sent as a package to the Township Committee.

9 MR. SACOTSKY: So marked.

10 (Whereupon a letter requesting
11 a franchise marked A-29 for identification.)

12 MR. BRENNAN: Killam is applying
13 for the franchise for the sewerage treatment facility?
14 Because, I had thought it was in the transcript
15 reference, the direct or indirect, W.R.Grace. But it
16 will be Killam that would be trying --

17 MR. FRIZELL: I notice here that
18 the Elson T. Killam Associates, Inc., it's a letter
19 from an attorney on behalf of Elson T. Killam Inc.

20 BY MR. FRIZELL:

21 Q. My question to Mr. DeNichilo, when you
22 prepared A-21, the feasibility report, did you have
23 any knowledge of A-29?

24 A. No. I wasn't involved in the franchise area.
25 And when I prepared this report, I prepared, you know,

1 from just an engineering point of view. I wasn't
2 aware of it.

3 Q. Do you have any connection with this end
4 of Elson Killam's business in terms of making
5 decisions on franchises?

6 A. Absolutely not, no.

7 Q. When I asked you about that before, you
8 indicated you were a nuts and bolts engineer?

9 A. Yeah, that's primarily it. I'm not involved in
10 the franchise end of it.

11 MR. SAGOTSKY: Mr. Frizell, you
12 are making a point that because of personal interest
13 that might be involved by Killam that this gentleman,
14 who although employed by Killam, is not involved in
15 any conflicting interest? Is that what you are
16 endeavoring --

17 MR. FRIZELL: Just having no
18 knowledge of the franchise. Obviously, Mr. DeNichilo
19 wasn't influenced by the request. Mr. Marks, on
20 cross-examination of Mr. McDonald, Mr. McDonald also
21 had no knowledge of the request for the franchise by
22 the company. And anything I might say in the
23 interest of the Elson T. Killam in obtaining that
24 franchise, to me, would indicate that the feasibility
25 of the success of the franchise was high. Rather,

1 that is what we're trying to show anyway in this part
2 of the report. But, in any event, apparently the
3 company was impressed enough by the report to feel
4 that they want to obtain the franchise and build and
5 operate the system.

6 MR. FERER: Are you aware of any
7 proposals prepared by your firm pertaining to this
8 franchise situation?

9 THE WITNESS: I am not aware of
10 the franchise. As far as the details of the
11 franchise, I do understand that, you know, a letter
12 went out -- I guess it was Colts Neck -- at the last
13 meeting when you had --

14 BY MR. FRIZELL:

15 Q. I don't think that's Mr. Ferer's
16 question.

17 Do you have any personal experience,
18 yourself, with Elson T. Killam, experience in
19 obtaining these franchises?

20 A. Absolutely none at all.

21 MR. SAGOTSKY: The letter is
22 dated May 13th, 1980, directed to George Handzo,
23 Clerk.

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

1 THE CHAIRMAN: Members of the
2 Board?

3 Mr. Sagotsky?

4 MR. SAGOTSKY: No questions.

5 THE CHAIRMAN: Is there anyone in
6 the audience that would like to pose a question of
7 this witness?

8 MS. GUNTHER: I am Dorothy
9 Gunther. I spoke at a few meetings ago. I live on
10 537 directly across from the proposed project. I
11 know you mentioned the fact that a well 50 foot -- I
12 will say, however, ours has been to 35 -- would not
13 be affected. However, I wasn't referring to -- when
14 I asked the question, I wasn't referring to the fact
15 that your water would be -- well would be dug on the
16 opposite side of the street. I was referring to the
17 fact that digging for the buildings, would that
18 affect our well? I do know that the when 18 was put
19 through, there were numerous wells over on Five Point
20 Road that were affected and went dry. And this is
21 something that I was concerned about our place.

22 The other question was, now I
23 don't know whether this would have something to do
24 with the water situation or the drainage situation,
25 that I don't know if you have anything to do with it.

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THE WITNESS: No.

MS. GUNTHER: May I ask that question, too, pertaining to the drainage?

MR. FRIZELL: I don't think Mr. DeNichilo could help you, Mrs. Gunther. The firm of Abbington, Ney will be here on July 17th. I'm sorry. I thought your questions related to Mr. DeNichilo's testimony.

MS. GUNTHER: Yes, part of it did. I'm still asking that. Would that have anything to do -- I'm wondering if this construction of the homes, will this affect our well?

MR. FRIZELL: I think you should perhaps arrive here on July 17th and ask Mr. Ney or Mr. Kovacs.

THE CHAIRMAN: I will submit that yours is probably a very valid question and I'd request that you appear on the 17th, if you possibly could --

MS. GUNTHER: I'm really quite concerned.

THE CHAIRMAN: -- and ask of that particular witness who can testify on that.

MS. GUNTHER: On July the 17th would that witness --

1 THE CHAIRMAN: See, this witness
2 is very narrowly confining himself.

3 MS. GUNTHER: And when he spoke,
4 I knew the gentleman was asking the question
5 pertaining to my last question. And I may not have
6 been quite clear about it. However, could I -- I
7 also find out on July the 17th, would that answer the
8 question of if there should be a flood, a torrential
9 rain, for instance, and the water, after paved roads
10 would be over there, it would not drain and it could
11 come across the road? And my husband has built up
12 our driveway, but if all this water came down -- and,
13 I noted in your map, you stated that the -- there was
14 a decline rather this way. However, though Mr. Orgo
15 was here, he may disagree with me. But however, when
16 we have -- do have a rain, the water comes down off
17 of the Orgo farm onto the highway.

18 MR. FRIZELL: I do suggest that
19 you come and ask the engineers. The plan is designed,
20 Mrs. Gunther, to detain all water on the site so that
21 that there is absolutely no increase in any runoff
22 whatsoever.

23 MS. GUNTHER: There wouldn't be
24 any? So I won't get any water in my cellar or in my
25 well?

1 MR. FRIZELL: They have designed
2 detention facilities on the site, they will describe
3 them on the 17th, to guarantee that there will be
4 absolutely no water increase from runoff from the
5 site.

6 MS. GUNTHER: And you say July
7 17th would be the time that we would come?

8 MR. FRIZELL: Yes.

9 THE CHAIRMAN: Just try and come.

10 MR. LARKIN: Just to make sure
11 what I think Mrs. Gunther understands what this
12 witness -- his testimony really related to the
13 drilling of the well itself, 700 feet down, would not
14 have an effect on a well 95 feet deep. He didn't
15 address himself at the site construction would have
16 any effect on the well. Is that accurate?

17 THE WITNESS: That's correct.

18 MS. GUNTHER: Yes. Thank you.

19 MS. THOMAS: Barbara Thomas.

20 MR. SAGOTSKY: Your address,
21 please?

22 MS. THOMAS: Squire Terrace,
23 Colts Neck.

24 I have a question. You referred
25 to the fact that you would have two wells, a standby

1 well with an emergency generator in case you needed
2 it. If you put a commercial shopping center, is it
3 conceivable that you would be using both of those
4 wells to draw water out for adequate supply?

5 THE WITNESS: Well, the maximum
6 day supply which we developed for this site would
7 entail use of one well. If you need two wells, the
8 system would certainly be designed to deliver
9 additional water; although, in our projections, one
10 well will be able to meet the needs of the commercial
11 tract.

12 MS. THOMAS: The commercial and
13 the residential tract?

14 THE WITNESS: Yes, right. It's a
15 State requirement that, you know, the total pumping
16 capacity installed in the system be such that you can
17 meet the maximum anticipated daily demand with the
18 largest single unit out of service, which would
19 require that the largest single unit out of service
20 you would have to have another unit available.

21 MS. THOMAS: You said that, but
22 in one statement I got the impression you might use
23 both wells.

24 THE WITNESS: If it's necessary
25 to use two wells, certainly you can.

1 MS. THOMAS: Does the State
2 require you get a permit to have both of these wells
3 put in?

4 THE WITNESS: Each well has its
5 own independent permit.

6 (Whereupon a brief recess is
7 taken.)

8 THE CHAIRMAN: Mr. Frizell, did
9 you say you had any more of your presentation?

10 MR. FRIZELL: I have another
11 witness.

12 THE CHAIRMAN: I don't mean
13 another witness.

14 MR. FRIZELL: I'm finished.

15 THE CHAIRMAN: Now, we will
16 resume. Will the gentleman in the audience, if he'd
17 like to pose his questions?

18 MR. MULHOLLAND: Bob Mulholland,
19 Heulitt Road.

20 I may have missed this, but what
21 sequence would be with this well? Would you have to
22 sink a test well to prove that you could supply the
23 water needs before you start constructing the houses?
24 would you sink and find out?

25 THE WITNESS: Normally you would

1 sink a well. In this case, we would sink a
2 production well because it's been demonstrated that
3 the general area that the quantity of water can be
4 developed. So we wouldn't put a test well in this
5 area. So instead of putting in an eight inch test
6 well, which is -- which is certainly very costly, it
7 would be much more desirable to put in the production
8 well because the quantity of water is established.
9 Once we know the -- whether the well comes first or
10 the buildings --

11 MR. FRIZELL: Mr. Mulholland, the
12 production well would be in place before the first
13 section was constructed.

14 MR. MULHOLLAND: That sounds
15 logical.

16 What is the basis of your basic
17 figure of 390 gallons per minute? Is that based on
18 the population and the use of this population?

19 THE WITNESS: Yes, that was
20 presented during an earlier testimony in which the
21 various housing types were presented and the
22 densities per unit and the estimated flows, with all
23 that information.

24 MR. MULHOLLAND: Simply a
25 mathematical extrapolation?

1 THE WITNESS: Yeah. That's
2 taking the certain units assigning certain densities,
3 assigning certain usage per capita unit and come up
4 with an aggregate or total amount.

5 THE CHAIRMAN: To further amplify
6 on the answer, I did ask that question earlier. I
7 asked if these demand estimates were hypothetical or
8 based on real projects that had preceded this and the
9 answer way that this is a pure hypothesis. They have
10 now actual experience to draw on.

11 MR. MULHOLLAND: I notice in your
12 distribution map that you introduced, there is no
13 information on there as to the diameter of the pipes,
14 where the hydrants would be, how high the water tower
15 or storage is going to be and how it's going to
16 maintain the pressure to meet the requirements.

17 THE WITNESS: This was strictly a
18 reasibility report. We do not get involved in the
19 exact size of the lines. But the lines would
20 certainly be sized to accommodate the maximum
21 anticipated needs.

22 MR. MULHOLLAND: For firefighting?

23 THE WITNESS: Yeah. I did
24 indicate that the State requires that the lines be of
25 such a size that you've got to maintain a minimum of

1 20 pounds per square inch residual pressure in the
2 water main under that maximum anticipated water
3 demand. And the lines will be sized along that basis.

4 MR. MULHOLLAND: Also, is that in
5 the State standard for frequency of hydrants and
6 thing like that?

7 THE WITNESS: The State doesn't
8 have a standard of 200 feet or 600 feet. But there
9 are certain standards that you would have to abide by,
10 as far as where you locate the hydrants, yeah. That
11 particular map doesn't have it because we haven't
12 detailed, designed the distribution system.

13 MR. MULHOLLAND: Oh, okay. Thank
14 you.

15 MR. LARKIN: Mr. Mulholland, if
16 you care to look at the report that's here, we have a
17 copy over there that shows a breakdown by units,
18 residential housing and commercial.

19 MR. MULHOLLAND: Which is the
20 basis of their 390 gallon per unit estimate.

21 THE CHAIRMAN: Any other
22 questions from the audience?

23 MR. RALEIGH: Jim Raleigh, 15 The
24 Enclosure, Colts Neck.

25 I asked my question informally

1 during the break. I'd like to have the comparison of
2 the water flow for this development as compared with
3 the water demand as developed in accordance with the
4 current code. And there is a three bedroom number
5 and this lot would develop a certain number of houses
6 and so there's quite a difference in the water flow
7 that the current development would demand and this
8 project.

9 The second part of my question --
10 I'm sorry I was late -- deals with the discussion of
11 salt water intrusion, as for example, discussed in
12 the Natural Resources Survey for Colts Neck or the
13 State Water Master Plan. Could you comment on that?

14 MR. FRIZELL: I think it was a
15 ratio you worked over during the break, something
16 like seven or eight to one. It was like 30,000
17 versus a total --

18 THE WITNESS: As far as the salt
19 water intrusion,, it's very difficult to comment on
20 what the effect would be until, you know, you first
21 sink a well and, you know, you pump the well and you
22 determine what the characteristics of the water are.
23 Normally, the indicator as to whether you have, in
24 fact, you have drawn sea water into a well is what is
25 known as chlorides. And if the chloride

1 concentrations were such -- chlorides is
2 predominantly salts -- and again, I quite frankly
3 can't answer that question as far as --

4 MR. RALEIGH: I appreciate your
5 answer, because in the '78 Water Master Plan it's not
6 the salt water in the well that you drill that's
7 important. It's the salt water in Union Beach and
8 Asbury Park that are being shut down because of salt
9 water pollution.

10 MR. SAGOTSKY: Is there any
11 implication that we are close enough to have such an
12 increase?

13 MR. RALEIGH: Mr. Lamar
14 (phonetic) has an Environmental Resource Study. As a
15 potential certain --

16 MR. LARKIN: I think you weren't
17 here when I asked it, as far as the salt water
18 intrusion is concerned. And I asked this question
19 specifically about the well in Colts Neck. So we
20 really didn't get into a question -- this might have
21 an effect. I really asked the question, how does the
22 State monitor this and what kind of an impact it has.

23 THE WITNESS: I guess the way you
24 monitor it, I guess closer to the shoreline areas,
25 you know, the only way they can really monitor is by

1 chemically monitoring and see whether the chloride
2 levels have been increasing in those wells. But I
3 don't have any first hand knowledge of what the
4 situation is with those particular wells along the
5 shoreline.

6 MR. LARKIN: So you are not aware
7 of any well being closed down because of salt water
8 intrusion?

9 THE WITNESS: No. In this
10 particular area of what I call central Monmouth
11 County, I'm not aware of any at all.

12 MR. SAGOTSKY: Are you aware, at
13 all, of the report that Jim Raleigh just mentioned?

14 MR. BRENNAN: Given your
15 experience, is it possible that if the two wells were
16 put on this site that we could exacerbate the
17 problems up in Union Beach or something else?

18 THE WITNESS: I would say that by
19 putting a well on this site, this well itself will
20 not have any detrimental effect to the problem at
21 hand, if there is a problem along the shoreline.
22 Because the State over the last few years, have been
23 granting diversion rights, you know, for wells in
24 this general area. And Water Policy and Supply
25 Council are the ones that, you know, determine

1 whether, you know, they feel, you know, it's highly
2 potentially, you know, dangerous situation existing.
3 And from my recollection, they never rendered a
4 decision that such a condition exists which would
5 prevent development in the central Monmouth County
6 area.

7 MR. SAGOTSKY: If I may interrupt?
8 That there are two more witnesses to be called by Mr.
9 Frizell this evening.

10 THE CHAIRMAN: Thank you, Mr.
11 Sagotsky.

12 On the salt water intrusion
13 situation, I appreciate Mr. Raleigh's question and
14 I'd like to say that we certainly hope and encourage
15 that Mr. Lamar's report will be entered into the
16 record later in these hearings; and, number two, that
17 a later report than 1968 is available. And it deals
18 quite extensively with salt water intrusion, as does
19 the '68 version. And we would hope that would be
20 entered into evidence later.

21 THE WITNESS: Is that the 1978
22 report?

23 THE CHAIRMAN: Mr. Larkin said '78.
24 I thought perhaps '77.

25 Are there any other questions

1 of this witness?

2 The Planning Board?

3

4 CROSS-EXAMINATION BY MR. MARKS:

5

6 Q. Mr. DeNichilo, did you perform an
7 on-site inspection of the premises?

8 A. No.

9 Q. You've never been on the property at all?

10 A. No, no.

11 Q. Have you ever done any work in Colts
12 Neck at all?

13 A. Nope.

14 Q. Never walked any property in Colts Neck?

15 A. Nope.

16 Q. You mentioned at the beginning of your
17 testimony that you wanted to determine whether water
18 was present. In other words, you performed a
19 feasibility study?

20 A. Uh huh.

21 Q. Is that correct?

22 A. Yes.

23 Q. And you drew your conclusion not from
24 any direct information; is that correct?

25 A. No. I did draw it from direct information, as

1 I indicated.

2 Q. Direct with respect to the site?

3 A. Not for this particular site; that's correct.

4 Q. Nor anything in Colts Neck?

5 A. Nothing in Colts Neck with the exception of
6 Earle Naval Ammunition Depot, that they do have wells
7 which are in the Raritan formation in Colts Neck and
8 the information we received, one well is
9 approximately 800 feet and another well is about 775
10 feet deep. And that the yield of those particular
11 wells is reported to be 500 gallons per minute and
12 570 gallons per minute.

13 Q. Can you say with any degree of certainty
14 as to whether or not water may definitely be found on
15 this site?

16 A. I feel -- I feel that the Raritan formation is
17 very well defined in the various State published
18 reports. And I had indicated that water has been
19 developed in the Raritan formation in areas
20 geographically away from this particular site out of
21 the Raritan formation and I conclude, with great
22 certainty, that you can develop the water at this
23 particular site.

24 Q. Can you exclude the possibility that you
25 can not develop water from this site?

1 MR. FRIZELL: I'm going to have
2 to object to that question. Don't answer that, Mr.
3 DeNichilo.

4 MR. MARKS: No?

5 MR. FRIZELL: Excluding --

6 MR. MARKS: Your objection is on
7 the record.

8 MR. FRIZELL: Excuse me?

9 MR. MARKS: Your objection is on
10 the record.

11 MR. SAGOTSKY: Gentlemen, may I
12 ask you for some ground rules, if you don't mind?
13 Please address your comments to the Chairman.

14 MR. FRIZELL: I'm about to, Mr.
15 Sagotsky, so we can get a ruling and we can conclude
16 the matter. Mr. DeNichilo already said that he was
17 certain that the water can be developed on the site.
18 Now, to ask if you can exclude the possibility, first
19 of all, isn't a pertinent question because the issue
20 is whether Mr. DeNichilo has formed a professional
21 opinion in that regard. Excluding possibilities is
22 really not a proper -- a proper consideration. But,
23 nevertheless, beyond that I just think it's baiting
24 the witness. He already said he was certain the
25 Raritan formation doesn't disappear under this site.

1 I think that's really gets repetitive at this point.

2 MR. SAGOTSKY: At this point,
3 there has been a question asked and an objection
4 stated.

5 MR. MARKS: I'd like to be heard
6 on that.

7 THE CHAIRMAN: Before we rule on
8 it, Mr. Marks, go ahead.

9 MR. MARKS: The witness says that
10 he's never examined the site, never been in Colts
11 Neck and that all his information is predicated on
12 theoretical or underlying topography. I use his
13 phrase that he used that's "similar to" Roosevelt
14 Borough, Howell Township and Freehold Borough.

15 MR. FRIZELL: And Colts Neck and
16 Colts Neck. If you read the report, Mr. Marks, Laird
17 Earle and Earle. But, in any event, let me withdraw
18 the objection and let's --

19 MR. BRENNAN: And S.S.White, is
20 that in Colts Neck, not northeast?

21 MR. FRIZELL: I'll withdraw the
22 objection, Mr. Schrupf and let Mr. DeNichilo answer
23 if there's any possibilities in his mind.

24 THE WITNESS: In my professional
25 opinion, I'd say that we can develop the water that

1 we need at this site.

2 BY MR. MARKS:

3 Q. I didn't ask that question. Can you
4 rule out, with certainty, that this site will not
5 produce water?

6 THE CHAIRMAN: I think that's too
7 narrow a question. I think that the witness has
8 answered the question substantively, that in his
9 professional opinion, water can be found there. And
10 just as in the rest of his report, there is a
11 possibility that he could be wrong, he -- he's just
12 hanging his hat on his professional opinion. It's
13 already been agreed to by the witness that he does
14 not have any knowledge of the water supply in Colts
15 Neck. He only had reports from various well drillers
16 in Colts Neck, previous wells drilled. So, it's only
17 his opinion. He doesn't have any practical knowledge.
18 That's been established. So let's proceed.

19 BY MR. MARKS:

20 Q. Mr. DeNichilo, in preparing your report,
21 you said you relied on Special Report Number 23?

22 A. I referred to it in the report, yes.

23 Q. And you also said that you relied on
24 certain in-house studies?

25 A. In-house engineering projects which we worked

1 on regarding the development of water from the
2 Raritan formation.

3 Q. And these were generated by your own
4 firm?

5 A. Yes.

6 Q. were some of these prepared in
7 connection with the franchise application?

8 A. what? I don't understand your question.

9 Q. were some of these reports prepared in
10 connection with the franchise application which
11 resulted?

12 A. Oh, no. I'm speaking about work we've done
13 over the last -- oh, gee, I don't know -- I'd say 15
14 years or 20 years in Monmouth County. I'm talking
15 about successful production wells out of the, you
16 know, which derives water from the Raritan formation.

17 MR. SAGOTSKY: Perhaps the
18 question was with reference to some pertinence to the
19 franchise application. I guess you can answer yes or
20 no to that.

21 THE WITNESS: No, no.

22 BY MR. MARKS:

23 Q. And that report which you relied on were
24 used in connection --

25 A. My reports that I relied on were simply used

1 for me to develop my engineering feasibility and
2 nothing else.

3 Q. You said before that you had no
4 connection with the franchise application; is that
5 correct?

6 A. I have no connection with the franchise
7 application.

8 Q. Do you have anything to do with the
9 franchise feasibility?

10 A. The feasibility, no.

11 Q. Do you do anything --

12 MR. BRENNAN: I'm sorry. You do
13 have something to do with the feasibility of the
14 franchise.

15 THE WITNESS: I have got
16 something to do with the feasibility of this report,
17 of this point of view, I'd say yes.

18 BY MR. MARKS:

19 Q. Have you ever worked on a project of
20 this size?

21 A. As far as size of the well, yes.

22 Q. A project -- I'm talking about a project
23 of this size, the development?

24 A. Projects larger than this size.

25 Q. Where were they?

1 A. Primarily municipalities. Do you want a few
2 municipalities?

3 Q. Go ahead.

4 MR. SAGOTSKY: Please don't
5 volunteer. Just wait till the question comes through.

6 A. If you are interested in Monmouth County. I
7 have worked on Howell Township, Freehold Borough,
8 Borough of Roosevelt. As far as this general area --

9 MR. MARKS: I have no further
10 questions of this witness.

11 THE CHAIRMAN: Mr. Fessler?

12 MR. FESSLER: Point of
13 information. Storage system: You point out that a
14 300,000 gallon storage facility would be required.
15 Could you tell us anything more about that storage
16 facility? Is it to be an elevated, underground tank
17 or what?

18 THE WITNESS: No, it's going to
19 be an elevated tank. Whether it's going -- when you
20 say "elevated tank", I usually define that as a -- a
21 tank where the water supply is completely elevated as
22 opposed to stand pipe, even though it's elevated, the
23 water is from the ground level up.

24 MR. FESSLER: It will be an
25 elevated tank?

1 THE WITNESS: It may be an
2 elevated. In other words, the site will be served
3 simply by the grade of that particular tank.

4 MR. FESSLER: Can you give us any
5 idea of the height? We do know the pressure, 50 to
6 60 psi.

7 THE WITNESS: You like to try to
8 keep a system -- static pressure in that magnitude,
9 I'd estimate that the elevation would probably be
10 somewhere on the order of 150, 200 feet, that general
11 range.

12 MR. FESSLER: Do you have any
13 knowledge of a water facility of this capacity of
14 that height anyplace in Monmouth County that we can
15 go look at?

16 THE WITNESS: As far as --

17 MR. FESSLER: Three hundred
18 thousand gallon capacity, on the order of 150 to 200
19 feet?

20 THE WITNESS: There is various --
21 I'm trying to think of any one in particular that you
22 can go to.

23 THE CHAIRMAN: How about -- how
24 about Howell?

25 THE WITNESS: In Howell they

1 haven't gone out to the bid with the storage tank. I
2 believe it's 150 feet.

3 MR. FESSLER: Is there one in
4 Freehold?

5 THE WITNESS: I haven't worked on
6 personally, but my office has built one in Freehold
7 Borough. I believe that's a million gallons. I
8 personally designed one that's a million and a half
9 in the city of New Brunswick. I can't give you the
10 exact height.

11 MR. FESSLER: You answered my
12 question. I appreciate that. Thank you.

13 THE CHAIRMAN: Any other
14 questions, Mr. Fessler?

15 MR. FESSLER: No.

16 MR. BRENNAN: In prior testimony,
17 you stated that the sewage collection and treatment
18 system would be installed in totality almost prior to
19 there being any construction on-site. Mr. McDonald
20 said it's going to be much easier to make the deep
21 cuts for the gravity flow and everything. I don't
22 know if it is part of your report, but is it
23 contemplated that the total water system, including
24 the distribution system up to the point where the
25 individual consuming units would tap in, would be

1 installed prior to development of the site?

2 THE WITNESS: I'd imagine that
3 when you start installing the sewers, you make the
4 cuts for the sewers, you certainly install the
5 distribution lines at the same time so you minimize
6 the impact of the construction. Also, from a cost
7 standpoint, you don't want to put the water mains in
8 after you pave the roads. I'd say yes, you would
9 have to put the water mains in around the same time.
10 You wouldn't build the treatment plant the same time.
11 You drill the well first and determine the
12 characteristics of the water. And once you determine
13 that, you can design the proper treatment plant for
14 the particular site. That would be staged.

15 MR. BRENNAN: Well, then adding
16 your two million one odd, I believe, with the
17 estimated cost of the sewerage system was three to
18 three million three, somebody is going to have to
19 front-end that development on the order of five to
20 five million four.

21 Would that be correct, Mr.
22 Frizell?

23 MR. FRIZELL: Yes, I believe it's
24 in A-21. I believe that sounds right.

25 THE CHAIRMAN: Any other

1 questions?

2 MR. FESSLER: I'd like to have
3 information. You stated that various State agencies
4 have to approve the well. Is there any State agency
5 charged with ruling on the overall adequacy in terms
6 of the system that it will supply the householders in
7 this development with adequate water?

8 THE WITNESS: Well, what you have
9 to do is, before you construct the water mains,
10 whether it be the water mains or storage tank, you
11 have to prepare a comprehensive engineering report --
12 when I say comprehensive, would certainly -- would be
13 the magnitude in greater detail than this particular
14 report. You have to present that to the State as a
15 prerequisite to receiving their approval and you give
16 them design plans and detailed plans. You also have
17 to give them your engineering report and your basis
18 for design. They look at it.

19 MR. FESSLER: Which State agency,
20 please?

21 THE WITNESS: That's the
22 Department of Environmental Protection, Bureau of
23 Potable Water. They're charged with the requirements
24 of approving the systems.

25 MR. FESSLER: Thank you.

1 One last simple question. The
2 matter of this well, do you have to prove to the
3 State by any tests that the well will have the
4 capacity that you need to support the system you are
5 talking about? How is that determined?

6 THE WITNESS: Well, you have to
7 drill the well and when you drill the well, you test
8 it for the yield. And certainly it's academic at
9 that point. You know what you have.

10 MR. FESSLER: That, I assume, is
11 in the data you submit to the State?

12 THE WITNESS: Oh, yeah. You give
13 them the construction of the well, you tell them you
14 developed the well for an estimated yield. Then
15 after the well is actually drilled, the State would
16 have you furnish the State with the yield report,
17 which the well driller would undergo. And they also
18 come along with their own people and sample the well.
19 And they want to be certainly sure that, you know,
20 water which you derive from that well will be
21 acceptable from the potable water standpoint.

22 MR. FESSLER: One last question.
23 Mr. Frizell may have answered this before. I didn't
24 quite hear the answer.

25 Is there any requirement that the --

1 that this overall approval we just talked about, the
2 water system is adequate, any requirement on that
3 relative to when the first housing construction
4 starts? Is there any requirement or can the houses,
5 in effect, theoretically be all -- be built before
6 that permission is obtained?

7 MR. FRIZELL: The system would
8 have to be in place before the housing could commence.
9 The water supply system would have to be in place
10 before the housing commenced and the distribution
11 would have to, at least, proceed in accordance with
12 the construction. But as Mr. McDonald said, he
13 anticipated, from his experience, they would lay --
14 especially the large mains -- all at one time, very
15 early in the project.

16 MR. FESSLER: Can you attribute
17 your answer to that, that this overall approval that
18 he talked about, does that mean that the approval
19 will be obtained before the construction starts?

20 MR. FRIZELL: Yes.

21 MR. FESSLER: Thank you.

22 THE CHAIRMAN: Any more questions?

23 Thank you, Mr. DeNichilo.

24 (Whereupon the witness is
25 excused.)

1 MR. FRIZELL: Stuart Sendell.

2
3 S T U A R T D. S E N D E L L, a witness called on
4 behalf of the Applicant, having been duly sworn
5 according to law, testified as follows:

6
7 DIRECT EXAMINATION BY MR. FRIZELL:

8
9 Q. Mr. Sendell, what is your business and
10 profession?

11 A. I'm the senior vice president of Larson
12 Mortgage Company, which is a mortgage banking firm
13 and also president of Larson Development Company,
14 which is a development firm.

15 Q. And what are your responsibilities with
16 the Larson Development Company?

17 A. With the development company I'm primarily
18 responsible for the finding of sites and developing
19 of proposals in conjunction with the agreement we
20 have with the National Housing Partnerships of
21 Washington, D.C.

22 Q. Before you go too far ahead, would you
23 tell the Board what the National Housing Partnership
24 is?

25 A. Yes they're more of a building firm that was

1 created in 1969 as a result of the Federal Act of
2 Congress which, at that time, recognized and a number
3 of housing bills were passed to assist in the
4 development of the lower and moderate housing but
5 that there weren't sufficient building companies and
6 entities with the expertise and capital to build. So,
7 in accordance with that Act of Congress, a number of
8 private companies -- most of your major corporations,
9 banks and unions -- got together and raised forty
10 million dollars of capital which formed the National
11 housing Partnerships. And since 1969 till now they
12 have developed over 30,000 living units using various
13 government assistance programs on a full basis or a
14 partial basis.

15 Q. How long have you been associated with
16 Larson?

17 A. Larson Mortgage Company, eight years; Larson
18 Development Company was formed approximately two and
19 a half years ago.

20 Q. And Mr. Sendell, what is your own
21 education background?

22 A. I have a Bachelor of Science degree from
23 Fairleigh Dickinson University in business
24 administration with a minor in computers.

25 Q. How long have you been involved with

1 real estate, overall?

2 A. Overall since 1971.

3 Q. Now, were you asked to investigate the
4 site of the Orgo Farms and Greenhouses and the site
5 of the proposed Colts Neck Village Planned Unit
6 Development for its suitability and feasibility of
7 providing subsidized housing at that site?

8 A. Yes.

9 MR. BRENNAN: I'm sorry. You
10 said for the feasibility of providing what?

11 MR. FRIZELL: Subsidized --

12 MR. BRENNAN: Okay.

13 MR. FRIZELL: -- housing.

14 BY MR. FRIZELL:

15 Q. And in that analysis, Mr. Sendell, what
16 did you do?

17 A. Well, I have walked the property and viewed it
18 and also have compared the general characteristics of
19 the site and the area to the site selection criteria
20 of both the Federal Housing Administration, sub-heading
21 under its Department of Housing and Urban Development,
22 and, site selection criteria of the State's Housing
23 Finance Agency.

24 Q. Before we go too much farther on the
25 site selection criteria, would you explain to the

1 board what is subsidized housing and what are the
2 programs involved?

3 A. Okay. It's a rather complex thing. Its titles
4 are a difficult thing to separate and I should start
5 by saying that the term "subsidized housing" -- and I
6 don't think it's a correct one -- in my opinion,
7 we're talking about assisted housing, affordable
8 housing. And the courts have sometimes called it "least
9 cost housing" and that is housing that is affordable
10 to an income level that the government has set -- and
11 this is the Federal Government -- in their own
12 definitions for eligibility to assisted housing.

13 Generally, most of the government, perhaps for
14 rental units, use a definition of low income that
15 corresponds to 30 percent of the median income on a
16 county-wide or standard statistical area. So that
17 each area of a country has a median income. And
18 based on that median income, 80 percent or less is
19 defined as low income. For the purpose of
20 illustration, in the Monmouth County area the median
21 income -- and this changes every six months, so I'm
22 going to speak in slight --

23 MR. SAGOTSKY: M-e-d-i-a-n,
24 meaning there is as many below as above that figure
25 for a family of four?

1 THE WITNESS: Well, it's median
2 income as a family income, all income that -- that
3 families produce. And in Monmouth County, would be
4 roughly \$22,000, the median, 80 percent of that is
5 what is set on a family of four base, for
6 illustration, would be around \$17,000 or less, would
7 be defined fine by government standard as low income.
8 Very low income would be defined as 50 percent of
9 that figure, which would be approximately in the ten
10 to \$11,000 family income range.

11 BY MR. FRIZELL:

12 Q. Now, do I understand then that the
13 \$17,000 range, the 80 percent of the median income,
14 whatever the exact number happens to be today in
15 Monmouth County, the 80 percent of that --

16 A. Based on the family of the four; down for
17 smaller families, up for larger families.

18 Q. These would be the families that would
19 be eligible for subsidy under various programs?

20 A. Basically under the rental programs.

21 Q. Under the rental program?

22 A. There are home ownership assistance programs
23 that operate more in the range of 95 percent of
24 median income. And current housing legislation in
25 process is thinking right now to 120 percent of

1 median income for a home ownership situation.

2 Q. Is that to say that under those programs
3 and under the proposed program that a family might be
4 eligible for subsidy, a family of four, if it earned
5 in the \$20,000 range under existing programs and
6 \$24,000 range under this proposed program? That's
7 the the 120 percent?

8 A. In the home ownership.

9 Q. That's home ownership programs?

10 MR. BRENNAN: Mr. Frizell, may I
11 ask you a question? Would the subsidized units here
12 be rental or ownership?

13 THE WITNESS: The way I answered
14 was home ownership.

15 MR. BRENNAN: within the
16 definition of the project itself, are they going to
17 be rental or ownership, just so we can go one track
18 and spare Mr. Sendell the pain.

19 MR. FRIZELL: Both, Mr. Brennan.

20 MR. BRENNAN: Both. Thank you.

21 BY MR. FRIZELL:

22 Q. Would you tell us a little bit more
23 about the different programs that have been used in
24 the past and are still existing and the proposed
25 program?

1 A. The basic type of government assistance that
2 are involved are two types. One, the provision of
3 mortgage funds; and, two, the provision of assistance
4 to the actual family unit in meeting an obligation,
5 whether it be a rental or home payment obligation.

6 The most active programs at the moment are in
7 the rental area, entitled Section 8 -- for military
8 people that's a connotation that's confusing -- but
9 that's the regulation code that is applied to it.
10 And what Section 8 is, is an attempt that began in
11 the Nixon administration to use housing assistance in
12 a different way than it had been used prior. And
13 that is to separate the assistance that's given to
14 housing from that of the development, per se, and
15 give it or assign it to the individual so that the
16 individual has more flexibility. And under the
17 Section 8 program, the government pays on behalf of a
18 tenant the difference between market rent in a
19 developed development and what 25 percent of their
20 gross income would be. Traditionally, in prior
21 programs of assistance, the government either
22 provided money to a builder to lower the cost of the
23 development, wrote down the cost of land or used
24 other techniques to minimize the cost. The theory of
25 the Section 8 program was to provide the assistance

1 to the consumer and then the development itself could
2 be built in conformance with general market standards
3 and the actual assistance would flow to the person
4 who would pay it to the owner.

5 Q. Is that to say that there would be no
6 requirement is to the particular type of unit; that
7 the assistance could go to the family and not to the
8 builder or to the unit itself?

9 A. It would be to the builder, only by way of the
10 consumer.

11 Q. Paying rent?

12 A. Paying his portion of the rent and the
13 government paying the balance.

14 Q. What other programs --

15 A. Another basic --

16 Mb. LARKIN: Before you get off
17 that one for a second, is there any limitation in
18 terms of dollar monthly rental or yearly mortgage
19 costs and so forth? In other words, if someone goes
20 in and puts a half million dollar house up, does the
21 government think that's subsidized, the difference
22 between the fair --

23 THE WITNESS: Very good question.
24 The way the program works is, you give -- the amount
25 of the Section 8 money is calculated by the

1 Department of Housing and Urban Development in
2 Washington. They then assign it all over the country
3 to regions. Within those regions it's further broken
4 down, some given to the State Housing Finance Agency.
5 The balance is put up for competitive bidding. And
6 the purpose of competitive bidding is to get as many
7 proposals with the best combination of what you just
8 mentioned, the lowest rents, so that the subsidy can
9 travel on the further basis as the its highest
10 quality of the product, the houses within government
11 standard and the best development team. And the last
12 thing, which I started discussing, is the site
13 criteria that are best.

14 So it's really allocated on a
15 competitive basis. There are published fair market
16 rents which, like the income figures, are maximums.
17 Then the selection of the projects fall -- and
18 programs -- that are at or below those figures.

19 MR. LARKIN: So there are maximum
20 figures but they vary by areas of the country?

21 THE WITNESS: They are calculated
22 each year by the government based on the construction
23 cost. It's trended to the normal development time of
24 two years to two and a half years from beginning of
25 the approval to final construction.

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THE CHAIRMAN: What is an area?

Who defines an area?

THE WITNESS: The areas that they follow are established statistical metropolitan areas, which generally follow the trend of counties in the State of New Jersey.

BY MR. FRIZELL:

Q. What are the other programs? Have you finished with Section 8 in terms of describing it generally to the Board?

A. Unless there's another question, that's the nuts and bolts of it.

Q. What are the other programs available?

A. The other most active program -- not so much in New Jersey at the moment -- is the 245 program, which is a home ownership assistance program, where again, like the Section 8, the government pays the difference between a four percent interest rate mortgage and the market interest rate at the time the loan is made or 20 percent of the person's gross income, whichever level of assistance is less to the government. The house sales price under that program and the mortgage have limits. The income of the purchaser has limits. In the current program, that is inoperable in New Jersey unless there's an

1 additional internalized subsidy provided by the
2 developer to write land down or shift the cost within
3 a large development. The new program, which is
4 currently in the House, which should come out in
5 September in some altered form, has recognized that
6 New Jersey and the northeast have been not able to
7 use that program because our costs are significantly
8 higher; and, also with the crunch of the last six or
9 seven months of mortgage money, the government has
10 proposed an expanding of that program to higher
11 income limits and higher mortgage limits which would
12 be more in the sixty to \$70,000 range of sales price;
13 and, mortgage and income, as I mentioned before, to
14 120 percent as opposed to 95.

15 The interesting thing about that
16 particular program, the persons whose incomes are
17 certified either annually or every two years, and
18 particularly in the home ownership program, from our
19 company's programs, the persons tend, due to the
20 inflation and general increases in salary, to work
21 their way out of the assistance, since it is a
22 function of their gross income and the mortgage. Up
23 to now there is a fixed cost. There is a tendency
24 over six or seven years to have the person move up.

25 MR. LARKIN: Unless they're not

1 going to work any harder.

2 MR. BRENNAN: I think you are
3 also proceeding on the assumption that the fixed rate
4 as opposed to adjusted rate mortgages will continue
5 in the future.

6 THE WITNESS: In the area of
7 government mortgages, which this is, an FHA mortgage,
8 the fixed mortgage is still fixed. But there are
9 other types of mortgage vehicles which I assume
10 you've probably all seen in the paper, which are also
11 assistance in a way. but they are not using direct
12 dollars of the government to function. And they
13 would be graduated payment mortgages, which are both
14 FHA insured and conventional; where, in essence, the
15 person makes lower mortgage payments in the earlier
16 years and as their income increases, their payments
17 increase. The principal amount of the mortgage is
18 actually declines over the early years to keep the
19 payments lower.

20 MR. BRENNAN: And negative
21 amortization?

22 THE WITNESS: And negative
23 amortization, which is a function of the types of the
24 property values we've enjoyed in the past. Those
25 types of vehicles are, in my mind, forms of

1 assistance but are not direct subsidies of the
2 Federal and State government.

3 MR. BRENNAN: Under the latest
4 government program, the negative amortization can
5 build the principal amount of mortgage up to 110
6 percent of the sales price, 110 percent of the
7 original mortgage amount. And I think it's even here
8 up to 113 percent under the last one that I've seen
9 proposed.

10 THE CHAIRMAN: This program?

11 THE WITNESS: I should mention on
12 the graduated payments mortgage, there is a higher
13 down payment required than under the normal FHA and
14 VA mortgages, where there is a minimal down payment
15 program to offset --

16 THE CHAIRMAN: This program, you
17 say, the government supplies two things, the mortgage
18 and a money grant? You didn't call it a money grant.
19 You wouldn't call it a dole. What do you call it?

20 THE WITNESS: Assistance.

21 THE CHAIRMAN: In the form of
22 money.

23 THE WITNESS: Exactly.

24 THE CHAIRMAN: Is that assistance
25 available to everyone else in a particular area that

1 lives there that aren't involved, say, with this PUD?
2 Say they've gone out and bought their own home and
3 fought their way into it and they want assistance.

4 THE WITNESS: The assistance, as
5 I describe, is allocated for units that are built
6 under that program or rental projects.

7 THE CHAIRMAN: They exclude
8 someone that's gone out and built their home? They
9 can't get any assistance?

10 THE WITNESS: Not through the two
11 programs that I describe.

12 THE CHAIRMAN: Is there any
13 program that allows them --

14 THE WITNESS: There have been a
15 number of programs that have provided relief.

16 THE CHAIRMAN: I'm talking about
17 government.

18 THE WITNESS: Yeah, government.
19 There are a number of programs for people that have
20 FHA and VA mortgages to insure assistance during
21 tough times.

22 THE CHAIRMAN: Where they
23 remortgage their house and the government would take
24 the mortgage and the government would give them a
25 grant because they're --

1 THE WITNESS: Not grant,
2 forebearance.

3 THE CHAIRMAN: So, in other words,
4 this is exclusionary to this development only? It
5 leaves the rest of the people out?

6 MR. BRENNAN: Yes. That's the
7 intent of the government program.

8 THE WITNESS: It would be limited
9 to certain people and certain income limits and
10 certain units. They have certain price limits.

11 MR. BRENNAN: Jack, it aims at
12 qualified projects as opposed to individual qualified
13 residences.

14 THE WITNESS: The Section 8
15 program I described applies to three different types
16 of housing: Existing housing, so that someone who is
17 the same income levels as I described before could go
18 to -- I think in Monmouth County an agency and
19 receive that same type of assistance and go to any
20 existing apartment and obtain a unit using the same
21 level of assistance. There's a certain bucket for
22 that type of assistance. Then there's another area
23 for assistance to new construction, which is what
24 we're talking about here. And there's another
25 segment to rehabilitated housing. So, there's three

1 different levels of funds. But in new construction
2 or renab, specific projects that were approved based
3 on either a portion of the units or all of the units
4 receiving this assistance, is the way the program
5 operates.

6 MR. SAGOTSKY: So that your
7 testimony is to clarify for the Board what you mean or
8 what we think you mean by subsidized housing as it
9 appears on the maps or has appeared in the testimony
10 to date?

11 MR. FRIZELL: Yes. His testimony
12 really is geared to just the feasibility of providing
13 it, the realistic aspect of the project in terms of
14 subsidized housing and subsidized housing aspect of
15 it. And I think that since that is a type of unit
16 and a type of housing that the Board may not be
17 familiar with, that the more knowledge they have
18 about subsidized housing, the better it is.

19 BY MR. FRIZELL:

20 Q. Are there any other programs --

21 MR. FRIZELL: Yes? I'm sorry.

22 MR. FERER: Feasibility of what?

23 MR. FRIZELL: Of providing it and
24 building it at this site, in this project, in
25 accordance with the plans that we've submitted.

1 MR. BRENNAN: well, you are
2 bringing -- addressing the issue of the feasibility
3 of obtaining the financing. You are not addressing
4 the feasibility of -- since you objected to
5 subsidized, I'll call it "affordable" -- housing on
6 this site. In other words, you might be be able to
7 build the project. You might be able to get
8 subsidized financing.

9 MR. FRIZELL: I don't mind
10 subsidized, Mr. Brennan.

11 MR. BRENNAN: But that doesn't
12 necessarily mean -- I don't think Mr. Sendell has yet
13 testified that somewhere out there is a large mass of
14 people who are most desirous of moving into this
15 subsidized housing on this site. I don't think he's
16 addressing this question. Somebody else may very
17 well. But I think he's only talking about there are
18 government programs which provide financing to make
19 housing more affordable to low income segments of the
20 population.

21 MR. FRIZELL: Yes, and the
22 suitability of the site.

23 MR. FERER: Are we going to
24 discuss the feasibility of a project of this nature
25 in Colts Neck qualifying for assistance?

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MR. FRIZELL: Yes.

BY MR. FRIZELL:

Q. Are there any other programs that you think would be of significance?

A. Yes. There's two other areas I think that are important to mention because these developments all change as time goes on. And it's important, I think, to know what the new housing strategy is at the Federal level. The Federal government has already taken the position before Congress in the new housing bill that rental housing, in total, has proven to have become an unfeasible entity and that they're concerned that the overall rental housing, as a nation as a whole, not just New Jersey, is shrinking due to the fact that the costs of construction have risen quicker than the incomes of potential renters. And on the reverse side, condominium conversions and other developments are changing the supply of rental housing by pulling it off the market. So they have proposed in the new housing bill -- it's not finalized -- that a new, what is called "moderate assistance program" for what we traditionally call market rate rental housing be developed in order to keep, on a national level, the supply of rental housing; and, with that, the demand for gradual

1 amounts of five and a half to seven and a half
2 percent mortgage rates for rental projects. If a
3 developer would propose a rental project, qualify for
4 that lower rate, the mortgage given, that he would
5 agree ahead of time to, one, keep the project as a
6 rental project and not convert it over a period of
7 time; and, also agree to start, as I described in the
8 other programs, increasing that market rate -- or
9 that lower rate interest -- to a market rate over a
10 certain schedule. And they're arguing now of what it
11 would increase to.

12 And as well as going to those two stipulations,
13 the current proposal requires that 20 percent of the
14 units within this rental project would be allocated
15 for Section 8 assisted tenants. And up to now, under -
16 and I think it's important for this particular site --
17 under the prior Section 8 program and this new one,
18 there has been for project selection a bonus or an
19 incentive to develop the -- to propose a portion of
20 assisted units as opposed to 100 percent of assisted
21 units. Meaning, they get a higher rating and higher
22 chance of being selected if they're proposing a
23 development, a combination of some tenants receiving
24 assistance and some not receiving. So this new
25 program could very well have an impact on this type

1 of development.

2 Aside from that, in California --

3 Q. Let me just go back over that new
4 program, proposed program.

5 First of all, it would apply to all
6 rental housing regardless of the type? That is, I
7 assume, it could be multi-family but it would be
8 garden apartments, townhouses, so long as it was a
9 rental project?

10 A. Within certain limits.

11 MR. SAGOTSKY: And where there is
12 rent control, does that have a bearing; regardless of
13 rent control?

14 THE WITNESS: Almost all FHA
15 insured mortgages, as well as developments receiving
16 assistance by way of the tenants, are exempt from
17 rent control if they're in a community that has rent
18 control if the Federal government, through HUD, makes
19 the claim that the feasibility of the project is
20 hampered by rent control.

21 BY MR. FRIZELL:

22 Q. Specifically, as low as 20 percent of
23 that project even if it had assistance of lower
24 mortgage, the federally insured mortgages at very low
25 rates, only 20 percent of those have to be subsidized

1 under the program?

2 A. Right.

3 Q. And, in fact, only 20 percent were
4 subsidized it would receive the priority because you
5 have a mix?

6 A. Under the current program, it would receive a
7 higher priority. Under the new program, they will
8 all have 20 percent. The intent is to build more
9 market rental housing, which is not being built and
10 take the limited funds for housing assistance and
11 spread them further. And this way, the same amount
12 that will build 20 units will build 100 units and get
13 more mileage.

14 MR. BRENNAN: One percentage of
15 the project is going to be dedicated to affordable
16 subsidized housing. Will it meet the 20 percent
17 quota?

18 MR. FRIZELL: Right. Now, as far
19 as an exact number, I'd rather not give it now. We
20 will develop it at the next meeting. There is in the --
21 and I think if you listen to Mr. Sendell's testimony
22 you'll understand why it's difficult to answer --
23 there is a section set out for subsidized housing.
24 And to clarify that section, we propose it
25 alternatively as either Section 8, senior citizens

1 housing, 120 units; or, 90 family units. Now --
2 which is roughly -- that is roughly in the ten
3 percent range. To make that ten percent and the
4 reason for those, I was about to ask Mr. Sendell.

5 BY MR. FRIZELL:

6 Q. Mr. Sendell, what is the current status
7 of senior citizens funds for senior citizens projects?
8 Is it questionable in terms of its availability?

9 A. It's questionable to where it's been reduced in
10 availability because of the fact that under the
11 housing programs, the majority of the developments
12 that have been built to date have been senior
13 citizens housing and the government has tended to
14 allocate additional assistance to the State Housing
15 Finance Agencies under a form you can only get "X"
16 amount of seniors, "X" amount of family use. Really
17 generally availability is to a nonprofit organization
18 that has a prior track record of having built senior
19 citizen housing and even that is changing as a total
20 overall availability.

21 Q. Secondly, besides the section that is
22 allocated in the plan for subsidized housing, all
23 rental housing in the proper form which if the new
24 housing bill would pass for which this mortgage
25 program were obtained, would have 20 -- if subsidized,

1 20 percent subsidized?

2 A. would or could?

3 Q. would have to?

4 A. Okay, if you use that program.

5 Q. Yeah, would have to.

6 A. Can I clarify that?

7 MR. BRENNAN: But the program has
8 not yet been passed by the Congress.

9 MR. FRIZELL: That's right.

10 MR. BRENNAN: So that shouldn't
11 we more deal with the realities of the situation
12 today as opposed to what Washington might do which
13 would further enhance this segment of the project?

14 MR. FRIZELL: We'll talk -- as I
15 said, we'll talk at length about the nature of the
16 units, the types of the units, the value of the units.
17 I think what Mr. Sendell is to talk about is the
18 nature of the programs and the availability of the
19 programs for the different types of units so that you
20 have to take Mr. Sendell's testimony and apply it to
21 the project as it is more specifically defined at a
22 later meeting. Mr. Sendell has been involved in
23 terms of consultant about advising the declining
24 availability of the senior citizens subsidies. When
25 we first came on this project, I think you recall we

1 had senior citizens housing shown. Based on Mr.
2 Sendell's advice that, you know, for us to represent
3 that and not be able to get those funds, you know,
4 might not have been candid unless we made the change.
5 And that was the result that we came to the slight
6 change that we discussed at the early meeting.

7 MR. SAGOTSKY: A-7A.

8 MR. FRIZELL: Yeah, A-7A. That's
9 now that led to it. It's the vagary of that Federal
10 system that we're working against.

11 THE WITNESS: Could I add a
12 clarification? There's nothing to say that the total
13 number of units in this home area, whatever you are
14 calling it, have to be affected by the 20 percent.
15 You could build a mix of rental townhouse and some
16 section of the townhouses are the rental, no
17 mortgage, like we described or assistance; and, one
18 area could be designated as a rental project that
19 would be 80 market and 20.

20 So, that the government doesn't
21 look at the total. They look at what you submit
22 under it. You could use all or part of it. There is
23 great flexibility there. Under today's funding of
24 Section 8, you could do the 20 percent exactly the
25 way I described it, right today. As a matter of fact,

1 an application of that type would be very competitive
2 on both the Federal level and the State Housing
3 Finance Agency level; in my opinion, would proceed
4 given all other factors were in line.

5 BY MR. FRIZELL:

6 Q. Are there any other programs? You
7 mentioned about something in California?

8 A. Well, the other method that is known to me as a
9 mortgage banker would be internal subsidization,
10 where the builder or developer themselves -- under
11 California law, they passed a law that certain size
12 developments, a certain number of units have to meet
13 a test of affordability. If the project is big
14 enough and the market is strong enough there are ways
15 within the structuring of the overall price that a
16 certain amount of the affordability can be provided
17 by the developers, themselves, also, through
18 spreading of costs on the basis of certain units
19 taking more costs, more than others. It seems to
20 have worked. Articles I have read indicate it seems
21 to have worked. In some cases, in --

22 MR. BRENNAN: Inclusionary zoning.

23 THE WITNESS: Correct. So a
24 combination of all that type of vehicles could be
25 considered.

1 BY MR. FRIZELL:

2 Q. All right. In terms of the site
3 analysis criteria that you referred to earlier for
4 Federal programs, could you just describe what they
5 are and where they're found?

6 A. Generally, within the code of Federal
7 regulation, under the Section 8 program, there is a
8 section on site criteria. In general, their concern
9 is that there's a market, that utilities are
10 available, that the proposal increases the choice or
11 housing choice of possible tenants or buyers.

12 Q. When you increase the housing choice,
13 what does that mean?

14 A. That it's not locating the various types of
15 units in areas that already have over-concentrations
16 of similar types of housing or of similar income
17 groups. So that you are widening the choice that a
18 potential tenant or owner would have. That's one of
19 the tests that the Federal government applies to a
20 site.

21 The availability of supportive services, the
22 basic test there is that the services that would be
23 available are generally in the same size and scope
24 that support the market that occurs around the
25 project. There's no difference between this proposal

1 and other proposals in the same market area.

2 Q. Which is to say a standard market
3 proposal in the general area or standard market
4 housing?

5 A. Correct. And you are by the way I described it,
6 the separating of the assistance to their portion,
7 leaves the proposal itself more meeting market tests
8 than ever before. It should be, in the eyes of the
9 Federal government, considered, conceived, designed,
10 built and operated and managed more in the sense of a
11 market proposal with the question of where the extra
12 help is coming from; rent being less of a significant
13 factor than it had been in the past.

14 Q. So this services is a relative test to
15 the general area?

16 A. Correct.

17 Q. And were there any other criteria that
18 you recall?

19 A. Really, that's basically it for elderly housing
20 than for family housing in the sense of
21 transportation requirements and other such needs
22 which may differ.

23 Q. All right. Now, did you -- first. What
24 is --

25 A. Those, by the way, were the Federal

1 requirements. You want me to go through the State
2 requirements?

3 Q. Are they different?

4 A. Yes, somewhat.

5 Q. What are the differences?

6 A. The State, for the first time, is developing a
7 rating formula for rating the various proposals;
8 because, like in most of these programs, there are
9 more proposals than there are funds available. The
10 last word I --

11 MR. SAGOTSKY: Name the agency?

12 THE WITNESS: The New Jersey
13 housing Finance Agency, which has the role of
14 providing mortgage funds by way of tax-exempt bond
15 issues and also allocating the rental assistance to
16 projects, both functions happening at the same time.
17 They have come up with a draft set of site selection
18 criteria, which I'm led to believe -- which will be
19 finalized by their Board either this month or early
20 next month -- which creates different emphasis in a
21 mathematical way for projects so they can be better
22 equated to their criteria. They have a formula that,
23 like the HUD formula, would give extra credit for,
24 one, family proposals; two, proposals that have a
25 portion assisted as opposed to all of the units

1 assisted; three, the projects have a wider choice, as
2 I mentioned before, of housing opportunities. They
3 have a stronger emphasis in the rating formula on
4 rehab of the projects in the city. They also have a
5 stronger or equal emphasis on city projects to ones
6 that are increasing the availability of wider choices.
7 It's a complicated formula. What they intend to do
8 is take every project that's been in their pipeline
9 for years as well as new ones that come in, rate them
10 all and ones that have been waiting a long time get
11 that extra credit for the length of time they've been
12 held up; then publish that list for each sponsor and
13 each community to see -- so you can see where you
14 stand in getting funding. I think generally, in my
15 mind, it's tended to have a little more emphasis in
16 the Federal in urban needs except to the extent that
17 it does also show an equal emphasis in what I would
18 call suburban or surrounding areas.

19 If we're talking family housing,
20 senior housing, I think they're much more, in their
21 rating formula, stressing either a community that has
22 already provided some family housing or an urban
23 setting. It's less likely, if not unlikely, that
24 under their formula suburban could get senior citizen
25 housing and if it hasn't also, at the same time or

1 prior, address the family needs that may exist.

2 THE CHAIRMAN: Can I ask a
3 question, myself?

4 MR. FRIZELL: Sure.

5 THE CHAIRMAN: Federal assistance
6 you say the pattern has gone, number one, to urban
7 and then you said to suburban?

8 THE WITNESS: I didn't say that.
9 This was State I was talking about. And I was saying
10 that the State revised formula has put more emphasis
11 on urban, rehab, and in the area of family housing,
12 suburban locations. Those are the three emphases.

13 THE CHAIRMAN: Where does that
14 leave rural?

15 MR. FRIZELL: Do you know any
16 rural municipalities around here, Mr. Schrupf?

17 MR. SAGOTSKY: You are not going
18 to bring up that decision?

19 MR. FRIZELL: No. We have a 42
20 page decision on rural. But, in any event, if you
21 can answer the question --

22 THE WITNESS: I don't know even
23 the housing and finance definition of suburban versus
24 rural. I guess it's better to say non-urban than
25 probably what it might be.

1 THE CHAIRMAN: I noted no rural
2 in there at all. I thought it was totally cast out
3 of the picture.

4 MR. FRIZELL: I think I
5 understood there is no distinction between rural and
6 suburban; and, it's urban and suburban.

7 BY MR. FRIZELL:

8 Q. Mr. Sendell, I think you are referring
9 to most of these projects are essentially in suburban
10 A. I guess I'm a product of suburbia.

11 MR. SAGOTSKY: Where?

12 THE WITNESS: Fourteen different
13 communities in New Jersey. I presently live in
14 Morristown, New Jersey, which is probably a little
15 bit of both.

16 BY MR. FRIZELL:

17 Q. Mr. Sendell, what is your own investment
18 with development of subsidized housing?

19 A. My role in the mortgage company, processing
20 mortgage commitments for this type proposal. In fact,
21 three different ways: Process mortgages for this
22 type of housing; we also act as a consultant to
23 nonprofit groups that wish to get involved; and, also
24 to developers and also, too, consultants to banks, in
25 many, many cases, who have a need to do a similar

1 type of loan and realize that they need expertise to
2 process the necessary government approval for
3 financing under Section 8.

4 The development company was was to act in a
5 more direct way with the Housing Partnership as their
6 developer in New Jersey, whose job was not only
7 arranging finance but to develop proposals. And
8 under that agreement, we have processed, closed the
9 mortgages and actually built and are currently
10 renting our first proposal under that agreement.

11 Q. Under the National Housing Partnership?

12 A. Right.

13 Q. You have your actual --

14 A. Two hundred fifty units, yes.

15 Q. When you put your other hat on, your
16 other title for the mortgage company, you act in a
17 consulting role?

18 A. Consulting and finance, both of them.

19 Q. In terms of applying from your
20 experience, Mr. Sendell, applying the criteria that
21 have been applied, did you form an opinion as to
22 whether or not this site in question here is an
23 appropriate site, one which would become eligible for
24 these programs?

25 A. Yes, in my opinion; specifically, a partially

1 assisted as opposed to a totally assisted proposal
2 would be acceptable to either the Federal authorities
3 through a Federal processing stream or through the
4 State through a State processing stream. And, in
5 fact, due to a number of situations, would actually
6 get some priority in the sense that it would be
7 meeting certain of the criteria that they consider to
8 be extra credit type criteria.

9 Q. Which are those?

10 A. The widening of the opportunities and the
11 partial nature of the assistance to the total project.

12 THE CHAIRMAN: In making that
13 determination, which we appreciate, you surely must
14 have had some similar development in mind that would
15 draw that conclusion for you; or, is this hypothesis
16 on your part?

17 THE WITNESS: Well, I have been --

18 THE CHAIRMAN: In other words, do
19 you know of one that's very similar in size and so
20 forth that was acceptable to the Federal and the
21 State and does get assistance?

22 THE WITNESS: Not one that I've
23 been directly involved with. I guess the best way is
24 meeting with both the State and the Federal
25 Government and listening to what their priorities are.

1 specifically towards the family and in regards to the
2 partially assisted site and knowing what their
3 general -- other site criteria are. They are both,
4 the state agency and the federal agency encouraging
5 submissions at this type. So that it's that I'm
6 rating, as opposed that I've been involved -- to a
7 specific one that's very similar.

8 THE CHAIRMAN: I'd hope that you
9 would have one in mind. It would be very refreshing
10 to have one witness come and say I can tell you where
11 one is.

12 THE WITNESS: I can tell a very
13 interesting example, the township -- particularly
14 with the mention of the word "rural" -- the Township
15 of Morris, through an agreement with the housing
16 authority of Morris County, which is also eligible to
17 get some of the Section 8 financing I described,
18 provided a 100 unit senior citizen project in what
19 would be considered, in my mind, one of the more
20 remote areas of Morris Township. It's a very rural
21 township. And, in fact, derived their funding for
22 that project through -- and this is another way to
23 fund -- through the farmers home program, if you can
24 picture that. Because, that particular area of the
25 township met certain tests, rural characteristics.

1 Farmers Home came and provided the mortgage loans and
2 even that development had less direct access to
3 shopping than you might have in a more urban or
4 developed area. They were able to accommodate that
5 through the provision of jitney buses and other
6 things that had to be within the proposal. And that
7 example -- and I'm not directly involved, I'm just
8 watching as an observer -- certain of the criteria
9 they didn't meet exactly. They were able to, however,
10 obtain funding and they just broke ground on it the
11 other day. In that particular case, the County Board
12 of Freeholders provided the site with county-owned
13 land so it could proceed. So there are ways to make
14 it happen in a variety of settings.

15 THE CHAIRMAN: That is a good
16 example; and, I'm aware of Morris Township, how it
17 encircles Morristown. And are you aware of the fact
18 that the original key proposal here was, we're going
19 to provide senior citizens housing? And now you've
20 just recommended to downgrade senior citizens housing
21 and cut it out, almost all, knowing you can't draw a
22 simile of their type? In one case it's great but not
23 for Colts Neck.

24 THE WITNESS: I think I said the
25 funding is being less available. In fact, the

1 project had problems because it was right at the
2 point that the funding was less available. It's just
3 as a practical alternative. The availability of the
4 funding for it is getting less, even though the need
5 is increasing.

6 MR. FRIZELL: Let me just clarify
7 something, Mr. Schrumpt. If it were the decision of
8 the Board that it should be senior citizens housing
9 for Colts Neck -- we proposed it as an alternative
10 for that reason, we felt because in all candor the
11 programs are waning in that area or may not be
12 available, that we should have an alternate proposal
13 for that site in the form of family subsidized
14 housing. But we would have no difficulty with a
15 requirement that that be senior citizens housing, as
16 proposed. I don't mean to say -- we were only being
17 candid when we came forward with the information that
18 this form of subsidy may not be available. I have no
19 problem with the original proposal for senior citizen
20 housing.

21 THE CHAIRMAN: That's very
22 refreshing to hear. I'm glad. It seemed to
23 constrict itself. You had taken a complete, 100
24 percent turnaround.

25 MR. FRIZELL: It wasn't intended

1 to be that and it would be no difficulty for us to
2 make it senior citizens housing. We'll get the other
3 programs in the present project and find the family
4 housing elsewhere. We had -- we had and have great
5 hopes for senior citizens housing. We hope that that
6 is -- that would be the general actual outcome. But
7 it's just a matter of candor. I can't bring in a
8 witness whose telling us that that particular program
9 is in trouble, those programs may not be available
10 when we build this project and still propose it. And
11 that's why we've felt it necessary to just --but in
12 any event --

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

15 MR. FRIZELL: Yes, certainly.

16 MR. LARKIN: If, in your judgment,
17 this particular project were proposed for a site in
18 Howell Township similar and characteristic to the
19 site of the Orgo Farms, would you feel there was any
20 difficulty in obtaining the necessary funding and so
21 forth for the site if it were?

22 THE WITNESS: Are you talking
23 about senior now or just generally?

24 MR. LARKIN: Either/or, 230 acre
25 site in Howell or Freehold Township, similar

1 characteristics?

2 THE WITNESS: In my view of this
3 area, I see a difference between those as far as
4 their acceptability.

5 MR. LARKIN: So that your
6 testimony is that this site does have characteristics
7 that apply but it's not exclusive of other sites
8 within western Monmouth County?

9 MR. FRIZELL: When you said
10 similar characteristics, you are talking about the
11 things -- you are talking the services relative to
12 the market, the availability of utilities?

13 MR. LARKIN: That's correct.

14 MR. FERER: By "this site" are
15 you referring to Colts Neck or this particular parcel
16 of land, the Orgo Farm?

17 THE WITNESS: Well, I'm not an
18 expert of all of Colts Neck; and, I have only looked
19 at that site. And there are some things there that
20 are of interesting note to me. If I remember
21 correctly, there is a school somewhat close to it;
22 there is a commercial zone closer to this than other
23 parts of Colts Neck; there is a bus line that runs by
24 the property. Those are three general
25 characteristics that apply to Colts Neck. But

1 generally, it's closer to major transportation of 18
2 for cars and for the bus line, the schools and the
3 commercial zones. So those are the things that are
4 additional positive points.

5 MR. FERER: Other than the school
6 the things that you mentioned are incorporated within
7 the development. The commercial areas and so forth
8 other than existing --

9 THE WITNESS: If I remember
10 correctly there's a bigger commercial shown than just
11 within this proposal.

12 MR. FERER: That's true.

13 MR. FRIZELL: Referring to Route
14 34.

15 THE WITNESS: The plan for the
16 town has said there's a certain commercial zone and
17 it's adjacent to this parcel.

18 MR. LARKIN: I have one other
19 question, if I could? Don't the government programs
20 and you described one in this case, senior citizens
21 housing -- can come and go?

22 THE WITNESS: See, the grey area
23 is a result of the changes that happen.

24 MR. LARKIN: Have you considered
25 the possibility that by 1985 the Section 8 housing

1 will have -- assistance will have changed
2 significantly and that this might render it
3 unfeasible?

4 THE WITNESS: My professional
5 reaction to that is that, one, it's a pretty high
6 likelihood within five years the current program
7 would be adjusted significantly, to use your word.
8 But my own feeling is, the trend over the last 20
9 years in housing has been that it's becoming more and
10 more a product that's not being able to be met within
11 the traditional marketplace. For instance, as a
12 mortgage banker, the number of people who can buy
13 their first home has been shrinking rapidly over the
14 last seven years. More and more of the home buying
15 has been done by people who bought an earlier home.
16 So that although I see changes, I see -- and some
17 people will like that trend, some won't -- a larger
18 role within five years and even a larger role in ten
19 years toward some sort of cooperation between private
20 enterprise and government to provide housing.

21 Housing has become -- and I may
22 be editorializing, stop me -- an investment decision
23 in the minds of people instead of the shelter
24 decision. I expect that slowly changing government
25 policy to get houses back to a style and at a cost

1 and a type more like the proposal than what -- as I
2 said, I'm a product of suburbia -- than we've been
3 used to in the last 20 years. It would be less
4 likely that we can continue under the old method.

5 Also, family sizes are changing;
6 income levels are also. I spend 60 to 70 percent of
7 my time financing townhouse condominiums and much
8 more dense housing than we're used to because that is
9 where the market is at this moment. So I see those
10 things of making it more likely to finance it.

11 BY MR. FRIZELL:

12 Q. On that point, Mr. Sendell, from a
13 standpoint of reasonability -- I'm not talking about
14 theoretical possibilities -- but from a reasonable
15 standpoint, what kinds of densities for a particular
16 housing section or a particular housing project do
17 you think are reasonably necessary in order to obtain
18 subsidies, partial subsidies, for the project for the
19 different housing units, townhouses, for instance?

20 A. Townhouses for sale generally, in my mind,
21 would be in the six to eight unit per acre range;
22 townhouses for rental in the ten, 12, 13 per acre;
23 traditional rental, what we've been calling garden
24 type rental units above each other, probably 15, 16
25 per acre range; and, in the area of senior citizen,

1 which in my experience has tended to be in mid-rise,
2 three four and five story buildings, maybe six, in
3 density has been 20 to 25 maybe 30 to the acre as far
4 as density.

5 Q. would you describe -- just take one
6 minute about senior citizens mid-rise? Why is it
7 necessary or why is it advisable in providing senior
8 citizens housing that it be mid-rise?

9 A. Well, the factors that are among the most
10 important ones, that on the average, for the usual
11 senior citizens housing, the average tenant is
12 usually a single woman in the age bracket of 75 to
13 low 80's. Again, this is the average. I think men
14 make up only ten to 15 percent of the occupancy of
15 this type of housing, just because of life spans and
16 life styles.

17 MR. BRENNAN: Life spans.

18 THE WITNESS: Oddly enough
19 they're starting to close with the change of life
20 styles, those numbers. But the people that are now,
21 we find in the one we are renting up to 70 units, 80
22 to 85 percent of the tenants are well in the -- in
23 that age bracket. Forgetting the social planners, it
24 seems that they, as a group, when they choose are
25 looking for a setting where they can chose whether

1 they're mingling, particularly with children or
2 people of other ages, as opposed to being forced into
3 a situation. So we see that the mid-rise in this
4 climate, too, provides a more contained -- by use of
5 elevators -- overall living environment. And the
6 community space and other services that have to be
7 provided as a part of the proposal can be put within
8 the building without going outside if you don't
9 choose to go outside. It also provides for better
10 security to the overall development.

11 There are a few examples that I know of in the
12 State where senior citizen housing has been provided
13 on a one story, six to eight to the acre type of
14 development. I think from what I have heard, it
15 tended not to be as acceptable for the reasons of
16 climate and access to the age bracket that I
17 described in the living styles.

18 It's not say I wish this had children in it.
19 The majority I bumped into there found it much more
20 satisfactory to be limiting, as I described it, of
21 community with like interests and like needs.

22 THE CHAIRMAN: This mid-rise you
23 are speaking of now, you are managing?

24 THE WITNESS: It's one we built
25 in Parsippany. My partner -- I've watched as a

1 partner it go through. That's four stories, by the
2 way, within 35 feet as far as total height limitation
3 within in community.

4 THE CHAIRMAN: That's not part of
5 a PUD?

6 THE WITNESS: No. It's a ten
7 acre site.

8 THE CHAIRMAN: What's a senior
9 citizen?

10 THE WITNESS: Sixty-two or older,
11 one or the occupants of the unit.

12 THE CHAIRMAN: But most of them
13 are 75 to 80?

14 THE WITNESS: That's in the
15 average in that proposal and almost all the other
16 ones I've checked. I think Morris Township has
17 fallen in the higher 70's.

18 MR. FRIZELL: I think that's a
19 distinction, senior citizens or adult community?

20 THE WITNESS: Oh, yeah,
21 definitely. Adult communities are 48 and older in
22 most cases.

23 THE CHAIRMAN: Some have 50 and
24 some have 52. I meant senior citizens.

25 MR. FERER: One we could use, a

1 difference between senior citizen units, if you are
2 talking senior citizens housing.

3 THE WITNESS: If I was 48 or
4 older I wouldn't react -- if I was 75 either --
5 between adult communitites.

6 MR. FERER: It's not a matter
7 which are market rate and there's no income
8 concentration or stereotype involved in senior
9 citizen developments that are built on a premise that
10 you have to have a certain income level or over to
11 live there?

12 THE WITNESS: Plus a pension of
13 eight to nine to \$10,000 a year.

14 MR. FERER: That's some type of
15 assistance involved?

16 THE CHAIRMAN: Mr. Frizell, go
17 ahead. Please try and get it in by eleven o'clock.

18 BY MR. FRIZELL: .

19 Q. Mr. Sendell, what's a Resolution of Need?

20 A. A Resolution of Need is a statement by a
21 community that is required by the New Jersey Housing
22 Finance Agency, which is the community's opinion as
23 to whether there's a need -- and if I remember the
24 language correctly -- for moderate income housing
25 within their community. And it is one of the

1 required exhibits that would be sent to the New
2 Jersey Housing Finance Agency for a proposal to be
3 considered.

4 MR. FRIZELL: I have no other
5 questions.

6 MR. LARKIN: Would you expand on
7 that just for a minute? You mean in Colts Neck if
8 this development of this community in terms of
9 getting the financing would have to send -- would
10 have to make a statement --

11 THE WITNESS: To the New Jersey
12 Housing Finance Agency.

13 MR. LARKIN: -- that there's a
14 need for moderate income housing in the township?

15 MR. FRIZELL: Mr. Larkin, for the
16 subsidies to be obtained, the township would have to
17 adopt a Resolution of Need.

18 THE WITNESS: Put it into their
19 processing stream.

20 MR. FERER: How would they
21 demonstrate that? The township could make a
22 statement that there was a need but would the
23 government require proof of that or some
24 demonstration of that?

25 THE WITNESS: They don't ask for

1 a feasibility study, if that's what you are asking.
2 They would send their own people out. As to one of
3 exhibits they wish to see in order to entertain a
4 proposal for proceeding, they require this Resolution
5 of Need. And they believe you have a knowledge of
6 your community, of --

7 MR. FERER: Is the intention of
8 these programs to serve an existing market for least
9 cost housing or to develop a market?

10 THE WITNESS: They're strictly
11 into existing market, people that are there or ready,
12 either in housing already and paying more than a fair
13 amount for that housing and subsidized housing coming
14 into an area; or, working in an area and not being
15 able to live in that area. It has to be existing not
16 creating one.

17 THE CHAIRMAN: This is a
18 Resolution for Need for Colts Neck -- you said area?

19 THE WITNESS: No. The Resolution
20 of Need is a specific municipality that the proposed
21 project --

22 THE CHAIRMAN: It wouldn't
23 pertain to the area that Colts Neck itself would need
24 in order to offer this Resolution?

25 THE WITNESS: Again, I'm not an

1 attorney, but under the various considerations that a
2 community looks at, they are supposed to look wider
3 than just their municipality. But the Resolution, if
4 I remember the language of it, specifically talks
5 about a need. And, as an aside, in the Federal
6 processing stream, they consider what they call "expect
7 to reside" people in their determinations, meaning
8 that people that work within the community that don't
9 currently live in the community are included in their
10 understanding of what a need might be, as well as
11 people that already live in the community. It's a
12 little bit wider view.

13 BY MR. FRIZELL:

14 Q. The Resolution itself only applies to
15 the municipality. If you adopt in Marlboro, that
16 doesn't apply to Colts Neck?

17 A. Correct.

18 Q. The demonstration of need, the market
19 need that you referred to earlier, might encompass
20 more than the municipality and the region that the
21 municipality is a part?

22 A. I have no knowledge of how they arrive at their
23 Resolution of Need.

24 MR. LARKIN: If the subsidized
25 portion of the housing, Section 8 or other

1 requirements, are not provided for this particular
2 PUD, for whatever reason it might be, in your
3 judgment, would this, the Section 8 or subsidized
4 housing portion of this project, be essential for the
5 project's development?

6 THE WITNESS: I sense that I'm
7 not the the one to answer that.

8 MR. FRIZELL: I'm sorry, Mr.
9 Larkin?

10 MR. LARKIN: My question, if for
11 some reason there is no subsidized portion of the
12 development, would this project be then feasible?
13 Would this be a feasible --

14 MR. FRIZELL: That's a function
15 of Mr. Kanenkamp's market study, which is part of the
16 application. The market is there for other than
17 subsidized housing. There is a market for subsidized.
18 The project would go without the subsidized housing.

19 MR. LARKIN: The question of
20 selling -- I'm talking about the question of
21 financing the project to begin with.

22 THE WITNESS: You mean, do I, as
23 a banker, think it could be financed with or without?

24 MR. LARKIN: That's my question.

25 THE WITNESS: Yes.

1 MR. FRIZELL: And I think Mr.
2 Ranenkamp where there is a market need which is to
3 say, if you can sell the houses, the financing is
4 just a function of that.

5 THE WITNESS: Don't make it sound
6 too easy.

7 MR. FRIZELL: I should say, I'm
8 not a banker.

9 THE CHAIRMAN: I must apologize.
10 I'm a little hung up on this Resolution of Need. I
11 think you said that the Resolution of Need is based
12 on the need of people who work in that township that
13 need housing in that township?

14 THE WITNESS: No, I did not say
15 that. I said -- in fairness to you, I know what a
16 Resolution of Need is, and it's required by the State
17 Housing Finance Agency. I don't know what criteria
18 the State says you have to have to pass it. I think
19 the Federal authorities look to a need that is
20 largely associated with the housing assistance plan
21 that is on for your area. If I remember correctly,
22 Monmouth County has a community development program.
23 Within that program, there is a housing assistance
24 plan that states either on municipal and usually
25 county-wide basis. And HUD, when they look at that,

1 look at the need that the county has, the
2 municipality has, and also includes in the need
3 people who work in the community but don't presently
4 reside. And if I remember their application, it
5 actually has a mathematical formula that the county
6 has to say of what they estimate the "expected to
7 reside" in the population might be. See, they're a
8 little more specific than the Federal. I can finance
9 the development either way, and/or, even with a
10 combination of both. So there is somewhat of a
11 difference of their approaches to the test of need.

12 THE CHAIRMAN: Would it be
13 reasonable then, in your professional opinion, would
14 you answer that it's reasonable to assume then that
15 if a community had industry, business in their town
16 from which they derive ratables, large ratables, that
17 they are really responsible for providing housing for
18 people that work in those businesses that provide the
19 ratables; but, not necessarily to have to provide
20 housing for people that work in other towns that get
21 the benefit of the ratables?

22 THE WITNESS: You want a personal
23 opinion?

24 MR. PRIZELL: Are you aware of
25 any criteria? On that basis, if you can answer the

1 question --

2 THE WITNESS: I can give my
3 personal opinion. I don't know in either of the
4 processing streams where they draw their exact --
5 except the whole essence of "expected to reside" has
6 that as a basic premise. And I think it's wider than
7 just industry rates; municipal employees,
8 government employees, school teachers. It includes
9 more as far as than just private enterprise and
10 rates.

11 THE CHAIRMAN: You understand the
12 thrust of my question?

13 THE WITNESS: I think so. But,
14 again --

15 THE CHAIRMAN: What I'm really
16 trying to say is, well, let's take Colts Neck. If
17 another township is getting great rates from
18 industry and so forth, why should we provide the
19 housing for people from that town? Why don't they
20 provide their own? It doesn't seem fair if you are
21 not getting any financial benefit from it and you put
22 a burden on your community.

23 MR. PRIZELL: I don't want to
24 conjecture, Mr. Schrupp. After hearing the
25 financial status of Colts Neck in terms of its

1 ability to afford, if you call it that way, providing
2 housing, two things have become apparent. One, that
3 this housing is not a burden to the municipality and
4 even if it were, the municipality is extremely
5 wealthy as a unit, as a municipal unit. But that's --
6 I don't really think Mr. Sendell is the --

7 THE CHAIRMAN: Okay. Maybe I'm
8 asking it of the wrong person.

9 MR. SAGOTSKY: Isn't -- if I may
10 venture an opinion -- you are getting into a very
11 deep philosophical and politically scientific
12 question there. And it was raised in the Mahwah case
13 and that we can abide by.

14 MR. FRIZELL: Perhaps, before Mr.
15 Sendell goes, I should point out at this juncture of
16 the testimony, that it is also part of the record, in
17 terms of the need for these forms of housing in Colts
18 Neck, that the regional study done by the State, by
19 the DCA of Monmouth County, allocated 679 units to
20 Colts Neck, based on a lot of standards, among which
21 are the ratio, that is the relative ratio, of ratables
22 within the community, in the community itself; which
23 is to say, based on the wealth of the community. It
24 is one of many criteria that they used. But that is,
25 as I said, that's part of the record. That's the

1 State Housing Allocation Plan, which we referred to
2 in the application and gave you the figure, Mr.
3 Schrumpt. I recommend it to you if you want to
4 analyze it.

5 MR. BRENNAN: Six hundred and
6 seventy-nine units?

7 MR. FRIZELL: Low and moderate
8 housing units, yes.

9 THE CHAIRMAN: Did that report
10 then say how many low and moderate income housing
11 units we have right now?

12 MR. FRIZELL: Yes.

13 THE CHAIRMAN: How many do we
14 have?

15 MR. FRIZELL: Well, I'm not sure
16 it says how many you have. It says how many you need
17 right now, which is based on what Mr. Sendell is
18 referring to, families in need of assistance,
19 families living in housing that they can't afford,
20 families living in delapidated housing. And that
21 number -- it's in the report -- I believe it's about
22 679; of the 679, 600 units, which are your share of
23 the regional need for that form of housing.

24 MR. BRENNAN: Will Mr. Radway be
25 coming back?

1 MR. FRIZELL: Yes.

2 THE CHAIRMAN: I'd be very
3 interested if you would bring that back. It shows
4 how many we have now?

5 MR. FRIZELL: In wasn't part of
6 Mr. Radway's --

7 THE CHAIRMAN: But that might
8 fall in his bailiwick, would it not?

9 MR. FRIZELL: I'm not sure. I'll
10 be glad to bring it in, the housing allocation for --

11 THE CHAIRMAN: It might be very
12 enlightening. I appreciate your offering the
13 information on it.

14 MR. FRIZELL: I have no other
15 questions of Mr. Sendell.

16 THE CHAIRMAN: I think part of
17 the testimony should be corrected, Mr. Frizell. I
18 appreciate what you said, "we've already proven that
19 this would not be any financial burden to the
20 community." I don't think that has been proven, yet.
21 In your opinion it will not. But the I think that
22 still is to be proven. I think that's part of the
23 hearing.

24 MR. FRIZELL: As I said, I have
25 no another questions of Mr. Sendell.

1 MR. BRENNAN: The Federal
2 criteria, I believe you said they include -- you
3 strongly implied -- were not limited to certain
4 things, which you mentioned, Mr. Sendell. Would the
5 criteria also -- and subsequently you referenced
6 transportation, the fact that there was a bus route
7 there. But would the the Federal criteria also
8 include opportunities for employment within the
9 community and adequate transportation to deliver
10 residents from the subsidized housing to the places
11 where they would work?

12 THE WITNESS: Yes. In the
13 overall transportation question, they would be
14 looking at both criteria.

15 MR. SAGOTSKY: What was just --

16 THE WITNESS: And they include
17 within transportation public transportation as well
18 as the reasonableness of a car being owned and being
19 used in the general market area. Again, they're part
20 is the person driving a car further than they would
21 if they were there; and, one of the entire market is
22 generally used to certain amounts of commute. And
23 the job centers are close to this site as they would
24 be to another number of market jobs.

25 MR. SAGOTSKY: One PUD close by --

1 and if I'm not on target stop me -- one PUD
2 relatively close by, some years ago, started out with
3 the idea that it be fairly self-contained units in
4 supplying work to the people who were there and
5 having a section for commercial and industry, so that
6 and in the commercial center would be geared to
7 internal shopping, so to speak, to take care of the
8 project. And there they thought in terms of keeping
9 employment, shall we say, at home. Is that what you
10 are thinking of? Do I understand you correctly?

11 MR. BRENNAN: Two items of
12 criteria, the question as to whether or not you are
13 meeting a need or creating a need, even say, in
14 quotes, expected to provide. I'm just saying that if
15 you go create the residential capacity and you are
16 looking for some form of Federal or State subsidy for
17 a portion or all of the project, would not also a
18 criteria be if we are going to put the subsidized
19 units in a specific location, there must be effective
20 employment opportunities for the residents of the
21 unit within that location, that location being
22 defined as within a reasonable commute; whether that
23 commute be by automobile or public transportation;
24 and, that the communication net exists or will be
25 created to transport the people to the effected

1 employment opportunities? Or else, you know, your
2 land costs would be very cheap.

3 THE WITNESS: To the Mojave
4 desert, but I don't know where the people would work.

5 MR. SAGOTSKY: You want to --

6 MR. BRENNAN: Could I just -- in
7 your experience in mortgage banking, Mr. Sendell, in
8 this facet of mortgage banking, has there been a stop
9 to certain of these programs where you would build up
10 groups of applicants who are going after the
11 subsidies?

12 THE WITNESS: I think a better
13 way to put it is that due to the complexity of all of
14 the factors of developing -- even not considering the
15 subsidized question -- all development has a less
16 than straight line from beginning of idea to the
17 delivery of the product. These have particularly
18 more ups and downs in the availability because of the
19 financing, fine tuning that has to be done to make
20 them feasible. It's not a sales pitch, but what I
21 eventually say is, it's not a question of whether it
22 will be done, it's a question of when it's done and
23 what form. Very few of them close in the exact
24 structure that you had anticipated to begin with, as
25 far as where you are going to the -- your mortgage

1 and whether the financing probably is going to be.
2 But the likelihood of closing is getting more and
3 more because the obligation or responsibility seems
4 to be becoming clear. I don't have one that I've
5 done. On the average, development time for either
6 ones I've developed or people I've financed has been
7 less than three to four years or five or six years
8 from when they get the idea or the owner moves in.
9 They're tough things to do.

10 MR. BRENNAN: I think we all know
11 that HUD has an unfortunately substantial portfolio
12 of projects that are in trouble, as well as the
13 projects that it has reduced to ownership in an
14 attempt to work them out. But I've also heard,
15 indirectly, New Jersey FHA also has a reasonable
16 share of problem projects. So I think we could
17 conclude, in fact, that even if the subsidy were
18 granted -- which might indicate the project is
19 feasible -- it might not follow that the project
20 would be a success. Could you amplify upon what New
21 Jersey Housing Finance Agency or HUD does when a
22 project gets in trouble so that the tax payments are
23 not being made or the fellow's repairing the roof
24 this month, paying the next month, making the
25 mortgage the third month, so that you have a

1 deteriorating quality to the project itself; and, how
2 long does it take before this deteriorated project is
3 removed as a burden to the township?

4 THE WITNESS: Generally in
5 responding to the HUD experience and the FHA
6 experience, one of the reasons that I described in
7 the way the Section 8 works and in removing subsidy
8 from the development and putting it with the consumer
9 is limited profit. That type of responses had been
10 significantly better than either housing authorities
11 or nonprofit. Frankly, in most of the difficulties
12 within HUD and FHA has been associated with nonprofit
13 sponsorship, with the type of, the heart was in the
14 right place, the interest was in the right place but
15 they didn't have an understanding that the a mortgage
16 runs for 40 years. And the thrust of the new
17 programs to solve that past experience was to put in
18 the situation where the interest of the owner in the
19 traditional sense was profit motivation. And I agree
20 with it. And it is much more likely to stay in good
21 repair, which is a built-in mechanism. They are
22 investors. They want to see it appreciate as well as
23 receive a return from it in the cash sense and a
24 return from it the appreciation sense. So that's one
25 or things that's been done to correct that problem.

1 In fact, the FBA, from what I understand -- I'm
2 processing my first right now and so I can't speak
3 with great experience of what their portfolio looks
4 like -- but the word I get is most of their problems
5 were nonprofit oriented and they have helped
6 nonprofit get substance by converting to dividends at
7 various stages because they anticipated that.

8 The other answer to your question
9 on who makes inspections is, two or three levels of
10 concern. Obviously, the owners, themselves and
11 investors that may be with the owners. The mortgage
12 lender is obligated, that services the mortgage on
13 behalf the federal Government, it is in their
14 servicing manual to do annual inspections and to do
15 written reports as to the quality before it goes back.
16 MUD has their own system to check and sample projects
17 in the same manner.

18 THE CHAIRMAN: On the subsidy.

19 THE WITNESS: Excuse me. The
20 best is each town code enforcement and the public
21 front line and others are behind.

22 THE CHAIRMAN: On the subsidy,
23 people apply for subsidy. Is there priority list?
24 Does the subsidy go first to all of the residents of
25 the town in which the PUD is built?

1 THE WITNESS: This is a very good
2 question and the hardest one to answer and make sure.
3 The Federal Government says that a preference for
4 occupants or residents of the community is permitted.
5 You cannot require that someone be a resident but you
6 can give a preference if someone is a resident. You
7 cannot restrict the length of time they were a
8 residents, to wit, you couldn't say people who have
9 been a resident 20 years or more or first, ten years
10 or more, five years or more. But there is a
11 permissible approach to use residency preference as a
12 tenant selection criteria.

13 One other aspect, and I shall
14 honest with you and it's important and fair, is that
15 if in using a residency preference an automatic
16 discriminatory effect has occurred, the sponsor and
17 HUD have to be cognizant of that fact. So the way
18 the residency preference is, it cannot be misused to
19 the detriment of people expected to reside and other
20 people to make up the community income-wise and the
21 test has to be taken into consideration when the
22 overall marketing plan is filed for development. But,
23 yes, to answer it, residency preferences are
24 permitted.

25 THE CHAIRMAN: Any questions from

1 the Planning Board?

2 MR. MARKS: Not at this time.

3 THE CHAIRMAN: We have one more
4 witness. I would like to at least give you, Mr.
5 Frizell, a half hour. You might need it. We would
6 like to adjourn at 11 o'clock.

7 We would like to thank this
8 witness for his straightforward answers. Thank you,
9 very much.

10 (Whereupon the witness is
11 excused.)

12
13
14 ERNEST ORGO, a witness called on behalf of
15 the Applicant, having been duly sworn according to
16 law, testified as follows:

17
18 THE WITNESS: Ernest Orgo, Colts
19 Neck.

20 MR. SAGOTSKY: We want your exact
21 address.

22 THE WITNESS: East County Road,
23 Box 40.

24
25 DIRECT EXAMINATION BY MR. FRIZELL:

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Q. Mr. Orgo, how long have you lived in Colts Neck?

A. Since 1950.

Q. And how long have you been associated with the property on Route 537?

A. The property was bought in two pieces, one in 1935; one in 1938.

Q. And is Orgo farms and Greenhouses, Inc. the owner of the property?

A. Yes.

Q. And how many persons own more than ten percent of the stock of that company?

A. Two.

Q. And who are those persons?

A. Myself and my mother.

Q. What's your mother's name?

A. Helen Orgo.

Q. Where does she live now?

A. Groveland, Florida.

Q. What's her address there, do you recall?

A. Box 37, that's it.

Q. Have you and your family been farming that land since you bought it?

A. Yeah.

1 Q. And is that since the 1935 and 1938
2 acquisitions?

3 A. Yeah, right from the -- right. We bought, we
4 were farming it.

5 Q. Did you also have a greenhouses on the
6 property; or, do you have greenhouses on the property?

7 A. Yeah. The greenhouses were constructed in late
8 I believe and we also added on in '51, after I came
9 out of service.

10 Q. And what were the greenhouses used for?

11 A. We were primarily a cut flower grower, so we
12 raised flowers for the cut flower market in New York.

13 Q. Are you still using it for that purpose?

14 A. No. I shut down last September.

15 Q. Why did you shut down?

16 A. That's been a loss operation, so I had to quit.

17 Q. Are you still involved, yourself, in the
18 cut flower business?

19 A. Oh, yeah.

20 Q. But you are no longer growing cut
21 flowers in Colts Neck?

22 A. No, it's not feasible.

23 Q. Now in terms of the overall operation,
24 is your son involved in the farming also?

25 A. Only indirect, because he farms but doesn't

1 farm that land.

2 Q. Is the land being farmed now?

3 A. Yeah, I've got some beans and corn I planted
4 there, about 70 acres.

5 Q. Now, is the operation on the premises
6 now profitable?

7 A. No, sir.

8 Q. When you say "no" does that mean you are
9 losing money?

10 A. Absolutely.

11 Q. Can you explain why you are losing money
12 farming that land?

13 A. Well, if it was just farming grain, that kind
14 of crop, you couldn't make money to balance the books.
15 And as far as cut flowers are concerned, there's just
16 too much hand labor and there's not good labor around.
17 I lost money five years in a row, so I quit.

18 Q. Is there any other factors involved in
19 your costs for operating the greenhouses?

20 A. Certainly, fuel now and then, a little bad
21 weather, you know.

22 Q. When you say "fuel" you mean to heat the
23 greenhouses?

24 A. Heating fuel, that went out of sight as we all
25 know.

1 Q. Can you estimate, Mr. Orgo, how much
2 money you made or lost last year at that location?

3 A. I have the figures, I think. Right in the area
4 of \$20,000.

5 Q. That you made?

6 A. Lost.

7 Q. And that's \$20,000 for federal tax
8 purposes?

9 A. Yeah.

10 Q. That includes some degree of
11 depreciation. Do you recall what the --

12 A. Yeah, I can get a form, see, the tax form.

13 Q. If you have it, would you just refer to
14 it for us?

15 MR. SAGOTSKY: Mr. Orgo, when you
16 resume your seat, please move up to the microphone.
17 Your voice isn't carrying into that.

18 BY MR. FRIZELL:

19 Q. What was your total loss?

20 A. Total loss --

21 MR. SAGOTSKY: Pull it over
22 closer to you, Mr. Orgo.

23 A. -- \$19,636.

24 Q. Can you approximate how much of that was
25 depreciation on fixtures and equipment and --

1 A. I sign these things, I don't know where to find
2 the depreciation -- \$2,700.

3 MR. BRENNAN: Were there any
4 other non-cash charges that you deducted for tax
5 purposes, non-cash charges such as depreciation, a
6 bookkeeping entry as opposed to an actual cash outlay?

7 BY MR. FRIZELL:

8 Q. No other non-cash deductions.
9 Deductions includes interest cost of?

10 A. The bottom line of that year.

11 Q. In '74, was what?

12 A. \$40,000.

13 THE CHAIRMAN: I'd conclude from
14 the thrust of this testimony that you are trying to
15 make a point. Would you make it, Mr. Frizell? I
16 don't think we have the right to delve that
17 completely into Mr. Orgo's finances. I want the
18 Board not to. Just make your point.

19 MR. FRIZELL: All right. I think
20 we already made it. We're just substantiating the
21 point.

22 BY MR. FRIZELL:

23 Q. Mr. Orgo, how long have you been
24 involved in agriculture?

25 A. How long have I been what?

1 Q. Involved in agriculture?

2 A. Since I came up here in 1946.

3 Q. And Mr. Orjo, is it feasible, in your
4 opinion, to continue farming, to farm that land on
5 any profitable basis at the present time?

6 A. Not the way things are now, no.

7 Q. Can you envision any change in the
8 immediate future which would change that opinion,
9 that is, any anything on the horizon?

10 A. No, not really.

11 Q. Can you tell us generally, Mr. Orjo,
12 what are the conditions, conditions in agriculture,
13 today which form the basis of your opinion in terms
14 of the feasibility of farming that land?

15 A. Well, if you were going -- you are talking
16 about farming? If you are going to farm from
17 agriculture, from grain and that type, you would have
18 to have more acreage, really. Then, you might.

19 Q. How many tillable acres do you have, by
20 the way?

21 A. Well, there's about, I'd say, about 100. Now,
22 some of them are on the other side of 18.

23 Q. Including the other side of 18, tillable?

24 A. Tillable, absolutely tillable.

25 Q. What are the other conditions affecting

1 agriculture today?

2 A. Of course, my main expertise is cut flowers.
3 And your involved with hand labor and such. You
4 can't get it here. Plus, the energy, the electricity
5 and the heat, it's just impossible. We've got
6 markets that are coming into our field from other
7 areas that we can't compete with.

8 Q. Is it possible, Mr. Orgo, for you to
9 rent the land to another farmer?

10 A. Yeah.

11 Q. And how much rent would you be able to
12 obtain in Colts Neck at your location?

13 A. Twenty, 25 an acre, maximum, I'd say, is 40.

14 Q. That's per year?

15 A. Per acre, per year.

16 Q. So if you were able to rent 100 acres to
17 a farmer, you might be able to realize \$4,000 a year?

18 A. Yeah.

19 Q. When you mentioned your address, you are
20 living on the property now?

21 A. Yup.

22 Q. Who else lives there?

23 A. My son, he lives in one house; with me, my wife
24 and two daughters. One is married. I have three
25 daughters. One is married.

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MR. BRIZELL: I have no other questions.

MR. LEWIS: Do we understand that farming is not feasible in Colts Neck, period?

THE WITNESS: It's either -- not that type of farming. Now, if you got a small farm, you might be operating it by yourself, you might be able to make out.

MR. SACOTSKY: You mean cut flower farm?

THE WITNESS: Also cut flower farming.

MR. SACOTSKY: And that's what you are talking about? You are not talking about grains?

THE WITNESS: Even grains is almost impossible.

MR. FERER: Okay. On the Orgo Farm, in Colts Neck, in New Jersey, in the northeast?

THE WITNESS: Yeah.

MR. FERER: Okay. In other words, the statement regards cut flower farming. It's not economically feasible any longer in the northeast or possibly in the United States?

THE WITNESS: Pretty much so.

1 that's wiped out. Long Island is almost all wiped
2 out. Everything around here is pretty well wiped out
3 you just can't make it.

4 MR. PERER: there are
5 economically profitable uses of agricultural land in
6 this community, though?

7 THE WITNESS: Well, I would like
8 to know what they are.

9 MR. PERER: Horse farming and --

10 MR. PERER: I might argue that
11 with you. If you're boarding and you got big stables
12 and you can board them, then it might pay. But just
13 to open land, you can't do it.

14 MR. FRIZELL: Let me just follow
15 that up for a minute.

16 BY MR. FRIZELL:

17 Q. In boarding horses, what are the
18 requirements?

19 A. I would have -- you would have to be able to
20 board 50 horses. Then you could make money.

21 Q. Do you have any boarding facilities on
22 your farm?

23 A. No.

24 MR. PERER: Brood mare operation?

25 THE WITNESS: I don't know the

1 first thing about it.

2 MR. BRENNAN: So your comments
3 were really directed to dirt farming in Colts Neck?

4 MR. SAGOTSKY: Would you repeat
5 that, please?

6 MR. BRENNAN: Dirt farming in
7 Colts Neck.

8 MR. FRERER: Or in the northeast?

9 THE WITNESS: That's what it's
10 coming to.

11 MR. FRERER: In other words, it's
12 not specifically to your piece of property, to Colts
13 Neck, to New Jersey? It's just the general geography
14 in the northeast?

15 THE WITNESS: We're some of the
16 last houses left.

17 BY MR. FRIZELL:

18 Q. I think, just so we're clear, that you
19 said, one of the last houses left. When he's talking
20 about in the northeast, you are not talking out
21 flowers?

22 A. Yeah, right.

23 Q. When you talk about the northeast, in
24 general, were you making -- were you offering a
25 comment on agriculture in general; that is, dirt

1 farming, grain farming? Or is it conceivable that
2 grain farming could be profitable in some other
3 locations besides your farm?

4 A. There are times, even in Colts neck, you could
5 make money grain farming. But you have got to have a
6 lot of acreage.

7 MR. LARKIN: What's the
8 definition of a lot of acreage?

9 THE WITNESS: Six, 800, 1,000.

10 MR. LARKIN: Are there any pieces
11 of property --

12 THE WITNESS: No. You can rent
13 that. That's a different story.

14 MR. LARKIN: I'm trying to
15 understand.

16 THE WITNESS: Well, you could
17 rent. You can make money raising grain on other
18 people's land. There's no pieces of land in Colts
19 neck six, 800 acres.

20 MR. PERER: There's types of farmin
21 that you can generate forty to \$60,000 per acre
22 that's done in New Jersey.

23 MR. SAGOTSKY: Well, there's one
24 farmer that I know of -- and I'm not at liberty to
25 use his name -- he rents 100 tillable acres within

1 three miles south of Freehold and he earned \$15,000
2 last year on grain farming. You know, he had corn.

3 MR. FRIZELL: Do you know what
4 his capital investment was?

5 MR. SAGOTSKY: No. He did tell
6 me that the response to -- the tax assessors in some
7 communities are saying, "what do you earn? what have
8 you earned," in order to qualify with the tax
9 assessment. In some -- and I do know of this case --
10 he earned \$15,000 on 100 tillable acres. And others
11 have turned in profits last year. Now, of course,
12 I'm not at liberty to mention their names. I would
13 subpoena. I don't think you would deny that that is
14 so. You said that they have made money last year,
15 some grain farmers?

16 THE WITNESS: Yes.

17 THE CHAIRMAN: Mr. Frizell, you
18 said you made your point. I think I missed it. Am I
19 to conclude that Mr. Orgo has decided to sell this
20 property or attempting to sell because it would be
21 unprofitable for him to maintain it as it is, in any
22 aspect?

23 MR. FRIZELL: He cannot make
24 money in agriculture. I think that was the point.

25 THE CHAIRMAN: That's why you try

1 to sell?

2 THE WITNESS: Well, no. I had a
3 lot of people that had come to me. The first year or
4 two, you go a loss you figure on better years. And I
5 always did have a lot of people. I've even had
6 people come to me who wanted to build a horse farm.
7 There's no buildings there. There's no barns. We
8 got to build a track. I don't get involved in that.
9 I got enough headaches, see? But when Richard came
10 with his idea, he's the first one that really made
11 any sense. And that's about three years ago. And I
12 listened to it and I thought he had a good plan.

13 BY MR. FRIZELL:

14 Q. Mr. Orgo, in your discussions with these
15 other persons previously, the horse farm, et cetera,
16 obviously the horse farm was consistent with the
17 current zoning?

18 A. I guess so.

19 Q. You had discussions with any other
20 persons who were attempting to use --

21 A. I had quite a few people that called me up and
22 wanted to make deals, a couple others. I had one
23 last week again. It's constant.

24 Q. Did any of them make a firm offer for
25 the property?

1 A. Not really. You know, they come up with some
2 sort of plan, let's get involved in this and that. I
3 just couldn't listen to them.

4 THE CHAIRMAN: Do you understand,
5 Mr. Orgo, that this Board is really sitting on this
6 whole thing to try and decide if this project
7 proposed is best for the most people in Colts Neck?

8 THE WITNESS: I assume so, yeah.

9 THE CHAIRMAN: Would you honestly
10 say to us that you think that this would be best for
11 the most people in Colts Neck?

12 MR. FRIZELL: I'm going to object
13 to that question. First of all, that is not what you
14 are here to decide. Number two, I don't think Mr.
15 Orgo's opinion in that regard has any essence in this
16 proceeding. And if that's what you consider to be
17 your responsibility, Mr. Schrumpt, then I think we
18 better have another separate presentation on that.

19 THE CHAIRMAN: That's the basic
20 concept. It's not the stated purpose of the meeting,
21 the hearing.

22 MR. FRIZELL: I'd disagree that
23 it's a basic concept. But, in any event --

24 THE CHAIRMAN: On what ground
25 would you object to the question then?

1 MR. FRIZELL: Well, I don't think
2 it's relevant. I don't think it has anything to do
3 with -- Mr. Orgo's opinion in response to that
4 question has anything to do with the matter that's at
5 hand. You're here to decide a variance. There's
6 1,900 cases on what is a variance, what are the
7 criteria of the variance. I've never yet read that
8 every single variance you have to have proof that
9 it's the best thing for the most people. I've never
10 seen it and I've never heard of it. And I suggest to
11 you that it has absolutely nothing to do with the
12 proceedings. If that was the ground on every single
13 variance -- that's not the variance. As far as Mr.
14 Orgo is concerned as the owner of the property, as
15 far as he's concerned, it's a question if the present
16 zoning on the property is a valid exercise of the
17 governmental power or has it effectively confiscated
18 the man's property; has it denied him any reasonable
19 use of 214 acres of land, any reasonable rate of
20 return that a reasonable man would accept in terms if
21 he went in and took the property. I think that's
22 what Mr. Orgo's here for. As far as the other
23 aspects of this, I don't think Mr. Orgo's really
24 qualified to answer the question that you've posed to
25 him in terms of the other reasons. It's special

1 reasons. It's regional need for housing,
2 suitability of property, the response to Judge
3 Lane's order.

4 MR. LARKIN: You are raising a
5 Fifth Amendment issue here, unjust taking or
6 deprivation of property rights?

7 MR. FRIZELL: I think that's an
8 issue in this proceeding, certainly. Is the present
9 zoning for the property suitable or is it
10 unreasonable? And I think that's one of our proofs.
11 But the special reasons aren't always limited to that.
12 The special reasons can also refer to other things,
13 such as the response to a constitutional mandate.
14 And I don't think that Mr. Orgo knows anything about
15 the constitutional requirement.

16 I don't know if you even have an
17 opinion. Have you ever tried to figure out, Mr. Orgo,
18 the answer to that question?

19 MR. SACCHERKY: I think he has an
20 opinion.

21 THE WITNESS: You mean the one in
22 the State that Judge Lane ruled on?

23 MR. FRIZELL: Not only that. In
24 response to the question, is that question something
25 that you've considered?

1 MR. SACOTSKY: If you will object
2 to the objection, then your objection --

3 MR. FRIZELL: It's very difficult
4 to object to the question by the person who rules on
5 the objection. I have had that problem before.

6 THE CHAIRMAN: Certainly we have
7 to use some device such as that you certainly can't
8 rule if you object to the question. I can't rule on
9 it.

10 MR. BRENNAN: Wouldn't you really
11 have to object to the answer because it's beyond the
12 scope and knowledge, of the expertise, of the witness?

13 MR. SACOTSKY: Plus, I think if
14 he gives an answer to the question, it could be
15 self-serving and -- well, I've said enough.

16 THE CHAIRMAN: Maybe if I explain,
17 Mr. Frizell. I'm trying to be, let's say, maybe
18 ethereal in my approach to it. I want to know if Mr.
19 Orjo really thinks this is best for Colts Neck and it
20 tells me a lot of it he really does. It enlightens
21 me a great deal.

22 MR. FRIZELL: Can we give him the
23 assumption, if, Mr. Orjo, that this township is
24 understand a Court Order? If we give him an
25 assumption that least cost housing and patio homes,

1 townhouses, et cetera, all those things set forth in
2 the Order must be built in Colts Neck, must be
3 allowed in Colts Neck Township? If we give them all
4 those assumptions, given the fact that the Colts
5 Neck Township, in terms of the overall township, and
6 ask him if he knows a better site where that Order
7 can be fulfilled, I have no objection to that
8 question. That's a fair question that I think he can
9 answer.

10 THE CHAIRMAN: I think he could
11 answer the other one.

12 MR. BRENNAN: I think that was an
13 excellent job of leading the witness.

14 May I suggest with the hour and
15 everything --

16 MR. SAGOTSKY: Please, we've
17 spent a lot of time on this.

18 MR. BRENNAN: -- we get a quick
19 answer, yes, no.

20 THE CHAIRMAN: Maybe I'm too
21 idealistic. I will apologize for being idealistic.
22 I sort of like this town. I wondered if Mr. Orgo had
23 the same thought I did.

24 MR. LARKIN: Maybe I can ask the
25 question slightly differently. If Mr. Brunelli had

1 come in and offered to buy your property and
2 construct single family homes with the same amount of
3 money he might be paying you to construct the present
4 plan, would you have sold it to him?

5 THE WITNESS: Well, perhaps it
6 happened to be he was at the right place at the right
7 time. I told you, I had a lot of people come at me
8 with a lot of ideas. And I guess his idea was at the
9 right place and the right time. That's all I can
10 tell you.

11 MR. FRIZELL: I assume if he came
12 in for cash you wouldn't have any difficulty with him.
13 If someone were to come and say, I'm going to build
14 single family, two acre housing on that site, you
15 looked at them twice. Those kinds of schemes for
16 that particular site, you had difficulty in involving
17 yourself in.

18 MR. MARKS: I'm going to object
19 to this. You know, this is --

20 THE CHAIRMAN: I withdrew my
21 question. Is there any question by any member of the
22 Board of Mr. Orgo?

23 THE CHAIRMAN: Planning Board?

24

25 CROSS-EXAMINATION BY MR. MARKS:

1

2

Q. Mr. Orgo, you said your son farms. what does he farm?

3

4

A. He farms around 500 acres in ad around Colts Neck.

5

6

Q. And what type of farming is that, dirt farming?

7

8

A. Grain and beans and corn.

9

Q. And does he own all those acres?

10

A. No, he rents them.

11

Q. Is there any reason why you don't farm on your property?

12

13

A. He farmed that, too.

14

MR. SAGOTSKY: what was the answer?

15

16

A. You can't make --

17

Q. but he could add that 100 acres to 500 acres; is that correct?

18

19

A. Yeah.

20

MR. MARKS: I have no further questions.

21

22

MR. FESSLER: The whole property is 244 acres, roughly. Why is only 100 of them tillable? We had a description of it. I think it was only 20 percent wa wooded with a small lake.

23

24

25

1 THE WITNESS: Seventy acres of
2 woods. If I go back, if my memory serves me right,
3 this was back when it was 233 acres, before the
4 taking. I think we had 70 acres of woods at that
5 time, was about 140 acres of tillable. I'm assuming
6 the 18. That was all tillable. We take 20 off of
7 that, and the fact that you can't get to the acreage
8 in the back, thanks to the State of New Jersey, so
9 you have 100 acres left.

10 MR. FESSLER: Thank you.

11 THE CHAIRMAN: Any members of the
12 Board?

13 Is there anyone in the audience
14 that would like to be heard?

15 MR. HERMAN: Mr. Chairman.

16 MR. BAGOTSKY: State your name
17 for the record.

18 MR. HERMAN: I'm sorry. Jay
19 herman again, representing the Board of Education.
20 Looking at the hour and listening to the direct
21 testimony, I would like to suggest that if the
22 Applicant could reproduce Mr. Orgo, I would like to
23 save my questions for then.

24 MR. FRIZELL: Are they extensive,
25 Mr. herman? There's a lot of witnesses and we have

1 an environmental report to do and that is going to be
2 very extensive. And I'm not sure that we can --

3 MR. HERMAN: I appreciate that
4 and I appreciate that we're late attending the
5 meeting.

6 MR. FRIZELL: Mr. Orgo, I assume --

7 THE WITNESS: I would be only too
8 glad to come.

9 MR. HERMAN: I'd be happy to give
10 you notice.

11 MR. FRIZELL: I'm in a little bit
12 of a quandry as to what the Board of Education wants
13 to know of Mr. Orgo.

14 MR. HERMAN: The board of
15 Education as an abutting land owner and would have an
16 interest, I think, in hearing from Mr. Orgo further.

17 MR. FRIZELL: well, if it's any
18 use to you, when the environmental impact comes in
19 you'll see very, very detailed description of real
20 estate and surrounding properties. And we've had a
21 lot of testimony beforehand. But I have no problem
22 bringing him back.

23 MR. HERMAN: I appreciate it.

24 MR. FRIZELL: It we could have a
25 discussion about --

1 THE CHAIRMAN: I'd like to see
2 Mr. Orgo come back for that purpose. Would you two
3 decide what might be the best date?

4 MR. HERMAN: I would be happy to
5 select the date. The next meeting is fine.

6 MR. SAGOTSKY: We might have some
7 time left over on the part of the witness that I hope
8 to have here. I'm subpoenaing a witness for the 15th.
9 I don't know how long that will take. And the time
10 left over -- I'm assuming -- unless it's taken by
11 some other witness that this Board calls or lets me
12 know they want, then there should be time left over
13 for the presentation of some portion of the evidence.

14 THE CHAIRMAN: There's one more
15 question. Let's get this clarified. Maybe if Mr.
16 Orgo came to the very next meeting, we could finish
17 up with him rather than have him wait.

18 MR. FRIZELL: Yes, he'll be here.

19 THE CHAIRMAN: There was a
20 question in the -- Mr.

21 MR. MULHOLLAND: Mr. Mulholland,
22 again. It seems to me that if the purpose of his
23 early testimony was to show that he was operating at
24 a loss and therefore that would be a reason for him
25 to, you know, be granted the right sell the property

1 for this purpose, that that loss should be examined
2 in the context of his entire financial picture.
3 Because, a paper loss for tax purposes to offset
4 income from other purposes and it raises the question
5 in my mind, at least, to whether or not a given
6 entity amongst many businesses could be intentionally
7 operated at a loss in order to offset other income.
8 And for the purpose of showing that this would be to
9 do it in that manner, in order to say that, gee,
10 here's the only profitable way that I can make use of
11 this property. I guess what I'm saying, the Board
12 really should be looking at the the entire financial
13 situation if they are going to accept that as
14 evidence of operating this thing at a loss.

15 MR. FRIZELL: I think I have no
16 difficulty with your asking Mr. Orgo everything that
17 you can ask him about the operation of that land in
18 order to determine whether or not he's intentionally
19 losing money.

20 BY MR. FRIZELL:

21 Q. Are you intentionally losing money at
22 that location, Mr. Orgo?

23 A. Not to my knowledge.

24 MR. FRIZELL: I think to get into
25 his entire financial picture, as you put it, is

1 totally beyond these proceedings.

2 MR. SAGOTSKY: There is also the
3 question of efficiency. You and I may have a farm.
4 You make money, I may not. And I have said I have
5 lost money. You may be more efficient. So there is
6 another element that could be looked into, if the
7 board so decides, without violating any of the
8 personal rights of Mr. Orgo; excepting, that when Mr.
9 Orgo alleges that he has a marginal or loss operation,
10 he is opening up the financial, and I will so advise
11 the board, for scrutiny by the public.

12 (whereupon the witness is
13 excused.)

14 THE CHAIRMAN: There being no
15 other questions, can we have a motion?

16 MR. BRENNAN: Move that we
17 adjourn.

18 MR. LARKIN: Second.

19 THE CHAIRMAN: We will adjourn
20 until July 15th, 1960, seven p.m.

21 (whereupon the hearing is
22 adjourned at 11 p.m.)

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CERTIFICATE

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


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

Dated: July 9, 1980
My Commission Expires on
June 7, 1983