

CN - Orego Farms v. Top of Cotts Neck

8/7/80

Transcript of proceedings: witnesses:

• William Queale

• James Kovacs

p 161

CN 000 014 S

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF COLTS NECK
NEW JERSEY

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IN THE MATTER OF:

The Application of Orgo Farms
Orgo Farms and Greenhouses, Inc.,
and Richard J. Brunelli,
for a Variance.

TRANSCRIPT
OF
PROCEEDINGS

x-----x

Tuesday, July 29, 1980, 7:00 p.m.
Town Hall, Colts Neck, NJ

B E F O R E:

J. SCHRUMPF, Chairman
C. DAHLBOM, Member
G. BRENNAN, Member
P. NIEMANN, Member
J. TISCHENDORF, Member

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

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

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

MARKS, HOLLAND & LA ROSA, ESQS.,
BY: GERALD A. MARKS, ESQ.,
For the Colts Neck Twp. Planning Board.

CARTON, NARY, WITT & ARVANITIS, ESQS.,
BY: JAY R. HERMAN, ESQ.,
For the Colts Neck Twp. Board of Ed.

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

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I N D E X

WITNESS DIRECT CROSS

WILLIAM QUEALE

By Mr. Marks 10

By Mr. Frizell 64,126

By Mr. Sagotsky 122

JAMES KOVACS

By Mr. Frizell 129

EXHIBITS MARKED FOR IDENTIFICATION

<u>Number</u>	<u>Description</u>	<u>Page</u>
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1 (The meeting convenes at 7:05
2 p.m.)

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

5 MR. TISCHENDORF: Here.

6 MR. BRENNAN: Here.

7 MR. LARKIN: Here.

8 MR. DAHLBOM: Here.

9 THE CHAIRMAN: Mr. Sagotsky, I
10 believe has an announcement to make.

11 MR. SAGOTSKY: Yes. A Motion has
12 been instituted by the Applicant for the purpose of
13 appointing a joint planner. He uses the word "impartial
14 planner. For my purposes, or our purposes, I would
15 call it a joint planner. And he has represented in
16 his Motion by Affidavit why he wants it, and has
17 cited a brief as his authority for wanting it.

18 There has been no official action
19 taken by this Board on this application.
20 Consequently, I ask for an executive session for the
21 purpose of discussing the opinion of this Board on
22 that application for this request for a joint planner.
23 And then after you've decided that, then to come out
24 to make the announcement.

25 It has also been brought to my

1 attention that the Applicant desires a copy of our
2 transcript of the proceedings and has sought to work
3 out with me some basic charge for that. Our machine
4 has been giving us difficulty. We've been having
5 problems with it, according to Mrs. O'Connor, in
6 making some of the copies and completing some. It
7 apparently has come to the attention of State
8 Shorthand Reporting, the service that we're using,
9 that we are having these problems and that we have
10 been making copies for the benefit of the Board. And
11 therefore, there has been presented to me this
12 evening a breakdown on the cost of these copies by
13 the State Shorthand Service. And I want to take up
14 with the Board, also in executive session, what would
15 be a reasonable charge for an extra transcript to
16 furnish it to the Applicant so he may have the
17 benefit of what has transpired here. And I want to
18 show you that, it is a letter, and have you read it
19 and come up with some reasonable, workable solution,
20 so that those who desire and order same can have the
21 copy of the transcript at a very reasonable cost.

22 So assuming there is no objection
23 from anyone as to this executive session -- and I
24 would also -- then, I ask you to call it; and, I ask,
25 of course, that our Clerk come in. And then we will

1 make our announcements later on in the evening as to
2 our, meaning your, decision.

3 THE CHAIRMAN: Sam, are we going
4 to do it here?

5 MR. SAGOTSKY: I assume that you
6 have a special room to go into and have your
7 executive session. Based on this announcement, yes,
8 I think that room would be -- that's what I had in
9 mind, but, of course, it's up to you.

10 MR. FRIZELL: I just might note
11 that I have volunteered to borrow a copy and make my
12 own copies if you have trouble.

13 THE CHAIRMAN: We'll be presented
14 with a breakdown of the cost.

15 An executive session is called
16 for a period of time so we can consider the
17 independent planner as well as very briefly consider
18 the costs associated with the transcripts. We will
19 return as soon as we can.

20 (Whereupon a recess is taken at
21 7:15 p.m.)

22 (Whereupon the hearing reconvenes
23 at 7:50 p.m.)

24 THE CHAIRMAN: We have finished
25 our executive session concerning the use of an

1 independent planner. And the unanimous decision is
2 that this Board does not feel that we need the
3 services of an independent planner. The basis of
4 that decision were really two-fold, one, the Board is
5 capable of analyzing the testimony of the several
6 planners that we are going to hear during this
7 testimony and capable of analyzing what they're
8 saying and come to an independent judgment as to the
9 merits or demerits of the case presented to us.
10 Number two, we believe that the testimony that we
11 have from Mr. Halsey would certainly qualify as
12 independent testimony from someone connected with
13 neither side in this proceeding. And we also feel
14 it's very consistent -- if I can have one second and
15 read from page ten of the transcript of the meeting
16 of June 17th, at which point Mr. Frizell had
17 suggested that we consider an independent planner.
18 The Chairman was Mr. Schrupf, at that point states
19 as follows, page ten: No. Once the names are
20 suggested, we will still have to decide if indeed we
21 would use one of the offices of an independent
22 planner.

23 Within that, we came to a
24 unanimous decision that this Board does not require
25 the services of an independent planner.

1 Sam, do we have any other
2 business?

3 MR. SAGOTSKY: Well, that is your
4 decision and the application for the joint planner,
5 or independent planner, as Mr. Frizell calls it, the
6 application is based on an Affidavit of Mr. Frizell
7 and also a brief as to his view of the law. The
8 hearing is up before the judge on August the 8th at
9 nine a.m. on the matter.

10 THE CHAIRMAN: Could everybody
11 hear what I've said?

12 MR. SAGOTSKY: I talk for the
13 Applicant. Perhaps you may repeat what I have said
14 for everybody's benefit.

15 (Whereupon Mr. Sagotsky's prior
16 statement is read back by the Court Reporter.)

17 MR. SAGOTSKY: And I will ask Mr.
18 Frizell if he knows what judge is going to hear it.

19 MR. FRIZELL: No.

20 MR. SAGOTSKY: This is summertime
21 and we're not always sure what judge will hear it.
22 But it will be heard on argument and the judge will
23 have the final say on this application. This Board
24 has decided this evening, for a reason stated, they
25 do not need or want a so-called independent planner;

1 that they have -- that they have had the benefit of
2 testimony; and, that their decision at this time is
3 that they do not need one nor they do not want one;
4 and, they have the benefit of a planner that they
5 consider independent. That's only my summary of what
6 was said.

7 THE CHAIRMAN: No other business
8 before we --

9 MR. SAGOTSKY: Well, the other
10 business I have left to Mr. Frizel's offer was -- and
11 we've broken it down at 50 cents a page. And I
12 believe the Chairman, if he wishes, he may use
13 another procedure, borrowing a copy and going to work
14 on all those pages yourself. We have spent
15 considerable time making copies and our machine has
16 been quite -- well, it has -- I don't think our
17 machine has been used to taking, shall I say, that
18 sort of a use. And so we feel -- so we can have it
19 done by State Shorthand and can prepare all the
20 copies, including for yourself. And we feel the
21 allocation would be reasonable, as has been mentioned
22 to Mr. Frizell. And Mr. Frizell, you say you will
23 let us know?

24 MR. FRIZELL: Yes.

25 MR. SAGOTSKY: I have nothing

1 else to bring before the Board at this time.

2 MR. FRIZELL: Mr. Larkin, Mr.
3 Marks has requested to bring on Mr. Queale out of
4 turn, since we're not finished, on the representation
5 that he will be brief, no more than two hours, total.

6 MR. DAHLBOM: I haven't an
7 attorney yet that said it wasn't going to be brief.

8 MR. FRIZELL: We still have Mr.
9 Kovacs with brief testimony also tonight. But with
10 that, I yield to Mr. Marks.

11 MR. MARKS: Thank you, Mr.
12 Frizell.

13 THE CHAIRMAN: Mr. Marks, who
14 else do you have scheduled besides Mr. Queale?

15 MR. MARKS: No one else but Mr.
16 Queale.

17 MR. FRIZELL: He's going to go
18 through the plans and he's also going to respond to
19 Mr. Fessler's questions about development standards,
20 setbacks, et cetera.

21 MR. DAHLBOM: Oh, Mr. Krakow?

22 MR. FRIZELL: Mr. Krakow has to
23 come back.

24 MR. DAHLBOM: Cross, yeah.
25

1 W I L L I A M Q U E A L E, a witness called on
2 behalf of the Colts Neck Township Planning Board,
3 having been duly sworn according to law, testified as
4 follows:

5
6 THE WITNESS: William Queale, Jr.,
7 Q-u-e-a-l-e, business address, 20 North Pennsylvania
8 Avenue, Morrisville, Pennsylvania; home address, 45
9 Noreen Drive, Morrisville.

10
11 DIRECT EXAMINATION BY MR. MARKS:

12
13 Q. Mr. Queale, are you a licensed,
14 professional planner in the State of New Jersey?

15 A. Yes.

16 Q. And will you summarize for us or in
17 particular list for us your academic and professional
18 qualifications?

19 MR. FRIZELL: Mr. Marks, I
20 wouldn't have any objection to Mr. Queale's testimony.
21 So if you want to submit these, I know he has a
22 written copy of his resume, you want to put it in for
23 the Board?

24 MR. MARKS: Fine. We will submit
25 this.

1 MR. SAGOTSKY: I think the Board
2 should have a general idea of his qualifications. It
3 would be good to have on the record as well as the
4 complete resume.

5 THE WITNESS: I'm a graduate of
6 Rutgers University, 1959, with a Bachelor of Arts in
7 economics and city planning. I am licensed in New
8 Jersey, number 47. I'm also an approved planner in
9 charge in the State of Pennsylvania, member of the
10 American Planning Association and a full member of
11 the American Institute of Certified Planners, having
12 served as the past president, past vice president,
13 member of the executive committee of the New Jersey
14 chapter of that professional association. I am also
15 a member of Housing Redevelopment Officials and
16 member of New Jersey Federation of Planning Officials,
17 having served as former secretary of the central area
18 and currently serving as Associate Director of the
19 state agency I'm a member of association New Jersey
20 Conservation Commissions; and, also our firm is a
21 member of New Jersey Association of Consulting
22 Planners.

23 From 1959 till 1961, I worked
24 with the New Jersey Division of State and Regional
25 Planning in their local planning bureau. From '61 to '7

1 I was a member of the firm Alvin Genshin (phonetic)
2 Associates and was responsible for supervising all
3 planning work.

4 From 1971 to present, I have been
5 associated with my own firm of Queale and Lynch,
6 Incorporated.

7 During these 20 some years I have
8 been responsible as a planner in charge for some 44
9 municipalities, master plans and zoning ordinances,
10 all portions, for county planning in New Jersey and
11 have represented a variety of private interests such
12 as the site selection for Richard Stockton State
13 College, the First Federal Savings and Loan of
14 Hammonton; advisory responsibility for 41 additional
15 towns and have been qualified as an expert on
16 numerous occasions for the courts, boards of
17 adjustment, governing bodies, planning commissions
18 and so forth.

19 I'm currently serving on the New
20 Jersey Department of Agriculture's Farmland
21 Preservation Study Steering Committee.

22 I have been a guest instructor in
23 Rutgers in planning courses as well as the Graduate
24 School of Education; and, I have been a panelist for
25 a variety of League of Municipalities and Federation

1 unctions. I have also served and am currently
2 serving as a member of the Board of Trustees of the
3 Woods School and Residential Treatment Center and I'm
4 a member of the governing body in my own community.

5 MR. SAGOTSKY: Is that a township
6 or borough?

7 THE WITNESS: Township.

8 MR. SAGOTSKY: Township Committee?

9 THE WITNESS: Yes.

10 MR. MARKS: I would like to have
11 this marked and put this into evidence, if there is
12 no objection. I don't know if you want to start a
13 new numbering system or --

14 MR. FRIZELL: I have one question.

15 Mr. Queale have you ever
16 represented a private developer on a given *advice*
17 development project of more than fifty residential
18 units?

19 THE WITNESS: No.

20 MR. SAGOTSKY: Well, I could
21 start it as PB-1.

22 MR. MARKS: PB-1 sounds fine to
23 me.

24 MR. SAGOTSKY: 7/29/80,
25 background of Queale and Lynch by William Queale.

1 (Whereupon the resume of William
2 Queale, dated 7/29/80 is marked PB-1 for
3 identification.)

4 BY MR. MARKS:

5 Q. Mr. Queale, to pause one second on your
6 qualifications your qualifications and indeed of the
7 thrust of your work, is that mostly in the
8 governmental sphere? Would you qualify it as that?

9 A. Yes.

10 Q. Mr. Queale, have you worked for the
11 Township of Colts Neck and, if so, since when?

12 A. Yes, I have worked for the Township since
13 roughly 1969. I was the planner in charge of the
14 master plan in the 1971 program that culminated in
15 the zoning ordinance. I was also involved in the
16 revisions to that ordinance when the Municipal Land
17 Use Law was adopted. I've offered general consulting
18 services on selected subdivisions and site plans that
19 have been referred to me and I'm currently involved
20 in the general reevaluation of the master plan.

21 Q. Are you familiar with the plans for the
22 Colts Neck Village that have been submitted by the
23 Applicant, Orgo Farms and Greenhouses?

24 A. Yes. I point out that with respect to this
25 particular application, I have evaluated broad

1 external aspects of the plan as opposed to the
2 internal aspects of detailed site plan or subdivision
3 considerations. What I've been most concerned with
4 is the fact that the project is for approximately 220
5 acres, of which some 187 are proposed for residential
6 development. And on the 187 acres a little over
7 1,100 dwelling units are proposed, representing six
8 units per acre on those residential portions. I've
9 also taken note that there is proposed to be a water
10 system and a sewer system and also the fact that the
11 project does propose a mixture of housing types plus
12 which industrial and commercial facilities near the
13 Route 18 interchange.

14 Q. Has -- your examination and evaluation
15 has really been the effect of the project as opposed
16 to the internal layout of the project?

17 A. Yes.

18 Q. In your evaluation, what considerations
19 have you included or considered?

20 A. Well, the basic items that I was concerned with
21 included the location of the project, the acreage
22 that I just identified and the intensity in terms of
23 the project, the number of units, as well as the
24 mixture of commercial and industrial uses; the
25 location, with respect to the relationship of this

1 tract within the Township and the region; the
2 township's existing development and agricultural
3 patterns; and, in an effort to recognize the Mount
4 Laurel issues with the township's location and
5 agricultural characteristics.

6 Q. Now, in your work as a professional
7 planner, are you familiar with the requirements of
8 the Municipal Land Use Law?

9 A. Yes.

10 Q. And within that scope as a professional
11 planner, do you normally consider the requirements of
12 the Municipal Land Use Law?

13 A. Yes.

14 Q. Would you outline your evaluation and
15 conclusion for us, in particular applying those
16 criteria to this project?

17 A. I have evaluated the project within the scope
18 of the requirements of the Municipal Land Use Law and
19 what I would like to do, with the Board's permission,
20 is to identify those statute provisions that I was
21 concerned with and then give you my conclusions and
22 the reasons for the conclusions as they apply to each.

23 First of all, the principles of the application
24 that I just outlined were done with respect to the
25 requirements for a use variance calling to a

1 particular case and a special reason. The next, the
2 negative criteria with respect to detriment to the
3 public good and whether or not there is substantial
4 impairment to the intent and purpose of the zone plan
5 and zoning ordinance; and, next, the application's
6 relationship to the purposes as spelled out under the
7 Municipal Land Use Law.

8 After having reviewed these, my conclusions are
9 that, in my opinion, a use variance should not be
10 granted for this application; that there is neither a
11 particular case nor special reason to warrant it;
12 that the development as proposed will impair the
13 intent and purpose of the zone plan and zone
14 ordinance; and, if developed, the development would
15 have substantial detriment to the public good and
16 would not meet several purposes of the Land Use Law.
17 And I've then taken each of these and outlined them
18 with some specific responses.

19 As far as particular case and special reasons,
20 I feel there are particular case and special reasons
21 to deny the variance. First, the size and magnitude
22 of this project inserts significant changes upon the
23 community. The issues, in my opinion, should be
24 resolved through the master planning process and
25 enacted by a legislative modification to the

1 development regulations ordinance. This project of
2 222 acres represents about one percent of the
3 Township's total land area. But the proposed number
4 of units adds about (58) percent. To just under 2,000
5 units that I've estimated would be in the Township
6 today; also the 1,137 units proposed on 187 acres,
7 coming to six units per acre, as compared to a half
8 unit per acre density that is permitted under the
9 present zoning. [But the site is located in an area
10 where the actual density is 0.02 of a unit per acre,
11 as of 1977.] *Counted residential uses only* The project itself also includes
12 industrial and commercial uses which further
13 intensify the proposal. It does propose a new water
14 and sewer system in the Township where no such
15 systems exist today. And, in my opinion, the project
16 does not have a special reason to be granted a
17 variance by virtue of attaching or proposing roughly
18 120 subsidized units through private development;
19 that is, proposing 1,137 units in total.

20 Secondly, I feel that while the application
21 attempts to respond to some of the housing issues, it
22 falls short of addressing some of the other important
23 Township issues that are best handled and should be
24 handled through the legislative process, in that
25 these issues are interrelated issues. One would be

1 coordinating development in conjunction with
2 agricultural preservation. This project does not
3 provide for any agricultural preservation within the
4 development, yet it's located in one of the six major
5 areas of the Township that has agricultural -- a
6 concentration of agricultural activities. And as of
7 1979, for example, agriculture does represent some 45
8 percent of the Township's land area as qualified
9 farmland. To give some indication of the intensity
10 of agriculture within the community, approximately 58
11 percent, something over half, of the qualified farmland
12 was also cropland. But, in particular, Colts Neck
13 has a very strong horse industry and we did do a
14 survey a year or so ago of some 58 farms that have
15 horses. And, in particular, it shows that the horse
16 industry is a growing industry with about 85 percent
17 increase in the horse population between 1970 and
18 1979. But another indication of the strength of the
19 horse industry is that of the 58 farms, horse farms,
20 66 percent of them had made major capital
21 improvements and about 41 percent had also expanded
22 their acreage during this time period.

23 Another consideration, with respect to the need
24 for legislation and the interrelationship of land use
25 functions and planning functions, is consideration of

1 an expansion of a regional utilities pattern. This
2 project is away from any of the existing utility
3 patterns such as Monmouth Consolidated water mains on
4 Swimming River Road and the sewer system in Tinton
5 Falls.

6 Also, I think there's an legitimate question
7 that if the Township is to have a higher density, the
8 issue of locating that higher density with respect to
9 drainage toward the reservoir is also a legitimate
10 function to be considered during the legislative and
11 planning function. Another issue would be
12 coordinating decisions of higher density developments
13 with the state county and regional plans; and finally,
14 evaluating alternate locations within the Township
15 with respect to other legitimate concerns such as
16 responding to transportation needs, major job centers,
17 major shopping areas what are the existing
18 neighborhood and regional development characteristics
19 with respect to a proposal of this magnitude and
20 other locations within the Township that might or
21 might not have opportunity for this type of
22 development with respect to the sufficient land area
23 being availability. Another --

24 Q. Just one second, Mr. Queale. I would
25 like to have this letter from the Department of

1 Community Affairs dated July 23, 1980 marked for
2 identification.

3 MR. SAGOTSKY: Letter entitled,
4 State of New Jersey Department of Community Affairs
5 dated July 23, re, SDR-80-14, addressed to Mr. George
6 Handzo, Clerk, Colts Neck Township, offered as PB-2.

7 (Whereupon a letter dated 7/23/80
8 is marked PB-2 for identification.)

9 MR. SAGOTSKY: And so marked.

10 THE CHAIRMAN: Should we read
11 that, Sam?

12 MR. MARKS: I'm going to.

13 MR. FRIZELL: A copy of that
14 letter went to the Zoning Board of Adjustment, did it
15 not? I have no objection to putting it right in.

16 MR. SAGOTSKY: I don't recognize
17 it, at the moment.

18 MR. MARKS: Would you be good
19 enough to read that?

20 THE WITNESS: This is addressed
21 to Mr. George Handzo, Clerk of Colts Neck Township,
22 dated July 23, and it's in reference to SDR-80-14:

23 Dear Mr. Handzo, This office is
24 in receipt of a copy of an application for
25 development in Colts Neck Township entitled "Colts

1 Neck Village" which has been furnished in compliance
2 NJSA 40:55D-12(g).

3 The Division of Planning has
4 prepared a State Development Guide Plan for the State
5 of New Jersey pursuant to --

6 MR. FRIZELL: That indicates that
7 we sent a complete set of the plans to the DCA and
8 this is its response.

9 MR. MARKS: You had sent a full
10 set of plans?

11 MR. FRIZELL: Yes.

12 THE WITNESS: -- C. 13:1B-15.52.

13 The purpose of this plan is to recommend general
14 areas where growth should be encouraged as well as
15 where it should be discouraged. The proposed Colts
16 Neck Village residential project is in a designated
17 limited the proposed "Colts Neck Village" residential
18 project is in a designated Limited Growth Area.
19 Within the context of the Guide Plan, this
20 designation reflects low-density development patterns
21 and the absence of growth-supporting infrastructure
22 or services. To maintain the character of Limited
23 Growth Areas, the Guide Plan that public investments
24 in such areas be limited to those required to
25 maintain health, safety and general welfare standards

1 for existing development and not for major new growth.
2 The applicant's project would be in general
3 conformance with the Guide Plan if the development
4 does to the alter the general character of the
5 surrounding area and does not require the support of
6 new public investments.

7 We understand that the Township
8 has been ordered by Superior Court to rezone land
9 within its jurisdiction to provide suitable areas
10 to a variety of residential uses. It is not the
11 purpose of the Guide Plan to suggest how this order
12 is to be addressed by the Township, but rather to
13 indicate generally where public investments over
14 which the State government exercises some control
15 should be directed to accomplish long-range,
16 statewide land use goals. Consideration of the Guide
17 Plan at the local level is encouraged, but other
18 factors, such as the relationship of the zoning
19 ordinance to the Township's overall land use plan,
20 are also important.

21 Since the proposed development
22 apparently will not require additional public
23 investments, its ultimate acceptability as currently
24 designed requires a local determination. Furthermore,
25 while the Court does not seem to require the

1 acceptance of this proposal, it does require the
2 Township to provide appropriate areas where
3 developments such as this one are permitted.

4 It should be noted that an
5 in-depth review of the submitted application has not
6 been made by Division of Planning. I would
7 appreciate being informed of the Township's disposition
8 of this application as soon as official action is
9 recorded. If you have any questions regarding this
10 matter, feel free to contact me at (609) 292-2953.

11 Very truly yours, Richard A. Gindon Director.

12 BY MR. MARKS:

13 Q. Would you indicate what copies --

14 A. The Planning Board Chairman, the Zoning Board
15 of Adjustment Chairman, the Monmouth County Planning
16 Director and Mr. Dave Frizell.

17 Q. Do you have any comment or thoughts on
18 this letter?

19 MR. SAGOTSKY: It has been marked
20 PB-2.

21 A. Well, I think one of the major things indicated
22 in there is that the State Guide Plan is prepared,
23 with the intent of guiding the direction of state
24 capital funds for public investments. They've
25 indicated their understanding that there would be no

1 request for public monies as far as this application
2 is concerned. It does not answer other direct
3 questions that might pertain to the specific
4 application. But I think at least my interpretation
5 of this letter comes with some background,
6 understanding, of what the plan itself calls for.
7 And that even though there are private utilities
8 proposed in this application, for example, the State
9 Guide Plan is appropriately reviewed with respect to
10 its reasonableness and its philosophy. The fact that
11 there is an effort, apparently, to discourage the
12 expenditure of public money for public utilities
13 raises the question of whether or not subsidized
14 units would get the support of DCA. But this is a
15 real -- an early stage, something to be reviewed at a
16 later date when I get a specific application.

17 THE CHAIRMAN: Would you give a
18 definition of what public investments mean?

19 THE WITNESS: In my view, it
20 would be major public investments, water system,
21 public sewer systems, additional monies for state
22 highway projects, mass transportation systems.

23 THE CHAIRMAN: Would this --

24 THE WITNESS: Local jurisdictions
25 might, if there is state aid available for school

1 expansion, for Federal funds where there would be.
2 some -- a state review might involve local funds for
3 a new municipal building, public schools, things of
4 that sort.

5 THE CHAIRMAN: Would it include
6 money for highways? We had some testimony that there
7 would be public monies involved, apportioned for part
8 of the expansion.

9 MR. FRIZELL: No, no public money.

10 THE CHAIRMAN: No public money?

11 Excuse me.

12 MR. BRENNAN: Well, you only
13 address the issue of the county road, isn't that
14 correct, 537? Nothing was ever said about 520.

15 MR. FRIZELL: 520?

16 MR. BRENNAN: I mean State Route
17 34. The changes wouldn't be on 537?

18 MR. FRIZELL: I'm sorry. What
19 about it? In other words, there's no public
20 investment money anticipated as a result of this
21 project. I don't know how else to answer that.

22 MR. BRENNAN: Well that's what
23 I'm saying, the state was not involved, the only
24 change would be made to 537?

25 MR. FRIZELL: Yes, you're right.

1 If there were any changes that were directly -- could
2 be found to be a direct result of this, including 537
3 or the other improvements, we would anticipate that
4 the Township would use or assess the developer.
5 We're not seeking any state funds.

6 MR. SAGOTSKY: If I may add, the
7 implication I get is that the DCA would consider,
8 with reference to the expenditure of public funds,
9 anything that would have to do or also have to do
10 with the development of highways or additional widths
11 or other improvements to highways that might have to
12 be brought about as a result of a development?

13 That's the impression I get. Am I --

14 THE WITNESS: The expenditure of
15 public money for highways is one of public
16 expenditures that they would attempt to address by
17 implementing their Guide Plan. But the basic thrust
18 of the Guide Plan in terms of the planned use,
19 intensities they have developed, growth corridors and
20 urban centers; they have also identified their
21 agriculture areas and things like the Pinelands areas
22 where no development is recommended. And basically
23 in between these areas they have what they call "limited
24 growth areas", which they look forward to a future
25 land reserve; but, in the meantime, trying to put

1 their public monies into improving systems in the
2 higher density areas rather than putting their money
3 into continued suburban sprawl. That's my general
4 impression of the plan and, I think, a reasonable
5 interpretation of that.

6 MR. SAGOTSKY: I have nothing
7 further.

8 BY MR. MARKS:

9 Q. Mr. Queale, do you have any opinion
10 whether the granting of the variance for this
11 application would substantially impair the intent and
12 purpose of the present zone plan and the present
13 zoning ordinance?

14 A. Yes. As I indicated earlier, I reviewed the
15 other conditions of the statute. In my opinion, this
16 variance could substantially impair the intent and
17 purpose of the plan and the ordinance; basically
18 recognizing that in order to offer 120 subsidized
19 units and approximately 400 additional units
20 identified as least cost units, the Applicant proposes
21 to increase the density in this area approximately 12
22 times the allowed density.

23 I've put this however in the context of the
24 litigation that has been ongoing related to this,
25 that should the Township not prevail in its appeal to

1 the Supreme Court, the implications that I've
2 outlined above are proper legislative considerations
3 in the development of a new land use element and new
4 zoning regulations. On the other hand, should the
5 Township prevail at the Supreme Court level, the
6 approval of this project would be a substantial
7 deviation from the intent of the present zone plan
8 and zoning ordinance, in view of the size and
9 intensity of the use.

10 I then also looked at the other negative
11 criteria with respect to this variance and, in my
12 opinion, it could have the potential to cause
13 substantial detriment to the public good; that while
14 the project itself is generally well designed, my
15 concern falls into two general areas, that the
16 implication to possible agricultural preservation
17 efforts would be substantially impacted by the
18 approval of this variance; and, secondly, the
19 application locates this project where it recommends
20 a leap frog pattern into the center of the Township
21 away from the coastal corridor of development within
22 the region. I've also taken into it that during the
23 presentation of the various documents that have been
24 submitted, that there are numerous considerations
25 offered. And these are certainly worthwhile

1 considerations and valid municipal concerns. But
2 that a number of these considerations, such as tax
3 consequences, the smaller household sizes, the
4 reduced population impact because of declining family
5 sizes and small sizes of some of these units, school
6 enrollment, mixed housing types cluster design
7 techniques, the staging proposals in creating the
8 housing with the recreation and open space plan,
9 having bicycle and pedestrian paths as an internal
10 circulation plan, having a landscaping plan and
11 proposing an open space management program are not
12 unique to this site or any other site. And they do
13 not represent either a particular case or a special
14 reason as applied to this site. They are procedural
15 and design techniques, as I indicated, that are
16 important in evaluating a plan, either a subdivision
17 or a site plan; and, in anticipating the Township's
18 future responsibilities in preparing an ordinance.
19 But they are not in my opinion justifiable reasons
20 for granting a use variance.

21 Q. Mr. Queale, do you have an opinion
22 whether the application before this Board does or
23 does not meet the special reasons test and whether or
24 not it satisfies the negative criteria tests? And if
25 you could, could you relate that to the purposes as

1 stated in the Municipal Land Use Law?

2 MR. FRIZELL: I'm going to object
3 to that. I don't think anything in Mr. Queale's
4 background qualifies him to tell us or tell the Board
5 what special reasons is or is not. If Mr. Queale,
6 would tell us what his concept of it is, if he can
7 define it in 50 words or less, he's better than I am.
8 But to simply come to a conclusion on a legal concept,
9 to have a planner testify on the conclusion of a
10 legal concept called special reasons, I think, is
11 requesting something of Mr. Queale that is beyond his
12 capability.

13 MR. BRENNAN: I'm sympathetic to
14 your comment because when the question was being
15 asked, I thought it was asking an opinion of law.
16 And probably the only thing that kept me from making
17 that observation was that probably Counsel for the
18 Applicant has given us a lot of planning advice over
19 the last two months.

20 MR. FRIZELL: To put it into
21 *touché* context, to say -- to put it in context, my
22 understanding of the law -- and I'm not saying it's
23 the only one -- is that special reasons can be found
24 where a given development fulfills any one of the
25 purposes of zoning. Now, if Mr. Queale will testify

1 that it doesn't fulfill any of the purposes of zoning,
2 this particular application, then I guess we can
3 continue. But then we'll go on from there. But
4 that's my understanding of the law. And I have Bill
5 Cox's famous treatise on it with me. But rather to
6 get to a conclusion, maybe we can ask some more
7 specific, planning type questions.

8 MR. SAGOTSKY: May I suggest,
9 perhaps, the time has come -- and I leave it to you
10 for a ruling and bear in mind that you are not held
11 100 percent strictly to evidence -- and you can
12 ascertain if the witness can give us his version.
13 And then it's up to the Board to make the decision as
14 to what weight to give to the evidence. I think that
15 might short cut a great many arguments.

16 MR. MARKS: I would agree with
17 that. I would just ask if I could respond to Mr.
18 Frizell's initial argument.

19 I know Mr. Frizell is fond of
20 referring to Judge Lane's opinion and I happen to
21 have an older opinion of Judge Lane in a case
22 involving Marlboro Township. As far as I know, it's
23 an unreported decision. It's a lower court case.

24 MR. SAGOTSKY: Superior Court
25 case?

1 MR. MARKS: Yes, a Superior Court
2 case, a trial case. And Judge Lane pretty much, in
3 his decision, takes a broad view. And I would just
4 like to read half of a paragraph. In fact, Judge
5 Lane says that: Special reasons is a flexible
6 concept. Broadly speaking, it might be defined by
7 the purposes of zoning as set forth in the -- the
8 then statute, NJSA 40:55-32, namely, to lessen
9 congestion in the streets; secure safety from fire,
10 flood, panic and other dangers; promote the health,
11 morals or the general welfare; provide adequate light
12 and air; prevent the overcrowding of land and buildings;
13 avoid undue concentration of population -- and Judge
14 Lane refers to other cases.

15 MR. FRIZELL: Well, I don't want
16 to compliment myself but I think that's what I just
17 said. Ask Mr. Queale whether or not this particular
18 application can be said to further none of the
19 purposes of zoning and we'll continue.

20 MR. MARKS: I think the question --

21 MR. FRIZELL: Don't ask him to
22 comment or to make an opinion on the ultimate -- on
23 whether or not -- well, on the ultimate fact of the
24 case, which is supposed to be the function of the
25 Zoning Board of Adjustment.

1 MR. MARKS: You had a planner
2 here last time, if I recall correctly, who felt that
3 he wasn't familiar with special reasons. I believe
4 that we are presenting a planner who can discuss
5 those.

6 MR. FRIZELL: Well, Mr. Radway
7 was here because we brought him in as a fiscal
8 analyst. Whether or not he knew anything about
9 special reasons is certainly no reflection on Mr.
10 Radway. The fact that he holds a planning license
11 indicates the number of people who hold planning
12 licenses in this state ^{than} ~~and~~ anything else -- and the
13 things that you have to have to get one. ~~But that's~~
14 ~~another matter.~~ Can we just ask Mr. Queale more
15 pertinent questions to the issue of planning and not
16 legal issues?

17 MR. SAGOTSKY: Well, my question
18 is, why can't that be reserved for cross-examination?
19 Let the Board make a ruling.

20 MR. FRIZELL: All right.

21 MR. SAGOTSKY: Let the Board hear
22 it and save it for your cross.

23 MR. FRIZELL: Either way.

24 THE CHAIRMAN: Any thoughts Mr.
25 Marks?

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Proceed with your question.

MR. MARKS: I'm going to repeat the question.

BY MR. MARKS:

Q. Mr. Queale, do you have any opinion whether the Orgo application does or does not constitute special reasons and whether it does or does not satisfy the negative criteria test? And if you do, would you -- could you relate that to the purposes behind the Municipal Land Use Law?

A. I can do that.

Q. Thank you, sir. Would you?

A. I have reviewed several -- all of the purposes and have comments on several of them, that the application, as I see it, does not meet the following purposes of the Municipal Land Use Law. Number one, that in the area of encouraging municipal action that will guide appropriate uses or development in a manner promoting the public health, safety and general welfare, I feel that there are other locations besides this tract capable of flexible design techniques that are available through legislative action; in that other locations are available that don't drain toward the reservoir, other locations that are also in closer proximity to major job

1 centers and shopping areas; and, as well as having
2 greater convenience for the traveling public; and, as
3 such, being in closer proximity, the issue of saving
4 fuel consumption is also included. Other locations
5 also have equal access to Route 537 and the limited
6 bus service that's provided on that highway. With
7 respect to the purpose that the application conflicts
8 with the development and general welfare of the
9 neighboring municipalities and county and state as a
10 whole, I would observe that this project places
11 itself, with its size and intensity, within the midst
12 of the agricultural area, if you take the southeast
13 quadrangle, 537 and 34, which I indicated, 68
14 dwelling units, 0.02 of an acre, the equivalent of
15 one unit per 50 acres. It is away from existing
16 utility corridors. It's away from the perimeter of
17 the county and state coastal corridors and as such
18 conflicts with the corridors shown on the county and
19 state plans and opposes the logical expansion of the
20 plan by leap frogging into the center of the Township.
21 Also, it does drain into the reservoir, where other
22 locations could avoid this, in my opinion. Also,
23 this application does not promote the establishment
24 of appropriate population densities and concentrations
25 that will contribute to the wellbeing of persons,

1 neighborhoods, communities and regions, and
2 preservation of the environment. The project is a
3 12-fold increase in the allowable density in this
4 particular area. But it represents a 300-fold
5 increase in the intensity of the development compared
6 to the existing development patterns in this area.
7 While it would provide alternate housing, I point out
8 that it does require more travel to work and to
9 shopping and social functions; and, again, is
10 injected into this agricultural area. In my opinion,
11 it is not a logical projection outward of the
12 established regional development corridor. It's
13 located where it poses a greater threat to the
14 reservoir than would a location where there would be
15 a positive drainage away from the reservoir.

16 Q. Have you had an opportunity to peruse or
17 read through the testimony of Mr. Robert Halsey who
18 was called by this Board as a witness several weeks
19 ago?

20 A. Yes.

21 Q. And your opinions with regard to the
22 logical progression of the development with respect
23 to corridors of development being at either end of
24 the Township, does that conflict or how does that
25 respond to the testimony given by Mr. Halsey?

1 A. I would see it as being similar.

2 Q. You would agree with Mr. Halsey's
3 testimony that the corridors of growth are towards
4 the edge -- the edges of this Township?

5 A. Yes. I also reviewed the additional purposes
6 of the Municipal Land Use Law. In my opinion, the
7 application does not encourage the appropriate and
8 efficient expenditure of public funds by the
9 coordination of public development with land use
10 policies. It does result, as I indicated earlier, in
11 a new water system; whereas, other locations could
12 tap into an existing water main.

13 Q. Could I just stop you at that point?
14 We're all aware that the water system here would be
15 private. But do you have an opinion as to the costs
16 of the housing which would be produced if this
17 project was located near a municipal sewerage or
18 water system?

19 MR. FRIZELL: Wait a minute. I
20 don't think I understood that question. I don't
21 think -- I don't know how Mr. Queale could have
22 understood it. And third, there's no foundation for
23 that question in this record, for sure. Does Mr.
24 Queale know anything about cost of sewer systems? I
25 suspect he does not.

1 MR. SAGOTSKY: The testimony of
2 Mr. Halsey was with reference to the pressures that
3 would exist for expanded development in the event
4 this application was granted on the Orgo Farms. As I
5 take it to mean that once you establish a sewer
6 system or a utility system and an intensive
7 development in the center of an area where Mr. Halsey
8 thought that it shouldn't be, that that encourages
9 pressures for surrounding development, increased
10 development, more of a sprawl. And therefore, Mr.
11 Halsey was against that type of thing and said it was
12 not in accordance with the general development plan.
13 I construe the question to mean -- of the Planning
14 Board attorney -- is whether or not the utilities
15 located in that area, where Orgo is, whether or not
16 they -- that sort of thing would encourage, shall we
17 say, outward pressures of the type that I've just
18 explained and in the wrong area. And if that's not
19 what you think, then correct it. But that's the way
20 I interpret it.

21 MR. MARKS: That was not what I
22 had in mind.

23 THE CHAIRMAN: I didn't hear it
24 that way, myself.

25 MR. FRIZELL: I understood the

1 question to ask Mr. Queale if he thought that providing
2 sewers with public money, that is, that the public
3 can provide the -- those services cheaper than
4 private enterprise.

5 THE CHAIRMAN: I think I'm going
6 to offer my interpretation. I interpreted the
7 question to be if this project was located in an area
8 where it could tap into existing water and sewer
9 facilities; is that correct?

10 MR. MARKS: Yes.

11 THE CHAIRMAN: What would be the
12 cost of these services and the impact on the overall
13 cost of the development?

14 MR. FRIZELL: My objection goes
15 to the fact that, number one, what's the basis for
16 that kind of an opinion? What is he going to base
17 that opinion on?

18 MR. MARKS: The concept of least
19 cost housing.

20 MR. FRIZELL: You're arguing the
21 relevance of the opinion. What's your cost? What
22 system are we going to tie into? What's the sewer
23 system we can tie into? What are the connection
24 charges?

25 MR. BRENNAN: I think that the

1 question might be asked of the witness. I think that
2 there was prior testimony by the Applicant that the
3 front end cost, I believe, for both the sewer and
4 water would be on the order of five million dollars;
5 that you are, roughly, talking about an average of
6 \$5,000 per unit.

7 MR. FRIZELL: Yeah, that also
8 includes the drainage system.

9 MR. BRENNAN: Over time plus the
10 annual operating costs. So possibly the Planning
11 Board might want to bring someone from Monmouth
12 Consolidated Water Company to determine just what the
13 capital investment would be and the recovery of the
14 capital investment, over time, with interest plus the
15 annual operating cost.

16 MR. MARKS: I think we'll have
17 another witness who will get a little deeper into
18 that the next time.

19 MR. BRENNAN: Mr. Marks, you are
20 talking about sewers. Let's not get deeper into that.

21 MR. MARKS: Those are murky
22 waters.

23 THE CHAIRMAN: Mr. Frizell, you
24 placed an objection?

25 MR. FRIZELL: Yes, sir.

1 MR. DAHLBOM: Can you rephrase
2 the question?

3 MR. MARKS: Let me see if I can
4 rephrase in a different manner.

5 BY MR. MARKS:

6 Q. Mr. Queale, you are aware that there are
7 a number of quote least cost houses end quote
8 proposed by this project?

9 A. Yes.

10 Q. Specifically 520 to 550 least cost
11 houses?

12 A. Those include the subsidized as well as the
13 least cost, yes.

14 Q. If this project -- well, let me retract
15 that.

16 Are there areas in this Township where
17 public sewer and water exist or are close by?

18 A. There are areas near Swimming River Road where
19 water is available from Monmouth Consolidated. In
20 the same road, there are sewer mains serving Tinton
21 Falls which would really only offer the opportunity
22 to explore the potential use of those mains. I don't
23 know of their individual capacity, whether they could
24 accept it. But it provides another alternative to be
25 explored. They are located in that eastern end of

1 the Township which is an alternative that doesn't
2 exist in this particular site.

3 MR. FRIZELL: Excuse me. Tinton
4 Falls, you say?

5 THE WITNESS: Yes.

6 THE WITNESS: My reason for
7 identifying the water system availability in Swimming
8 River Road as far as it relates to the purpose of the
9 statute, calls for appropriate and efficient use of
10 public funds, and so forth, was the fact that I don't
11 know the specific dollar amounts -- and I'm not
12 pretending that I would know the impact on a specific
13 project -- but from an overview point of view, you
14 don't have to drill a well, you don't have to incur
15 those costs. In addition, you don't have to incur a
16 treatment plant or storage facilities; tap into the
17 main and run the same infrastructure, even if you had
18 your own storage tank, wells. So to the extent there
19 are savings there, I think there would be. I don't
20 know the magnitude.

21 With respect to the sewers in
22 that area, my main point is the alternative of
23 exploring their availability in terms of capacity of
24 the mains and pumping station, capacity of the
25 ultimate treatment facilities can be explored at the

1 eastern end which cannot be explored here. But yet
2 the same alternatives for other sewerage treatment,
3 spray irrigation, or treatment plant, package plant,
4 pivots at the eastern end also exist here. So you've
5 gained one more alternative. But the fact that you
6 locate it further downstream from the headwater areas
7 and close to the larger -- close on Hockhockson Brook
8 before it goes into Pine Brook. That location --
9 also, with respect to public expenditures and
10 coordination of public development for land use
11 policies, I think it's appropriate that that location
12 also drains away from the reservoir. And again, with
13 respect to transportation costs, there are
14 opportunities at that point to tie into the bus
15 service on Route 537.

16 THE CHAIRMAN: Mr. Frizell, does
17 this take care of your objection?

18 MR. FRIZELL: Well, I think he
19 answered the question that was basically -- it was
20 the question that was posed and he also avoided
21 points of my objection by simply offering an opinion
22 that he thinks there might be some cost savings at
23 some point in time. But I mean, if we were in formal
24 proceedings, I would ask that the opinion be stricken
25 since there is no foundation for it. We don't know

1 what the tie in fee to Monmouth Consolidated is.

2 THE CHAIRMAN: You still have an
3 objection?

4 MR. FRIZELL: He's stated it. I
5 can't stay anything more about it now. I no longer
6 have an objection.

7 THE CHAIRMAN: Thank you.

8 THE WITNESS: There are a couple
9 of other purposes of law that I reviewed.

10 In my opinion, while this
11 application would provide a variety of residential
12 and recreational and open space uses, it would
13 infringe upon the opportunity to preserve major
14 agricultural areas and protect environmental concerns
15 with regard to the reservoir. As I mentioned earlier,
16 this site is a part of a larger agricultural area.
17 There are other locations within the Township that
18 can provide housing development opportunities with
19 less of an impact on the agricultural implications;
20 and, there are other areas that bypass the reservoir.

21 With respect to other purposes of
22 the ordinance, while this, for example, provides open
23 space even though the residential density is six
24 units per acre, it does not promote the conservation
25 of open space and valuable open areas and prevent the

1 spread of urban sprawl. This project leap frogs away
2 from the coastal corridor into the midst of the
3 community. It leap frog way from the existing water
4 and sewer service areas and the options open at the
5 eastern end of town; and also, further, the major job
6 and shopping facilities in the coastal corridor. It
7 does drain into the reservoir.

8 As far as the environmental
9 questions are concerned, it consumes an agricultural
10 tract that is part of a larger agricultural
11 neighborhood. And in contrast, there is considerable
12 acreage available elsewhere inside the Township.

13 In my opinion, this is a
14 legitimate examination of alternatives that should be
15 explored through the legislative process; and, that
16 these other tracts are more directly surrounded by
17 residential developments and smaller scale, that
18 they're more under the influence of surrounding
19 developments. Therefore, their loss to some future
20 development can at least, in the broader sense, can
21 be more likely to be expected and the loss of that
22 agricultural land would not have the same impact on
23 the agricultural preservation effort as would the
24 loss of this significantly large tract

25 MR. DAHLBOM: You refer to legal

1 or legislative action. Do you mean the Township or
2 county or state?

3 THE WITNESS: Township. And my
4 final observation is, while this application contains
5 design techniques that encourage lessening the costs
6 of the development and an efficient use of land, in
7 my opinion, this issue will best resolved -- there
8 can be legislative efforts -- uniformly, to more than
9 a one tract program, than a variance on one tract in
10 order to encourage many public and private activities,
11 to meet lower cost and more efficient use of the land
12 through the legislative process. Other decisions can
13 be considered, including an appropriate density for,
14 not only development, but possible relationship with
15 respect to housing types and agricultural
16 preservation. It can consider design standards for
17 mixing housing types and specific site plan
18 considerations. There can be coordination with
19 regional development patterns. There can be
20 consideration of the availability of utility services
21 that now exist and alternate locations for higher
22 densities. Residential developments can also be
23 considered.

24 THE CHAIRMAN: I'm still -- I was
25 following things very well at this point but I will

1 try to summarize. In a sense, what you just said --
2 because I think I kind of lost you -- are you saying
3 that a one-shot variance for this particular site
4 would not be proper planning procedures in terms of
5 coordinating this within the context of the Township
6 and the regional pattern of things?

7 THE WITNESS: Yes.

8 THE CHAIRMAN: A reasonable
9 summary of what was said?

10 THE WITNESS: Yes. And my
11 testimony prior to that indicates the considerations
12 I feel are pertinent.

13 THE CHAIRMAN: Thank you.

14 BY MR. MARKS:

15 Q. Do you feel that there is another body
16 besides the Zoning Board which should consider the
17 total impact of a population increase of the size
18 that's proposed here; and, if so, what body?

19 A. Well, what I've been referring to, the
20 legislative process, I'm thinking of the total
21 process, that's development of a development
22 regulations ordinance that includes zoning as well as
23 design standards.

24 MR. FRIZELL: Can I object to
25 this? I'm sorry, Mr. Queale. I didn't mean to

1 interrupt your answer.

2 I don't know why Mr. Queale's
3 opinion on the legislative function versus
4 quasi-judicial function is important. I think you
5 ought to save that for argument. I think Mr. Queale
6 is a planner. His opinion is of no probative value.
7 The Board looks to Mr. Sagotsky and the Counsel with
8 respect to the function of different branches
9 government. This is a quasi-judicial body. That's
10 why we're here. Whether Mr. Queale agrees with the
11 fact that we should be here or not doesn't seem to be
12 probative of anything.

13 MR. MARKS: I think you missed
14 the thrust of his opinion. I think if I could
15 attempt to rephrase it --

16 BY MR. MARKS:

17 Q. What you are saying is, that the inquiry
18 before this Board, you have no objection as to
19 whether it's proper or not; in fact, I would deem
20 that you would consider it proper?

21 A. It's certainly a proper application, yes.

22 Q. But what you are saying is, that the
23 housing proposed here is a very narrow issue; is that
24 correct?

25 A. Yes.

1 Q. And it doesn't consider the
2 ramifications of the effect on agriculture in the
3 area; it doesn't consider other functions which
4 should be combined and considered as part of the
5 legislative process through the Township Committee?
6 Is that what you feel?

7 A. Not only Township Committee but the Planning
8 Board, to develop the land use element, to be the
9 basis for zoning changes if that, in fact, is what
10 should have to be.

11 MR. MARKS: Does that answer your
12 questions, Mr. Frizell?

13 MR. FRIZELL: Well, I think he's
14 presuming that the Zoning Board isn't going to take
15 into consideration things like agriculture. But
16 let's go.

17 MR. SAGOTSKY: Are you saying, in
18 effect, that the Planning Board -- the Adjustment
19 Board is asked, by way of a variance, to consider a
20 result that could best be accomplished through
21 legislation? Is that the effect? Is that the thrust?

22 THE WITNESS: Yes.

23 MR. SAGOTSKY: And that that
24 legislation should come, in this case, from the
25 Township Committee, who would be in charge of zoning

1 in accordance with the land use plan and other
2 pertinent elements?

3 THE WITNESS: Well, not just the
4 Township Committee, but the involvement of the
5 revision of the master plan through the Planning
6 Board's function, with recommendations to the
7 Township Committee and then their adoption of some
8 ordinance.

9 MR. SAGOTSKY: Planning Board's
10 and the legislative aspects of the Township Committee?

11 THE WITNESS: Yes, sir.

12 MR. SAGOTSKY: I have nothing
13 further.

14 THE CHAIRMAN: Do you still have
15 an objection, Mr. Frizell?

16 MR. FRIZELL: I don't think
17 anyone addressed my objection. I don't have any
18 problem with the issue. The problem I have is that
19 Mr. Queale is not the proper party. He's a planner.
20 He shouldn't be talking about governmental action.
21 I'll withdraw the objection. Let's go.

22 THE CHAIRMAN: Thank you.

23 BY MR. MARKS:

24 Q. Would you comment on the relationship of
25 this project to the regional plans, both of the state

1 and of the Tri-county Regional Planning Commission?

2 A. Well, the county, the state and Tri-state plans
3 are, in their broadest thrust, in concert with one
4 another, in that Colts Neck is shown as a very low
5 density, agricultural density level with the
6 development corridors shown generally along the coast
7 paralleling and east of the Parkway; and, into the
8 west, down Route 9 into the Freehold center. So that
9 the southern part of Holmdel, all of Colts Neck and,
10 I believe, the north portions of Howell are shown at
11 this lower density.

12 Q. Do you feel that the -- do you have any
13 feelings with respect to this project in terms of
14 urban sprawl and would you define that?

15 A. Well, in my opinion, there really are two kinds
16 of urban sprawl that you might be able to envision.
17 One would be the specific design of the -- of a site
18 or a small region of the town, a strip along the
19 highway or something of that sort where individual
20 lots are stripped along a highway, uncoordinated and
21 so forth. The second is the broader aspect. If you
22 look at, say, the north portion of the State of New
23 Jersey and compare growth rates, starting back in
24 1930 or 1940 and how development has pushed out along
25 major transportation routes and utility corridors in

Queale - direct

1 a general sprawl development. And in my opi
2 this project in this location would foster th
3 sprawl of a latter type. Designing a project -- this
4 is a very good design so that the controlled
5 circulation patterns and placement of units and so
6 forth would not be of a sprawl pattern such as my
7 first description.

8 Q. You were talking before about
9 agriculture. Do you feel that this project poses a
10 threat to existing agriculture in the Township?

11 A. Yes, I do.

12 Q. Do you feel that also at the same time,
13 to use your phrase, it will promote leap frogging
14 because of its location?

15 A. Yes.

16 Q. Would you be a little more specific on
17 what you mean by leap frogging and perhaps relate
18 that to the testimony of Mr. Halsey relating to the
19 pressures of development?

20 A. Well, I'm not sure I recall specifically what
21 Mr. Halsey said. My own opinion is that the the
22 jumping of this facility to almost the geographic
23 center of the Township is a leap out from the
24 perimeter; whereas, the perimeter of the Township
25 would be a more logical extension of the regional

1 growth patterns tying in with utilities and highways
2 and jobs and shopping and so forth. I would concur
3 with Mr. Halsey that the general pattern has been
4 that where you have developments pushing out, it can
5 be expected, reasonably expected, that would entice
6 additional developments. It's never guaranteed and
7 there are certainly bound to be exceptions around the
8 state. But I think with the extension of utility
9 systems and the intensity of the development, it then
10 becomes -- this project, for example, would be the
11 rationale for a similar project next door, down the
12 street and so forth.

13 MR. MARKS: I have no further
14 questions at this time.

15 MR. BRENNAN: Precisely what
16 would be wrong if it led to another project of such
17 scope down the street?

18 THE WITNESS: There may not be
19 anything inherently wrong with such a project other
20 than -- my point here is that the implications of the
21 intensity of this development really should be a
22 policy determination after a careful evaluation of
23 all the alternatives for the Township as a whole. If
24 a system is going to be put in for water and sewer in
25 this location, should it be oversized so the

1 municipality can make a decision that it, in fact,
2 may or may not want to take over the water system or
3 the sewer system so it would be expanded into the
4 site next door. I think it's a fair decision.

5 Also, after a variety of
6 alternatives can be discussed with the public at
7 large as to whether an agricultural preservation
8 issue should be pursued and adopted through local
9 legislation. Right now it seems that the abilities
10 to farm, the pressure for horse farming and so forth
11 have kept a lot of the agricultural areas on the
12 market as agriculture rather than development. But I
13 think it's an issue that deserves some public
14 discussion. The same thing with the -- on the
15 alternatives, with respect to where should you place
16 it, is to best get the location, if it's scattered
17 around the Township in four or five parts. This site,
18 is that the wishes of the Township as opposed to say
19 three or four projects next to each other in one
20 concentrated area with one utility system? These are
21 issues and there are others as you cut through the
22 myriad land use considerations, traffic uses,
23 utilities, recreation, placement of school facilities
24 and so forth that have to be interrelated; that which
25 you can do when you take a master plan approach as

1 opposed to the isolated issue of one project.

2 MR. BRENNAN: If we approve the
3 Colts Neck Village application, we are planning by
4 variance as opposed to planning with thought?

5 THE WITNESS: I think that
6 distinction is a good --

7 MR. TISCHENDORF: Mr. Queale, you
8 said, I believe, that you agreed with Halsey that
9 corridors of growth are near the edges of our town.
10 And alluded a few times to the eastern end of town in
11 proximity to water and sewers in Tinton Falls. Is
12 there another edge of town where you conceive where
13 you could say this would be a better location, other
14 than the implied one near the eastern end of town?

15 THE WITNESS: I had considered
16 the western end nearer the Route 18 interchange with
17 537. But, at least to this date, have been somewhat
18 dissuaded from that because it's my current
19 understanding that utility hook ups, particularly
20 sewers, are not available at that end through the
21 Freehold area. In addition, that area does
22 ultimately drain into the reservoir, whereas the
23 eastern end, if an alternate system has to be done
24 and higher density development is required, it seems
25 to me that the reservoir itself is to be a major

1 concern. We have the opportunity to provide the
2 different housing choices in the Township in a
3 location where we can avoid potential threat that
4 some feel is more important than others. But
5 nevertheless, it is an issue before the Township.
6 Now if at the time when we ever get to the area where
7 the total area away from the reservoir gets to its
8 capacity, we have -- may have the luxury to know
9 other design techniques of how to protect the
10 reservoir that we don't now know of.

11 MR. TISCHENDORF: So you are
12 saying that area near 537 and 18 does drain into the
13 reservoir?

14 THE WITNESS: Yes. But in answer
15 to your question, yes, I have given consideration to
16 that periphery of the Township because of the
17 densities of the development pushing out from
18 Freehold and location of the Route 18 interchange.

19 MR. TISCHENDORF: And the north
20 boundary?

21 THE WITNESS: No, the north
22 boundary much of it is already taken up in major
23 tracts of single family development, so that -- and
24 the in between parcels are favorably influenced by
25 the type of single family residential development

1 there. There are a couple of sizable areas that I
2 think could be considered agricultural in nature,
3 which would then leave open the question of an
4 agricultural preservation policy. But that end also
5 is directly or rather closely tied into the north leg
6 of the reservoir.

7 MR. TISCHENDORF: I have no more.

8 THE CHAIRMAN: Sam?

9 MR. SAGOTSKY: No questions.

10 MR. MARKS: I just have one other
11 question.

12 BY MR. MARKS:

13 Q. You've referred several times to
14 agricultural preservation. And I noticed in your
15 qualifications, credentials, you indicated that you
16 served on several bodies relating to agriculture. Is
17 it that simple, just to say "agricultural
18 preservation", or is there something deeper in this
19 issue?

20 A. It's very deep and it's very complex. And
21 there are numerous alternatives being discussed from
22 legislation for the transfer of the development
23 rights to the application -- or broader application
24 of the concept that we introduced in Chesterfield,
25 called "transfer of development credit".

1 Q. Could you explain that for a second?

2 A. Well, the transfer of development rights is
3 where someone --

4 MR. FRIZELL: Wait a minute. I'm
5 going to object. What's that got to do with anything?

6 MR. MARKS: I think it's germane
7 to his testimony that agricultural preservation is
8 important; that your project is located in a
9 significant agricultural area of the Township and
10 that's going to impair it.

11 MR. FRIZELL: Mr. Marks, what has
12 transfer development rights got to do with the
13 agricultural issue? There is no such thing in New
14 Jersey. If there was, maybe we would have a
15 different case. It was tried in Burlington County
16 and found to be a miserable failure.

17 MR. MARKS: That's a state
18 procedure. We're talking about zoning where sections
19 of the Township would be designated as agricultural
20 preservation zones where only farming use would be
21 continued.

22 MR. FRIZELL: Well, wait a minute --

23 MR. MARKS: Development credit
24 would be transferred to other areas of the Township.

25 MR. FRIZELL: Is it authorized or

1 not authorized under present New Jersey statutes? I
2 can assure you --

3 THE WITNESS: I think you should
4 rephrase that and say it has not been tried.
5 Certainly there have been significant discussions
6 about --

7 BY MR. MARKS:

8 Q. You mentioned transfer of development
9 credits. Is that in effect in Chesterfield Township?

10 A. Yes.

11 Q. Could you explain that?

12 A. I didn't mean that transfer of development
13 rights was legislation implemented in New Jersey,
14 because it is not. But it is a concept which is
15 being discussed, that the Department of Agriculture,
16 in their broader view of having to come up with
17 agricultural preservation methods. So that
18 ultimately they hope through the cooperation of
19 various farm organizations, municipalities and
20 assessors and so forth to develop an agricultural
21 preservation program that will be meaningful. Some
22 of the issues that are being discussed will need
23 legislation. Others may not. The transfer of
24 development credits is, in its simplest form, cluster
25 zoning for non-contiguous properties so that the

1 owner of two separate parcels can develop the number
2 of units generate, you know, the zoning ordinance on
3 one of those parcels, dedicating the other parcel for
4 agricultural use.

5 But there are other techniques
6 going on, as far as this committee that I'm currently
7 serving on, at the state level where they hope to
8 have an agricultural preservation program, I imagine,
9 over the next several months.

10 THE CHAIRMAN: Mr. Frizell, do we
11 need a ruling on your objection?

12 MR. FRIZELL: Well, I'll save it
13 for argument. It's totally irrelevant, this whole
14 line. Rather than belabor the record with objections,
15 I would rather continue.

16 MR. SAGOTSKY: My question would
17 be directed to Mr. Marks. Is he in testifying to
18 show that if the Orgo site were approved for a Colts
19 Neck Village, might that subsequently interfere with
20 some legislative program designed for the use of the
21 program of development rights or development credits?
22 Would that be the thrust of your question?

23 MR. MARKS: Yes, that it would
24 imperil one of, I believe, the six agricultural areas
25 of concentration within the Township.

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Is six the correct number, Mr.

Queale?

THE WITNESS: Yes.

MR. BRENNAN: You had suggested that a development of this intensity and density with all its implications might be better suited to the edge of the Township along 537; is that correct?

THE WITNESS: Yes.

MR. BRENNAN: But isn't that land along 537 over towards Tinton Falls also agricultural and horse farming?

THE WITNESS: Yes, it is.

MR. BRENNAN: So if you seek to preserve use at the Orgo site, you would consume agricultural use over on the Tinton Falls --

THE WITNESS: That's correct.

What we're attempting to address is the issue that should the Township be required, as a result of the application, to make provision for alternate housing types, higher density development -- basically, with the remaining land that can be developed in the Township, you are talking a very high proportion of it being agricultural. So we know at the outset, any development of the Township is going to consume that portion of the existing agricultural land. The issue

1 becomes one of trying to establish densities and
2 zoning concepts that would minimize that impact; and
3 secondly, making or selecting a location or multiple
4 locations that would adhere better to other planning
5 concepts, such as, access utilities, reservoir and so
6 forth.

7 MR. BRENNAN: My point is the
8 fact that Orgo Farms is now agricultural land is not
9 critical because you would consume other agricultural
10 land. Therefore, that argument of yours is not a
11 very strong argument in that the Board really should
12 focus more upon the other arguments that you've
13 presented.

14 THE WITNESS: Well, I think you
15 should focus on both of them because the -- and
16 perhaps you are correct in the sense of total acreage
17 consumed may be a wash, the same acreage here as
18 opposed to someplace else. And the other issues are
19 also important. But it just is my opinion that the
20 destruction of agriculture at this location where you
21 are then talking about new utility infrastructures
22 and things of that sort and different than this
23 locations on the periphery.

24 MR. BRENNAN: Which are your
25 other arguments?

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THE WITNESS: Yes, that's right.

THE CHAIRMAN: Any other questions from the Board?

I have questions.

MR. BRENNAN: Are you going to ask questions, Mr. Frizell?

(Whereupon a recess is taken at 9:15 p.m.)

(The hearing reconvenes at 9:20 p.m.)

THE CHAIRMAN: Mr. Frizell, I believe you've got the floor.

CROSS-EXAMINATION BY MR. FRIZELL:

Q. Mr. Queale, did you bring a copy of Township master plan with you?

A. No, I didn't.

Q. Now, you have a pencil, Mr. Queale?

A. Yes, sir.

Q. Let me ask you in terms of locating a housing project which would have a variety and choice of housing in it, including townhouses, patio homes, et cetera, garden apartments, do you have any difficulty, Mr. Queale, with using the following

1 criteria? And I'm going to give you five: Number
2 one, access to community and commercial facilities;
3 number two, development suitability of the tract, of
4 the area; number three, access to major
5 transportation routes, number four, potential of the
6 site for the installation of water and sewer
7 utilities; number five, land ownership patterns
8 within the site or within the area which make the
9 assemblage of large tracts of developable land
10 feasible.

11 MR. MARKS: I'm going to object
12 to the last portion of that on the basis that this
13 witness has not been called as someone who has
14 examined tax maps, who has determined ownership in
15 the Township. And to that extent, I'd object to item
16 number five.

17 MR. FRIZELL: Mr. Marks, I merely
18 asked him if he has any difficulty with the criteria.
19 I didn't ask if he examined tax ownership.

20 THE CHAIRMAN: Mr. Marks, does
21 your objection still stand?

22 MR. MARKS: My objection still
23 stands.

24 THE CHAIRMAN: Sam, any thoughts
25 here?

1 MR. SAGOTSKY: My opinion would
2 be the question is beyond, shall we say, the scope of
3 the cross-examination.

4 THE CHAIRMAN: All the points Mr.
5 Frizell raised or just the last one?

6 MR. SAGOTSKY: The last point is
7 beyond the scope and Mr. Frizell apparently -- if he
8 wants to produce his own witness, that would be up to
9 him.

10 MR. FRIZELL: Mr. Sagotsky, the
11 rules of evidence about not cross examining witnesses
12 except about things that they testified about was
13 changed about 1962. It's an issue in the case. The
14 witness is here and I've asked him a question and
15 that is, what criteria. It seems to me the primary
16 question here, what criteria should be used in
17 locating a project of this type, if Mr. Queale has a
18 problem with that particular criterion, he can tell
19 us that. But all I've asked Mr. Queale at this point
20 is, does he have any difficulty with those five
21 criteria.

22 THE CHAIRMAN: Maybe it would
23 help, Mr. Frizell, if you would define a little bit
24 more what you mean by large tracts and feasibility.
25 Five hundred acres, 100 acres, 50 acres? What do you

1 mean by -- I believe your question, if you rephrase
2 it, is -- or restate again?

3 MR. FRIZELL: I mean other than,
4 for instance, where you have in order to obtain a
5 site large enough to make a feasible development
6 possible you have to sell more than three parcels of
7 land.

8 THE CHAIRMAN: So, the definition
9 that you are asking there would be where you would
10 have to acquire more than one plot of land in order
11 to create a large enough area to make it feasible?

12 MR. FRIZELL: More than two or
13 three. In other words, if you only have to put
14 together two I'm not saying that. If we look at
15 ownership patterns and they are basically half acre
16 lots, undeveloped, that rules it out. Ownership
17 patterns that would lend to assemblage of two or
18 three.

19 THE CHAIRMAN: Totally, in the
20 approximate number of acres you are talking about
21 here?

22 MR. FRIZELL: Yes.

23 THE CHAIRMAN: I think we can ask
24 the witness to answer. If he has some problems with
25 that last part, let me qualify it.

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MR. BRENNAN: Where did the
criteria come from?

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MR. FRIZELL: I'll tell you in a
minute.

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MR. SAGOTSKY: Your minute is up.

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MR. FRIZELL: I'm waiting for an
answer first, too.

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THE WITNESS: Am I to answer? Is
that the decision?

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MR. MARKS: Yes.

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THE WITNESS: I have no problem
with those criteria. I think there are additional
items that can be added to the list.

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BY MR. FRIZELL:

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Q. Which items would you add to the list,
Mr. Queale?

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A. I think when you are talking about an issue of
this type, where you have a strong agricultural
community, I think ag' preservation issues are also a
consideration. I think in addition to the potential
for water and sewer installation, while that's
important, I also think the availability of utilities
should also be a consideration; in today's planning
world, a comparison with the compatibility with
adjoining community and regional plans is also a

1 consideration.

2 Q. As compared with other local and
3 regional plans?

4 A. Yes. And I think also Colts Neck is somewhat
5 unique in that it is a community with a major
6 reservoir. So I think in this instance that becomes --
7 that would be a concern, too. It would not appear in
8 other communities. And I think with respect to
9 future plans it's legitimate to select locations for
10 issues such as this with an eye toward the reasonable
11 location of future public utilities and public
12 facilities, schools, parks and playgrounds, things of
13 that sort.

14 Q. I'm not sure you've added anything to
15 this last few; that is, anticipated access to
16 facilities to include potential future -- and I also
17 considered development suitability.

18 A. I interpreted to soil, topo, physical
19 characteristics.

20 Q. All right.

21 MR. MARKS: Excuse me. So that I
22 understand, are we adding these five to the original
23 five --

24 MR. FRIZELL: Mr. Queale added
25 them.

1 MR. MARKS: -- in terms of
2 whatever inquiry you are getting into? You have no
3 objection to that?

4 MR. FRIZELL: Well, let's go to
5 one question at a time. I'm not here to be
6 cross-examined. I'm here to ask questions. Mr.
7 Queale is here to answer them.

8 MR. MARKS: I have a problem. I
9 would like to intelligently understand what's going
10 on and I would like to know if all ten are to apply.

11 THE CHAIRMAN: The intent was to
12 have, I believe --

13 MR. FRIZELL: If it's any help,
14 we'll deal with them all.

15 MR. MARKS: Okay.

16 THE CHAIRMAN: I think though you
17 were going to answer one question from a Board member
18 as to what was the basis of these criteria. Is that
19 appropriate now?

20 MR. FRIZELL: Where does the
21 criteria come from? The first five criteria were
22 given by the planner who testified in our behalf in
23 the Orgo farms litigation. I asked Mr. Queale if he
24 had any difficulty at that time and he testified that
25 he did not.

1 BY MR. FRIZELL:

2 Q. Now, Mr. Queale, in terms of Township of
3 Colts Neck, major transportation routes in the
4 Township of Colts Neck, will you agree that Route 18,
5 Route 34 and Route 537 are the major transportation
6 routes in the Township of Colts Neck?

7 A. Yes.

8 Q. Now, do you know how many acres of the
9 Orgo farm are presently being used for agriculture?

10 A. No.

11 Q. Mr. Queale, do you know where the major
12 concentration of horse farms is in Colts Neck?

13 A. Well, not in terms of specific numbers; in
14 terms of generalized areas, yes. They're
15 concentrated in six general areas.

16 Q. Is one of those areas the eastern
17 section of the Township along 537?

18 A. There are some facilities at the eastern end,
19 yes.

20 Q. Are there major horse installations at
21 that end of the Township along Route 537?

22 A. Yes.

23 Q. Do those major installations include the
24 large lots at the end of Route 537 on either side of
25 the highway?

1 A. I know the furthest one is but I don't recall
2 the others.

3 Q. Now, can you tell me generally, Mr.
4 Queale, from your own knowledge, since we don't have
5 a physical characteristic map within your master, *plan*
6 about what your master plan says about the physical
7 characteristics of the area in the southeastern
8 portion of the town in the vicinity of the
9 Hockhockson Brook?

10 A. Which portion now, the whole stream corridor?
11 The whole stream corridor shows up as being wet. The
12 closer you get to it, the more problems you would
13 have with development. As you go away from the more
14 serious, wetness problems, you get into an area that
15 I believe the master plan or subsequent updating of
16 the physical characteristics study of areas that are
17 developable but would need sewers.

18 Q. Does that generally apply across the
19 whole southeastern sector of the town, south of Route
20 537 and east of the Earle railroad right-of-way?

21 A. The major drainage problems, of course, follow
22 the brook. The wetness problems, I believe, do
23 expand in that area but as you get up to 537, they
24 disappear. I don't recall the extent to which they
25 cover that far eastern corner.

1 Q. Let's explore that just a little further.
2 You indicated that the availability of sewers from
3 the Borough of Tinton Falls should be explored. Do
4 you know what the availability of capacity of sewer
5 in Tinton Falls is across the line?

6 A. We did the master plan there and I would say as
7 of four or five years ago they did have a contractual
8 limitation as to the amount of flow that they could
9 contribute to the regional system. And within their
10 collection system, there were locations where the
11 pipes themselves had capacity problems. We did not
12 identify specific segments of the system that had
13 capacity problems, so I'm unable to, you know,
14 identify them specifically. Other locations possibly
15 could be explored as tie in locations, metered as
16 they flow through the system, pass through and picked
17 up at the outflow.

18 Q. You testified before Judge Lane, didn't
19 you? So you know when that decision came down?

20 A. Which one?

21 Q. The original Court decision.

22 A. Yes.

23 Q. Have you explored the availability of
24 sewer capacity in Tinton Falls since July of 1979 and
25 today?

1 MR. MARKS: Objection. The
2 question was answered by the witness.

3 MR. FRIZELL: He told me what he
4 did in 1977. I want to know if he's done anything --
5 what has he done for us lately?

6 THE WITNESS: I have not explored
7 that issue.

8 Q. Isn't it true that there's no capacity
9 in Tinton Falls?

10 A. I can't say that.

11 Q. Cause you don't know?

12 A. That's right.

13 Q. Now, you talk about the compatibility of
14 neighboring master plans. You know what the Borough
15 of Tinton Falls has planned for this area immediately
16 east of the Township of Colts Neck, don't you?

17 A. Roughly one and a half per acre. At the
18 southern end, it might be three.

19 Q. They also have a designated historic
20 district in that region, don't they?

21 A. Very small.

22 Q. How big is small?

23 A. Well, I can't give it to you in square
24 measurements but it's just the village of Tinton
25 Falls that comes up toward Colts Neck, perhaps two or

1 three houses on the south side of 537 and half a
2 dozen on the north side and then spreads out on
3 Sycamore Avenue and goes up to the school, as you
4 continue toward the ECOM building.

5 Q. All right. The planning in that area is
6 for large lot, single family housing, is it not?

7 A. It's one and a half units per acre with cluster
8 provisions.

9 Q. Which is approximately one house every
10 30,000 square feet?

11 A. Well, that would be the average lot size if you
12 just took it in the street.

13 Q. I understand that.

14 A. One and a half per acre.

15 Q. But it could be clustered to something
16 small?

17 A. Yes.

18 Q. What do your clients at the Planning
19 Board of Tinton Falls think about your suggestion to --

20 MR. MARKS: Objection. That's
21 not relevant and --

22 MR. FRIZELL: -- put townhouses
23 and apartments in that zone?

24 MR. SAGOTSKY: The objection is,
25 what would those people think?

1 MR. FRIZELL: I'll withdraw the
2 question.

3 MR. SAGOTSKY: That is
4 objectionable.

5 BY MR. FRIZELL:

6 Q. Mr. Queale, acting as a planner for
7 Tinton Falls, would you recommend that they send a
8 correspondence to the Township of Colts Neck
9 encouraging the Township of Colts Neck to fulfill its
10 obligations under Mount Laurel on the border of
11 Tinton Falls?

12 MR. MARKS: I object to that
13 question. I think it's speculative and also think
14 that there hasn't been any sort of foundation laid to
15 this as to what's going on in Tinton Falls.

16 THE CHAIRMAN: Sam?

17 MR. FRIZELL: I'll restate the
18 question, Mr. Sagotsky.

19 BY MR. FRIZELL:

20 Q. Mr. Queale, would the provision for the
21 variety and choice in housing contemplated by the
22 Order that's entered in this case on the border of
23 Tinton Falls be compatible with the master plan of
24 Tinton Falls?

25 A. In my opinion, it could be.

1 Q. What do you mean it could be?

2 A. The density was one of the issues that I
3 specifically addressed in my direct testimony as
4 being a policy determination that I felt is better
5 handled through the legislative process. We have not
6 indicated what that density would be. We have not
7 assumed that it would be six units per acre as you
8 have proposed. It could be something less than that
9 with different types of options or more options than
10 what you've proposed.

11 Q. What density do you think is a minimal
12 density for providing townhouses, garden apartments
13 and patio homes in an area where the -- where those
14 and small lot single family homes -- where they can
15 be mixed and commercial adjuncts can be placed with
16 them, Mr. Queale?

17 A. Well, in Chesterfield, it's one unit per acre
18 and that's being done.

19 Q. Is that least cost development?

20 A. According to Mr. Rahenkamp.

21 Q. Mr. Queale, the Chesterfield case is a
22 settlement between the township and the developer?

23 A. Yes.

24 Q. Let's don't argue since there is a
25 settlement in that case that obviously the developer

1 made the exceptions?

2 A. There are townhouses and apartments and 5,000
3 square foot lots.

4 Q. Within the development?

5 A. Yes.

6 Q. Now, is there anything else, Mr. Queale,
7 in terms of the potential for water in that area of
8 the Township? Is that within the Monmouth
9 Consolidated franchise area?

10 A. To my knowledge, it is.

11 Q. It is?

12 A. Yes, sir.

13 Q. You mean there is areas within the
14 Township of Colts Neck which are within the Monmouth
15 Consolidated franchise area?

16 A. With the exception of the Borough, which I'm
17 not certain of, it's my understanding that Colts Neck
18 is entirely within the franchise area.

19 Q. How long have you been the planner in
20 Colts Neck?

21 A. Since '69.

22 Q. Now, you indicated several times in your
23 testimony that there were -- there were areas
24 elsewhere in the Township. Other than this area, in
25 the vicinity of 537, were there any other areas you

1 were alluding to or are you consistently alluding to
2 that area?

3 A. It was primarily consistent, in my reference,
4 to that southeast portion; but again, depending on
5 the overall approach on how to resolve the housing
6 question. There could be the question of small sites
7 and other options scattered around the Township.

8 Q. Is it possible to develop -- not say:
9 possible -- but from a practical standpoint, is it
10 possible to develop garden apartments, townhouses,
11 patio homes, et cetera, without the installation of
12 utilities, sewer and water?

13 A. What was the the initial premise?

14 Q. Whether it was possible.

15 A. Clustered to one to the acre?

16 Q. My question, was it possible to provide
17 those housing types without providing sewer and water.

18 Perhaps a better question, is it
19 rational and intelligent planning to plan for those
20 kinds of uses without also planning for sewer and
21 water?

22 A. Now you are going to make me sound like it
23 would be irrational or not intelligent. We have
24 provided a development option in one of our
25 agricultural towns where small clusters of townhouses

1 and clustered lots would be available on water on
2 individual wells and septics. But there would be
3 limited numbers and specific design criteria. And
4 it's merely an option. So in the narrow sense, I
5 would have to say, yes, it is possible to do without
6 the central water and sewer systems. I think in the
7 broader sense, where you are talking about smaller
8 lot sizes, townhouses and apartments, generally you
9 are talking about water and sewer systems.

10 Q. Now, in your opinion, Mr. Queale, what
11 is the minimal density for providing least cost
12 development given current development standards,
13 current standards within the planning profession.

14 MR. MARKS: Objection.

15 Q. If you are going to plan, Mr. Queale,
16 for least cost development what density, would you
17 designate an area for?

18 MR. MARKS: Objection. There
19 hasn't been a sufficient foundation laid. We've had
20 testimony from your own witness that it's relative.
21 What are you talking about, talking about Colts Neck,
22 Kalamazoo or where?

23 MR. FRIZELL: Colts Neck.

24 THE WITNESS: Dhd you say what is
25 the least density?

1 BY MR. FRIZELL:

2 Q. What is the highest density?

3 A. Highest?

4 Q. Excuse me, lowest.

5 MR. SAGOTSKY: For least cost
6 housing?

7 MR. FRIZELL: For least cost
8 housing, reasonably given all the factors.

9 THE WITNESS: Well, as I say, in
10 Chesterfield it's combined with an agricultural
11 preservation concept and one unit per acre with
12 conditional uses allowing subsidized houses.

13 BY MR. FRIZELL:

14 Q. What's the size of the project?

15 A. The original tract is 600 acres and the design
16 is for 4,000 units. So they will be anticipating the
17 acquisition of 400 additional acres. I think within
18 the general context of suburban areas, such as
19 central Jersey, and for this, three units per acre
20 and four units per acre would provide that
21 opportunity; and, provided it's tied within a planned
22 development concept, mixed housing types and
23 clustered criteria.

24 Q. Are you saying three to four units per
25 acre?

1 A. Yes.

2 Q. Well, then you disagree with the Mount
3 Laurel opinion itself which said that the PUD's at
4 Mount Laurel, at those densities, were not designed
5 for low or moderate least cost housing.

6 MR. MARKS: There's no foundation
7 to that.

8 MR. FRIZELL: Mr. Queale has read
9 the decision.

10 MR. SAGOTSKY: There's no
11 testimony that the conditions are the same in Mount
12 Laurel as they are in the Colts Neck area.

13 THE CHAIRMAN: Mr. Frizell, I
14 think I'll have to uphold that objection. Please
15 rephrase the question.

16 BY MR. FRIZELL:

17 Q. Mr. Queale, I'm going to another
18 question. Mr. Queale, when you testified before
19 Judge Lane, didn't you indicate that there were no
20 areas in this town that housing of this type either
21 should be located or could be located?

22 MR. SAGOTSKY: I object. The
23 issues were different in the matter before Judge Lane
24 than they are before this court.

25 MR. FRIZELL: I'm merely

1 introducing this, Mr. Sagotsky, to impeach Mr.
2 Queale's testimony. It seems to me that someone who
3 is on record as saying nowhere or anywhere in town
4 and then says there's somewhere but it's not your
5 client's property, I think that's impeachable
6 testimony.

7 MR. SAGOTSKY: I think what you
8 are forgetting is that your question to Mr. Queale
9 today was based upon your preliminary statement, on
10 your part, in view of the present Order of the Court
11 as it now exists by Judge Lane. That was the premise
12 that you based your question on. And that could
13 conceivably, certainly present a different aspect
14 than what Mr. Queale was faced with before Judge Lane,
15 at which time the decision hadn't yet been rendered.

16 MR. FRIZELL: I suggest to you
17 that the physical characteristics of Colts Neck have
18 changed not much.

19 THE WITNESS: I have no problem
20 responding to that.

21 THE CHAIRMAN: Go ahead.

22 THE WITNESS: I believe I had
23 testified --

24 MR. SAGOTSKY: I will withdraw my
25 objection.

1 THE WITNESS: -- that your
2 characterization of my testimony is reasonably
3 accurate, Mr. Frizell. But I didn't consider the
4 Township at this juncture in attempting to respond to
5 the court decision in anticipation of what may or may
6 not happen as any indication of what I would prefer
7 and what I would recommend had I not had those court
8 constraints. I made it clear that I did not feel
9 that Colts Neck should have that obligation and
10 spelled out numerous reasons. If we are to
11 anticipate that we must do it, then I find myself in
12 a position as a professional of considering all the
13 ramifications of that decision and making a
14 recommendation.

15 BY MR. FRIZELL:

16 Q. Mr. Queale, let me ask you what you
17 would recommend or would you -- what you would
18 recommend if your charge was not to simply engage in
19 some kind of a planning game and say, "Well, it's
20 legislative. It's not quasi-judicial," et cetera, et
21 cetera; and, you had an obligation to encourage these
22 housing types within Colts Neck. Would that change
23 your opinion?

24 A. I didn't follow the intent of your question.

25 Q. My question was whether or not your

1 opinion would be changed if your obligation, your
2 charge, what you are being paid to do was to
3 encourage and bring into the Township of Colts Neck
4 the kind of housing types that are the subject of
5 this application?

6 THE CHAIRMAN: Mr. Frizell, which
7 opinion --

8 MR. FRIZELL: His opinion about
9 whether or not this particular --

10 MR. SAGOTSKY: Site location.

11 MR. FRIZELL: -- site location is
12 appropriate, whether it's better than the eastern end,
13 whether or not this could be drained.

14 MR. SAGOTSKY: Without the
15 preliminaries, without your own preliminaries, state
16 the question.

17 BY MR. FRIZELL:

18 Q. The question is, whether or not the
19 opinions Mr. Queale has rendered tonight would be
20 different if his responsibility was not to discourage
21 the development of this housing type within the
22 Township but rather to encourage that housing type
23 within the Township?

24 MR. MARKS: I object. The
25 question is too vague and the witness has said

1 himself before that if there was a charge that was --
2 that this be done, he would have to go back and study
3 the matter. And I don't think he's here to make any
4 shoot-from-the-hip opinion.

5 THE CHAIRMAN: Maybe if I could
6 help, I think your question is, if Mr. Queale walked
7 into this cold and objective and it was said you've
8 got to zone or you've got to provide for this type of
9 housing for Colts Neck --

10 MR. FRIZELL: And encourage.

11 THE CHAIRMAN: -- your question
12 to him, would this be his choice or this or is that?

13 MR. FRIZELL: Yes, whether his
14 opinions would be different.

15 THE CHAIRMAN: Whether your
16 opinion would be any different in terms of your
17 consideration on the perimeter versus the center of
18 town and so forth?

19 I'm still not sure. I'm trying
20 to restate your question, Mr. Frizell. I'm not doing
21 a very good job.

22 THE WITNESS: The primary thrust,
23 if I were in that situation without any past history,
24 would be to examine the existing land use patterns;
25 as a major input, the physical characteristics as

1 well. As I indicated earlier, we have identified six
2 major agricultural areas. In my opinion, a community
3 such as Colts Neck, where you have such an
4 identifiable agricultural strength, there is a
5 justifiable reason to at least pursue the policy
6 making not to continue in the agricultural program,
7 but at least to pursue it depending on whether that
8 decision to preserve or not preserve could result in
9 two different development regulations concepts. My
10 preference would be, absent the public input, the
11 decision and policy makers and so forth, would be to
12 make an effort to preserve the agricultural industry
13 that does exist here and seems to be thriving. And
14 to do so with some type of transfer of credits
15 project and provide options to the design of the
16 housing that would result; including planned
17 development, cluster design, mixed housing types.
18 Where the densities got sufficiently large and we
19 would anticipate the need for water and sewer
20 programs, it would be my intent to encourage that
21 toward the eastern end so that we could explore or
22 build upon the infrastructure that's there.

23 BY MR. FRIZELL:

24 Q. You had some problems with the number of
25 houses. Can you tell me, in terms of your

1 implementation of the decision, do you think that the
2 number of housing units that we've proposed here is
3 too high?

4 MR. MARKS: I'm going to object.
5 I'm going to object, because that's not what the
6 decision stated. The decision of Judge Lane merely
7 stated that the Township would be required to develop
8 areas -- in which will be built houses on small lot
9 areas, in which townhouses, garden apartments, patio
10 housing and zero lot line housing may be placed,
11 areas in which a mix of small houses, multi-family
12 and commercial adjuncts may be and areas -- he didn't
13 say to put it altogether. He didn't say to use your
14 density.

15 MR. FRIZELL: I have a question
16 posed to Mr. Queale, whether he thought the numbers
17 too high.

18 MR. BRENNAN: Judge Lane
19 specifically did avoid the issue of density.

20 MR. FRIZELL: You are correct,
21 Mr. Brennan. But one unit per acre, 1,100 units at
22 one unit per acre is 1,100 acres. What does that do
23 to agriculture -- just to give away my whole line of
24 argument before I ask Mr. Queale a question, what is
25 the implementation of that decision on the smallest

1 possible lot of land consistent with health, safety
2 and welfare?

3 MR. MARKS: Have you been
4 qualified as a planning expert?

5 MR. FRIZELL: It is our objective
6 and should be the objective of the Township. So
7 therefore, the total number of units that are being
8 proposed, in terms of what Mr. Queale would be in
9 terms of corss-examining him and impeaching his
10 testimony, is probably the most important question.

11 MR. BRENNAN: Well, I question
12 the relevancy.

13 MR. FRIZELL: If he doesn't argue
14 that the number of units is improper and then he
15 argues that the density should be reduced, what he's
16 saying is spread the thing around, take up more land,
17 destroy more agricultural uses.

18 MR. HERMAN: Mr. Chairman, I
19 think Mr. Frizell --

20 MR. FRIZELL: Are we going to get
21 a ruling on this?

22 You are not even involved.

23 MR. HERMAN: I think I am
24 involved.

25 MR. FRIZELL: I have asked a

1 question. Mr. Marks has stated an objection. Just
2 for the purposes of proper procedure, can we get a
3 ruling on that question?

4 MR. SAGOTSKY: I think the
5 Chairman should hear from the representative of the
6 School Board.

7 MR. HERMAN: I think that Mr.
8 Frizell is implying that Mr. Queale has said that for
9 1,100 units at one per acre you must destroy 1,100
10 acres of agricultural land. I don't think that's
11 what he said at all. I think specifically he talked
12 about perhaps innovative planning decisions where the
13 units -- whereas they may be at an average density of
14 one per acre, don't necessarily consume one acre each
15 I think he talked about preserving agricultural land
16 and still building one residential unit to the acre
17 and I think you are misrepresenting about what he's
18 talking about.

19 MR. FRIZELL: We can find out if
20 he answers the question.

21 MR. MARKS: May I respond further
22 on that, with the permission of the Board?

23 THE CHAIRMAN: Yes, please.

24 MR. MARKS: I would just ask the
25 Board in the next week to take a look at the last

1 three pages -- my copy of the of Judge Lane's
2 decision is light. I believe it's page 25, 26 and 27.
3 But I would just like to read a portion, a page and a
4 half, if you permit me. I'm sorry, two pages.

5 MR. FRIZELL: Wait a minute.
6 Hold it. I have a question. There's an objection.
7 Let's move on it. That's already part of the record.
8 That's all marked in.

9 MR. MARKS: It's germane to your
10 objection, and I think you don't want to hear it.
11 Judge Lane has said: I have heard proofs with
12 respect to Plaintiff's property solely for the
13 purpose of demonstrating the higher density
14 development is feasible in Colts Neck, even though it
15 may not be at the densities talked of by Plaintiff.

16 MR. FRIZELL: What was the
17 density talked of by Plaintiff at that case, do you
18 know?

19 MR. MARKS: No.

20 MR. FRIZELL: Any other questions?
21 Do we still have an objection pending to the question?

22 MR. MARKS: Absolutely,
23 absolutely.

24 MR. FRIZELL: My question to Mr.
25 Queale is, it seems to me for the purposes of

1 cross-examining Mr. Queale's testimony, is whether he
2 thinks that number is too high. I mean, obviously,
3 if he thinks that it's only ten percent of the number
4 that should be incorporated, then you can proceed
5 from there. But if he thinks it's too high, then we
6 can proceed from that point.

7 THE CHAIRMAN: Maybe we should
8 have the question asked again, Mr. Frizell.

9 MR. FRIZELL: My question was
10 whether or not Mr. Queale felt in terms of the
11 implementation of the units or the number of houses
12 that we have proposed in this particular application
13 is too many.

14 MR. SAGOTSKY: It is my opinion
15 that the question is not relevant.

16 THE CHAIRMAN: Objection upheld.

17 BY MR. FRIZELL:

18 Q. All right. Mr. Queale, in terms of the
19 number of acres that you believe should be dealt with
20 in terms of implementing that decision, can you tell
21 me how many acres you would anticipate rezoning in
22 terms of the decision?

23 A. I don't recall the acreage specifically. I
24 would generalize by saying that it's a larger area
25 than equivalent to your site.

1 Q. Is it less than 400 acres?

2 A. Well, I just said I couldn't generalize. If
3 it's approximately double the area of your site, then
4 it would be something a little more than 400.

5 Q. What do you think are reasonable
6 densities in terms of net residential densities.

7 MR. MARKS: I object for the same
8 question that the Chair ruled on.

9 MR. FRIZELL: This is a
10 completely different question.

11 Q. In terms of providing least cost housing,
12 what do you think are reasonable densities for
13 townhouses, net residential densities.

14 MR. MARKS: I object. This
15 question is speculative and the concept of least cost
16 is irrelevant.

17 Q. In today's markets.

18 THE CHAIRMAN: You have an
19 objection, Mr. Marks?

20 MR. MARKS: Yes.

21 MR. SAGOTSKY: Well, the
22 sufficient foundation hasn't been laid; in what
23 location in the same Township. There could be
24 different locations. And I should think the question
25 would have to depend on the specific locations.

1 MR. FRIZELL: The location has
2 very little to do with net densities. Given a
3 developable piece of real estate, my question is in
4 terms of what you are going to give away -- not in
5 terms of what you are going to give away for whatever
6 reason or you are going to put into green areas or
7 roads. Within a given residential section, what are
8 reasonable and yet least cost densities, net
9 densities.

10 Mr. Queale has answered this
11 question previously.

12 MR. SAGOTSKY: Can you answer
13 that?

14 THE WITNESS: I would say
15 somewheres with the townhouse design, somewheres of
16 four, five or six units per acre and with garden
17 apartments, somewheres eight to the acre.

18 BY MR. FRIZELL:

19 Q. Garden, net eight to the acre, you are
20 saying is least cost? Have you rendered that opinion
21 before?

22 A. Sure.

23 Q. Where?

24 A. Well, I can't tell you where.

25 Q. Have you ever heard that opinion by

1 anyone else besides yourself?

2 A. I can't recall that.

3 Q. Have you ever seen garden apartments
4 developed at eight units per net acre? If you have,
5 please tell me where they are. I would like to see
6 them.

7 A. I can't specify, but I'm sure -- you know I
8 can't. I'm sure I could identify some areas.

9 MR. MARKS: Would you be willing
10 to supply the Board with that data at a future date?

11 THE WITNESS: Sure. The
12 assumption is that it's a two-story unit. If it's
13 three stories, it's going to be -- three stories
14 could be as high as 12, 13 units. It also depends on
15 one bedroom or two bedroom or three bedroom.

16 BY MR. FRIZELL:

17 Q. I asked a net density for garden
18 apartments. You told me that eight units an acre is
19 a least cost density for garden apartments, net?

20 A. But, Mr. Frizell, you are involved enough in
21 land development to know that there would be
22 different issues of distribution of bedroom type,
23 one-story, two-story or mid-rise apartments. I
24 assumed in that two-story garden apartment structures.
25 Three-story would be more; and, that the bedroom mix

1 could involve different numbers. If you are talking
2 entirely senior citizen efficiencies and one bedroom,
3 you are talking high numbers.

4 MR. SAGOTSKY: Let --

5 MR. FRIZELL: I'll accept the
6 two-story garden. If you can find a two-story garden
7 apartment, four units on the ground and four units
8 one story up, on one given acre of ground and they
9 call it a garden apartment -- other than a single,
10 isolated four unit job, I would like to see it. But,
11 in any event, let's go on.

12 BY MR. FRIZELL:

13 Q. What does the current master plan say in
14 terms of recommendations, in terms of land use plan
15 for the Orgo Farm?

16 A. I would have to refresh myself but I believe
17 the commercial property either stops at the present
18 line on the district or may go back to the power line.
19 And then the rest the eastern portion of the power
20 line is low densities, residential. There is no
21 non-residential uses around the interchange. I would
22 have to look at the master plan. I haven't look at
23 it for some time.

24 Q. Has the land use plan changed since its
25 original implementation?

1 A. No.

2 Q. Is this a copy of the land use plan?

3 MR. FRIZELL: I would like to
4 have a place marked in the record for the master plan
5 of Colts Neck Township except I would not like to
6 give you mine at this time. We could mark this?

7 Can we mark that, Mr. Sagotsky?

8 MR. SAGOTSKY: Well, at this
9 point you are engaging in cross-examination.

10 MR. FRIZELL: Yeah.

11 MR. SAGOTSKY: It really should,
12 in order to be in place, it should be when you put in
13 your case or what affirmative position --

14 MR. FRIZELL: Perhaps I'll use it
15 for rebuttal.

16 Well, I don't think we have to
17 mark the master plan of the town. I think the Zoning
18 Board of Adjustment can take judicial notice of it.

19 BY MR. FRIZELL:

20 Q. Now, Mr. Queale, does the reference to
21 the master plan refresh your recollection in terms of
22 the -- of what the master plan designates for the
23 Orgo farm?

24 A. Yes.

25 Q. What is it?

1 A. The power line does become the dividing line
 2 between the commercial at the north half of that
 3 western fringe. The southern half is low density
 4 research and development of office and experimental
 5 and similar uses. East of the power line it's --
 6 it's low density residential and farm.

7 Q. The designation in the present plan for
 8 the areas on the other side of the freeway for
 9 commercial office type uses is more consistent with
 10 the master plan than two acre residential lots, is it
 11 not?

12 A. Well, to the portion that's west of the power
 13 line it would be conforming, yeah.

14 Q. If I told you that virtually the entire
 15 area -- that almost most of the commercial area is
 16 west the power line, all right? Now, in terms of the
 17 area on the other side of the highway, does your
 18 master plan talk about agricultural uses for the Orgo
 19 farm in the areas west of the power line?

20 A. Not for areas west of the power line.

21 Q. Your master plan also anticipates the
 22 installation of a municipal police department,
 23 doesn't it?

24 A. There may be some general language in there
 25 that same day the Township should anticipate a police

1 department.

2 Q. Now, did you discuss in your master plan
3 the possibility or feasibility of a sewer interceptor
4 in the vicinity of the Orgo farm?

5 A. There was, at one time, some discussion about a
6 sewer interceptor coming up the brook that crosses
7 and runs generally parallel to Route 34.

8 Q. And was that the feasibility and the
9 typing of that interceptor dependent primarily upon
10 land use considerations adopted by the Township and
11 the completion of the Route 18 freeway?

12 A. The anticipation was a service to the
13 non-residential development that was shown around
14 Route 34 and Route 18 interchange; because, I believe
15 there was language in the text referring to
16 development of that sort, dependent on water and
17 sewer service.

18 Q. You agree that the commercial areas of
19 Colts Neck as developed and as proposed for
20 development are in the vicinity of Route 537 and
21 Route 34?

22 A. Yes.

23 Q. And you will agree, won't you, in the
24 community that there is a concentration of community
25 facilities in that general area?

1 A. Well, when you say "community facilities", that
2 infers to me, public.

3 Q. Do you know where the post office is?

4 A. That's in the Village of Colts Neck, west of 34.

5 Q. Do you know where the Atlantic
6 Elementary School is?

7 A. East of 34, abutting the northwest corner of
8 your project.

9 Q. And do you know where the firehouse on
10 Route 537 is?

11 A. Just west of the village.

12 Q. Are there any other community facilities
13 that you -- that the Township of Colts Neck provides
14 that are elsewhere in the Township?

15 A. The Conover school.

16 Q. Other than schools?

17 A. The municipal complex, *about project* [the Department of Public
18 Works garage,] the first aid squad.

19 Q. Where's the first aid squad?

20 A. Well, it used to be in the Village of Colts
21 Neck. I think it just moved to the back of this
22 municipal complex.

23 Q. Now, in terms of all those facilities,
24 you can't really compare in terms of those facilities,
25 community and commercial facilities, you don't mean

1 to say that the vicinity on the eastern sector of the
2 town along Route 537 has as good access to those
3 facilities as the proposal, do you?

4 A. If you are talking about existing facilities,
5 your site is more convenient to some of those
6 facilities, recognizing that the Atlantic School --
7 last I did research-- was serving only grades four
8 and five. So the school system is scattered about
9 with bus service. We have proposed an additional
10 school site at the east end, on Hockhockson Road plus
11 an additional firehouse at the east end. Rescue
12 squads, municipal buildings and things of that sort
13 are usually municipal-wide services, in any event. I
14 don't think they have much bearing.

15 Q. Access to the post office, access to the
16 firehouse?

17 A. Well, the access --

18 Q. You mean -- access to one school is
19 better than access to none, is it not?

20 A. Well, to the extent that you have fourth and
21 fifth grade students that would be living at the
22 north end of your project, that might be true. Those
23 students that live to the south end of the project,
24 it might be a busing situation. In any event, all
25 those students that are non-fourth and fifth grades

1 students are going to be bused to points where the
2 school sites are.

3 Q. You are assuming that that particular
4 set up continues?

5 A. That's right.

6 Q. Let's just go down your list, Mr. Queale.
7 In terms of access to commercial and community
8 facilities, you don't deny that the proposal has good
9 access to commercial and community facilities, do you?

10 A. To the extent that there is the commercial
11 service on Route 34, it has more convenient access
12 than a site away from 34. My testimony was directed
13 toward the limitation of those facilities in a strung
14 out nature; just to underline the fact that these are
15 not consolidated services that are within easy
16 pedestrian walk. They require a vehicle, not
17 withstanding the fact that your project abuts a
18 portion of that business district.

19 Q. But that business district could be --
20 could continue to be developed with pedestrian access
21 in mind, could it not?

22 A. Only portions of it could. The shopping center
23 that's northwest of the intersection is an emerging
24 shopping center that would not be conveniently accessibl
25 to the pedestrian access from your project.

1 Q. Which shopping center?

2 A. The one that's northwest of the intersection.

3 Q. In any event, even eliminating those
4 areas where pedestrian access would not be convenient,
5 isn't it better, if you have to rely on automobile
6 transportation, to reduce the number of trips and the
7 length of trips?

8 A. The number of trips? I thought that would be
9 changed. The length of the trips, to the extent that
10 the services that are of the nature that are going to
11 be in high demand, your assumption is correct. With
12 respect to major shopping needs, they're outside of
13 the Township in any event.

14 Q. That's number one. In terms of access
15 to major transportation routes, you'll agree, won't
16 you, that the Orgo Farm site has good access to major
17 transportation routes within the Township?

18 A. Yes.

19 Q. In terms of potential for water and
20 sewer, do you disagree that the site has potential
21 for water and sewer facilities on the site?

22 A. They have the potential. The area of the site
23 would indicate to me that it was flexible to be able
24 to design it. There is not access to existing
25 services. So it would have to be created services

1 and then designed.

2 Q. I understand that. But you don't know,
3 for instance, whether or not on the other end of
4 Route 537 you indicated you don't know if there is
5 any capacity in those lines in Tinton Falls; isn't
6 that correct?

7 A. That's correct.

8 MR. MARKS: I object on the basis --

9 MR. FRIZELL: There is no
10 question pending, Mr. Marks. Can we just have some
11 modicum of the decorum --

12 MR. MARKS: I'm going to object.

13 MR. FRIZELL: -- so we can object
14 when questions are raised? And other than that,
15 we'll just proceed along. I listened to Mr. Marks'
16 questions and if I missed my objections, I missed
17 them. But can I ask another question?

18 THE CHAIRMAN: I believe the
19 witness answered the last question, no.

20 MR. MARKS: I think Mr. Frizell
21 combined two questions. He talked about water and
22 sewer on the subject parcel and then only related his
23 question to the east to sewer. He was talking about
24 the capacity of the sewer system in Tinton Falls. He
25 did not relate his question, a parallel relationship,

1 to the water.

2 MR. FRIZELL: Excuse me, Mr.
3 Marks.

4 BY MR. FRIZELL:

5 Q. Do you know, Mr. Queale, whether or not
6 there is capacity in existing lines for servicing a
7 housing project in the vicinity of the eastern end of
8 the Township along Route 537?

9 A. There is, I believe, the ten inch main in the
10 Swimming River Reservoir. I have assumed that there
11 would be capability of tapping that line. I have
12 also made the assumption that, you know, worst case
13 situation and it could not be tapped, that location
14 is the shortest distance to the treatment plant; and,
15 in a parallel line, would be more feasibly installed.

16 Q. Did you explore the capability of any
17 water lines in that end of town?

18 A. No.

19 Q. It wasn't for lack of time, was it,
20 since Judge Lane's decision that you didn't explore
21 that capability?

22 A. Time either was or was not a factor. I am
23 responding to the questions with respect to what I
24 would suggest as a planner in a general sense. I
25 don't in any municipal plan, whether I have ten years

1 to evaluate the system, do that that kind of
2 engineering analysis. But it is my common practice
3 to explore where the utility lines are and what would
4 be a logical extension of the utility infrastructure
5 to provide additional services.

6 Q. Now, in terms of development suitability,
7 I know I only have to ask you because you don't the
8 master plan with you, based on your general knowledge,
9 you don't deny that your own master plan generally
10 refers to the Orgo Farm; and, in fact, the county
11 Natural Features Study refers to the Orgo Farms as an
12 area that is suitable for development?

13 A. In terms of soils and topo, it is suitable.

14 Q. You'll agree generally that the southeaster
15 sector of the Township in the vicinity of Hockhockson
16 brook and south of Route 537 and east of the Earle
17 railroad depot is heavily inundated with wet soil and
18 is -- and that you categorized this area as
19 unsuitable for development within the master --

20 A. I don't believe that that's the case. I did
21 identify the drainage corridors along the tributaries
22 to Hockhockson Brook. And as I indicated earlier,
23 the closer you get to the brook, the category of
24 recommended non-development is in the plan. As you
25 get away from the brook, there are wet

1 characteristics that would indicate it can't be
2 developed with on-site sewers or at least that would
3 be a potential problem. But I believe it's
4 identified as being capable of development with
5 sewers.

6 MR. MARKS: You meant on-site
7 septic systems?

8 THE WITNESS: I meant on-site
9 septics.

10 Q. Now, you don't disagree with me, Mr.
11 Queale, that the development pattern of Orgo Farms is
12 one which is conducive to assemblage of large parcels
13 of land?

14 A. As a single large parcel, the same
15 characteristics exist all along south of 537, east of
16 the -- of your property to the boundary of the
17 Township.

18 Q. Does it apply down along Water Street
19 and Hockhockson Road and Ord Road?

20 A. South of Hockhockson Brook, the parcels do
21 become smaller although there are some sizable
22 parcels in there, yes.

23 Q. Now, you won't disagree with me, will
24 you, Mr. Queale, and you will agree with Mr. Halsey,
25 won't you, to the effect that under the general

1 guidelines of the county plan and the general
2 guidelines of Tri-state a higher or what I would call
3 a medium density project can't be built anywhere
4 within the Township of Colts Neck?

5 A. That's the recommended decision.

6 Q. So that in that aspect all properties in
7 the entire Township are equal?

8 A. In terms of the density application throughout
9 the Township, that's correct.

10 Q. Now, in terms of impact on neighboring
11 master plans, you will agree with me, won't you, that
12 in terms of not interfering or not adversely
13 impacting a development pattern which has been
14 established or preferred by a neighboring town, that
15 putting a higher density or medium density
16 development next to a low density, single area in
17 Tinton Falls would be more incompatible with
18 surrounding master plans and zone plans than
19 containing a medium density project entirely within
20 the or near the center of the Township of Colts Neck?

21 A. I don't necessarily agree with your full line
22 of thought or your rationale.

23 Q. That's number one. Would you answer?

24 MR. SAGOTSKY: Let him finish.

25 MR. FRIZELL: Let me ask a

1 question.

2 THE WITNESS: I can't answer that
3 yes or no. I'm trying to give an explanation on
4 where your questions may have had some analyses.

5 Number one, we would be talking
6 about putting residential uses next to Tinton Falls,
7 which is also residential in nature. And as I
8 indicated, the density is one and a half units per
9 acre. That does not make it incompatible because of
10 the increased density. The decisions on what that
11 density should be has not yet been achieved. The
12 other implications could be that, again with
13 relationship to the density, to what extent is
14 clustering going to be permitted and how big will the
15 buffer areas be from say 537, from the Tinton Falls
16 boundary. The Tinton Falls boundary happens to back
17 up to a church and vacant land. It has strip
18 frontage and it has the additional frontage. The
19 assumption about your project at six to the acre
20 being -- near the center of town being less an impact
21 because it abuts the business district may be true on
22 that particular boundary. But it is a much more
23 drastic contrast to the farm on the east side and the
24 agricultural areas that abut it, going from six to
25 the acre down to approximately one unit for every 50

1 acres.

2 BY MR. FRIZELL:

3 Q. What would you recommend, a gradual
4 reduction in density into the farmland?

5 A. No. But I would like to have an overall
6 agricultural preservation program if that, in fact,
7 becomes the policy.

8 Q. What does overall agricultural program
9 mean, current to density nowhere in the town? Isn't
10 that the question if you are talking about that type?
11 You keep making reference to something like a gradual
12 spreading out of the density. That is, you shouldn't
13 go from a rural density up to six units per acre.

14 What's the alternative? The alternative is to have
15 no higher density development.

16 MR. SAGOTSKY: May we have a
17 reframing of that question? I think it has been --
18 the question has been interspersed with testimony.
19 So perhaps if we could be succinct in reframing the
20 question we could have a specific --

21 MR. HERMAN: May I be heard for a
22 minute? I think Mr. Frizell's cross-examination is
23 going far beyond not only the testimony of Mr. Queale
24 but the scope of this hearing. Mr. Frizell is
25 attempting to place on trial other parcels of

1 property within the boundaries of Colts Neck which
2 are not the subject matter of this hearing. This is
3 not a Planning or Council meeting to determine what
4 zoning ought to be in Colts Neck. This is not a
5 trial on what is good zoning or good planning. This
6 is a Board of Adjustment hearing on a variance
7 application for a specific piece of property. I've
8 heard more testimony from Mr. Frizell about the
9 merits or demerits of other pieces of property that I
10 don't think are relevant. And Mr. Frizell, who is
11 constantly admonishing us about watching the clock
12 and pursuing relevant subjects, I think, is off on a
13 frolic which is not germane to what it is the
14 obligation of this Board to ascertain.

15 MR. FRIZELL: It appears to me
16 that Mr. Queale testified that one of the reasons
17 that this application should be denied is there are
18 other areas in this town for the development. I
19 think that's a proper subject for cross-examination.
20 If it isn't, I went to the wrong law school.

21 MR. HERMAN: The hearing here is
22 with regard to the Orgo Farms property. And Mr.
23 Queale has testified to what he feels are good and
24 bad features of that property and why that property
25 should or should not be granted the variance that you

1 are asking for. I don't think the property along the
2 Tinton Falls line is on trial.

3 MR. FRIZELL: Why don't you raise
4 your objection while Mr. Queale is testifying, anyway?
5 That's his testimony and this is cross. Let's go.

6 MR. SAGOTSKY: Well, the
7 objection is based upon the fact in the questions are
8 now directed to issues beyond the control, shall we
9 say, the proper direction of the Adjustment Board.

10 MR. HERMAN: Not only control,
11 Mr. Sagotsky, but this Board isn't charged with
12 deciding what ought to be next to Tinton Falls.
13 They're charged with this hearing to decide whether
14 or not this Applicant should get this variance on
15 this piece of property.

16 MR. FRIZELL: Mr. Herman, I
17 suggest you read ^{Kohl} Cole against Fairlawn, which says
18 that the relative suitability of a particular site
19 for the use for which the variance is sought is a
20 relevant consideration for the Zoning Board of
21 Adjustment. So let's go. Let's not argue all the
22 law. That's a relevant consideration.

23 MR. MARKS: I appreciate Mr.
24 Frizell's recitation of the law and that may or may
25 not be so, depending on what his alumni association

1 feels. It is, nevertheless -- I think the objection
2 is a valid one. I think we are getting far afield.
3 I just note that this cross-examination is lasting
4 longer than the direct examination. I would like the
5 Chair to rule on the question.

6 MR. FRIZELL: Mr. Marks, if it
7 was a valid basis for objection, the Orgo Farms trial
8 would have taken three days instead of 12; my case
9 took two days, and the Township's took ten.

10 THE CHAIRMAN: I think we've been
11 through that before. I think we would like to try --
12 we keep on chucking away at the clock. I think we
13 would like to try to concentrate this as much as is
14 feasible and try to keep Tinton Falls and other towns
15 out of this discussion because I don't think we've
16 had enough testimony that there hasn't been any
17 checking as to whatever is going on Tinton Falls and
18 so forth. I think --

19 MR. SAGOTSKY: I think the ruling
20 is the objection is sustained.

21 THE CHAIRMAN: The objection is
22 sustained.

23 MR. SAGOTSKY: Carry on from
24 there, Mr. Frizell.

25 THE CHAIRMAN: Let's keep it as

1 much to the point to this particular tract of Orgo
2 Farms as we can possibly do.

3 BY MR. FRIZELL:

4 Q. Are there any proposals adopted by the
5 Township anywhere, Mr. Queale, for the installation
6 of public utilities anywhere in Colts Neck?

7 A. Not to my knowledge.

8 Q. So that in terms of the tenth, so-called
9 tenth criteria, that we discussed, that is the
10 provision of future public utilities, there is no
11 utility service plan adopted in Colts Neck for the
12 installation of water or sewer facilities?

13 A. That's one of the issues that is under
14 consideration on the reevaluation and it has not been
15 adopted. I merely make the -- make note the fact
16 that there are at the eastern end.

17 Q. When you said it was not in conformance
18 and impairs the intent of the zoning --

19 A. The existing one.

20 Q. -- the zoning plan that was found to be
21 invalid by Judge Lane?

22 A. Yes.

23 MR. SAGOTSKY: No, I have to
24 object to that. That was argued before. It is in a
25 state of suspension. It is the only one that we have

1 to go by.

2 MR. FRIZELL: If you have to go
3 by one.

4 MR. SAGOTSKY: I'm aware. But as
5 it now stands, that is the only variance you are
6 seeking from the present zoning law and we have to go
7 by that.

8 MR. FRIZELL: We are also seeking
9 a variance from the subdivision ordinance and the
10 site plan ordinance. But, all right.

11 BY MR. FRIZELL:

12 Q. Now, in a general planning sense, Mr.
13 Queale, would you agree or not agree that generally
14 higher density or middle density forms of housing,
15 patio homes, townhouses, et cetera, should be
16 clustered around the area within the Township if
17 there is one which is historically the focus of
18 community commercial developments and, to that extent,
19 community residential development?

20 A. I've had situations which support that theory
21 and I have had situations which have gone against
22 that theory. To the extent that where you have a
23 historic crossroads and a pattern has emerged, some
24 towns have recognized that as a crossroads locations
25 and have established their density around an

1 expansion of that higher density core. I've had
2 other situations where they have recognized the
3 existing land use pattern, but because of clutter
4 situations felt what was in that crossroads area
5 should be the limit and for additional development
6 had gone to other locations.

7 Q. Let me ask you generally about this
8 agricultural issue. The Orgo Farm only has one side
9 which is directly bounded by agricultural uses; isn't
10 that correct?

11 A. Yes.

12 Q. The Orgo Farm is located in an area,
13 because of the access to major transportation routes,
14 where one could expect, based not on a detailed
15 traffic analysis but from a general planning
16 perspective, where one would expect to minimize any
17 commuter traffic through existing agricultural areas,
18 is it not as opposed to, for instance, any other area
19 of the town where there may be farms and in order to
20 get to the major transportation routes you would have
21 to drive through agricultural areas?

22 A. There is a great deal assumed in your question
23 that may or may not be relevant to either your site
24 or any other site. My general comments were that
25 with the concentration of development in the coastal

1 corridor, there are higher concentrations of jobs as
2 well as shopping; and, by nature of the shopping,
3 related jobs. That I think there's at least in my
4 opinion, a higher probability that more people would
5 go in that direction. So that the eastern end would
6 result in less traffic along those roads. Now, there
7 can be unique circumstances by the occupancy of
8 particular tenants they could throw that out the
9 window. But your assumption doesn't necessarily hold
10 true on your property.

11 Q. Well, did you do a traffic analysis to
12 determine where traffic would be bound out of the
13 site and what percentage would be bound out of the
14 site along 537?

15 MR. MARKS: I object to the
16 question. You just asked from a general planning
17 perspective.

18 Q. I understand that. I'm just asking if
19 he did that kind of analysis.

20 Do I understand that you would expect
21 more people to go out 537 in an easterly direction?

22 A. Possibly, to continue north to the same
23 corridor.

24 Q. Can you tell me what you base that on?

25 A. That's where the jobs are. That's where the

1 major shopping is, not east, in that general area to
2 Middletown or east to Eatontown or south to Ocean
3 Township.

4 Q. Do you know how many jobs are east
5 versus how many jobs are north or northwest?

6 A. No.

7 Q. Now, in terms of the reservoir, you'll
8 agree that there's an advantage, will you not, to
9 sewerage the project into the Hockhockson Brook?

10 A. As opposed to sewerage it so it would go into
11 the reservoir?

12 Q. Correct.

13 A. Yes.

14 Q. Now, in terms of that portion which
15 drains into the reservoir, are you familiar with any
16 development techniques which could mitigate any
17 adverse water pollution impacts which have not been
18 incorporated into the site design here?

19 MR. MARKS: I'm going to object
20 to that question on the grounds that I think that's a
21 matter of expert testimony. You presented an expert,
22 we'll have someone else. It's beyond the scope of
23 this witness.

24 THE CHAIRMAN: I think I'll
25 uphold that objection.

1 BY MR. FRIZELL:

2 Q. Mr. Queale, are you generally familiar
3 from a planning perspective with techniques to
4 mitigate adverse environmental impacts from urban
5 runoff?

6 A. In a general sense, yes.

7 Q. What are they?

8 A. Retention of those in detention and retention
9 ponds; the filtering of the storm drainage system in
10 some form before it hits a reservoir, before it hits
11 a reservoir or some other body of water.

12 Q. What about the idea of channeling the
13 water across vegetation as opposed --

14 MR. MARKS: I'm going to object.
15 It's beyond the scope and competence of this witness.

16 MR. FRIZELL: Excuse me, Mr.
17 Marks. Channeling the water into drainage channels
18 such as pipes and stream culverts.

19 MR. MARKS: I'd like to renew my
20 objection. I would like a ruling from the Chair

21 THE CHAIRMAN: Sam?

22 MR. SAGOTSKY: Well, it seems
23 that the question should relate to the particular
24 site. The present question seems to be directed to
25 the witness's expertise on the entire subject, shall

1 we say, of drainage.

2 MR. FRIZELL: Well, my only
3 question -- I'm sorry, Mr. Sagotsky.

4 MR. SAGOTSKY: On that basis, it
5 seems that the objection should be sustained. But
6 Mr. --

7 MR. FRIZELL: My only question to
8 Mr. Queale was whether or not he had overlooked that
9 and he was familiar with it when he told us about
10 detention facilities and filtering devices.

11 THE WITNESS: I have no problem
12 answering it.

13 MR. SAGOTSKY: All right.

14 THE WITNESS: My concept of
15 filtering was broad enough and I would expect that
16 filtering water through grassed areas and things of
17 that sort of a filtering process together with any
18 man-made mechanical filters that might be included.
19 And, frankly, I don't recall having heard of any
20 where detention basins had had mechanical filters
21 installed.

22 Q. Generally from a planning perspective if
23 you are trying to protect the Swimming River
24 Reservoir, would you recommend the installation of
25 on-site septic systems in the vicinity of the

1 reservoir?

2 A. Generally I would like to have no development
3 in the vicinity of the reservoir. I don't know
4 offhand what the limits of that boundary should be on
5 lots with septic systems. Under certain soil,
6 conditions as far as the septic effluent is concerned,
7 I would expect that there would be minimal or no
8 problem because you are filtering that effluent
9 through the soil.

10 Q. Did you hear the testimony of Richard
11 Moser from Monmouth Consolidated Water Company?

12 A. No.

13 Q. Did you ever, from any source, learn
14 that the Swimming River Reservoir is being polluted
15 with coliforms?

16 A. That terminology sounds familiar from the case.
17 But I, frankly, don't remember the context and what
18 his conclusions were. It's obvious that if you have
19 a septic system that is overflowing and going
20 directly into the reservoir, you are going to have a
21 problem.

22 MR. SAGOTSKY: Mr. Frizell, are
23 you going to raise the question of non-point
24 pollution?

25 MR. FRIZELL: Yes, I was going to

1 address that, Mr. Sagotsky.

2 MR. FRIZELL: I have no other
3 questions.

4 THE CHAIRMAN: Any questions
5 from the Board?

6
7 CROSS EXAMINATION BY MR. SAGOTSKY:

8
9 Q. There was a question on
10 cross-examination based upon density development
11 around a crossroad. And the question had some
12 implications to which you answered in some occasions,
13 yes; in some occasions, no. Am I on target with you,
14 Mr. Queale?

15 A. Yes.

16 Q. Can you apply your answer to this
17 particular development where it is requested to be in
18 its present location?

19 A. In my opinion, the determination again is a
20 major policy determination and that there is no
21 simple answer to that question. In other words, the
22 answer to that particular question can't be the sole
23 answer that would control whether this is a good or a
24 bad project. What I consistently try to do in my
25 testimony is to identify what I think are advantages

1 at the eastern end of town. Some of the advantages
2 at the east end of town can also be paralleled on
3 this site in terms of topography, in terms of roads,
4 access to the bus service and things of that sort
5 that might be a wash. Given the total state of
6 considerations, I would opt to recommend development
7 of a higher density at the eastern end of town. I
8 would also opt to attempt to develop an agricultural
9 program that could involve transfer -- might involve
10 development options on-site at different densities
11 than if the densities of units were transferred
12 off-site.

13 MR. PRIZELL: You are rehashing
14 your entire testimony in response to a fairly simple
15 question.

16 MR. SAGOTSKY: He has answered
17 that was not the only consideration. If I implied
18 that that was the only consideration, he has answered
19 it was not the only consideration.

20 BY MR. SAGOTSKY:

21 Q. With reference to the Zoning Board of
22 Adjustment considering this application and the
23 negative criteria, et cetera, and all the other
24 matters, is this particularly within the scope of an
25 Adjustment Board or is it something that's

1 legislative, in accordance with your opinion?

2 A. I have to respond to that as a planner. As the
3 Township's, planner if this variance were granted
4 this gentleman raised a point a few hours ago. It
5 would, in fact, have things that I could not ignore
6 in subsequent recommendations to the Planning Board
7 and the Township Committee. It's obvious from my
8 testimony that I feel a project of this size, of this
9 intensity should not receive a use variance but that
10 the issues that have to be resolved with respect to
11 the litigation, to Mount Laurel testing and so forth
12 should be the subject of a master plan review,
13 development of a new land uses element and modified
14 development regulations provisions.

15 Q. Getting back to your characterization,
16 it's legislative?

17 A. Yes.

18 Q. It's a legislative matter and a solution
19 by legislation, and the handling the problem by
20 legislation rather than by the theory of an
21 application for a particular tract for special
22 reasons, for certain uses and taking into
23 consideration the negative criteria?

24 A. In my opinion, it's a legislative matter.

25 MR. SAGOTSKY: I have nothing

1 further.

2 THE CHAIRMAN: Are there any
3 questions from the audience?

4 MR. RALEIGH: Jim Raleigh, Colts
5 Neck. At the time of a consideration of a revised
6 master plan in Colts Neck, would you consider changes
7 in adjoining township plans since our last plan; for
8 example, the incorporation and the impact on Colts
9 Neck of the ECOM building and the impact on the
10 farmland values or visual impact, highway planning
11 impact or perhaps on the other towns, Marlboro's
12 industrial park?

13 THE WITNESS: Yes. As a matter
14 of fact, the revised plan will have a specific
15 section in it that evaluates current planning and zoning
16 in the adjoining communities and that ECOM building.
17 There is a direct change that will have to result in
18 the Township's circulation plan because the
19 construction of that ECOM building voids the
20 opportunity for the Tinton Falls bypass that is now
21 in the Township's plan and had previously been in the
22 county plan. That bypass goes right through that
23 building and obviously cannot be put there.

24 MR. SAGOTSKY: That was brought
25 out in previous testimony, I believe.

1 MR. RALEIGH: I have another
2 similar question. With respect to the interceptor
3 sewer that was mentioned in the Colts Neck master
4 plan as a possibility. And I observe that it is not
5 included in the county 208 study, at all. Is there
6 some reason for the difference?

7 THE WITNESS: The difference in
8 time, I would expect, in the preparation of those
9 documents. But that also would have to be a
10 reevaluation within the new master plan, which will
11 include the utilities services section.

12 MR. RALEIGH: Thank you.

13 THE CHAIRMAN: Mr. Herman, any
14 questions? Anyone else?

15 MR. MARKS: Just request a one
16 minute recess, if I can speak to my witness for a
17 second.

18 MR. FRIZELL: Can I ask one
19 question about that variance question?

20
21 CONTINUED CROSS-EXAMINATION BY MR. FRIZELL:

22
23 Q. Do you have any problem with developing
24 higher density housing for senior citizens by
25 variance?

1 A. On 222 acres, yes. I think the magnitude of
2 the project is something that has to be a judgment
3 call. And I'm testifying in this instance -- and not
4 only size of the acreage but the number of units. I
5 think an individual site, you know, could be a
6 different question.

7 MR. SAGOTSKY: Well, our Chairman
8 has gone through a stressful period and now suffers
9 great physical pain from an operation he had recently.
10 So for that reason only, I ask all concerned to be as
11 brief as possible and see if we can't take care of
12 everyone with his questions, but on the basis as much
13 as brevity as possible.

14 MR. FRIZELL: I have no more.

15 MR. MARKS: I just want to speak
16 to --

17 MR. SAGOTSKY: Mr. Frizell, would
18 you have any objection if our Chairman left? He's in
19 great pain and if he left and could fill in his
20 presence through reading the minutes and certifying?

21 MR. FRIZELL: I have no problem,
22 Sam. I have no objection.

23 MR. SAGOTSKY: There's no
24 objection on the part of Mr. Frizell. There are no
25 questions by Mr. Herman. The audience, I assume,

1 will forgive us with the situation. I represent to
2 you that our Chairman, he would like to leave
3 momentarily unless there is something urgent?

4 MR. MARKS: No, no.

5 MR. DAHLBOM: Can we continue
6 with three members?

7 MR. FRIZELL: The only material I
8 now have is Mr. Kovacs, which would go through the
9 plan and also propose and give to you the written
10 development standard that Mr. Fessler raised as to
11 the setbacks, et cetera, within the site. And it's --
12 in other words, it's not opinion testimony. It's
13 simply a description of the plans. So, I don't know.
14 It's not really hearings. I don't have a problem
15 with it.

16 MR. SAGOTSKY: I would have no
17 objection. Do you?

18 MR. MARKS: No, I have no
19 objection.

20 MR. SAGOTSKY: It would be a
21 fill-in, unless we only have four members. And so,
22 of course, we wouldn't have a quorum if our Chairman
23 left. So that my question to you is to whether there
24 would be any objection by filling in through
25 testimony. If you wanted to go on longer, we may or

1 may not have a proper -- it might appear we might be
2 about finished.

3 MR. FRIZELL: I would like to do
4 Mr. Kovacs. That's all. And I have no problem with
5 Mr. Larkin leaving.

6 MR. SAGOTSKY: You would have no
7 problem with the validity of three, of three instead
8 of four?

9 MR. FRIZELL: No.

10 (Whereupon Acting Chairman Larkin
11 is excused. Mr. Brennan substitutes as Acting
12 Chairman.)

13 MR. SAGOTSKY: We have one more
14 witness, ladies and gentlemen.

15
16 J A M E S K O V A C S, a witness having been
17 recalled on behalf of the Applicant, having been
18 previously sworn according to law, testified as
19 follows:

20
21 MR. SAGOTSKY: Mr. Kovacs, you
22 are being recalled. We are waiving the swearing in.

23 MR. FRIZELL: He was sworn in.

24 MR. SAGOTSKY: We're admonishing
25 that you are still under oath.

1 THE WITNESS: Thank you.

2
3 DIRECT EXAMINATION BY MR. FRIZELL:
4

5 Q. Mr. Kovacs, I don't think that we --
6 please, very briefly, go through your own educational
7 background and your experience in the field of
8 engineering?

9 A. I have a Bachelor of Science degree from
10 Rutgers University. I've taken graduate courses at
11 New York University and Cooper-Union. I hold a
12 professional engineer's license in the State of New
13 Jersey since 1963. I also hold a professional
14 engineer's license in the States of Massachusetts,
15 Vermont, New York, Maryland, Virginia and I hold a
16 land surveyor's license in the State of New Jersey.
17 I hold at a professional planners license in the
18 State of New Jersey. I am a member of the American
19 Society of Civil Engineers, the National Society of
20 Professional Engineers.

21 MR. SAGOTSKY: You may enter this
22 qualifications, if you have it in writing.

23 THE WITNESS: I don't have it in
24 writing. New Jersey Society of Professional
25 Engineers.

1 In my years of private practice,
2 I've mostly specialized in development or the
3 engineering and surveying of large tracts.
4 Specifically, just to name a few, I was involved in
5 the engineering of Twin Rivers, East Windsor Township,
6 approximately 2,000 units; Hidden Lake in North
7 Brunswick, approximately 400 units; Monmouth Heights
8 in both Manalapan and Marlboro, approximately 500
9 units; Yorktowne in Manalapan, approximately eight
10 hundred units. The only reason I bring up the larger,
11 because there are slightly different problems
12 associated with large tracts than there are with 50
13 lot subdivision or ten lot subdivision.

14 In addition to that, I served as
15 a municipal engineer over a period of years for the
16 Township of Freehold in Monmouth County, the Township
17 of Manalapan, the Borough of Englishtown and the
18 Borough of Sea Bright. While in those years I was
19 active on the Planning Board, consulting as a
20 planning engineer. I assisted in the reviewing
21 variances and zoning subdivision ordinances. I
22 reviewed plans for the Planning Board. And that's
23 pretty broad brush, I think.

24 MR. SAGOTSKY: Now the witness is
25 qualified.

1 MR. FRIZELL: Will you please
2 mark that, Mr. Sagotsky?

3 MR. SAGOTSKY: Development
4 Specifications, Colts Neck Village, Colts Neck, New
5 Jersey, offered by the Applicant, consisting of eight
6 pages, marked A-49.

7 (Whereupon the Development
8 Specifications of Colts Neck Village is marked A-49
9 for identification.)

10 BY MR. FRIZELL:

11 Q. Mr. Kovacs, did you prepare A-49?

12 A. Yes, I did.

13 Q. All right. Now, is that based on A-37?

14 A. That's correct.

15 Q. And was that in response to concerns
16 about whether or not the Board -- in a shortened form,
17 the development standard that had been incorporated
18 into A-37?

19 A. That was in response to that, yes, sir.

20 Q. Would you describe for the Board -- I
21 know you described A-37 generally, but would you
22 describe to the Board in somewhat more detail, in
23 terms of what it contains? Is it set up on a section
24 by section basis?

25 A. Partially, yes. The plans themselves were

1 prepared in conjuncton with representatives of four
2 specific firms. Our own firm, Abbington-Ney
3 Associates are the consulting traffic engineers and
4 the general site plan consultants. Pat Gilvary and
5 his firm provided the architecture. Elson Killam
6 provided environment, hydraulic, sewer and water.
7 John Rahenkamp and his staff were the project
8 planners. So basically we had a design team
9 consisting of four firms, input from Mr. Frizell and
10 Mr. Brunelli. And we would regularly meet about once
11 every week and have an eight or nine man design team
12 review of status of the project. So what you see
13 here is not specifically my idea as a particular
14 project or section but rather it's a distillation of
15 what we feel is the best of a team effort with iputs
16 from four different groups.

17 The first page of the project is a title sheet
18 with space for revision and revision dates, assuming
19 that there is a continuing planning process. The
20 sheets have been set up to be 24 by 46, which is in
21 accordance with the Colts Neck developmental
22 regulations. The rest of the state allows sheets 30
23 by 42. And perhaps 68 sheets we would have got it
24 down to 45. We attempted to comply with the Colts
25 Neck regulations.

1 The second sheet is an overall master plan of
2 the entire project. And if you'll view it, there is
3 an area map, shows how it fits on the scale, one inch
4 equals 3,500 feet of the surrounding area. The
5 adjoining properties are shown and the specific uses
6 by sections and the streets names are shown
7 throughout the project. By virtue of a key, you
8 would pick up a three-three-story condominium. The
9 area would be five point three acres. We designate
10 the numbers and one bedroom and two and three bedroom
11 and total units. Actually, you got a rundown of the
12 total number of units for the entire project and a
13 general schematic way in which you can pick up the
14 sections and go through them.

15 MR. BRENNAN: Is the plan based
16 on the 120 senior citizens or the 90?

17 THE WITNESS: We have -- section
18 12, for example, is subsidized housing and senior
19 citizens with an asterisk, alternate B, subsidized
20 family housing, 90 houses, 1,107 units. In the first,
21 it would be 1,137. If you actually go to the sheets,
22 sheets 11 and 12 are site plans for section 12;
23 alternate A and section 12, alternate B. In one case
24 we have -- the A alternate would be senior citizen
25 mid-rise housing and the other, we have the family

1 housing. So you pays your money and you takes your
2 choice.

3 I'm trying to go through it rather quickly.
4 You really should sit down and look at them for a
5 couple of hours.

6 Sheet three is an outbound survey of the entire
7 project. We ran the survey in the field set pipes to
8 the property corners, concrete monuments that were
9 found and determined the exact acreage of the
10 property; located the physical features and exits,
11 Route 18 freeway cutting across and Jersey Central
12 easement. The property fronts on 537 and Route 34.

13 MR. TISCHENDORF: Where Slope
14 Brook is?

15 THE WITNESS: Right, there.

16 Then we just go through section
17 by section. Section one is a site plan sheet for
18 section 1. It shows 42 patio or zero lot line homes.
19 We also listed on developmental standards, at the
20 bottom, of the minimum lot, width 50 feet, the
21 minimum lot depth, 90 feet. The minimum lot area,
22 5,000 square feet. The front yard, 20 feet, backyard,
23 25 feet, minimum side yard, zero. We proposed to
24 have the permitted minimum distance between
25 structures of 20 feet. Maximum building height would

1 be two and a half stories. The concept here is that
2 there would be off-street, on-lot parking on each of
3 the lots. In addition, there would be overflow and
4 visitor parking in each of the turnaround cul-de-sacs.
5 We also show a two-acre reservation at the entrance
6 to 537, which is reserved for bus stop and commercial
7 uses. It is not intended to seek approval for the
8 site plan at this time but rather to designate the
9 area of it, obviously, for anything that is in a
10 sketchy detail at this time. We would have to come
11 back to the appropriate board, whether it be the
12 Zoning Board or Planning Board, with the specific
13 configuration. But we would --

14 MR. BRENNAN: Mr. Frizell, we had
15 some problems on that particular --

16 MR. FRIZELL: That's why it's
17 designated that way. It was shown reserved on the
18 original plan. It should have more detail. That's
19 why it's shown that way. The reason that it's not
20 site planned is because of the problem that we ran
21 into at the first meeting.

22 THE WITNESS: We do show the
23 major collector road with its intersection through
24 537, the deceleration-acceleration lanes. And the
25 road widening has been designed by our traffic

1 department, by Mr. Ney, and has the center lane
2 island or divider in Village Boulevard, the site
3 triangle easement in accordance with the Colts Neck
4 developmental regulation, At each of the intersections,
5 we spot out the drainage utility easements with the
6 standard notations, drainage and utility easement is
7 granted to Township of Colts Neck, et cetera, and
8 that is standard throughout the tract. The drainage
9 is shown, concrete pipes, headwalls and the grass
10 swales on each.

11 MR. DAHLBOM: Did you say minimum
12 width and length?

13 THE WITNESS: Minimum width of 50
14 feet and minimum depth of 90 feet. You don't
15 multiply. You can have them a little longer or a
16 little shorter.

17 THE WITNESS: Like a one acre lot,
18 for example, you usually -- maybe 180 foot minimum
19 depth and 180 minimum width. And you don't multiply
20 them out, those either.

21 MR. FRIZELL: You wouldn't have
22 them at the same time?

23 THE WITNESS: That's correct.
24 Section two then, marching along, is a two-story
25 garden apartment -- is a two-story garden apartment

1 condominium. Here we've picked up Slope Brook.
2 There's an existing structure and the existing farm
3 road. We've picked that up as our alignment for
4 Village Boulevard. We propose to increase the size
5 of the detention pond that presently exists. We were
6 going to create an island in the center of it by
7 taking out this area here, just around that contour.
8 We're also going to bring the pond, the detention
9 facility, up to the other end of Village Boulevard
10 where it will be directed to the storm drainage
11 system. It would be more of a water vista. This
12 water presently exists. The pond has an elevation of
13 84.4. It will continue to do that. And it will hold
14 water at all times, which will be both visually
15 pleasing and, in addition, it will act as a siltation
16 basin and also act for storm water control. The
17 elevation of the pond will rise during periods of
18 severe rainfall and will fall as the water outlets.
19 We've placed some standard notations on the plan,
20 which I would like to call out: These are
21 preliminary plans and assuming all normal progress of
22 things, they would be reviewed by the appropriate
23 officials, engineer, planner and realizing that they
24 are preliminary, we're not feeling they are cast in
25 bronze. They're capable of being built on.

1 Going to the next, the finished
2 spot elevations, finished floor elevations, final
3 grade and contours are preliminary. Final grades are
4 to be determined after final architecture and final
5 site plan, to maximize number of existing trees. In
6 any event, we've got something here that's workable.
7 But when we get to final, we like the ability to
8 possibly adjust them further specifically to save
9 trees and also assist us in the grading operation.

10 Going along to sheet six, this
11 shows three specific sections, three, four and nine.
12 There's a right-hand turn here. And as we're coming
13 down, this is Village Boulevard. That was the
14 detention pond next to it. And now we've got section
15 three, four and nine. You can see here the Jersey
16 Central Power and Light Company easement is shown
17 backing up to section nine and section -- let's take
18 them in order. Section three, for example, has
19 three-story condominiums. There will be 90 two-bedroom
20 units with 165 parking spaces. Access will be from
21 Village Boulevard, a grouped parking system. Section
22 four would contain townhouses 30 two-bedroom, 11
23 three-bedroom, for a total of 42; 82 parking spaces.
24 Section nine is similar, also contains townhouses, a
25 connection from Village Boulevard and one onto Joshua

1 Huddy Drive. I would point out that we propose to --
2 going back to sheet one -- two rather, we propose to
3 construct Joshua Huddy Drive from Village Boulevard
4 to the end of the property. This has been picked off
5 the Colts Neck master plan for roads in an
6 approximate location. We didn't trace it exactly.
7 But generally it starts at Route 34. It ends at the
8 Stavola common property line, at this location. We
9 just sort of fit it into this project. This is
10 designated on the Colts Neck Township master plan as
11 a connector road. We've incorporated it. While we
12 intend to pave it through this section -- I'm going
13 back once again to the sections three, four and nine --
14 we have reserved the right-of-way through the
15 remainder of the section, so that at any time the
16 municipality desires extending, they have the ability
17 to do that.

18 We've also kept the units a
19 minimum of 50 feet of what would be the right-of-way,
20 also with the road set at pretty much existing grade.
21 We don't foresee a great problem with the extension
22 of the road throughout the project.

23 There are a system of grass
24 roadside swales and they've been carefully designed
25 so that the velocities of the water but we've kept

1 the velocity of the water in those roadside swales
2 above two and under five feet per second. Two will
3 keep your water moving along without having any
4 problems with sediment or extra siltation, and five
5 will be less than at which it would provide scour.
6 The grass swales, in our opinion, will filter all of
7 the urban wastes, the road tars and the various
8 problems, dog droppings and the like, fertilizer for
9 the lawns. So by the time it gets to the detention
10 ponds, the further siltation, what we'll be putting
11 out is as clean a product as leaves the property
12 right now. The roadside swales have been
13 specifically designed in accordance with the
14 recommendation contained in the Delaware and Raritan
15 Canal Commission, which we've been using over in the
16 western side of the state.

17 MR. FRIZELL: Do you know who
18 developed those? General Whipple.

19 MR. SAGOTSKY: What page are you
20 on?

21 THE WITNESS: Page seven, which
22 shows -- continuing down -- this is continuing down
23 Village Boulevard. Once again, two more sections of
24 townhouses. Section five would have 81 units with
25 162 parking spaces, a double tennis court in the rear

1 of the units.

2 Section ten would have 50 units
3 with 100 parking spaces, a connection from Joshua
4 Huddy Drive and Village Boulevard. We've made every
5 attempt to have a small number of communities, a
6 number of small units throughout the tract, so that
7 everything is developable. They really are
8 bite-sized and well separated. So you are going to
9 get a different look here. Every section is
10 separated by detention ponds, open space and
11 landscaping so that the distance between units, after
12 you go from one section or the other, is 100 to 120
13 feet.

14 BY MR. FRIZELL:

15 Q. Breaking the project into the six-five
16 versus ten-five would have a different look than ten?

17 A. That's correct. And also farther away, sheet
18 eight, and see -- section six? But, like, for
19 example, the distance between four and five, the
20 units are 150, 160 feet apart. The same is true from
21 units five to six. You've got a detention pond going
22 across. The general effect here is, you are not
23 going to see one large project. You will see a
24 number of smaller sections with different housing
25 types. And they are all separated from each other by

1 the open space and detention ponds and drainage
2 swales and the Jersey Central Power and Light Company.

3 Sheet nine, which is the frontage
4 along Route 537, we show the painted traffic island
5 here, our deceleration lane. We show a detention
6 pond which will be a general focal point. It will be
7 a wet pond. And specifically, if you look at Mr.
8 Gilvary's rendering, I'm pointing to the one with the
9 lake on, there is the detention pond as you are
10 looking across in that rendering, in this direction.
11 It will contain water. It will rise and fall with
12 the flood.

13 Now, against the school site here,
14 we've kept an open space buffer here. We further
15 kept the buildings away here, approximately 100 feet
16 with just one end unit here on the condominiums. And
17 the rest would be further away. We don't -- we don't
18 think we're going to have a negative effect in terms
19 of the school. First of all, we're not going to
20 touch the first 50 feet or so.

21 Running back up, sheet ten,
22 section eight, these are single family lots, average
23 7,500, 8,500 square feet, nominally 7,500; site
24 triangles. The whole scheme is to have everything on
25 cul-de-sacs so that a person living in the single

1 family unit doesn't have cars flipping by his door
2 every minute, other than lives on the street. The
3 end unit corner lots have additional frontage so that
4 they're further away from Village Boulevard.

5 MR. DAHLBOM: All these streets --
6 is it assumed the Township would be taking over all
7 of these streets?

8 THE WITNESS: All of the public
9 roads, yes. It is our proposal, if you will, that it
10 is the major boulevards, the major collectors which
11 are intended to go public and maintained by the
12 municipality. Single family lots, we feel, are no
13 different than any other single family lots anyplace
14 and should be maintained.

15 MR. FESSLER: Didn't we hear
16 testimony contrary to that? Only the major would be
17 Township-owned, the others would be development-owned?

18 MR. FRIZELL: I don't think you
19 heard testimony contrary to that. I think what Mr.
20 Kovacs is saying, where there is a single family unit
21 development and the street in front of it, that could
22 be proposed for dedication. When I presented
23 information about the possibility of a homeowners
24 association, we did indicate that all the condo units,
25 et cetera, would be fronting on condo-maintained

1 roads and they would. These are not homeowners
2 association.

3 THE WITNESS: Single family lots.

4 BY MR. FRIZELL:

5 Q. I think that's the only distinction?

6 A. That's correct. For example, referring to
7 sheet 14, which shows the bottom three sections,
8 sections 14, 15 and 16, which are three specific
9 townhouse sections, it is intended that Village
10 Boulevard, shown in this, would be a public road.
11 Greentree Drive, which is the connection out to Route
12 34, be a public road. However, the entrance area and
13 the parking lot and everything shown within a finite
14 section, that is intended to be part and under the
15 maintenance or aegis of a homeowners group. And that
16 maintenance will begin and end there. But the public
17 roads, it has always been my opinion that they would
18 be dedicated to the municipality and maintained.

19 MR. FESSLER: The condo roads,
20 would you show us on the original map which roads
21 would not be public and what --

22 MR. FRIZELL: These are the
23 single family sections.

24 MR. FESSLER: Where are the ones
25 that are not? Those would be not public?

1 MR. FRIZELL: That's correct;
2 and everything in here.

3 THE WITNESS: Everything shown
4 here is intended to be treated as driveways.

5 MR. FESSLER: These are to be
6 treated as driveways?

7 MR. FRIZELL: The roads that have
8 names would be dedicated.

9 MR. RALEIGH: One turning
10 direction and turning radii all conform to the Colts
11 Neck?

12 THE WITNESS: Specifically 114
13 feet in diameter, which -- with a 100 foot diameter
14 outside circle. And unless I'm mistaken, I thought
15 the tangents were to be kept.

16 MR. FESSLER: You are right.

17 THE WITNESS: We really weren't --

18 MR. DAHLBOM: So you got "Woodland"
19 in there?

20 THE WITNESS: Name changes are
21 subject to further review by the municipality?

22 And then south of Route 18
23 freeway, we do show a couple of items. One is the
24 connection to the offices.

25 MR. BRENNAN: Page what?

1 THE WITNESS: Page 16. We do
2 show a 50 foot right-of-way, minor collector road,
3 into the office-industrial site. And once again, the
4 site plans for the office-industrial have not been
5 prepared other than schematically. And all we're
6 showing here is two alternatives. One has the option
7 of either putting one big use, one big building with
8 associated parking

9 MR. DAHLBOM: Page 17?

10 THE WITNESS: -- or on page 18,
11 the possibility of running in a little cul-de-sac and
12 a couple of smaller uses. Once again, anything that
13 is schematic or sketchy, obviously, would have to
14 come back to the Planning Board and/or Zoning Board
15 with the exact details of that.

16 The Killam firm is designing the
17 sewerage treatment facility and we just left -- other
18 than the site, we left that entirely to them.

19 Sheet 19 shows a landscaping
20 schedule, the types of shrubs and trees and
21 ornamentals that will be placed throughout the
22 project. And then on each specific section -- in
23 other words, sheet 20 for example, would be the same
24 as sheet four. Where sheet four shows the site plan,
25 sheet 20 shows what we're intending to do in that

1 section in terms -- terms of planting; nothing within
2 the site triangle easement heavily planted; in the
3 buffer, a walking path through the open spaces, a
4 bicycle path along the Village Boulevard. And we
5 also show tree save anyplace that we can throughout
6 the project. We've had our landscape architect --

7 MR. SAGOTSKY: I had to miss a
8 part you covered street widths, have you?

9 THE WITNESS: I haven't, but
10 they're in the specification.

11 MR. SAGOTSKY: All right. I
12 don't want to get you off your trend. Continue with
13 your trend.

14 MR. FESSLER: Does this meet the
15 shade tree planning specifications? Was it intended
16 to meet that?

17 THE WITNESS: I wasn't aware of
18 that. My landscape architect handled it. I don't
19 know.

20 MR. MARKS: Who is your landscaping
21 architect, Mr. Kovacs?

22 THE WITNESS: Guy Leighton, an
23 on-staff member of Abbington-Ney.

24 Yeah, we do show -- we have left
25 off street lighting in terms of the major streets.

1 only because we don't design them. We leave that up
2 to Jersey Central. We have sent plans to Jersey
3 Central for their design. I'm not competent to
4 design lighting for public roads. And no matter what
5 you do, they change it anyway. However, within our
6 own sections, we set up our lighting interior. We
7 show the standard Clone (phonetic) 81100. That's
8 what they are pushing in some areas of the county. A
9 couple notations on the planning we don't show on
10 here, the individual unit landscaping probably, more
11 commonly called foundation plantings. This is just
12 such a scale, we're showing the major trees, major
13 plantings. Obviously, each unit is going to have
14 foundation plantings. But the plan is so preliminary,
15 we can't show it at this scale. And by Jersey
16 Central Power and Light Company we show a bicycle
17 path that will be paved macadam.

18 MR. DAHLBOM: Do you have to get
19 an agreement with the lighting company for that?

20 THE WITNESS: Yes, to put
21 anything on the right-of-way. It's been my
22 experience --

23 MR. DAHLBOM: I think you have to
24 get some sort of an agreement.

25 THE WITNESS: Exactly. I'm just

1 spinning through the sheets. Sheet 24, sheet 25, you
2 can -- all they do is follow the site plans. We've
3 tried to save, on sheet 25, a large stand of trees up
4 near the front. We've actually worked our parking
5 around it and we've also planted, really loaded up
6 the planting in this section, because this will be
7 one of our addresses out on 537. We would like to
8 have a fairly substantial planting in that area. We
9 also propose a couple of plantings, berms, out at 537
10 to soften the effect of the units against the road.

11 And the rest of it is purely
12 engineering details. These are sheets 29, 30, 31, 32,
13 33 are all road profiles, which show the cutting and
14 fill. You will notice that we don't have any street
15 or significant flat grades throughout the project.

16 Sheets 34, 35 and 36 are the
17 cross-sections of Slope Brook. This would be
18 required for submission to the Department of
19 Environmental Protection. We have two other unnamed
20 streams, which we've designated stream "B" and stream
21 "C".

22 Sheets 37, 38 and 39 indicate
23 that the cross-sections on sheet 40 we show the
24 specifications of the various roadways. For example,
25 I think the plans kind of speak for themselves, but,

1 you know, Village Boulevard is intended to be a four-lane
2 divided collector road with a shoulder, 80 foot
3 right-of-way, 18 foot planted median, two ten foot
4 travel lanes or 20; and a four-foot shoulder. We
5 have a detail for our swale coming off the end of the
6 road, which is also shown in the street. We show a
7 detail for our -- to the lots -- of bike path detail,
8 six feet wide, inch and a half, FABB Course 4, quarry
9 process stone. That will be throughout the site. A
10 shoulder detail, it is intended that the shoulders
11 actually be minimum of six inch crushed stone base so
12 that we do have some surface there. They will filter
13 any of the urban runoff impurities through the
14 crushed stone.

15 MR. MARKS: Is it only one road
16 that's four lanes, divided?

17 THE WITNESS: That would be
18 Village Boulevard to Joshua Huddy Drive. At that
19 point, our traffic engineers felt that we will still
20 have it divided. But at that point, we only need two
21 lanes. We're starting to peel off most of our -- at
22 the point the development specifications which I've
23 handed call out, road by road, what it is intended to
24 be. I think since they'll be in the record, there's
25 no point in just reading again. Sheet 41 has some

1 details on a flared end; section for drainage pipe
2 will have rip rap to further control erosion; and, a
3 detail for a drainage manhole. And then on sheet 42,
4 detention pond details.

5 The rest were prepared by Killam
6 Associates. And sheet 43 to and including 65 of 68,
7 once again, show the outline of the project and on
8 these it shows the sanitary and water system. We
9 propose -- by the way, coming out of our water plant
10 we're proposing a minimum 12 inch water main. So the
11 possibility of connecting to anyone else's ten inch
12 line, it's just not possible.

13 And the remaining three sheets of
14 the site are sheets 66, 67 and 68. These are
15 architectural elevations prepared by Patrick Gilvary
16 and they show the various -- what a typical size unit
17 townhouse would look like, what an eight unit luxury
18 townhouse would look like. Section 15 and elevations,
19 garden apartment, condos. Sheet 67, sheet 68, the
20 front, rear and right side elevation of the least
21 cost condominiums in section 7.

22 MR. TISCHENDORF: Did you say the
23 last 50 feet on the westerly side would be left
24 untouched or was that just next to the school?

25 THE WITNESS: Just next to the

1 school. From testimony, I guess that was sensitive.

2 MR. TISCHENDORF: So what does
3 that also mean, a fence would be left untouched?

4 THE WITNESS: We actually
5 wouldn't touch the fence or shrubery there. There
6 will be a green space right there and there will be
7 no building in here. And then going back along the
8 trail, single family residential, there will be a
9 green area in there.

10 MR. HERMAN: Do you propose for
11 any of the drainways or any of the recreational
12 facilities, like the tennis or ballfield, to be
13 dedicated?

14 MR. FRIZELL: Not dedicated.

15 THE WITNESS: No. That was going
16 to be under the control of a homeowners group for the
17 residents.

18 MR. HERMAN: That's true for both
19 the recreational and the open areas?

20 MR. SAGOTSKY: And the roads.

21 MR. HERMAN: He mentioned some of
22 the roads would be dedicated.

23 MR. FRIZELL: What we proposed is
24 an advantage. If the town wanted to maintain them,
25 they could maintain. Typically this will done by

1 homeowners association. That's what we proposed.

2 THE WITNESS: I think that's an
3 overview.

4 BY MR. FRIZELL:

5 Q. Would it be in the detail to show any
6 fencing around the school?

7 A. We haven't proposed any fencing. Both my site
8 inspection and our topographic survey indicate that
9 there is an existing fence right on the property.
10 Obviously, that wouldn't be touched. And there's an
11 existing shrubery, a treeline, also on the property.
12 Once again, that wouldn't be touched. I can't see
13 the necessity of putting a fence next to a fence. It
14 would just be wasting money. The school still will
15 be some significant distance from the closest
16 building.

17 MR. TISCHENDORF: This pond that
18 was mentioned last time, was mentioned as a possible
19 attractive nuisance. How deep will that be?

20 THE WITNESS: Normally, four feet
21 and then it will raise six feet or so when it gets
22 full of water.

23 MR. HERMAN: You are saying only
24 four feet at the deepest point?

25 THE WITNESS: Four feet, pretty

1 much flat. We would like to hold that much water all
2 the time. It should be a minimum of four feet deep
3 to retard algae growth. Once you get lower, you get
4 a problem with algae

5 MR. DAHLBOM: What protection do
6 you have from that to keep the flow from coming
7 across the road?

8 THE WITNESS: Just the
9 calculations. Our calculations are for 100 year
10 storm. After --

11 MR. FESSLER: Is this coming in
12 or leaving?

13 THE WITNESS: It will be leaving.
14 In other words -- and then it will be going into the
15 culvert under the road.

16 MR. FRIZELL: I think the purpose
17 of this is to prevent that from happening. That's
18 why it's shown that way to prevent from anything
19 getting across the road.

20 THE WITNESS: Obviously they're
21 designed for a certain storm frequency. When they
22 exceed the storm frequency --

23 MR. HERMAN: That would be the
24 six foot level?

25 THE WITNESS: Yes. And that will

1 be at a 100 year flood. That happens -- today's, for
2 example, today's was a lot less.

3 Now, the question of fencing, we
4 don't propose them. But I would have no serious
5 objection to them if the Board felt that the
6 attractive nuisance thing -- we do need them for
7 flood control. We should have them.

8 MR. FRIZELL: You say "them", you
9 mean the pond itself?

10 THE WITNESS: Right, yeah. We
11 need the ponds. But the fence, if the Board felt
12 that it should be, I would no objection to it.

13 MR. SAGOTSKY: Twin Rivers, they
14 seem to have a problem of providing enough parking
15 for the respective areas. For example, they provide
16 sufficient parking for the people who live there but
17 very little, if any, for guests.

18 THE WITNESS: I didn't find that.
19 I'm not sure.

20 MR. SAGOTSKY: They have some
21 other problems in Twin Rivers. They find some views --

22 THE WITNESS: This, I would point
23 out, is a lot nicer in terms of the unit styles and
24 everything else. I could give you chapter and verse
25 with what's wrong with Twin Rivers. It's a lot less

1 dense. The townhouse units are up around 11, 12 and
2 the overall on it is probably eight or nine

3 MR. FESSLER: Do you know what
4 their ratio of parking was?

5 THE WITNESS: One, five. This is
6 two point oh plus. But one thing that I would say,
7 the item of dentention pond fencing, which I kind of
8 like, I don't like, you know, the chain link, six
9 foot high, that type of thing. It looks terrible.
10 What we found that really seems to work is a standard
11 three rail, split rail fence that looks good and then
12 we back it up, put a hog wire or something like that.
13 ~~It's a one by two wire that is stapled to the fence.~~
14 We're not worried about is 12, 13, 14 year olds
15 scaling a fence. What we're worried about is a
16 toddler on a bicycle, that type of thing. And that
17 type of fence can preclude that. It's definitely up
18 to the Board. The slopes, though, are so gentle of
19 going in, this -- it's not a question of someone
20 tumbling into it, but rather a side slope.

21 MR. SAGOTSKY: The people at Twin
22 Rivers are also upset about the the ratio of
23 commercial and industrial with reference to the
24 residential.

25 THE WITNESS: Also, it's two

1 different projects. I was there last night in East
2 Windsor trying to get a Crown Royal gas station in
3 front. The people were up in arms. But, you know,
4 that's entirely different.

5 MR. SAGOTSKY: They feel that the
6 interior commercial became an exterior commercial on
7 the main highway, they had intended the commercial to
8 provide for those who live in the area, and that
9 extends. It has come along the area that you are
10 talking about and they're upset about it. You are
11 indicating, without going into detail, that you
12 alleviated many of the problems of Twin Rivers? Is
13 that your general statement?

14 THE WITNESS: Exactly.

15 MR. MARKS: Mr. Kovacs, are you
16 the project planner for this?

17 THE WITNESS: It was a team, Mr.
18 Marks. Rahenkamp did the overall planning design;
19 the architect, the building sizes and location; and I
20 actually drafted the locations, the streams, road,
21 grading, the storm drainage and the detention bodies.

22 MR. MARKS: So essentially you
23 did the engineering?

24 THE WITNESS: That's correct.

25 MR. MARKS: You didn't do the

1 architecture and the planning?

2 MR. FESSLER: what is the intent
3 of the industrial zone? Was it to be consistent with
4 our industrial zone regulations in our ordinance?

5 MR. FRIZELL: We would have to
6 look at the site plans I'm not familiar with it

7 MR. FESSLER: What about uses?
8 What uses? Are they assumed to be the uses
9 consistent with the zoning ordinances?

10 MR. FRIZELL: I'm not sure. I'll
11 tell you the truth, Mr. Fessler, it was only today
12 that I think that I realized -- are you talking the
13 industrial zone on the other sides of the road?

14 MR. FESSLER: Yeah.

15 MR. FRIZELL: That's the only
16 place.

17 MR. FESSLER: We have Laird's is
18 industrial.

19 MR. FRIZELL: That's not zoned --

20 MR. FESSLER: Well, yes, it is.
21 But we have some regulation that states the permitted
22 uses.

23 How about the so-called -- in
24 various places it does not show commercial. In this
25 area this does.

1 THE WITNESS: The other side.

2 MR. FESSLER: Would the
3 commercial meet our regulations as to our uses?

4 MR. FRIZELL: Yes, that's correct.
5 This will be developed according to the zoning. That
6 would be commercial according to the zoning.

7 MR. FESSLER: Industrial is in
8 the back section, seven, at the very end. The use is
9 permitted.

10 MR. FRIZELL: Offices, office
11 building, research establishments, processing,
12 warehousing and trucking operations. Yeah, I think --

13 THE WITNESS: That's pretty broad
14 brush.

15 MR. FRIZELL: We think that we
16 would probably comply with the zoning ordinance, Mr.
17 Fessler. I think if you want to take a closer look
18 at it at leisure, I have no other questions of Mr.
19 Kovacs.

20 MR. SAGOTSKY: I have no
21 questions at this time.

22 MR. BRENNAN: As the Acting
23 Chairman, does the audience have any questions?

24 MR. MARKS: I was just -- I'm
25 going to have one witness available next time. I

1 I think Mr. Herman's is going to have something.

2 THE CHAIRMAN: The Chair will
3 entertain a very quick motion to adjourn.

4 MR. TISCHENDORF: So moved.

5 THE CHAIRMAN: Second.

6 (Whereupon the hearing adjourned
7 at 11:35 p.m.)

8
9 CERTIFICATE

10
11 I, KATHLEEN M. SHAPIRO, a Registered
12 Professional Reporter and Notary Public of the State
13 of New Jersey, certify that the foregoing is a true
14 and accurate transcript of the proceedings as taken
15 before me stenographically on the date hereinbefore
16 mentioned.

17
18 
19 KATHLEEN M. SHAPIRO, R.P.R., C.P.

20 Dated: August 7, 1980
21 My Commission Expires on
22 June 7, 1983
23
24
25