

CN - Orgo Farms v. Top of Colts Neck

8/14/80

Transcript of proceedings: witnesses

- Richard Alaimo
- Ernest Orgo

+ exhibits marked for identification

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ZONING BOARD OF ADJUSTMENT
COLTS NECK
NEW JERSEY

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IN THE MATTER OF:
The Application of Orgo Farms
and Greenhouses, Inc., and
Richard J. Brunelli, For
a Variance.
----- X

TRANSCRIPT
OF
PROCEEDINGS

Thursday, July 31, 1980, 7:00 p.m.
Town Hall, Colts Neck, New Jersey

B E F O R E:

- J. SCHRUMPF, Chairman
- J. TISCHENDORF, Member
- G. BRENNAN, Member
- C. DAHLBOM, Member
- L. LARKIN, Member

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

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

FRIZELL, POSYCKI & 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, MARY, WITT & ARVANITIS, ESQS.,
BY: JAY R. BERMAN, 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

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RICHARD ALAIMO				
By Mr. Marks	4, 71			
By Mr. Herman		67, 120		
By Mr. Frizell		76, 123		
By Mr. Sagotsky		130		
 ERNEST ORGO				
By Mr. Herman		136		

EXHIBITS MARKED FOR IDENTIFICATION

<u>Number</u>	<u>Description</u>	<u>Page</u>
PB-3 Id.	Conceptual Engrg. Report, 1979	10
PB-3 Evd.		53
PB-4 Id.	Letter, 5/13/80	52
PB-4 Evd.		60

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(The hearing convenes at 7:20
p.m.)

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

THE CHAIRMAN: Again I remind
everyone that this is a special meeting, narrowly
confined to the issue at hand. The first
presentation this evening is to be on behalf of the
Planning Board.

MR. SAGUTSKY: Will you call the
roll, please?

MR. SCHRUMPT: Here.

MR. DAHLBOM: Here.

MR. TISCHENDORF: Here.

MR. BRENNAN: Here.

THE CHAIRMAN: Mr. Marks?

MR. MARKS: Yes. Good evening,
Mr. Chairman. I have one witness to call tonight,
Mr. Richard Alaimo. If the Board is ready, I'll
proceed.

R I C H A R D A L A I M O, a witness called on
behalf of the Planning Board, having been duly sworn
according to law, testified as follows:

1 THE WITNESS: Richard Alaimo,
2 A-i-a-i-m-o 200 High Street, Mount Holly, New Jersey.

3
4 DIRECT EXAMINATION BY MR. MARKS:

5
6 Q. Mr. Alaimo, could you describe your
7 educational background for the Board?

8 A. Graduate of Rutgers University, College of
9 Engineering, class of '56.

10 Q. Are you a licensed professional engineer?

11 A. I am licensed in the State of New Jersey and
12 the Commonwealth of Pennsylvania.

13 Q. By whom are you employed?

14 A. Employed by a corporation of which I am
15 president of Richard A. Alaimo Associates.

16 Q. How many employees are there in your
17 firm?

18 A. Approximately 80 employees.

19 Q. And can you advise us in a general
20 fashion as to what type of work your firm performs?

21 A. Civil sanitary consulting work, mostly
22 municipal work, utilities authorities, sewerage
23 authorities; solid waste, water and sewer being our
24 primary business.

25 Q. Could you talk up a little?

1 A. Okay.

2 Q. Could you tell me if you represent any
3 municipalities and approximately how many?

4 A. Represent approximately 50 municipalities. We
5 have offices in Cherry Hill and Passaic, New Jersey
6 and Mount Holly; Mount Holly being our principal
7 office. But our work is throughout the State of New
8 Jersey.

9 Q. With reference to the sewer authorities
10 and municipal sewer systems that you handle can you
11 advise us as to some of the larger systems?

12 A. Old Bridge Municipal Utility Authority; north
13 of here in Middlesex County; we do work for the City
14 of Paterson, Cherry Hill Township Paterson,
15 approximately 120,000; Cherry Hill is 80,000 people;
16 Old Bridge is approximately 70,000.

17 Q. And can you advise us of some of your
18 smaller systems that you represent?

19 A. We represent Wrightstown MUA, population of
20 about 800 people.

21 Q. Any others in that category?

22 A. Pemberton Borough about 600 people.

23 Q. Are you in a position to advise us with
24 respect to sewer feasibility and water feasibility?

25 A. These have been my primary business and

1 experience for 20 years. I would hope so.

2 Q. Mr. Alaino, I call your attention to --

3 MR. BRENNAN: May I ask a
4 question? Is Mr. Alaino appearing this evening as a
5 witness for you or is he engaged by the Township of
6 Colts Neck on a retainer basis?

7 THE WITNESS: I have been
8 especially obtained for this particular -- retained
9 for this project for review of the water and sewer
10 system, more particularly the report prepared on
11 behalf of the Colts Neck Village PUD prepared by
12 Killam Associates on water and sewer.

13 MR. BRENNAN: Thank you.

14 BY MR. MARKS:

15 Q. Mr. Alaino --

16 MR. PRIZELL: May I ask one
17 question?

18 MR. MARKS: Sure.

19 VOIR DIRE BY MR. PRIZELL:

20 Q. How many private systems have you
21 designed and supervised the construction and
22 maintenance of?

23 A. We've done work for very few private companies.
24 Mount Holly Water Company, we've done for them.

25 Q. That's a water company. Any sewer

Alaino - direct

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1 companies?

2 A. There are very few sewer companies in the State
3 of New Jersey. There are very few small water
4 companies in the State of New Jersey. Our primary
5 clientele is a municipal.

6 Q. Well, I'm sure. Does that mean you
7 don't have any private clients that have constructed
8 sewer and maintenance of sewer systems?

9 A. Private clients?

10 Q. Yes.

11 MR. SAGOTSKY: Private sewer
12 companies?

13 THE WITNESS: As opposed to
14 municipal?

15 MR. FRIZELL: Yes.

16 THE WITNESS: I would say that on
17 a numbers basis, there isn't more than one percent of
18 sewerage handled by private companies in the State of
19 New Jersey.

20 BY MR. FRIZELL:

21 Q. Mr. Alaino, I just want an answer to the
22 question.

23 MR. MARKS: Let the witness
24 answer the question.

25 A. The answer to the sewerage is no. The answer

Alaine - direct

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1 to the water is Mount Holly Water Company; probably a
2 couple others, not very many.

3 THE CHAIRMAN: I would consider
4 as Chairman that that's a very cogent reply, Mr.
5 Frizell. If there's only one percent private
6 companies in the State of New Jersey, it doesn't give
7 them too many to represent, does it?

8 MR. FRIZELL: Well, Mr. Schrupf,
9 I'm not satisfied that only one percent of the sewer
10 systems in the State of New Jersey were developed
11 privately.

12 THE CHAIRMAN: That's a point.
13 Perhaps you can bring that out.

14 MR. SAGOTSKY: Is there a
15 difference in the application of sewerage disposal
16 whether it's done by a private company or municipal
17 company?

18 MR. FRIZELL: You may ask Mr.
19 Alaine

20 THE CHAIRMAN: I imagine that
21 will come up.

22 THE WITNESS: I think what the
23 attorney may be alluding to is the rate structure.
24 But facilities are the same regardless of ownership.
25 And the cost of the facilities, private ownership is

Alaimo - direct

1 generally a higher cost. But the facilities are the
2 same. You are still dealing with sewerage. You are
3 still dealing with potable water. The science is
4 exactly the same, regardless of ownership.

5 BY MR. MARKS:

6 Q. I would like to call your attention to I
7 think a document that has previously been marked in
8 evidence, A-21, which is the feasibility report upon
9 sanitary sewerage and potable water supply facilities
10 dated June, 1980, prepared by Elson T. Killam
11 Associates. Have I furnished you with what copy of
12 that and have you reviewed --

13 A. Yes, you have, and I have reviewed it.

14 MR. MARKS: Mr. Sagotsky, I would
15 like to have this other document marked.

16 MR. SAGOTSKY: I believe we ended
17 with PB-2, is that correct?

18 THE CLERK: This would be PB-3.

19 MR. SAGOTSKY: A document consisting
20 of 44 pages entitled Elson T. Killam Associates, Inc.,
21 further entitled, "Conceptual Engineering Report,
22 Feasibility of Providing Sanitary Sewerage, Storm
23 Drainage and Potable Water Supply Facilities for the
24 Colts Neck Village Planned Unit Development, Colts
25 Neck, New Jersey" offered, is marked for

1 identification as PB-3

2 (Whereupon a 44 page document,
3 Conceptual Engineering Report, is marked PB-3 for
4 identification.)

5 MR. SAGOTSKY: 7/31/80.

6 MR. MARKS: Mr. Sagotsky, a
7 question was just asked by a Board member whether
8 that document which you just marked PB-3 is the same
9 as A-21. It is not. PB-3 was prepared by the
10 applicant in connection with the original litigation
11 involving the Township. We're going to refer to two
12 documents, the one that was prepared in June, 1980
13 and -- Sam, what is the date of that?

14 MR. SAGOTSKY: January, 1979,
15 prepared for R. J. Brunelli and Company, 320 Amboy
16 Avenue, Metuchen.

17 MR. SAGOTSKY: I just made this
18 remark to what I had previously said when the
19 material was marked PB-3 for identification.

20 BY MR. MARKS:

21 Q. Turning your attention to A-21, page
22 three, there's a -- is that the sanitary sewerage
23 study, commencement of that in the June, 1980 Killam
24 report?

25 A. Yes, it is.

1 Q. And there's a statement made in the
2 second sentence of Roman numeral two, waste water
3 flow projections. And that statement is: Reduction
4 in sewage flows can be accomplished by using water
5 saving plumbing fixtures such as shower heads which
6 restrict flow, toilet dams and other water saving
7 devices now commercially available. And I'll stop --
8 and which are mandated for new construction under the
9 State plumbing codes.

10 Prior to that, the first sentence gives
11 waste water flow projections for the proposed project
12 which are presented in table S-1, which appears on
13 page four. Do you have any comment regarding the
14 reduction in sewage flows as set forth in the 1980 as
15 compared to the 1979 report?

16 A. The '79 report projects sewage flow to be
17 between 320,000 gallons per day to 360,000 gallons
18 per day. This report projects sewage flow of 249,560.
19 There is a slight difference in the number of units
20 apparently being proposed in this report as opposed
21 to that report. But I certainly don't think that
22 water saving devices can materially decrease the
23 amount of sewage flow to the extent shown in this
24 report.

25 Q. Does this report show approximately a 30

1 percent savings?

2 A. Yes, over the highest figure which is 360.

3 Q. How does that affect -- that 30 percent
4 savings figure affect the capital expenditure as well
5 as the user cost?

6 MR. PRIZELL: Can I object to
7 this? Where does it say that the 30 percent savings
8 has anything to do in a direct way with the water
9 saving fixtures?

10 MR. SAGOTSKY: He concluded --
11 well, let him answer. I gathered that it was
12 concluded when you bring up your set of figures, the
13 difference between the two would amount --

14 MR. PRIZELL: That's what he
15 gathered.

16 MR. SAGOTSKY: What do you say?

17 MR. MARKS: Would you like to do
18 the arithmetic on the figures between the two?

19 MR. PRIZELL: I don't doubt that
20 the figures are different.

21 MR. MARKS: Mr. Alaimo --

22 MR. PRIZELL: I don't think there
23 is any immediate direct connection between the 30
24 percent figure. I would think that the water saving
25 plumbing fixtures may have had some impact but I

1 certainly don't think -- to say that it had a 30
2 percent impact, I suspect it was due to more detailed
3 information available to the engineer which was not
4 available when he did the first report.

5 MR. MARKS: Are you saying that
6 the first report prepared for the court was not
7 complete?

8 MR. PRIZELL: The first report is
9 based on 1,500 units.

10 THE WITNESS: This report was
11 based on 1,300 and some units.

12 MR. MARKS: Can we have that PB-3
13 back, because we're going to be referring to that.

14 MR. PRIZELL: Total equivalency
15 units?

16 THE WITNESS: The first report
17 was based on 1,363 units.

18 MR. PRIZELL: And how many
19 commercial and industrial units? That's 200 units
20 additional, 20 percent.

21 THE WITNESS: I said there was a
22 combination of two things, the reduction in the
23 number of dwelling units and the water saving devices.
24 And what I said was, I don't think that could
25 materially affect the sewage flow projection that

1 significantly.

2 MR. PRIZELL: The reduction of
3 the 200 units plus the reduction of the commercial
4 and industrial units would not significantly reduce
5 the flow? I think the record will show --

6 THE WITNESS: You want the table
7 or do you want to argue?

8 MR. MARKS: Why don't you save
9 that for argument because I think that's a good point
10 you can certainly bring out.

11 MR. PRIZELL: Okay.

12 BY MR. MARKS:

13 Q. Would you compare the tables?

14 A. The tables, that is commercials, are exactly
15 the same. The office building was projected as
16 16,900 under one option and 33,800 under the other
17 option. So that's in keeping with option two. The
18 nursery school is exactly the same, 1,800 gallons.
19 The nursing home has been eliminated. Then there are
20 mixed uses in the residential. So we're talking
21 about the only thing that was eliminated from
22 non-residential was the nursing home. The
23 residential units changed approximately 200 units.

24 Q. Can you compare the average daily flow
25 which is stated on page four of the most recent

1 report to the 1979 report and comment on that, if you
2 will?

3 A. Well, the '79 report indicated they had two
4 options. They hadn't settled on the number of
5 dwelling units and their lowest option was 320,000,
6 the highest 360,000. We believe, in general, the
7 figures that they're using are low for the sewage
8 flow. And that is material because number one, it
9 reduces projected construction costs; number two, if
10 there is a state allocation for the discharge permit,
11 the lower figure would tend to enable them to meet
12 that criteria. If the flow is higher, the criteria
13 which apparently right now producing a treatment
14 plant which requires 98 to 99 percent removal, would
15 be almost impossible to achieve. It is best to
16 reduce your estimated flow to meet for best load
17 allocation, which is based on flows. The lower the
18 flow the better off you are. These figures are
19 inconsistent to a slight degree, not material but to
20 a degree with their own statements later in the
21 report that suggest that in the absence of real data
22 you should use 100 gallons per capita per person.
23 Then they say that 85 percent of the water enters the
24 sewer system. Given that, I would say that every
25 figure shown on table S-1 should indicate a capital

1 flow of 85 gallons as opposed to what they've done
2 here. But I don't think what they've done is that
3 far off. Again, it's that far off to the low side.

4 MR. BRENNAN: Could you, for the
5 advantage of us that don't have the book, explain
6 what they did do?

7 THE WITNESS: On page four of the
8 new report, they have listed by uses patio homes, two
9 bedrooms, the number of units, the number of people
10 that they project. They project three people in a
11 two bedroom unit and then they say 70 gallons per
12 person, per day is the sewage flow.

13 MR. BRENNAN: In contrast --

14 THE WITNESS: Of one hundred --

15 MR. BRENNAN: -- with 85 percent?

16 THE WITNESS: Eighty-five percent
17 entering the sewerage. So for both references to be
18 consistent, they should have used 85. But again, I
19 think we're talking about, in our estimation, maybe
20 the 250,000 gallons ought to be 300,000 gallons. I
21 think they are taking the low side of all figures.
22 And the question asked me is, why would you do that.
23 Well, I would like to say that if I were trying to show a
24 lower cost. I would do it if I was -- I had
25 difficulty in meeting my waste flow allocations.

1 MR. BRENNAN: Can you tell me
2 what waste flow allocation means?

3 THE WITNESS: This is the actual
4 liquid that would be discharged into a stream. As we
5 get into the report later, they're proposing an
6 advanced waste water treatment plant which they
7 haven't settled on the type of treatment. But they
8 have apparently gone to the State and the State has
9 said you shall have removal of -- BOD's is basically
10 the contaminants that is in the water -- your removal
11 shall be to the extent of 98, 99 percent removal.
12 That's an extremely high removal to comparison to
13 what used to be primary treatment, with 30 to 50
14 percent; secondary treatment from 85 to 90 percent.
15 Now you are getting in the category of advanced waste
16 water treatment plant, which is very expensive
17 capital cost and very expensive to operate. But if
18 someone is making some figures go to the low side,
19 what is the advantage? The advantage is to show a
20 lower cost to make something look more feasible.
21 It's to indicate that they're able to meet
22 requirements. Now, what would happen in the future,
23 I don't know.

24 MR. MARKS: Does that answer your
25 questions?

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MR. BRENNAN: Yes.

BY MR. MARKS:

Q. Mr. Alaimo, I ask you to take a look at page five.

MR. SAGOTSKY: Identify the report.

MR. MARKS: A-21.

A. That is the 1980.

Q. The 1980 report. Under the water discharge requirements, do you have an estimate of the removal percentage of contaminants from the water and if so how does that relate to capital and operating costs?

A. Well, that's what I was suggesting the question before by one of the members. Pages five and six allude to meetings and agreements with the Department of Environmental Protection. There's nothing shown here from the Department of Environmental Protection. The representation is, they met with the Department of Environmental Protection who has set the guidelines for this particular stream at this suggested point of discharge.

Q. Are those guidelines stringent?

A. Yes, they're extremely stringent guidelines.

Q. And what does that stringent guideline

1 translate into in terms of percentage of removal of
2 contaminants?

3 A. I would say they would would have to design to
4 98.5 to 99 percent removal of BOD's, of solids.
5 There are other items that -- which may require
6 further advance waste treatment related to any given
7 item.

8 Q. These stringent requirements would
9 translate into an extensive capital expenditure?

10 A. Correct.

11 Q. And similarly, an expensive operating
12 cost?

13 THE CHAIRMAN: Can we back up
14 just a little? I'm referring to page six of the 1980
15 report. And it's clearly asterisked that this is a
16 New Jersey Department of Environmental Protection
17 determination. Did you state that nowhere could you
18 find factual data that it comes from the DEP?

19 THE WITNESS: There's nothing in
20 the report other than the statement. That's why I am
21 prefacing my remarks. I'm accepting what they're
22 offering to me and you on page five and six as a
23 representation. I don't know if they entered it into
24 the record before or not.

25 BY MR. MARKS:

1 Q. By the way, while we're on that, do the
2 standards that apply to the 1980 report, are they
3 different from those in the 1979 report?

4 MR. PRIZELL: I'm going to object
5 to this whole line of questioning.

6 MR. MARKS: I think it's relevant.

7 THE CHAIRMAN: Let's hear the
8 objection first.

9 MR. PRIZELL: My objection is
10 that Mr. MacDonald and the Killam people were here.
11 If you had a problem with their prior report, the
12 time to raise that was while the man is here. You
13 don't impeach a man's testimony when the man's not
14 here to refute it. Anyone can come in and try to put
15 holes in his report and nit pick the thing. It's
16 improper use of the 1979 report to introduce it as
17 part of Mr. Alaimo's testimony.

18 MR. MARKS: First of all, I point
19 out that that report was utilized by you in the trial
20 and, I think it's important to show the differences
21 between that report and this report and how the
22 criteria have changed.

23 MR. PRIZELL: I don't argue with
24 you that it may be important. But I'm just saying
25 that the proper time to raise the issues was while

1 Mr. MacDonald was here to meet them.

2 MR. SAGOTSKY: Wait a minute.

3 You stated your objection. You stated your answer.

4 At this point, I think it's time for a ruling.

5 THE CHAIRMAN: Well, it seems to
6 me as the Chair for this evening, it would have been
7 highly impractical to have a confrontation between
8 two witnesses. We were certainly not prepared to
9 challenge on technical points because we don't have
10 enough knowledge. And I think if there is knowledge
11 not contained in the original report presented to you,
12 we should have it to make a fair consideration. And
13 it's coming forth this evening. That's why I asked
14 the question if, indeed, the Department of
15 Environmental Protection report was a valid one or
16 was it never presented to us.

17 MR. PRIZELL: On that point, it
18 was presented. Mr. MacDonald testified that he
19 personally received that information through the
20 Department of Environmental Protection.

21 MR. SAGOTSKY: I would conclude
22 from what was said that the objection was overruled.
23 Is that so, Mr. Chairman?

24 THE CHAIRMAN: I think so. It's
25 helpful to the Board. It's very helpful to me, since

1 we didn't have anyone to interpose objections at that
2 time. It would have been ideal to have them both
3 present at the same time but certainly it wasn't
4 practical.

5 MR. MARKS: I also have to state,
6 Mr. Chairman, that we obviously need the time to
7 evaluate those figures. I have no objection if Mr.
8 Prizell would like to bring anybody back. That's his
9 option.

10 MR. SAGOTSKY: If we have time
11 within the time limits of the Court Order.

12 THE WITNESS: You want me to
13 answer the question?

14 MR. MARKS: Yeah, go ahead.

15 THE WITNESS: In the 1979 report,
16 which is also shown as Table 2, the effluent
17 requirements were not as definitively stipulated as
18 they are in this particular report.

19 MR. SAGOTSKY: Would you identify
20 it further, "this report"?

21 THE WITNESS: Page seven, this is
22 the 1979 report, Killam report.

23 MR. SAGOTSKY: A-21. I think if
24 you try to use A-21 and PB-3 --

25 MR. PRIZELL: That's PB-3. '79

1 is PB-3.

2 MR. SAGOTSKY: PB-3 is the '79
3 report. A-21 is the 1980 report. It helps us to
4 identify it.

5 THE WITNESS: The report at that
6 time does not allude to any approvals by the
7 Department of Environmental Protection. In fact, it
8 had only a limited sampling of the leaving stream.
9 However, the proposed effluent discharge was not
10 unlike the S-2 table, the biggest variance being that
11 the BOD's, where it shows as less than 5.0, is now
12 2.9. I don't see any major difference in the
13 effluent requirements. There's a -- some major
14 differences in the cost of the sewage treatment plant.
15 As we had testified last year, we felt the costs were
16 extremely low. Those costs have been brought more in
17 line at this time to recognize the advanced treatment
18 required by these parameters.

19 BY MR. MARKS:

20 Q. You mean that the cost projections given
21 at the trial have been modified by A-21, the 1980
22 report?

23 A. Yes, they have.

24 Q. And they've been increased?

25 A. Increased drastically.

1 MR. BRENNAN: When you say --
2 THE WITNESS: For the sewage
3 treatment plant.

4 MR. BRENNAN: Do you mean
5 construction costs?

6 THE WITNESS: That's the only
7 thing the report shows. They don't even deal with
8 operating costs. They deal with capital costs.

9 THE CHAIRMAN: When you allude,
10 Mr. Marks, to the trial, would you identify it?

11 MR. SAGOTSKY: Before Judge Lane.

12 THE CHAIRMAN: It would be
13 helpful.

14 MR. MARKS: Fine. I think it was
15 in June of 1979, June, 1979 trial.

16 MR. SAGOTSKY: Before Judge Lane?

17 MR. MARKS: Before Judge Lane.

18 MR. SAGOTSKY: In the matter of
19 Urge --

20 MR. MARKS: Against the Township.

21 MR. SAGOTSKY: -- versus the
22 Township of Colts Neck.

23 MR. FRIZELL: Just to make it
24 clear, are you representing that those figures
25 appeared anywhere at the time of trial?

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THE WITNESS: Appeared in this report.

MR. PRIZELL: I'm asking Mr. Marks.

MR. MARKS: This report was prepared for the trial.

MR. PRIZELL: Do you know whether or not the figures ever came before the Court?

MR. MARKS: No, I wouldn't know that. You would -- you could tell us that.

MR. PRIZELL: I don't -- yes, I could. I'll save it for argument, Mr. Marks.

MR. SAGOTSKY: The testimony now is based on the alleged differences between the report. All right. Is that correct?

MR. MARKS: That's correct.

MR. SAGOTSKY: That's as far as we're going at the moment.

MR. MARKS: Whether they were introduced or not is irrelevant. We're comparing the two reports at this point.

MR. SAGOTSKY: The Board then will weigh the report.

MR. DAHLBOM: Can I ask a question? Is it significant that a new report has

1 been submitted in preference to a report that was
2 given at an earlier trial? Isn't it acceptable that
3 the new report might be filed? It might have more
4 recent data.

5 MR. MARKS: I would like Mr.
6 Alaino to answer that.

7 THE WITNESS: I think it's
8 perfectly in order that the report be updated.

9 MR. DAHLBOM: So why do we spend
10 all this time comparing something that's already out
11 of date with something up to date?

12 THE WITNESS: I don't know if
13 making a report a year later makes it up to date,
14 entirely. What we're trying to point out are some
15 inconsistencies of the report that may be material.
16 Some of these things have gone up, which we agreed
17 should have been raised a year ago. Some of them
18 have gone down, which we don't understand.

19 MR. SAGOTSKY: In price?

20 THE WITNESS: In price. This
21 report represents itself to be a feasibility report.
22 in the market --

23 MR. SAGOTSKY: Refer to this
24 report, A-21.

25 THE WITNESS: A-21.

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MR. SAGOTSKY: Represents itself to be?

THE WITNESS: Represents itself to be a feasibility report. In the marketplace, a feasibility report determines for a client the cost of the facilities, the capital costs of the facilities and the operating costs related to those particular facilities. Now, if you are dealing with a report and the two objectives are to narrow in on least cost utilities then we must object to things that we find that are not least cost representations. And also, another constraint in the report is Department of Environmental Protection regulations. And the idea is to compare the two where they've changed and improved and where they haven't improved. I think that's hopefully what we're trying to get out of the testimony.

MR. MARKS: Does that answer your question?

MR. DAHLBOM: Not entirely, but I'll listen some more.

BY MR. MARKS:

Q. I would like to ask you to turn to page seven of A-21, the 1980 report and can you tell us what the capital cost estimate is for the sanitary

1 sewer collection system?

2 A. On page seven, in the middle of the page the
3 figure represented is the sanitary sewerage
4 collection system of \$655,000.

5 Q. What did the 1979 --

6 MR. SAGOTSKY: Mr. Chairman and
7 all concerned, I have been asked from the audience --

8 THE CHAIRMAN: With it on, to
9 whom does it present a large problem?

10 Proceed, please.

11 MR. MARKS: Would you read back
12 the last question?

13 (Whereupon the pending question
14 is read back by the Reporter.)

15 BY MR. MARKS:

16 Q. The 1980 study, A-21, projected the
17 sanitary sewer collection cost, construction cost as
18 being \$655,000; is that correct? Is that stated on
19 page seven of that report?

20 A. Yes, it is.

21 Q. The 1979 report, how does that compare
22 to that \$655,000 figure?

23 A. On page eight of the 1979 report, the figure is
24 shown as one million ten thousand dollars.

25 Q. In order -- it's about \$400,000 more in

1 the 1979 report; is that correct?

2 A. That's correct.

3 Q. Do you have any thoughts comparing the
4 two figures as to why there's disparity?

5 A. No. It's basically the same layout. And we
6 had made a cost estimate of the 1979 one and we felt
7 that was low. And I feel that this is a figure that
8 is much too low to represent as being the cost of the
9 collection system.

10 Q. I would ask you to turn to page eight of
11 A-31, the 1980 Killam report.

12 MR. SAGOTSKY: Are you referring
13 to A-21?

14 MR. MARKS: I'm sorry, A-21, A-21,
15 page eight of A-21.

16 MR. SAGOTSKY: That's the 1980
17 report.

18 MR. MARKS: Of the 1980 report.

19 Q. On that page, the title heading is, "waste
20 Water Treatment Alternatives". Could you explain the
21 different types of alternatives and what the
22 Applicant is proposing?

23 A. Well, they have not -- they've defined four
24 possible alternatives. The method of treating the
25 sewage basically for the removal of solids and for

1 the method of being able to meet a State discharge
2 permit. These are accepted, normal methods of
3 alternative sewerage processes, except alternate
4 number one, I think, it's just a typographical error.
5 I don't think they would propose a primary treatment
6 and land application. However, later in the page
7 they cancel that as being a potential alternative
8 because it would utilize 80 acres of land for spray
9 irrigation. Alternate number two, the physical
10 chemical advanced waste treatment with direct
11 discharge to Hockhockson Brook; alternate number
12 three is a biological secondary with biological
13 physical chemically advanced waste water treatment
14 with direct discharge to the Hockhockson Brook. And
15 alternate number four, biological secondary, physical
16 chemical secondary advanced waste water treatment
17 plus rapid infiltration and land application. Again,
18 I don't understand the land application. I think
19 what they're alluding to is rapid sand filters. All
20 three of those alternates could possibly give you a
21 result that would meet the State requirements.

22 Again, on the specification of the equipment
23 and the size of the unit, with the exception of the
24 land application, I don't understand it. They do not
25 definitively select an alternative at this time.

1 Later in the report, they have cost estimates which
2 indicate a variance between two alternatives to give
3 you a general idea of cost.

4 Basically, I have no disagreement with the
5 alternatives, with the couple of corrections which
6 I'm sure is a just a typographical -- just an error.

7 Q. Of the three that you understand, what
8 would be the expense factor involved in the systems
9 being proposed in this report?

10 A. Well, they do project the expenses. Their
11 estimate of the waste water treatment on page nine --
12 again, the key words in all of those alternatives is
13 "advanced waste water" which in the profession means
14 tertiary treatment to the extent of high removals,
15 over 95 percent; and, the specification being whether
16 you have to remove BOD down to three or four or two
17 or whatever it may be. Each one of the restraints on
18 the permit creates dollars, both dollars in costs,
19 primary costs, capital costs and operating costs.
20 Page nine is the breakdown of the facilities. It's
21 not a breakdown. It's just an estimate. There is no
22 breakdown since they really haven't selected, at this
23 point, the definitive type of treatment plant. But
24 they put it in those three categories.

25 Q. So, in other words, you are saying that

1 This would give you a figure, based upon 1,200 units,
2 of approximately \$3,300 a unit. So that each and
3 every unit being constructed for a 1,200 unit PUD,
4 average cost for sanitary sewers, capital
5 improvements, is \$3,300. That, I may say, is high.

6 Q. Now, we've gone through several figures.
7 We've gone through an initial capital cost and we're
8 talking about a high average annual cost per unit.

9 How --

10 MR. BRENNAN: I think all we did
11 is allocate the capital costs per unit.

12 MR. MARKS: I'm sorry, you are
13 correct.

14 BY MR. MARKS:

15 Q. Just relating those two figures to the
16 concept of least cost housing, do you have an opinion
17 with respect to those figures?

18 MR. PRIZELL: Objection. Mr.
19 Alaimo as an engineer. He used the terms "least cost
20 utilities". I never heard that before. I think if
21 you have an argument to make based on Mr. Alaimo's
22 testimony, I welcome you to make it. But Mr. Alaimo
23 is not here to comment on least cost housing.

24 MR. SAGOTSKY: State the form of
25 the objection. You are objecting to the form of the

1 question?

2 MR. FRIZELL: Yes.

3 MR. SAGOTSKY: You are basing
4 your objection on the qualifications of the witness
5 to answer the question?

6 MR. FRIZELL: Yeah. Obviously,
7 it calls for a legal conclusion.

8 MR. SAGOTSKY: I'm just trying to
9 clarify so we can get a ruling.

10 MR. MARKS: I would like to
11 answer that. On page one of the Killam report, the
12 1980 report --

13 MR. SAGOTSKY: You are answering
14 directly to the objection so we can make a ruling?

15 MR. MARKS: Yes.

16 THE CHAIRMAN: All right.

17 MR. MARKS: On page one of A-21,
18 of their own report, talks about cost effective to
19 construct and that --

20 MR. FRIZELL: Yes, I have no
21 problem with that.

22 MR. SAGOTSKY: Let him finish.

23 MR. MARKS: That, as far as I'm
24 concerned, is least cost housing.

25 MR. FRIZELL: It may be as far as

1 you are concerned. You are a lawyer. The man who
2 wrote this is an engineer talked about cost
3 effectiveness. Mr. Alaemo --

4 MR. MARKS: Why don't we ask if
5 cost effectiveness relates to least cost housing?

6 MR. FRIZELL: I don't know if he
7 even knows what he means.

8 THE CHAIRMAN: Why don't you
9 proceed on that tack and see if we can draw out a
10 qualification on cost effectiveness.

11 MR. BRENNAN: If it costs \$3,300
12 per unit, and assuming the developer want to recover
13 all of his costs and make a profit, the sales price
14 of a home that has a \$3,300 capital cost allocated to
15 it would be higher than the sales price of a home
16 that has \$1,000 allocated to it.

17 THE WITNESS: I would agree with
18 that.

19 MR. BRENNAN: Okay. But legally
20 it could still be least cost housing. Now, I'm
21 making a statement there. I'm not asking the witness
22 to respond to it.

23 MR. FRIZELL: Mr. Brennan, I
24 might add that virtually the exact same statement was
25 made by Judge Lane in response to Mr. Alaemo's

1 testimony at the trial.

2 MR. MARKS: I think that Mr.
3 Prizell's comments are gratuitous and should be
4 ignored by the Board as to what went on in front of
5 Judge Lane.

6 THE WITNESS: For the record, I
7 don't agree with the statement that was just made.
8 Judge Lane never made a remark to me related to least
9 cost utilities.

10 BY MR. MARKS:

11 Q. Did you, in fact, prepare a report for
12 the Court on least cost utilities?

13 A. We prepared a report for the town. I don't
14 know if it was ever submitted.

15 Q. Do you have an opinion how cost
16 effectiveness --

17 THE CHAIRMAN: Let's sort this
18 thing out, here. I'm a little disturbed. Did, in
19 fact, Judge Lane say this or did he not?

20 MR. FRIZELL: Does Mr. Alaimo
21 have a copy of the transcript?

22 THE CHAIRMAN: I'm just trying to
23 ask our Counsel if he recalls it so at least we can
24 be in the ballpark.

25 Do you recall it?

1 MR. SAGOTSKY: I was not present
2 at the hearing with Judge Lane.

3 THE CHAIRMAN: Then, without a
4 copy of the transcript, we're not too sure whether he
5 did or did not.

6 MR. SAGOTSKY: Except you have
7 the sworn testimony of Mr. Alaimo. The other, up to
8 this point, is a remark of Counsel based on memory
9 and, no doubt, in good faith. He says he can
10 substantiate it later on. But for the time being,
11 you have sworn testimony that he does not recall it.
12 For what it's worth, you may evaluate it and go on
13 from there.

14 THE CHAIRMAN: It's possible if
15 we could locate that in the transcript it might be
16 helpful as to how he categorized it.

17 MR. PRIZELL: Is there a
18 transcript anywhere in the building?

19 Off the record.

20 (Whereupon there is a discussion
21 off the record.)

22 MR. MARKS: I would suggest that
23 we be permitted to move on and if you have something
24 to submit from the transcript, why go head and do
25 that.

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MR. FRIZELL: Thank you, Mr.

Marks.

MR. SAGOTSKY: For the moment, if I may add, you may just postpone it for further consideration or decide that it's not crucial. You have time to evaluate that.

THE CHAIRMAN: Let's handle that in that manner.

MR. MARKS: I would just like -- I think we could end the discussion between the page one characterization of cost effective utilities if we just look at page ten, again of A-21, the 1980 report.

BY MR. MARKS:

Q. Mr. Alaimo, I call your attention to page ten, the second paragraph. Is there not a statement there regarding least cost? Can you read that sentence?

A. The last paragraph: Four categories were evaluated with the hopes of achieving "least cost" planning improvements. And by following general guidelines -- blah, blah -- and they refer to it later in the paragraph as being one of the two constraints, the other constraint being rules and regulations of the Department of Environmental

1 Protection.

2 THE CHAIRMAN: Would that satisfy
3 you, Mr. Frizell?

4 MR. FRIZELL: It doesn't satisfy
5 me a bit. I don't understand what the relevance of
6 all this is. Does Mr. Alaimo? Maybe we can solve it
7 if Mr. Alaimo will give his definition of what least
8 cost is and based on that understanding, we'll
9 proceed with his testimony.

10 THE CHAIRMAN: All right. Let's
11 do it in that fashion. You make your explanation of
12 what you conceive it as.

13 THE WITNESS: Least cost
14 utilities?

15 MR. BRENNAN: Housing.

16 MR. SAGOTSKY: It was said
17 housing but I think the testimony was concerning
18 least cost utilities.

19 MR. BRENNAN: Will you restate
20 the question? I thought you said least cost housing.

21 THE CHAIRMAN: We got least cost
22 housing and least cost utilities or whether it falls
23 into the category of least cost planning improvements.
24 Restate your question, if you can remember it.

25 MR. BRENNAN: I think Mr. Frizell

1 has to restate his objection.

2 MR. FRIZELL: If Mr. Alaino would
3 simply tell us what he understands the terms to mean
4 and then he can use the terms and I can understand
5 what he means.

6 MR. BRENNAN: So you are asking
7 for his definition of all three terms or just least
8 cost?

9 MR. FRIZELL: Whichever one he
10 intends to use.

11 MR. SAGOTSKY: And if he feels
12 that least cost utilities refers to least cost
13 housing?

14 MR. FRIZELL: I have a little
15 problem with least cost utilities.

16 MR. MARKS: You have it in your
17 report.

18 MR. FRIZELL: I didn't write it.
19 I think I know what he -- what he means.

20 MR. MARKS: I think you should
21 have asked him that when he was here.

22 MR. FRIZELL: I'm asking Mr.
23 Alaino to define the terms that he is going to
24 use so that we can proceed.

25 MR. SAGOTSKY: I was going to

1 suggest that you might leave that for your cross but
2 somehow it's gotten to the point --

3 MR. MARKS: That we are at cross
4 or voir dire.

5 THE CHAIRMAN: I will make the
6 ruling from the Chair. You explain it as you
7 understand it and we'll reserve Mr. Frizell's remarks
8 for cross-examination if he feels that you have
9 explained it not to his satisfaction or understanding.

10 Proceed, Mr. Marks.

11 BY MR. MARKS:

12 Q. Mr. Alaimo, do you have a definition
13 that you would use for least cost utilities and could
14 you explain that?

15 A. Yes. We're dealing with water and sewer
16 facilities. Least cost meaning that someone has
17 studied more than one alternative and has determined
18 that the least cost and therefore the most feasible
19 type of facilities to construct for a particular
20 project is the least cost on the basis of first,
21 capital cost and operating cost; operating cost being
22 used to determine present worth of money -- capital
23 costs to be used as present worth of money. You have
24 guidelines for least cost, EPA guidelines, that tell
25 you how to determine least cost utilities. There is

1 no least cost definition within this report since
2 there is no alternatives study and there are no
3 operating costs in this study. My definition of
4 least cost is the least cost to the client in the
5 capital and operating, total picture.

6 MR. SAGOTSKY: As compared to?

7 THE WITNESS: As compared to
8 alternate B, alternate C and alternate D and however
9 many alternates you may want to propose.

10 THE CHAIRMAN: We're dealing with
11 a specific alternate here.

12 THE WITNESS: My problem with the
13 report is that it does not. While it says it is
14 looking for least cost utilities, it does not examine
15 three or four different alternates and say, therefore,
16 this is the least cost utility. It only examines one
17 utility, one location and says these are what the
18 capital costs are. They make no representation as to
19 what the operating costs are. As you know, even
20 though the capital costs may be a dollar, the
21 operating costs may be ten times in weighing the
22 factors as to what it's going to cost you over the
23 life of the facility. So this report does not
24 conclusively prove anything as far as least cost is
25 concerned. It represents one type of a system to

1 provide water and sewer and it defines what it feels
2 to be the capital costs related to those particular
3 facilities if constructed.

4 BY MR. MARKS:

5 Q. Do you have an estimate as to what the
6 unit cost per year would be for the system, whatever
7 it is, that is set forth in A-21, the 1980 report?

8 A. You are talking about the sanitary sewerage
9 section?

10 Q. Yes, the sanitary sewer section.

11 A. Yes. We made an estimate for the cost of
12 utilities on an operating basis to be approximately
13 \$360 a year per unit, basically between \$300 and \$400
14 per unit per year for sanitary sewer service.

15 Q. Have you compared that yearly cost to
16 other sewer systems?

17 A. Yes, we did make a study of some facilities in
18 the area. Sewer service from Northeast Monmouth
19 which is a system of about 9,000 units, \$140 a year;
20 Wall Township, \$150 a year; Middletown Township, \$145
21 a year; Old Bridge Township, \$80 a year. The average
22 of those, approximately \$120 a year, something like
23 that.

24 Q. Now, those are all public or semi-public
25 utilities; is that correct?

1 A. Yes.

2 Q. If this project were located where
3 public utilities were available or could be extended
4 to meet the project, would the figures then be closer
5 to the lower figures in the Northeast Monmouth
6 Utilities Authority, the Wall Township system, the
7 Middletown system, the Old Bridge system?

8 MR. PRIZELL: Objection. Number
9 one, calls for speculation, calls for hypothesis.
10 That's not anywhere near to being demonstrated in
11 this report. Number two, what does "closer to" mean?
12 Does Mr. Alaimo know what it would cost? Does he
13 have any idea what it would cost to hook into an
14 existing public sewer system? If so, what is that
15 based on? The comparison that you've asked for
16 requires the answers to all those questions.

17 MR. SAGOTSKY: And therefore you
18 are objecting to the question?

19 MR. PRIZELL: Thank you, Mr.
20 Sagotsky.

21 THE CHAIRMAN: Do you plan to ask
22 those questions?

23 MR. MARKS: Yes. I would ask
24 that Mr. Alaimo respond to it directly.

25 THE CHAIRMAN: All right. Seems

1 quite satisfactory.

2 THE WITNESS: I don't think I can
3 answer the question definitively for this particular
4 site. The difficulty of this particular site is it's
5 in the middle of town. So that there are many
6 utilities that touch the borders of this town, but
7 without a definitive study, which this report doesn't
8 make -- and I haven't had time to make -- there is no
9 comparison. I think it would be logical to have a
10 comparison but there is no comparison. The general
11 statement is that if we went closer to other
12 utilities, whether it be in the west or in the east,
13 those facilities would probably become available at a
14 lower cost. But I have no definitive figures.

15 BY MR. MARKS:

16 Q. Are you aware of utility systems close
17 to the western and eastern portion of the towns?

18 A. Well, the western portion you've got Freehold.
19 In the eastern --

20 MR. SAGOTSKY: Freehold Borough?

21 THE WITNESS: Freehold Borough.

22 And in the eastern portion, you have -- they changed
23 the name to Tinton?

24 MR. SAGOTSKY: Into Tinton Falls.

25 THE CHAIRMAN: Is that exactly

1 correct when we said Freehold Borough, Mr. Marks?

2 THE WITNESS: You have the
3 Township and the Borough.

4 MR. MARKS: I think the Freehold
5 sewer system?

6 THE WITNESS: Well, there's a
7 sewage treatment plant shown right across the
8 township lines, whether it be the Township or Borough.

9 MR. SAGOTSKY: It is a Borough
10 system and it might just be on the edge of the
11 Township line, the one that is now in existence; and,
12 does serve some portions of the Township. The
13 Township has a part of its residential area served by
14 a private sewer system.

15 MR. BRENNAN: Which Township are
16 you talking about?

17 MR. SAGOTSKY: Freehold Township.

18 THE CHAIRMAN: That's what I was
19 trying to determine. It was stated Freehold Borough
20 and I was just trying to determine whether it was
21 Township or Borough that we were referring to,
22 Township or Borough.

23 MR. SAGOTSKY: It was my
24 impression that he was referring to the Freehold
25 Borough --

1 THE WITNESS: I believe so.

2 MR. SAGOTSKY: -- as being the
3 nearest to this area?

4 THE WITNESS: Right out on 537.

5 THE CHAIRMAN: In an easterly
6 direction, I think you stated it was Tinton Falls?

7 THE WITNESS: Tinton Falls.

8 BY MR. MARKS:

9 Q. I would like to call your attention to
10 page 11 of A-21, in which the average daily demand of
11 280,000 gallons is mentioned. Do you have a comment
12 on that figure?

13 A. Well, as I said before, the figure that was
14 developed for the sanitary sewer, we feel, is low.
15 What they've done is to carry sanitary sewage flow
16 forward into their water study. And again, if you
17 looked at it under the microscope and said, if you
18 are recommending 100 gallons per day per person, why
19 did you use 70? I come to the same conclusion here.
20 I think it's too -- 30 is low to begin with. It was
21 low in the sewer; it is now low in the water.
22 They're carrying the same figure forward.

23 Q. That 100 gallons for 100 persons living
24 in a unit, is that, in fact, not stated on page 12 of
25 A-21?

1 A. Yes. They recite that this was taken from a
2 Federal Housing Administration report, substantiate
3 the report as being minimum standard designs
4 acceptable as revised 1965. They allude to the
5 report and they say that was the basis of some of
6 their projections related to water.

7 Q. And yet their own report doesn't adhere
8 to that standard; is that correct?

9 A. That's the way I read it.

10 MR. SAGOTSKY: When you say "their
11 own report" you are referring to?

12 MR. MARKS: A-21, the 1980 report.

13 BY MR. MARKS:

14 Q. Jumping, if we can, to the fire figures,
15 do you have any comments with regard to the storage
16 tank which is proposed and the figures given?

17 A. You jump right past the fire. There is a
18 recommendation on page 13 related to fire. And they
19 recommend, and we agree, that the standard that they
20 propose, 2,500 gallons per minute for a two hour
21 duration. Yet when they go forward into their
22 storage tank, they recommend a storage tank of
23 300,000 gallons. If you simply multiply 2,500 times
24 120 minutes, you'd see that the fire would require
25 that the storage tank be filled at all times because

1 that's what the use that would be demanded in a two
2 hour fire. I think that's not proper. The 1979
3 report recommended 500,000 gallons and I would think
4 that that figure would be more proper; the bottom
5 line to that being that the cost of facilities in the
6 water section are, again, too low.

7 Q. When you say "the 1979 report", you are
8 referring to PB-37?

9 A. Yes, sir, I guess that's the number.

10 Q. Now, do you have any opinions regarding
11 the cost of utility service both sewer and water from
12 an existing utility as opposed to a private utility?

13 A. Well, I think you don't really have to
14 re-invent the wheel in the water and sewer business.
15 No one is that much smarter than anyone else. The
16 bigger the utility, the cheaper the cost to the
17 consumer; the smaller the utility, the higher the
18 cost. The public utilities generally are lower
19 because they have certain tax advantages. They have
20 a different structure and, therefore, they're cheaper.
21 In this particular example, you have the ingredients
22 to make the highest water and sewer rates as possible,
23 a small utility, privately owned.

24 Q. How would the figures for both water and
25 sewer for this private system compare to a public

1 facility? What would the rates be in comparison of
2 one to the other?

3 A. Well, we took a study of water rates around the
4 area. Monmouth Consolidated averages about \$135 a
5 year for a given unit that uses approximately 70,000
6 gallons a year, which is basically what this report
7 is based on. Middlesex Water Company, \$115 a year;
8 Old Bridge MUA, \$100 a year. So the average for
9 water on even a privately owned -- publicly owned
10 larger system is about \$120 a year. We projected for
11 this particular system -- they have not only a small
12 system but they have again iron removal. They're
13 talking about removing water from the Raritan
14 formation which has very heavy iron content. They're
15 dealing again with a sophisticated treatment process;
16 high first cost, high operating cost. We estimated
17 their water to be approximately \$300.00 a year for
18 water. How do these figures compare? Two to three
19 times higher than what you could expect from larger
20 public systems, connections.

21 Q. Connections to existing facilities?

22 A. Yes.

23 Q. Do you have an opinion regarding whether
24 this report establishes the economic inexpensiveness
25 if I can use that word -- with regard to the

1 utilities proposed?

2 A. No. I think I tried to explain before that to
3 determine what is the least cost you have to
4 determine what are the alternatives. And if you
5 study five, then you say this is least of the five I
6 have studied; having those five being generally
7 agreed as the five most reasonable to study. This
8 report only studies a given plan and comes to a given
9 conclusion and only gives you half the picture, as
10 far as costs are concerned. Obviously, if you are
11 spending \$3,000 in capital costs and the operating
12 costs go on for the next 40 years and you multiply
13 300 times 40, the operating costs are much higher
14 than the capital costs. So that that is a big
15 consideration in determining what is the least cost
16 utility that this project or any other project or any
17 other area in the community could say, this is the
18 least cost facility for a particular service.

19 MR. MARKS: I would like to have
20 this letter marked PB-4.

21 MR. SAGOTSKY: There is offered,
22 for identification, a letterhead, law offices of
23 Rosen, Gelman and Weiss, dated May 13, 1980,
24 addressed to Mr. George Handzo, Clerk, Township of
25 Colts Neck, "Dear Mr. Handzo". And then it goes on

1 to attach page two, which is a resolution; page three,
2 a continuation of the resolutions; page four and page
3 five and a map; altogether consisting of six pages.
4 It will be marked PB-4.

5 (Whereupon a letter dated May 13,
6 1980, is marked PB-4 for identification.)

7 MR. TISCHENDORF: The letter is
8 from whom?

9 MR. SAGOTSKY: Rosen, Gelman and
10 Weiss, a professional corporation, Newark, New Jersey,
11 addressed to Mr. Handzo. It's proposing a form of
12 resolution.

13 MR. FRIZELL: I may be mistaken
14 but I thought that was already in. I thought we put
15 that in.

16 MR. SAGOTSKY: Well, I haven't
17 read enough of it to really acquaint myself with it.
18 You may further explore it, whether it has been
19 placed into evidence or for identification previous
20 to this evening.

21 MR. MARKS: At this point, before
22 I start with this, I would like to move PB-3 into
23 evidence.

24 MR. SAGOTSKY: PB-3.

25 MR. MARKS: Which is the 1979

1 Killam report.

2 MR. SAGOTSKY: Marked in evidence.

3 (Whereupon PB-3 for
4 identification is received and marked into evidence.)

5 BY MR. MARKS:

6 Q. Mr. Alaimo, could you -- would you tell
7 us what clients that law firm purports to represent;
8 and, would you read that letter?

9 THE WITNESS: The letter is to
10 Mr. George Handzo, Clerk of the Township of Colts
11 Neck: We enclose for the consideration of your
12 Township Committee, a form of resolution for the
13 purpose of granting a franchise to Elson T. Killam,
14 Inc. to construct and operate a water and sewer
15 utility on the land owned by Orgo Farms and
16 Greenhouses, Inc. to be developed by Richard J.
17 Brunelli. The proposed franchise area is more
18 particularly described in the form of the resolution.
19 This application is submitted pursuant to NJSA
20 48:19-17 and NJSA 48:13-11. We understand that
21 active consideration is being given to the
22 development of the land in question. Franchise of
23 water and sewer services in this area will facilitate
24 improvements of these parcels. Elson T. Killam
25 Associates Inc. is a firm of environmental and

1 hydraulic engineers well versed in utility matters.
2 We have a brochure outlining their qualifications for
3 your review. We respectfully request the prompt
4 attention of your Township Committee to this
5 application for a franchise.

6 The letter is dated May 13, 1980.

7 Q. Is there anywhere in that letter a
8 reference to the W. R. Grace Company?

9 A. No.

10 Q. Can you explain the nature of the
11 request which is made in the letter?

12 A. They are requesting permission to obtain an
13 exclusive franchise to provide water and sewer to the
14 farm in question. The normal procedure is that a
15 request be made to the Township and then an
16 application is made to the Public Utilities
17 Commission, based upon that particular franchise. It
18 is an exclusive right to be the one and only sewer,
19 water operator within the particular confines of the
20 franchise.

21 Q. This letter requesting permission to
22 establish this franchise was submitted by the
23 same company that prepared the feasibility report set
24 forth in A-21?

25 A. Yeah, it represents to be Elson Killam, yes.

1 Q. And not W. R. Grace?

2 MR. PRIZELL: Mr. Marks, can I
3 object? What in the world does W. R. Grace have to
4 do with this?

5 MR. MARKS: It seems to me at the
6 time of June 17th hearing. When you had your witness
7 here. Mr. MacDonald. We brought up the matter of
8 whether or not --

9 THE CHAIRMAN: "We" meaning the
10 Planning Board?

11 MR. MARKS: The Planning Board,
12 on cross-examination, brought up the question of
13 whether the Killam Company does not at all operate,
14 does not -- hasn't requested permission to operate
15 the proposed sewer plant.

16 MR. PRIZELL: That's right. He
17 said he was unaware of any such request.

18 MR. MARKS: Yes. But there was
19 later testimony or comment, I should say, given by
20 you which indicated that because this request came
21 through the parent company it was obvious that Mr.
22 MacDonald had no knowledge or was aware of it.

23 MR. PRIZELL: Mr. Marks, you are
24 misconstruing the whole all of that testimony.

25 MR. MARKS: Let the Board decide

1 that.

2 MR. FRIZELL: I will not until
3 I've made my point. I thought that perhaps the
4 letter had been written on behalf of the parent
5 company. That may have some bearing on it. At
6 either the same meeting or next meeting, I think the
7 letter and Elson T. Killam wrote it. The only point
8 being that Mr. MacDonald had no knowledge.

9 MR. SAGOTSKY: Hold it right
10 there. Is that the point and thrust of your bringing
11 out this testimony, that the witness at that time, in
12 the form of Mr. MacDonald and whom else, were working
13 for a company that has an interest in a franchise in
14 this area and therefore there might be a conflict?
15 Is your point that the company, itself, is seeking to
16 obtain a franchise so that there may be some matter
17 of selfish interest or conflict there, as individuals
18 or the company?

19 MR. MARKS: Obviously, the --
20 obviously, the company.

21 MR. SAGOTSKY: You are not, at
22 this point, pointing out anything to the individuals?

23 MR. MARKS: No, that is not
24 intent at all. The intent is very clear.

25 MR. FRIZELL: But that has

1 nothing to do with W. R. Grace.

2 MR. SAGOTSKY: Let the committee
3 decide on the basis of the thrust of this
4 cross-examination.

5 And Killam is in conflict? Is
6 that it?

7 MR. MARKS: Yes.

8 MR. SAGOTSKY: And if you wish to
9 develop that, then the Board will rule on it.

10 THE CHAIRMAN: On that basis of
11 that, you can proceed. But please point out very
12 clearly why you are bringing up the name of W. R.
13 Grace in relationship to Killam. I think that's the
14 important thrust of your whole argument.

15 MR. MARKS: It was represented,
16 Mr. Chairman, that W. R. Grace was the parent of
17 Killam. And, in fact, on page 152 of the June 17th
18 transcript there is reference to W. R. Grace. I want
19 the Board to be very -- I want it to be very clear in
20 the Board's mind that it is the Killam Company that's
21 seeking to operate the franchise, the same company
22 that prepared the feasibility study.

23 BY MR. MARKS:

24 Q. Mr. Alaimo, do you have any opinion
25 regarding the feasibility study and the request on

1 the part of Killam Associates to operate a proposed
2 franchise?

3 A. Well, it's highly unusual. Killam, to my
4 knowledge, has never operated a franchised water and
5 sewer company in the State of New Jersey. I think
6 they're probably qualified. I would also think that
7 if there is truly a feasibility report to be prepared
8 for a client, it should be by a disinterested party
9 who would objectively determine whether a franchise
10 is even necessary; whether extensions of other
11 utilities are possible. To that extent, I think it's
12 ill-advised, you know, that they're representing both
13 hats in that particular case.

14 MR. SAGOTSKY: Is it the
15 implication that if Killam is interested in a
16 franchise in some way that interest might taint their
17 study or their feasibility report?

18 THE WITNESS: I wouldn't suggest
19 that that would change their opinion one iota. But
20 by the same token, conflict of interest is seen to
21 the outsider as potential. And if I looked at the
22 study and said why didn't you study alternatives two,
23 three and four, well two and three and four didn't
24 involve granting a franchise to your company; maybe
25 they threw it out because they knew the alternatives

1 were ludicrous. It's the potential of conflict that
2 I find to be ill-advised.

3 MR. SAGOTSKY: And if I may ask,
4 would another word for these alternatives mean bases
5 of comparison.

6 THE WITNESS: Yes, sir, sure,
7 sure.

8 MR. SAGOTSKY: All right.

9 THE CHAIRMAN: Thank you, Mr.
10 Sagotsky. That's very well put. And perhaps on your
11 cross, Mr. Frizell, you can explain that a little
12 further.

13 MR. BRENNAN: No, let's leave his
14 cross to cross and not summations.

15 THE CHAIRMAN: No, I think he can
16 develop it rather succinctly, if it's able to be
17 developed.

18 MR. MARKS: I would like to move
19 PB-4 into evidence.

20 THE CHAIRMAN: If indeed it
21 already is not.

22 MR. SAGOTSKY: Well, he did offer
23 on the basis of no objection I marked it. It's moved
24 into evidence. It's again moved into evidence.

25 MR. FRIZELL: Just so there's no

1 misunderstanding on my position. The only Rule that
2 applies to evidential rulings in this proceeding is
3 whether or not the subject matter of the document is
4 relevant to the proceedings. I can't argue that the
5 document is relevant to the proceedings. I have no
6 objection to it. I move all my evidence on the same
7 basis.

8 MR. MARKS: I would add to that --

9 MR. SAGOTSKY: Let's settle this
10 issue. The other issue raised is not to be
11 determined at this time. Let's settle PB-4 and get a
12 ruling on that. It's offered into evidence.

13 MR. FRIZELL: I have no objection,
14 Mr. Sagotsky.

15 MR. SAGOTSKY: Marked into
16 evidence, PB-4.

17 (whereupon PB-4 for
18 identification is received and marked into evidence.)

19 MR. FRIZELL: I only trust that
20 it's an accurate copy.

21 MR. SAGOTSKY: Well, I'd be glad
22 to let you look at it. There's certainly no
23 intention on the part of an inaccurate copy. Would
24 you like to look at it?

25 MR. FRIZELL: I have nothing to

1 compare it to at this time. I assume it's correct.

2 MR. SAGOTSKY: If you compare it

3 MR. MARKS: I believe Mr. Handzo
4 is present in the building and if there's any
5 question from Mr. Prizell, I'd be glad to get him an
6 original copy.

7 MR. PRIZELL: I assume it's a
8 correct copy. I have no objection to it on the
9 assumption it's a correct copy.

10 MR. MARKS: Thank you.

11 THE CHAIRMAN: Proceed, Mr. Marks.

12 MR. MARKS: I have no further
13 questions of this witness.

14 THE CHAIRMAN: Board members have
15 any questions they would like to interpose?

16

17 EXAMINATION BY THE BOARD:

18

19 MR. BRENNAN: Is it fair -- might
20 I summarize your testimony before you cross-examine?

21 You are saying that you question
22 the quality of the feasibility study because it does
23 does not thoroughly examine alternatives; that you
24 believe the capital cost is understated and that the
25 operating costs were not considered in the Killam

1 report; but, in your opinion, the operating costs of
2 this specific utility would be higher than the other
3 possible options that were not examined?

4 THE WITNESS: I agree with every
5 statement you made, yes, sir.

6 THE CHAIRMAN: Taking that to be

7 MR. BRENNAN: But as a practical
8 matter, you don't know that if we looked into utility
9 "X", "Y" or "Z", it might require an expansion of
10 capacity of utilities "X", "Y" and "Z" at current
11 cost as opposed to historical costs, which probably
12 contribute in some fashion to the lower annual charge
13 per year?

14 THE WITNESS: That's a complex
15 question. I must presume that no matter where I go
16 I'm going to have to create sewage treatment plant
17 capacities, whether it's there, existing or I have to
18 create it. I think the important factor is that
19 we're dealing with an extremely small area in this --
20 in this particular case; so that in my judgment, even
21 if you had to add on to a sewage treatment plant in
22 Freehold, it would be cheaper than to create a highly
23 sophisticated tertiary, advanced waste water, small
24 sewerage system in the middle of the town.

25 MR. SAGOTSKY: At the Orgo site?

1 THE WITNESS: Pardon?

2 MR. SAGOTSKY: At the Orgo site?

3 THE WITNESS: That's correct.

4 MR. BRENNAN: It would be less
5 expensive on an annual operating cost basis because
6 the current higher cost of the expansion in capacity
7 would be recaptured by the utility by increased
8 charges over the total customer base as opposed to
9 just specifically charging the proposed unit at the
10 Orgo site?

11 THE WITNESS: That's true. And I
12 can further elaborate. If I were connecting to a
13 public system that is eligible for 75 percent Federal
14 funding, eight percent State funding then my user is
15 benefited by Federal monies which he's made to
16 contribute to his own sewer service. When I deal
17 with a private company, there are no Federal grants;
18 there are no Federal subsidies. So those people are
19 locked out from their own Federal money.

20 MR. DAHLBOM: Is that true as
21 well if they have subsidized housing included?

22 THE WITNESS: I'm only talking
23 about utilities. So, there are no grants for
24 sewerage for private sewer companies and no grants
25 for creation of private water companies.

1 MR. DAHLBOM: Even if that
2 particular plant was to service a so-called
3 subsidized housing.

4 THE WITNESS: To the best of my
5 knowledge, that is. The rules of the game are that
6 the grant can only go to public entities.

7 MR. SAGOTSKY: The answer is no.

8 THE CHAIRMAN: Mr. Alaemo, to
9 your knowledge in any of your experience, is there
10 any advantage to understated costs at the outset with
11 the Applicant.

12 THE WITNESS: There really isn't
13 any advantage because the Applicant obviously is only
14 fooling himself, if that's the term that I can use.
15 But the illusion is being created that utilities can
16 be provided at an economic cost. When the figures
17 are not true, then you know, that's -- that would be
18 the only thing that the purpose would have to be, to
19 fool someone else; because, obviously, you are going
20 to pay the piper if you are trying to fool yourself.

21 THE CHAIRMAN: If a plant is
22 designed and it's already going to operate at 95
23 percent capacity at its outset, do you feel it would
24 be wiser to make it larger in the beginning and not
25 come too close to the full capacity or would it be

1 more economical to add on later --

2 THE WITNESS: No, no.

3 THE CHAIRMAN: -- to provide for
4 going over that capacity?

5 THE WITNESS: The norm would be
6 that -- the norm in sewage treatment plant design is
7 that you design for a 12 year growth factor after
8 completion of the construction. In a closed
9 franchise of this type, of course, the holder of the
10 franchise is limited to his confines, unless there's
11 an application to expand his franchise for new
12 customers. Certainly, it's cheaper to add 25 percent
13 now than it is to add 25 percent later because all
14 you're talking about is the tank being a little
15 bigger. Later you are talking about an auxiliary
16 tank next to it. But, again, without the operating
17 costs, without the projections, full projections, on
18 utilization of this facility, that's difficult to
19 come out with, whether the size should be 250, as
20 they suggest or maybe 500,000. I certainly think
21 that I would not design the plant at that close a
22 margin. There are things, you know, that aren't even
23 discussed; the water filtration plant, the back wash
24 water from the water filtration plant must go into
25 the sanitary sewer system. There is no provision.

1 They don't flag it. They don't say, we're going to
2 get water from that particular facility. The figures
3 are extremely close on the low side and if they ever
4 built these, I think they could take their own
5 cautions that maybe they would have to change their
6 figures later.

7 THE CHAIRMAN: Any other
8 questions from the Board?

9 Is there anyone from the general
10 audience that would like to pose a question?

11 MR. SAGOTSKY: And we have the
12 representative of the School Board here.

13 THE CHAIRMAN: Relative to this?

14 MR. SAGOTSKY: Yes.

15 THE CHAIRMAN: Anyone from the
16 general audience that would like to pose a question?

17 The School Board have a question,
18 Mr. Herman?

19 MR. SAGOTSKY: Mr. Herman, if you
20 would come around this side I think you would be
21 facing --

22 MR. HERMAN: I only have two or
23 three questions.

24
25

1 CROSS-EXAMINATION BY MR. HERMAN:

2

3 Q. Mr. Alaemo, you said before -- you gave
4 us estimates of the capital cost to build these
5 utility systems to service the Orgo site. I think
6 you used the number \$3,300 per unit?

7 A. Correct.

8 Q. Are you aware that the developer is
9 planning to construct a site over a multi-year period,
10 I think something like five years?

11 MR. BRENNAN: Hundred a year he
12 had testified -- somebody had testified to.

13 MR. HERMAN: Okay.

14 BY MR. HERMAN:

15 Q. Assuming that to be the case, that it's
16 going to take five years to build, would the same be
17 true of the utility systems? Would they be built 20
18 percent each year or would they have to be built
19 before the first unit was usable?

20 A. You know, I don't know what their construction
21 schedule is; but, the norm in a case of that type
22 would be the primary facilities, such as the sewerage
23 treatment plant and water treatment plant would be
24 constructed totally at the beginning, before the
25 first occupancy permit. The extension of the water

1 and sewer mains would probably go with construction
2 to reduce their, you know, their capital outlay as
3 much as possible.

4 Q. But there would be a significant capital
5 investment prior to the first units being occupied?

6 A. I would think they would have to. For example,
7 take advantage of the "49 rule". They could put in
8 septic tanks and private wells up until 49 units to
9 get the sales moving, so to speak and to get those
10 first units occupied. But it would be --

11 Q. I don't think what is being proposed.

12 MR. SAGOTSKY: No. The testimony --
13 I'll withdraw the -- I remember the testimony on that.
14 They have to be practically finished with the
15 installation before they would start their
16 construction.

17 BY MR. HERMAN:

18 Q. My question is, on the cost, the capital
19 cost per unit of \$3,300, did you take into
20 consideration in that cost the fact that several
21 million dollars would have to be invested perhaps
22 several years before they would be used, at least
23 used by many of the units; and, if not, is your
24 opinion that the cost of that capital for several
25 years would actually substantially increase the costs

1 per unit?

2 A. No, I did not take time into consideration; yes,
3 it would increase the costs.

4 MR. BRENNAN: Excuse me. The
5 costs would be increased through funding the
6 operating deficits early on when they have only one
7 customers, two customers and the utility would be
8 running at a loss.

9 THE WITNESS: I presume that's
10 what he's alluding to? And the answer would be yes.
11 And he's going to try to recoup that in his rates at
12 a later --

13 BY MR. HERMAN:

14 Q. Those costs were not included in your
15 \$3,300 per unit? It obviously is a higher number to
16 recover?

17 A. Correct.

18 Q. There was discussion both from you and
19 from prior witnesses that we can expect that the
20 utility systems will be owned possibly by Killam
21 Associates, possibly by the developer; but, probably
22 by some private person, company or organization. Did
23 you include in your estimate of annual operating
24 costs any factor for profit for a private owner-operator
25 of this system or were your estimates just a break

1 even estimate based on what the cost would be to
2 operate?

3 A. My figures are reasonable estimates. Under
4 private operation, he's entitled to depreciation;
5 he's entitled to profit; he's entitled to interest
6 borrowed on money; he's entitled to his own end.
7 Again, my figures are reasonable estimates, knowing
8 how much it costs to say operate a 1,500 unit or
9 1,200 unit system in this particular case.

10 Q. One last question. You may have
11 answered this already, but in my mind it's a little
12 unclear. Did you say that if this site were on or
13 adjacent to a public utility system that the both the
14 capital costs and the operating costs would, in all
15 possibility, be significantly lower than what they
16 are here?

17 A. I did say that; and, I affirm. I agree with
18 that kind of a statement.

19 MR. HERMAN: Thank you. I have
20 no other questions.

21 THE CHAIRMAN: I think you meant
22 to say interest on borrowed money instead of interest
23 borrowed on money.

24 THE WITNESS: Yes, sir, yes.

25 THE CHAIRMAN: No other questions?

1 (Whereupon a recess is taken at
2 9:00 p.m..)

3 (Whereupon the hearing reconvenes
4 at 9:07 p.m..)

5 THE CHAIRMAN: We shall reconvene.
6 The five minute recess was probably in order so Mr.
7 Frizell could gather his thoughts and questions.

8 And while we were out, Mr. Marks
9 has found another question he would like to ask. So
10 we'll permit him to ask it at this time before Mr.
11 Frizell starts. Mr. Marks?

12
13 CONTINUED DIRECT EXAMINATION BY MR. MARKS:

14
15 Q. Mr. Alaimo, you are familiar with this
16 site, are you not?

17 A. Yes, I am.

18 Q. Have you ever physically walked the site?

19 A. Yes, I have.

20 Q. Have you examined the size of the stream
21 as it appears on the Orgo parcel?

22 A. Yes.

23 Q. And could you describe the size of that
24 stream and the flow at that point?

25 A. Well, it's at the headwaters of a watershed so

1 that the flow is not small but I would say ditch size,
2 if anything, as opposed to a continuously flowing
3 stream. I think it's at the top of a watershed. All
4 I was going to describe is that there is no
5 appreciable flow to support continuous flow of water
6 in that particular area. In this particular case, we
7 walked the site. We also observed that any effect
8 the sewage treatment plant will happen upstream from
9 this particular plant site as it referred to in the
10 report and probably one of the reasons for the high
11 degree of treatment that is required, a combination
12 of the low flow of the stream itself and having one
13 sewage treatment plant already dumping into the
14 particular stream.

15 Q. If this PUD project was located at a
16 another point further down the stream at the eastern
17 end of the Township, do you have any thoughts as to
18 the cost of the utilities with the stream size or
19 whatever down at the eastern end; make any difference?

20 MR. PRIZELL: I'm going to object
21 to that. It calls for speculation on the part of Mr.
22 Alaemo. He certainly hasn't demonstrated any
23 knowledge on which to base an answer to that question.

24 BY MR. MARKS:

25 Q. Are you aware of the size of the stream

1 in the eastern portion of the Township?

2 A. Well, I have before me what is termed the USGS
3 sheet which shows the topography of that portion of
4 the Township. If you care to direct your questions
5 at that plan, I'd be glad to answer. They show
6 clearly what the watershed consists of.

7 THE CHAIRMAN: We still have an
8 objection. The Chair is going to rule that we're
9 going to let you answer the question and see if you
10 have the expertise or knowledge to answer it.

11 BY MR. MARKS:

12 Q. Are you familiar with the size and the
13 flow of this stream lower down in the flow?

14 MR. SAGOTSKY: You are referring
15 to now -- we talked about Slope Brook, I think, or
16 Slope Stream, and we talked about Hockhockson. Are
17 you referring to either one of those two when you say
18 "stream".

19 THE WITNESS: Hockhockson.

20 BY MR. MARKS:

21 Q. Are you familiar with it?

22 A. Yes, sir.

23 Q. Can you describe the size and the flow
24 lower down?

25 A. The flow, as indicated on the USGS sheet, would

1 be appreciably increased by the size of the watershed
2 if you proceeded downstream approximately two miles.
3 From this particular map, I would say you would
4 probably increase the flow of the stream five to ten
5 fold just by the contributory area that is involved.

6 Q. If this project were located at that two
7 mile point rather than where it is, would that have
8 any effect on least cost utilities in terms of your
9 own definition?

10 A. It would decrease the capital and operating
11 costs of the sewage treatment facility because you
12 would have a greater dilution factor in the stream
13 itself, and, therefore, greater capability of the
14 stream to absorb the load being discharged.

15 Q. So you wouldn't have to have as
16 sophisticated a treatment facility as is proposed on
17 the Orgo site?

18 A. I would say generally that's a correct
19 statement.

20 MR. MARKS: Thank you, Mr.
21 Chairman.

22 THE CHAIRMAN: You pose a couple
23 of questions that I would like answered. When you
24 say "as sophisticated", you mean reduce it from
25 tertiary to secondary treatment.

1 THE WITNESS: Well, there are a
2 number of constraints related to dissolved oxygen,
3 phosphorus and nitrates. The greater good would
4 affect all of those particular restraints, in general.
5 The question was asked as a general question.
6 Certainly with a stream that has a larger flow, more
7 permanent, more reliable flow, it would enable it to
8 absorb more of a load on the industrial and,
9 therefore, the specification of the type of removal
10 would be reduced. Again, you are moving away from
11 the NADA Earle sewerage treatment plant and that
12 would be beneficial since their contaminants haven't
13 been able to be absorbed at this point. The oxygen
14 level would be improved further down. Number one,
15 the watershed is extremely small in the location
16 called for. If you move downstream, the watershed
17 would be increased tremendously but you are also
18 moving away from the sewage treatment plant which is
19 a contaminant on the stream right now.

20 THE CHAIRMAN: Could you make any
21 determination as to whether that stream at the --
22 principally the topography of the stream can handle
23 the flow proposed.

24 THE WITNESS: You are talking
25 about just as flow?

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THE CHAIRMAN: The effluent, yeah.

THE WITNESS: I don't remember the numbers but I did check this out. That question was posed to me and the actual capacity of the stream in its cross-section. I don't think the flow from this sewage treatment plant as proposed would have a real effect. I think that if the storm drainage from that particular development were directed towards the stream there would be a material effect. But even at 300,000 gallons a day or 400,000 gallons a day, I don't think it is would materially affect the stream.

THE CHAIRMAN: Thank you.

Mr. Frizell?

CROSS-EXAMINATION BY MR. FRIZELL:

Q. Mr. Alaimo, let me ask you a few preliminary questions. Are you generally familiar with cost of construction and have you been for some period of time?

A. Yes, sir.

Q. Now, could you -- there was a builder that testified on behalf -- on our behalf who said recently construction costs have been inflating about 20 percent a year in the past five years. Is that

1 roughly accurate in your estimation?

2 A. I can't say 20 percent would be a
3 representative figure. I think that's a little high.
4 I think if you said construction and you said asphalt,
5 I would say, yeah, that's probably a true statement;
6 asphalt prices being affected like everything else,
7 with the oil prices. Concrete prices, pipe prices, I
8 would say ten to 12 percent is more of a reasonable
9 figure for inflation construction in the last five
10 years.

11 Q. I think the CPI was about 13 percent.
12 What about last year, 1979, not an average for five
13 years but in 1979? Do you have any idea?

14 A. From 1979, from '78 to '79?

15 Q. The year 1979, January 1, '79?

16 A. You mean to 1980?

17 Q. Correct.

18 A. Are we talking about asphalt or non-asphalt?

19 Q. I'm talking about the kind of
20 construction you need to do for these sewer plants;
21 digging, laying lines, et cetera?

22 A. I would say in the sewage treatment field, I
23 don't think the lines have materially gone up. I
24 think concrete has; some labor costs. I say 12
25 percent is a reasonable figure. One percent a month

1 is generally what the --

2 Q. Would you say that continued through all
3 the, dates one percent a month for the past 18, 20
4 months?

5 A. I think that's a representative figure.

6 Q. Okay. Now, would you tell, Mr. Alaemo,
7 the Board what the non-degradation policy of DEP is?

8 A. Basically that a stream -- a stream is to
9 remain in the state that it is prior to the discharge
10 of a particular effluent. So that the standard that
11 would be developed in this particular case would be
12 looking at the stream, itself. And that policy is
13 not a hard policy. But that is the general policy,
14 that in this particular case, the NAD Earle plant
15 being there, they would take into consideration that
16 is a contaminant that is already in the stream and
17 maybe permit a loading that would not degrade the
18 water but by the same token not improve it. But I've
19 seen them take the reversal and make the effluent a
20 higher quality.

21 Q. Would you tell what the PUC, the Public
22 Utility Commission, plays in terms of the setting of
23 rates and terms of investments, et cetera? Are you
24 familiar with that?

25 A. Generally familiar, sure.

1 Q. What role do they play?

2 A. The Public Utility Commission, by law, is the
3 controlling agency related to utility rates and the
4 method of accounting, the method of depreciation, the
5 method of schedules that will be submitted; and, the
6 amount of profit that will be permitted for this
7 particular facility.

8 Q. And in terms of establishing waste load
9 not waste load allocation, but actual sizing of the
10 plant, et cetera, are there any State or Federal
11 agencies that control that aspect of the construction
12 of a sewer plant?

13 A. The Department of Environmental Protection has
14 rules and regulations which basically establish
15 minimum standards relating to the size of component
16 units within the sewage treatment plant, itself.

17 Q. What about the size of the plant in
18 terms of the number of persons or unit that it's
19 supposed to serve?

20 A. They have review of the consulting engineer's
21 report and have final jurisdiction. However, as in
22 all cases, the design engineer has the design
23 responsibility for this. The State would not relieve
24 the design engineer of responsibilities. They would
25 they have review, they have permits, by law,

1 regulations. But their review is such that it is in
2 general conformity with their rules. But the
3 designer is still responsible.

4 Q. Now, in your many years in this field, I
5 assume that you have encountered the work of Elson T.
6 Killam Associates several times?

7 A. Yes, I have.

8 Q. Can you tell the Board what the
9 reputation of Elson T. Killam Associates is in the
10 field and what we're taking about in terms of its
11 professional engineering capabilities?

12 MR. SAGUTSKY: At this point, I
13 would like to enter an objection based on irrelevancy.
14 Mr. Frizell has introduced evidence of the
15 qualifications of his respective witnesses who work
16 for Killam. In effect, Killam has shown its
17 qualifications. To ask its qualifications of another
18 planner, at this time, seems irrelevant.

19 MR. FRIZELL: Perhaps I had
20 misunderstood Mr. Alaemo's testimony. But I
21 understood his testimony largely attacking the
22 credibility of the preparers of A-21. And I think in
23 terms of the general framework of that testimony, we
24 should hear from someone in the field as to what the
25 reputation of the firm is in terms of professional

1 engineering capabilities.

2 MR. SAGOTSKY: I might say
3 reputation is one thing, reputation is what others
4 think. The testimony here was with reference to a
5 specific report, specific items alleged that were --
6 or fallacies in the specific report. And I think
7 reputation and what the specifics called for are two
8 divergent elements. And again, I don't think it's
9 relevant.

10 THE CHAIRMAN: The Chair agrees
11 with Counsel that to question the reputation of
12 someone else in that field is probably, I would
13 consider, unethical. And let's stick to the
14 specifics of the report if you feel it's damaging but
15 not as to their reputation.

16 BY MR. FRIZELL:

17 Q. Mr. Alaemo, have you ever represented
18 individual applicants before approval agencies?

19 A. Individual applicants?

20 Q. Yes.

21 A. Sure.

22 Q. Now, when you represented an applicant
23 at a stage of preliminary approval, is it your
24 expectation that if the project is approved that you
25 will do substantially more detailed work for the

1 project as it progresses?

2 A. I don't understand the question.

3 Q. Well, in other words, assuming a
4 hypothetical applicant who has hired you, he's asked
5 you to go in, testify at the stage of preliminary
6 approval, very early stage of testimony and very
7 early stage of planning the project?

8 A. May I ask, have I done the work; have I planned
9 the work?

10 Q. Yes.

11 A. Done the feasibility work?

12 Q. Prepared the feasibility report and are
13 going in at the preliminary stage. Now, in that
14 circumstance, isn't it normal that if the project
15 were approved that you would be retained to continue
16 on and do the more detailed work?

17 A. It's normal.

18 Q. When you testify in that respect, Mr.
19 Alaemo, do you consider yourself to have a conflict
20 of interest at that time?

21 A. No.

22 MR. SAGOTSKY: At this point I
23 object.

24 MR. PRIZELL: He answered the
25 question.

1 MR. SAGOTSKY: I objected first.
2 He shook his head and he answered it and I withdrew,
3 in effect. And now you are following up on your
4 situation, which I don't think is proper. There is
5 no testimony that he will obtain any job and the
6 situation here, to make a comparison now of the
7 situation in which Mr. Alaimo finds himself in as
8 compared to an engineer who has written a letter
9 asking for a franchise, is obviously making a
10 comparison not based on the alternatives.

11 MR. FRIZELL: You can save your
12 arguments, Mr. Sagotsky, for your advice to the Board.
13 As far as I'm concerned, I represent private interests
14 predominantly, not exclusively. But virtually every
15 witness I bring forward, every engineer, has some
16 financial interest in the outcome of the project. He
17 hopes to have the project approved. He will make
18 more money as it goes along. And that's the only
19 point that I'm attempting to make.

20 MR. SAGOTSKY: The two
21 contractors that you had here from Canada alleged
22 that they had hopes, but no commitment to have any
23 come forth from this project.

24 BY MR. FRIZELL:

25 Q. Mr. Alaimo, do you have any difficulty

1 with the basic free market principle? That is, that
2 given a single project, a single product, that it
3 will sell at the price at which the willing buyer is
4 willing to pay and the willing seller is willing to
5 sell it for?

6 MR. MARKS: I'm going to object,
7 on the basis that it's totally irrelevant. The man
8 is here as an expert on sewerage and water. He's not
9 here as an economist.

10 THE CHAIRMAN: The objection is
11 overruled. I feel that if it pertains to this
12 particular project, let him answer it. But if he's
13 going to go into economics, I will sustain.

14 MR. FRIZELL: I ask that you note
15 for the record that Mr. Larkin has arrived.

16 THE CHAIRMAN: Note for the
17 record that Board member Lawrence Larkin arrived at
18 9:20.

19 So we don't lose sight where
20 we're at, let's not get into economics. I don't feel
21 that Mr. Alaemo -- that's within his purview.

22 MR. FRIZELL: I don't intend to.

23 MR. SAGOTSKY: May I just add a
24 word for the benefit of Mr. Larkin? Mr. Alaemo has
25 finished his direct examination and it's based on

1 testimony with reference to the sewer construction
2 and various aspects of the sewer that may apply to a
3 project of this type. And at this point, Mr. Frizell
4 is conducting his cross-examination based upon the
5 direct testimony.

6 I am finished.

7 THE CHAIRMAN: Thank you.

8 Try another one, Mr. Frizell.

9 BY MR. FRIZELL:

10 Q. It was a yes or no question, whether or
11 not Mr. Alaemo had any difficulty with that basic
12 principle?

13 A. No.

14 Q. Now, you don't know any housing
15 developers, other than some governmental agency, that
16 are in the business of giving things away to the
17 general public, do you?

18 A. You lost me on that one.

19 Q. You are correct, Mr. Alaemo. Let me go
20 around that.

21 Assume that we had a given product
22 within a market area, namely, a house and namely, in
23 the market area of Colts Neck, in the vicinity of
24 Colts Neck. And the exact same house. And in one
25 the builder was able to produce the house and put it

1 on the market with an expenditure of \$500 more than
2 the other builder was able to sell it for. Now,
3 assuming the free market principle, that the buyers
4 are willing to pay that price, is it your experience,
5 Mr. Alaemo, that in that situation the builder who
6 saved \$500 on a sewer utility would pass that on to
7 his consumers as a gratuity?

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

9 The basis of the question is unfair because every
10 piece of property is unique. Different locations
11 attract certain people, others don't. I don't
12 believe the question is a fair one.

13 MR. SAGOTSKY: I further object
14 on the ground it's highly speculative. If I were a
15 builder, I might be inclined to pass it on; if
16 somebody else were a builder, he might not.

17 MR. MARKS: Depending on his own
18 economic conditions, also.

19 MR. PRIZELL: That's why I asked
20 the first question first; and, that was, that a man
21 sells the product for what the person buying the
22 product is willing to pay. Mr. Alaemo testified, as
23 I recall, if you could save \$1,000 on a sewer
24 connection that that would make the house cost less.
25 I suggest to you that that's directly contrary to the

1 fundamental principle of our economy.

2 MR. MARKS: Are you testifying as
3 an expert, as a builder, as an attorney, as a sewer
4 expert or what?

5 MR. FRIZELL: I am responding to
6 an objection. Now, I asked Mr. Alaemo if it was his
7 experience that that occurs. If it is, it is; if
8 it's not, it's not. Then we can proceed.

9 MR. MARKS: I object. There is
10 no testimony here that Mr. Alaemo is a builder and
11 does or does not pass on cost. It's wholly
12 irrelevant and out of order.

13 THE CHAIRMAN: The Chair would
14 rule that each builder would vary in his own
15 philosophies and his own principles for charging for
16 a unit. And I don't think Mr. Alaemo should be
17 called to answer that question on the basis of his
18 own philosophy. He certainly doesn't know how the
19 builders operate. He responded as to the principle
20 but don't let's get into specifics.

21 MR. FRIZELL: Does that mean that
22 objection is sustained and I should proceed to
23 another subject matter?

24 THE CHAIRMAN: Yes.

25 MR. FRIZELL: Thank you. I'm

1 batting about 80 in this proceeding.

2 BY MR. FRIZELL:

3 Q. Now, Mr. Alaemo, if you have an idea,
4 approximately how many private sewer treatment
5 facilities are presently operating in New Jersey?

6 A. Extremely few.

7 Q. Approximately how many are presently
8 operating, Mr. Alaemo?

9 MR. MARKS: If you know.

10 THE CHAIRMAN: Let him answer it,
11 Mr. Marks.

12 THE WITNESS: I don't know a
13 definitive number.

14 THE CHAIRMAN: We had somewhat of
15 an answer to this, approximately one percent. I
16 think that's definitive. For him to say 19 or four
17 or 26, I don't think he came prepared to testify to
18 that. He's sworn before this hearing that it was
19 approximately one percent.

20 BY MR. FRIZELL:

21 Q. Now, how many sewer plants are there
22 operating, total, in New Jersey, do you know?

23 A. How many sewer plants are there operating in
24 New Jersey?

25 Q. How many sewer authorities?

1 A. Sewer authorities.

2 Q. Yes. I shouldn't say sewer authorities.
3 I meant approved sewer systems, total?

4 A. Well, wait a minute. That's --

5 Q. Including private and public?

6 A. I would say 200.

7 Q. All right. So then one percent of 200
8 is two; is that correct?

9 A. No. I think if you listened to my answer, it
10 was that one percent of the people are served by
11 private sewer companies. I could take one public
12 company, Middlesex Sewerage Authority, that services
13 a multitude of populations. The only remaining ones
14 in the private sector are extremely small ones,
15 scattered. Most of them have been acquired by the
16 public sector because they're inefficient to operate,
17 and, for cost factors, they've gone out of business.

18 Q. Are you now changing your testimony, Mr.
19 Alaino?

20 A. I don't know if there are two. No, you cannot
21 take two, one percent of 200. You have to take a
22 number that represents people and population. I
23 don't think there more than one percent of the people
24 served in New Jersey by a private sewer company.

25 Q. Well, Mr. Alaino, of course you

1 understand, I'm sure, that the City of Newark and the
2 City of Paterson is not served by private sewer
3 companies. But I'm not sure that that's the percent
4 of the people is the point.

5 Now, which the of the private sewer
6 companies presently operating did you go to and
7 analyze their operating cost in order to prepare for
8 your testimony?

9 A. Analyzed their costs? I've seen the sewer
10 rate schedule from Sunbury Village in Burlington
11 County, population serviced, about 500; sewer rates,
12 \$500 a year. I think in the report we presented
13 another small one we were able to find. It is
14 difficult to find them on a general basis. Their
15 rates are high. There are very few of them. Other
16 than that, if you would like me to research the PUC
17 records, that's the only place you can definitively
18 find them.

19 Q. I understand that. You keep saying
20 "generally" this and that. Sunbury Village has
21 annual per unit rates of \$500 per annum?

22 A. Approximately.

23 Q. And that services how many people?

24 A. Oh, I would say it's a development of five, 600
25 people.

1 Q. Homes or people?

2 A. People, people.

3 Q. That would be --

4 A. Probably.

5 Q. Two-hundred and fifty homes?

6 A. Small townhouses 200 and 250 units. It's a
7 water and sewer company, both private.

8 Q. Now, have you ever attempted to
9 determine at what point -- we now know that 250,
10 assuming your figures here are accurate for this
11 Burlington County community, do you know at what
12 point it becomes feasible to install and operate -- I
13 mean, I would consider \$500 a year to be feasible
14 only if it was supported by the market value of the
15 houses. I don't know really what they were there or
16 what their sales prices were. Have you ever
17 attempted to analyze yourself, at what point --
18 what's the minimum number of units that should be
19 provided for in a package treatment system?

20 A. Well, that's not a clear question. Where do
21 the economics cross over, is that what you are saying?

22 Q. Yes.

23 A. How many units would it take, in my opinion, to
24 make a feasible system?

25 Q. Yes.

1 A. As far as sanitary sewerage is concerned, I
2 don't think you'll find feasible -- and feasible I
3 mean \$200.00 a year or less for sewer rates -- less
4 than 25,000 units. The water system is dependent a
5 lot on the supply facilities. If I've got a well in
6 the middle of an area where it has no iron removal
7 and all I'm doing is pumping water directly out of
8 the ground and chlorinating, the feasibility could be
9 on the basis of 1,500. If I've got an iron removal
10 plant, then my numbers will change, increase
11 drastically, maybe up to 2,500, 3,000. But sewers, I
12 would say, 5,000 and less is uneconomical; and, you
13 are getting into high rates.

14 Q. At what point do you reach the level of
15 \$250, how many units approximately?

16 A. What are you talking about, for sewers?

17 Q. Yeah, sewer. You said it was \$200.00 a
18 unit at 5,000 units?

19 A. I've never developed those figures on a
20 definitive basis.

21 Q. But presumably, if I understand your
22 analysis correctly, at 5,000 units you can get to
23 \$200.00 a year, in your opinion. If you go less than
24 that, the price will rise?

25 A. Correct.

1 Q. But you are not sure at what point, for
2 instance, you come to 250 or 225?

3 A. There's so many different ingredients to it.
4 Is it privately, publicly owned and secondary
5 treatment, tertiary treatment and how big is the
6 system? You would have to analyze each one.

7 Q. Is it generally your -- you work
8 principally for municipalities; is that correct?

9 A. Correct.

10 Q. Is it generally your experience that the
11 government is able to provide services at lower rates
12 or lower cost to the ultimate consumer than private
13 enterprise?

14 MR. MARKS: I object. The
15 question is too broad.

16 THE CHAIRMAN: Can you answer
17 that, Mr. Alaemo?

18 THE WITNESS: Well, the question
19 was broad. If he means in the field of utilities, I
20 can answer the question; and, the answer is, public
21 entities provide utilities to people at lower cost.
22 No question. There's a tremendous difference in the
23 cost of financing. A municipality finances at the
24 cost of six to seven percent, tax free bonds. A
25 private man goes out and if he's lucky, he's going to

1 pay 14 to 15 percent interest rates; tremendous
2 difference in the cost of monies related to capital.

3 BY MR. PRIZELL:

4 Q. What about other than monies related to
5 capital? What about the cost of constructing and
6 building a given unit? Do you think that private
7 enterprise cannot do it cheaper than the government?

8 A. No, I think those days are gone.

9 Q. You mean the days are gone when private
10 enterprise was able to do things cheaper than the
11 government?

12 A. I think the days are gone when you can have a
13 private man to go out to get scabs and get
14 construction of the non-union labor. There is no
15 non-union labor and there is no electrical work,
16 non-union labor. The rate is the same for the a
17 public entity and a private entity.

18 Q. Do I understand your answer that the
19 government can construct the sewerage treatment plant,
20 the collection facilities and the water treatment
21 plant and water distribution facilities at a same
22 cost or less cost than a private enterprise?

23 A. I think they can create the same facilities
24 with approximately the same cost, with variabilities;
25 with location of the project, the travel to the

1 project. But I don't think the cost, cost of the
2 facilities --

3 MR. SAGOTSKY: Your answer that
4 you just made taken into consideration your previous
5 answer to your question about financing costs are so
6 much cheaper on the part of the public utility than a
7 private?

8 MR. BRENNAN: No. Mr. Frisell's
9 question excluded that.

10 MR. SAGOTSKY: Very well.

11 MR. BRENNAN: Previously, you
12 referred to Federal and State grants only for
13 government-owned utilities, now, is that "free" money
14 that must not be paid back?

15 THE WITNESS: Oh, yeah. Sewage
16 treatment grants under EPA are grants. They are not
17 available to private utilities.

18 MR. BRENNAN: But the
19 governmental body does not have to pay it back?

20 THE WITNESS: Correct.

21 MR. BRENNAN: See, then it would
22 affect the rate base.

23 THE WITNESS: I think the
24 question is what is the construction cost as opposed
25 to where did the money come from.

1 BY MR. FRIZELL:

2 Q. Now, in terms of estimating a collection
3 system, the costs of a collection system, can you
4 tell me what are the factors that go into estimating
5 the cost?

6 A. Cost of material costs of labor; those are the
7 two basic ingredients.

8 Q. Now, given a one-stage in the design
9 process versus -- what I mean to say is, can't you
10 explain, Mr. Alaimo, the difference between the
11 million dollars and the \$655,000 in the two reports
12 by virtue of the advanced state of the knowledge of
13 ~~the consultants between the two reports in terms of~~
14 the engineering details which were developed between
15 the two reports.

16 A. If anything, the contrary would be my answer.

17 Q. Would you explain that, Mr. Alaimo?

18 A. Yes. The crossing of the Route 18. I don't
19 know where that cost is in the \$600,000. I don't
20 know where the depths of the sewers are, because you
21 are talking about 20 to 30 feet depths of the sewers,
22 if you have a complete gravity system, I think that's
23 uneconomical.

24 Q. That's not in -- that's not the point.

25 MR. MARKS: I object. I want the

1 witness to finish his answer.

2 A. The first plans call for gravity collection
3 system, while the 1980 report calls for a complete
4 gravity system. One would be led to say if the
5 pumping station and force main were eliminated, you
6 would have a lower cost. And I would say because of
7 the deeper cuts, it would be more expensive. And you
8 got a crossing of Route 18. Where anybody made that
9 one disappear --

10 Q. Did you compare the plan, the sketch of
11 the plan in A-21 with the PB-3 that you brought with
12 you to see whether or not they were the same
13 engineering plan?

14 A. Did I compare them in the office? Yes.

15 Q. What can you tell me, are they the same?

16 A. They don't have a pumping station and force
17 main

18 Q. What about the layout?

19 A. There are some changes, a couple of changes, a
20 couple of other things. The topography hasn't
21 changed, the linear feet of pipe hasn't changed
22 materially. It's all going to the sewerage treatment
23 plant.

24 Q. Do you know what assumptions they made
25 when they estimated the one million ten thousand

1 dollars in 1979?

2 A. I don't understand what you mean by "assumptions".

3 Q. Do you know what assumptions they made
4 in terms over what they were going to encounter in
5 cost in 1979 versus what they knew in 1980?

6 A. No.

7 Q. You don't know that?

8 A. Their assumptions are not spelled out.

9 Q. You don't know that, do you?

10 A. Correct.

11 MR. SAGOTSKY: Well, at this
12 point, may I interrupt, please?

13 MR. FRIZELL: Yes.

14 MR. SAGOTSKY: When -- Mr.
15 Frizell, when you say you don't know that and his
16 answer was based on the assumptions. Now, are you
17 abandoning any further developments of that line of
18 examination?

19 MR. FRIZELL: Well, I quite
20 frankly, Mr. Schrupf, lost the point of that whole
21 analysis. Let me continue, in any event.

22 MR. SAGOTSKY: All right.
23 Continue.

24 MR. MARKS: You meant Mr.
25 Sagotsky, didn't you?

1 MR. PRIZELL: No, I meant Mr.
2 Alaemo.

3 MR. MARKS: No, you meant Mr.
4 Sagotsky.

5 MR. PRIZELL: I mean, I don't
6 understand the point that a man makes an estimate in
7 June of 1979 and comes with, obviously, a better
8 estimate based on more details in 1980. I don't
9 understand the point of demonstrating that difference.

10 THE WITNESS: The difference is,
11 I don't agree that it's a better estimate. Now, you
12 don't have to agree with that, either. But that's my
13 professional opinion. I think it's a poor estimate.
14 I think the estimate in 1979 was low. I think this
15 was extremely low. There are still so many houses,
16 so many streets, so many linear feet of pipe. And I
17 don't agree with the estimates.

18 BY MR. PRIZELL:

19 Q. Now, you made a point, Mr. Alaemo, about
20 the difference in the cost of the treatment
21 facilities between the original report and the second
22 report; is that correct?

23 A. I pointed out that there was a difference, yes,
24 50 percent difference.

25 Q. You said that can't be explained by

1 water saving facilities. Could you explain to me
2 what the point of all that testimony was, what you
3 are trying to demonstrate?

4 A. What was I trying to demonstrate?

5 Q. Yes, sir.

6 A. I'm not demonstrating anything. I'm answering
7 questions directed to me by Counsel.

8 Q. Well, weren't you asked an opinion about
9 that, your own opinion?

10 A. I don't want to play games with you. What's
11 the opinion you are asking for? I don't know what
12 you are talking about.

13 Q. That's what I'm trying to discover, what
14 that point was at that time.

15 THE CHAIRMAN: I'm going to ask
16 our Counsel, Mr. Sagotsky, if it's proper before this
17 Board that Mr. Frizell directs that to the questioner
18 and gets his answer and let's get on with it. Why
19 did he ask that question? Maybe Mr. Marks can better
20 answer it.

21 MR. FRIZELL: Let me go on with a
22 different line of questions.

23 BY MR. FRIZELL:

24 Q. Mr. Alaimo, when you commented about the
25 difference in -- of price in 1980 -- the January,

1 1979 -- did you take into account the 18 percent
2 inflation that occurred between the two dates?

3 A. I said 12 percent.

4 Q. I'm -- so, that's 18 months.

5 A. Did I take that in account?

6 Q. Yes.

7 A. What I pointed out was the discrepancy in the
8 two figures.

9 Q. Can you take into account the 200 unit
10 difference from the projected total population, the
11 total number of units in the project?

12 A. As I pointed out, there is a difference in the
13 number of residential units.

14 MR. TISCHENDORF: If I may, I'm
15 confused on the inflation factor. It seems to me the
16 inflation factor goes in the other direction.

17 MR. PRIZELL: No, it goes up.

18 MR. TISCHENDORF: You are talking
19 about a lower figure in '80 than '79?

20 MR. PRIZELL: I'm referring to
21 the cost of construction of the treatment facilities.

22 MR. TISCHENDORF: Okay. Then it
23 follows.

24 MR. PRIZELL: One million two
25 versus two million or whatever it was.

1 MR. TISCHEENDORF: Then it goes
2 the direction that you implied. I agree.

3 BY MR. PRIZELL:

4 Q. Now, would you tell me, Mr. Alaeno, on
5 what basis you estimate the units per year of
6 operating this facility at \$360 a unit?

7 A. Sewer system?

8 Q. Yes.

9 THE CHAIRMAN: Let it be noted,
10 for the record, that Mr. Alaeno is referring to his
11 notes and on sewerage, the figures on which he
12 testified.

13 THE WITNESS: We estimated
14 operation and maintenance to be \$150 a unit; \$120,000
15 depreciation.

16 Q. Excuse me. What was the number?

17 A. \$120,000, total.

18 Q. Depreciation?

19 A. Depreciation, \$132,000.

20 Q. What per unit?

21 A. One hundred ten dollars a unit.

22 Q. Administration and profit, \$120,000?

23 A. One hundred dollars a unit; so that should give
24 you \$372,000; \$360 a unit.

25 Q. Now what percent profit did you figure

1 in for that?

2 A. I don't have the full breakout here but I would
3 say eight to nine percent.

4 Q. All right. Now, when you estimated
5 operations and maintenance of \$150 a unit, what
6 factors went into that?

7 A. Well, we estimated 120 -- I'm sorry, the
8 \$180,000 -- I'm sorry, \$180,000. I broke out with
9 the wrong number, \$180,000. We determined what we
10 felt was operation and maintenance as a total cost
11 and then divided by 1,200 to get the unit cost.

12 Q. Did you take into account any
13 contributions from the commercial industrial sections?

14 A. No.

15 Q. Now, in terms of your \$180,000, could
16 you tell me what that's comprised of?

17 A. Plant operators, labor, power, chemicals.

18 Q. How many operators did you assume?

19 A. I don't recall.

20 Q. Don't recall?

21 A. I don't recall.

22 Q. Do you have it in your notes?

23 A. No, all I have is a summary of them.

24 Q. How much did you figure for chemicals?

25 A. I don't recall.

1 Q. How much did you figure for power?

2 A. I don't recall. I don't have -- I told you,
3 all I have is the \$180,000.

4 Q. All right. Your depreciation?

5 A. And again, let me say this to you --

6 Q. Why don't you answer my questions?

7 A. Okay, fine. You can tell Mr. Marks and he'll
8 ask the questions. I just want to proceed.

9 MR. MARKS: I would like the
10 Chair to make sure that the witness has a chance to
11 answer the questions.

12 THE CHAIRMAN: Will it be helpful
13 in your answer for you to go into more detail to
14 explain your answer?

15 MR. FRIZELL: There was no
16 question, Mr. Schrupf. That was the point.

17 THE CHAIRMAN: I thought there
18 was a question.

19 MR. FRIZELL: There was no
20 question pending.

21 THE WITNESS: Well, the questions
22 were related to operation and maintenance. And what
23 I attempted to say was, there is no definitive
24 decision in the Killam report related to the type of
25 treatment. Therefore, the operational maintenance

1 figures that we're using are general figures related
2 to sewage treatment plant of that size. You
3 obviously can't determine the chemicals unless you
4 know what the treatment process is.

5 THE CHAIRMAN: You testified to
6 that earlier.

7 BY MR. FRIZELL:

8 Q. In terms of depreciation, what did you
9 base that on?

10 A. Thirty year depreciation schedule.

11 Q. And on what investment?

12 A. Three point three million.

13 Q. And what rate of return -- excuse me.
14 what rate of depreciation, 30 years straight line?

15 A. Straight line.

16 Q. Well, the three point three million, is
17 that your figure?

18 A. I think that was Killam's figure, wasn't it?

19 I'm sorry, they were three point three.

20 Q. In terms of the -- did I understand you
21 to say administration, \$100 a unit? What is that?

22 A. Administration and profit and, again, return on
23 profit is difficult to judge, as you know, as a
24 definitive figure unless you know what the man's
25 capital investment is going to be and what his

1 borrowing is going to be. He may borrow all the
2 money; he may put 25 percent up.

3 Q. Well, explain to me how that will change
4 the figures?

5 A. How will it change the figures?

6 Q. Yes, given all these variables?

7 A. I don't think it's going to change the figures
8 materially. But if you are starting to get to the
9 tack how much is he paying for interest; how much
10 money is he borrowing; how much money is he putting
11 up?

12 Q. What rate is he paying? What
13 assumptions did you make? How can I examine the
14 conclusions unless I know on what it's based. How
15 can the Board accept the conclusion unless they know
16 on what figures it's based?

17 A. It's based on my experience in the water and
18 sewer field for 20 years. And again, I don't think
19 you have to re-invent the wheel. You know that a
20 utility of this size is going to generate certain
21 costs in operating expenses and therefore they are
22 going to turn out certain user costs just as your
23 report shows a preliminary figure.

24 Q. What are the preliminary figures for
25 administration and profit?

1 A. Well, I'm sure there's going to be someone
2 who's going to be in charge of this system, who's
3 going to be administrative line. And every one of
4 these is a PUC line and there's going to be a line,
5 billing, collecting, reading of meters, sending out
6 bills, officers, directors --

7 Q. All right. You put in \$120,000 for that?

8 A. Uh huh.

9 Q. Now, on what basis do you come to the
10 conclusion that there's going to be \$120,000 in
11 expenses for administration and profit for this
12 system?

13 A. Well, if the man put up all of the money, three
14 million dollars and he's entitled to nine percent on
15 his return, he would be entitled to \$270,000 of
16 profit. I presumed he wouldn't put up three million
17 dollars, that maybe he'd borrow the money and he'd be
18 entitled to some money on interest on return. And
19 he's entitled to some money on his capital investment.
20 Again, I can't differ definitively these numbers.
21 You haven't told me what type of sewage treatment
22 plant I've got here. And there's no description of
23 how this system would be operated administratively.

24 Q. Now, when you talked about Killam not
25 analyzing alternatives, do you know what this present

1 sewer situation is in Freehold along 537 and the
2 western end of the town?

3 A. That there is a moratorium?

4 Q. Yes.

5 A. I know that.

6 Q. All right. Now, would you think it
7 unreasonable for Killian to have eliminated that
8 alternative in its report?

9 A. Yes, I think that's unreasonable. I think that
10 a temporary moratorium is a temporary moratorium.
11 And you cannot say that a sewerage treatment plant is
12 closed now for the rest of eternity. I think that
13 alternatives, moratorium in sewers, is not a reason
14 for stopping a review at the planning board, zoning
15 board level, and shouldn't be under consideration of
16 whether a utility is feasible or not.

17 Q. But in doing a feasibility report, you
18 would, if you were representing a private man and he
19 was paying you by the hour to do this report, you
20 would analyze the feasibility of connecting into a
21 system which had a total moratorium on building; in
22 fact, the Township was ever committed in terms of the
23 number of units already approved?

24 A. Yes. I would expose to him what the cost was
25 related to those utilities and he would make a

1 subjective judgment relating to those costs and
2 relating pragmatically whether that system would be
3 available to him in the time that he would want it.

4 Q. Do you have any information -- did the
5 Planning Board of Colts Neck ask you to get any
6 information concerning when the moratorium in
7 Freehold could be expected to be lifted?

8 A. No, sir.

9 Q. Do you know what the current situation
10 is with respect to the sewer lines in the Tinton
11 Falls border on the eastern end of town?

12 A. I understand they're under construction.

13 Q. They're -- excuse me?

14 A. I understand they're under construction now.

15 Q. Do you have any knowledge about the
16 capacity of the lines in the vicinity of Colts Neck
17 Township?

18 A. No.

19 Q. Do you know who the consulting engineers
20 are in Tinton Falls?

21 A. No.

22 Q. If I told you Elson T. Killam Associates,
23 would that ring a bell?

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

25 He answered the question.

1 THE CHAIRMAN: You objection is
2 overruled. I think that's pertinent. It will bring
3 Mr. Frizell's percentage up.

4 MR. SAGOTSKY: I thought 80
5 percent was a good percentage.

6 MR. FRIZELL: No, no, batting 80
7 out of a thousand. I'm a baseball player.

8 MR. MARKS: I'm was going to say
9 not even Ted Williams batted 500.

10 BY MR. FRIZELL:

11 Q. Now, if, in fact -- assuming
12 hypothetically Elson T. Killam is the consulting
13 engineer in Tinton Falls -- and if, in fact, since
14 you don't know for the moment there's no capacity in
15 the lines, do you think that it's not a feasible
16 alternative for sewerage this project?

17 A. I don't know how they can conclude that without
18 making a preliminary feasibility --

19 Q. Is -- your answer is yes, that was
20 unreasonable to do?

21 A. Yes.

22 Q. Now, in terms of attempting to come to
23 any conclusions about the cost of a sewer treatment
24 plant, Mr. Alaemo, can you briefly tell us what you
25 have to know?

1 A. What you have to know to come to the cost of
2 the sewage treatment plant?

3 Q. Yes.

4 A. You have to know the capacity which you wish to
5 design; you have to know the type of treatment and
6 the ultimate percentage of removals. And I can give
7 you a pretty good cost right from those two things.
8 Because there are such things as EPA guidelines that
9 print curves. And it says, you design a sewage
10 treatment plant of 250,000 gallons, you go into the
11 curve, you get this cost. These are the two basic
12 ingredients.

13 Q. In terms of the collection system, you
14 have to know the things like topography and soil
15 conditions; is that correct?

16 A. Correct.

17 Q. Now, in terms of the degree of treatment,
18 that's a factor of the DEP guidelines and generally
19 the non-degradation policy would impact that; is that
20 correct?

21 A. Correct.

22 Q. Now, when you first responded to PB-3,
23 you were critical, were you not, of the prospect or
24 the principle of estimating the cost of a treatment
25 system without having established a firm waste load

1 allocation first through DEP?

2 A. Are you talking about the 1979 report?

3 Q. Yes.

4 THE CHAIRMAN: It would help the
5 Board to know -- don't go away from the question --
6 when he responded and who made the inquiry of him.

7 MR. FRIZELL: Well, Mr. Alaimo
8 responded in writing to the original '79 report,
9 subsequent to its issuance.

10 THE CHAIRMAN: To whom?

11 MR. FRIZELL: To Mr. O'Hagan.

12 THE CHAIRMAN: Okay. Thank you.

13 THE WITNESS: We were critical of
14 the sampling that was purported to have been taken --
15 well, was taken. But it was pointed out, like it was
16 a one day or three day sampling period.

17 BY MR. FRIZELL:

18 Q. So you don't think that engineers, for
19 instance, should be giving opinions about the
20 relative costs of systems unless they know more
21 information about the conditions in the stream, the
22 capacity of the system, the level of treatment that
23 will be required, et cetera?

24 A. Well, I think in this case, if you walked out
25 there and saw this little dry creek and you saw a

1 sewage treatment plant upstream from you, you would
2 know that that was a critical item. And it was --
3 either you are going to build a sewage treatment
4 plant very sophisticated or you are going to go into
5 spray irrigation or you weren't going to build a
6 treatment plant at all.

7 Q. Do I understand that if you don't know
8 all that you shouldn't go out and give opinions about
9 things like that?

10 A. I don't know where you are coming from.

11 Q. I'm asking if I understood that to be
12 the original import of your report.

13 ~~MR. SAGOTSKY: Unless the~~
14 question is talking about the preliminary -- if we're
15 talking about a preliminary report as against a final
16 report, they're two different kind of things. I
17 think the question should be clarified.

18 BY MR. FRIZELL:

19 Q. In terms of the -- generally, is it
20 always true that a stream, especially now talking
21 about Monmouth County -- I'm sure you worked through
22 Pemberton, through the whole Pinelands area with all
23 the sand, et cetera, and aquifers and all that
24 business -- is it always true that a stream has more
25 flow downstream than it is does upstream, assuming a

1 two mile differential? Is that always the case in
2 these soils?

3 A. I would say 99 percent, unless there is a
4 diversion from one point to another.

5 Q. Is it always the case that the volume in
6 the stream will be some kind of a direct ratio to the
7 watershed involved?

8 A. Yes, generally.

9 Q. What do you mean "generally"?

10 A. Ninety-nine percent.

11 Q. Does the presence of other streams in
12 the area -- well, that wouldn't impact the same
13 watershed.

14 Do the soil conditions impact that in
15 terms of the percolation rates of the given soils in
16 the watershed?

17 A. Sure; the slope of the terrain; whether it's
18 rock; whether it's sand; whether there are bogs. It
19 has to do with how much of the water that ultimately
20 gets into the stream. I mean, if you are in a sandy
21 soil maybe only 20 percent of the water reaches the
22 stream. In Pennsylvania, in a rock, 95 percent of
23 that water is going to into the stream. It's not
24 going to percolate into the ground. The time of
25 concentration is going to be short. There are many

1 factors. The bigger the shed, the more water. No
2 question about it, the bigger the shed, the more
3 water.

4 Q. Do you know what extent, in terms of
5 this treatment plant, the hypothetical treatment
6 plant on the Tinton Falls side of town, do you know
7 to what extent the effluent limitations would be
8 changed at that location?

9 A. No, I couldn't definitively tell you that.

10 Q. Now, isn't it generally true, for
11 instance, that the effluent from Earle Ammunition
12 Depot would generally have less of an impact on the
13 quality of the water two miles down than it does a
14 few hundred yards away?

15 A. Correct.

16 Q. Wouldn't that lead you to conclude at
17 least on that factor that the effluent limitations in
18 the vicinity of the Orgo Farms proposed discharge
19 site would be less stringent than they might be -- by
20 virtue alone -- than they might be downstream?

21 A. I'm sorry, I lost you.

22 Q. Given the non-degradation policy, the
23 impact of the Earle Ammunition Depot facilities is
24 greater in the vicinity of the Orgo Farms than it is
25 downstream two miles?

1 A. Correct.

2 Q. And therefore, isn't it true that the --
3 if that were the only factor in the equation that the
4 level of treatment expected or demanded at the Orgo
5 Farms site would be less than that two miles
6 downstream?

7 THE CHAIRMAN: You can answer if
8 you do but I don't understand the question.

9 THE WITNESS: I don't understand
10 the question.

11 MR. LARKIN: I certainly don't.
12 I have no idea what that question was.

13 ~~THE WITNESS: I really --~~

14 BY MR. FRIZELL:

15 Q. All right. If the Earle Ammunition
16 Depot --

17 THE CHAIRMAN: Stay with it. You
18 are going to rephrase it?

19 MR. FRIZELL: Yes.

20 Q. -- sewer plant were the only factor in
21 the equation, the water two miles downstream would be
22 of a higher quality than it is at the Orgo site in
23 terms of its current condition?

24 A. The only sewerage treatment plant now on-stream
25 is the NAD plant. The stream quality two miles

1 downstream without any outside influences, would be
2 better quality than it is at the Orgo site.

3 Q. Given the non-degradation policy, you
4 would expect the policy to help the Orgo site that
5 the DEP would require?

6 A. No, I can't come to that conclusion because I
7 don't know what the discussions with the DEP were.
8 They might have said to them, we're going to persist --
9 we're going to give you stronger requirements because
10 the plant is there and it's already degrading. I
11 have no facts to make a statement. As I said before,
12 the only thing that appears in the report is Killam
13 says, these are the limitations they gave us. And I
14 don't know how they came to that conclusion. I don't
15 know if NAD, Earle helped them or hurt them.

16 THE CHAIRMAN: Well, Mr. Prizell
17 is looking up, researching his notes, I recall -- and
18 on behalf of the Board I'll state this -- the
19 effluent, it was testified to that the effluent from
20 Earle would be more harmful -- the demand in effluent
21 quality than from this proposed treatment plant --
22 Earle was a poorer quality. That testimony was made
23 to this Board.

24 THE WITNESS: Oh, yeah, I would
25 think NAD, Earle would get away with lesser

1 restrictions because it's the Federal government.

2 Just a pragmatic -- they have a difficult time

3 whether NAD, Earle or Fort Dix or Fort McGuire, they

4 have a difficult time enforcing State rules against

5 Federal operations.

6 MR. SAGOTSKY: They did as to

7 odor.

8 BY MR. FRIZELL:

9 Q. Do you know what the current tap-in fees
10 to tap into the Monmouth Consolidated system?

11 A. Connection fees?

12 Q. Yes.

13 A. I don't know. I may have them in some of the
14 papers here. No, I don't. I have their usual rate
15 schedule.

16 Q. Do you know what the tap-in fee for the
17 sewer system is in Tinton Falls?

18 A. No, I don't.

19 MR. LARKIN: Mr. Frizell, do you
20 know?

21 MR. FRIZELL: The answers to
22 those questions? Mr. Kovacs told me the other day
23 that the tap-in fee for Monmouth Consolidated was
24 something like \$1,600 -- that was the sewer.

25 MR. LARKIN: How about the water?

1 Can I ask you why you asked a
2 question if you answered?

3 MR. FRIZELL: You mean why? I
4 would presume he would tell the truth.

5 Lawyers most of the time ask the
6 questions that he knows the answers to, but not
7 always.

8 MR. SAGOTSKY: You know the
9 elements of good cross-examination is not to ask a
10 question unless you can generally guess what the
11 answer is going to be.

12 MR. LARKIN: Sam, I didn't know
13 the answer to that either.

14 BY MR. FRIZELL:

15 Q. Now, did you attempt to estimate, Mr.
16 Alaimo, the difference in costs either in terms of
17 capital construction or the operating costs of
18 connecting in either of the two alternatives that you
19 say Killam overlooked?

20 A. No, sir.

21 MR. FRIZELL: I have no other
22 questions.

23 MR. SAGOTSKY: You have Mr. Orgo?
24 I was going to ask if you have Mr. Orgo.

25 THE CHAIRMAN: Mr. Orgo is here,

1 yes.

2 MR. SAGOTSKY: Okay.

3 THE CHAIRMAN: It brings us to
4 the point, are there any other questions after
5 hearing Mr. Prizell's cross-examination that we might
6 ask of Mr. Alaemo? Mr. Herman, are you standing up
7 for that reason?

8 MR. HERMAN: I want to be polite
9 and let the Board go first but I have a couple if no
10 one else does.

11 THE CHAIRMAN: You go ahead while
12 the Board gathers their thoughts.

13
14 CONTINUED CROSS-EXAMINATION BY MR. HERMAN:

15
16 Q. Mr. Alaemo, I think your calculations on
17 the annual operating costs essentially -- correct me
18 if I'm wrong -- I think the way you got the \$360 a
19 year was to take the \$332,000 dollars total annual
20 costs, adding together the three components you gave
21 us, divided by the 1,200 unit.

22 A. Correct.

23 Q. If you divided by 1,137 units?

24 A. I used 1,200 units. I was using equivalent
25 units. They have some office buildings so I just

1 rounded it out to 1,200 equivalent units.

2 Q. With regard to the administration and
3 profit component, I think you said \$120,000. And
4 when Mr. Frizell talked to you about it, you said
5 essentially you were considering about eight or nine
6 percent profit but you were considering some equity
7 on the part of the owner?

8 A. As I tried to tell him, it's very difficult,
9 something like that, not knowing what the financial
10 structure is or would be or could.

11 Q. Eight percent of three point three
12 million dollars would be \$264,000 as opposed to 120.
13 Nine percent would be \$297,000 as opposed to your 120
14 assuming we were to use numbers like that or the BPU
15 were to use numbers like that --

16 A. The rates could be considerably higher,
17 certainly.

18 Q. Raise the rates?

19 A. Certainly.

20 Q. Also the factor we talked about before,
21 when I first asked you a couple of questions, that is
22 the interest cost component for the five years on
23 that three point three million dollars, until the
24 system were functioning for all the units. I ran
25 some numbers. I'm not going to go through them now.

1 It seemed to me that it could be another 40 percent
2 or so increase in the start up costs over and above
3 the figures that you gave us?

4 A. Yeah. You know, I ran my figures out and what
5 I considered a reasonable amount for the type of
6 system we're talking about. I was trying to be fair
7 and say there is at least two.

8 MR. BRENNAN: Three times the
9 difference; I think the difference would be even
10 larger.

11 Q. But it's not inconceivable that the
12 Bureau of Public Utilities might grant an eight or
13 nine percent yield which would mean about \$150,000
14 more per year or about one-third more than the 360?

15 A. It's conceivable, but I can't --

16 Q. You don't know for sure?

17 A. I'm not sure.

18 Q. One other question, Mr. Frizell talked
19 to you before about whether or not you would consider
20 it feasible to consider an alternative like a public
21 system which was currently experiencing a moratorium
22 you said that you would for reasons that you stated.
23 You may be unaware, but the Board is aware, that one
24 of the tests that the applicant has to meet here is
25 the feasibility with regard to this particular piece

1 of property. And going even beyond your answer, it
2 seems to me clear that other pieces of property not
3 located so far from public systems would be even more
4 feasible to consider those types of alternatives?

5 A. Certainly.

6 MR. HERMAN: Okay. I have nothing
7 more. Thank you.

8 THE CHAIRMAN: Mr. Sagotsky?

9 MR. FRIZELL: I have one.

10
11 CONTINUED CROSS-EXAMINATION BY MR. FRIZELL:

12
13 Q. My question, Mr. Alaimo, was when the
14 owner of the utility accepts a tap-in fee from the
15 resident, doesn't it reduce his capital investment in
16 terms of the PUC rates that are applied in terms of
17 his permit, profit on his investment?

18 A. You'll have to lay a little more ground work to
19 that question. First, is the owner of the water and
20 sewer also a developer; is he making an aid in
21 contribution; is Killam only the franchise system and
22 the franchise has been granted and this is a new
23 connection and therefore a connection fee? There's
24 limits on the connection fees the PUC will approve.

25 Q. My question was, didn't you assume when

1 you talked about three million dollars, eight percent
2 that the guy hasn't recouped a single dime in
3 connection fee?

4 A. Correct.

5 Q. Is that a reasonable assumption?

6 A. There's nothing in that report that leads me to
7 believe otherwise.

8 Q. Is there anything in that report that
9 leads you to that belief? Where. In that report.
10 Can you show me any indication that that is the case?

11 A. They don't show an aid in contribution from the
12 developer. They don't project annual costs? Had
13 they projected annual costs and reduced the capital,
14 you could tell whether that were going to be aid in
15 contribution from the developer you are alluding to.
16 They don't do that.

17 Q. You're asking them to analyze -- you
18 expect them then to analyze the physical capabilities
19 of owning and maintaining the system in terms of
20 whoever the developer is?

21 A. I didn't say that at all.

22 MR. BRENNAN: Wait a minute, Mr.
23 Frizell. You are not letting him answer. He didn't
24 say that at all. He said -- his response was
25 something totally different. You were putting words

1 into his mouth.

2 Q. Let me ask you the question again that
3 you didn't answer before. Is it a reasonable
4 assumption to make?

5 THE CHAIRMAN: Why won't you let
6 him answer it and let --

7 Q. Is it a reasonable assumption to make
8 that the owner of the utility will not recoup any
9 money in your experience, Mr. Alaimo, not recoup any
10 money if the connection or tap-in fees --

11 MR. MARKS: I'm going to object
12 to that. The question was answered already. And I
13 think Counsel is jumping all over the witness. I
14 think maybe we can do with a two minute break.

15 MR. FRIZZELL: That's a fairly
16 simple question. I just want a answer to it.

17 MR. MARKS: I think the question
18 was asked and answered before.

19 THE CHAIRMAN: Mr. Alaimo, do you
20 feel you can answer the last question posed to you?

21 THE WITNESS: I think the
22 arrangement cannot be generalized. It depends on the
23 transaction that's being contemplated; whether
24 they're on a friendly basis, whether they're on a
25 partnership basis, whether they're on an enemy basis.

1 That one's too broad to generalize.

2 MR. SAGOTSKY: The objection is
3 sustained.

4 BY MR. PRIZELL:

5 Q. Assuming for the moment there is no
6 tap-in fees.

7 THE CHAIRMAN: This is a new
8 question. Objection was sustained.

9 Q. Assuming there was no tap-in fees?

10 A. Assuming that there is no cost for the builder?
11 Yes, the home builder?

12 MR. SAGOTSKY: You might
13 elaborate on the tap-in fee, also.

14 Q. I said assuming there is no tap-in fees,
15 the utility is private; it's owned not by the
16 developer, owned by a separate utility?

17 A. The home builder is not going to pay the tap-in
18 fee?

19 Q. To connect into that system?

20 A. He's going to save whatever the tap-in fee
21 would have been.

22 Q. What is the incentive to the utility to
23 permit people to tap into the system without paying
24 for it?

25 A. What is the incentive?

1 Q. Yes. Under what circumstances does it
2 happen? Quite frankly, I'm quite befuddled. It's
3 outside my own experience and I would like perhaps --

4 A. Years ago it was illegal for a private company
5 to charge a connection fee. The municipalities were
6 the ones who created the connection fees.

7 MR. SAGOTSKY: I would like to
8 object, only because I think if Mr. Frizell could
9 tell us what he's driving at perhaps we could reach a
10 conclusion quicker as to an answer.

11 MR. FRIZELL: It's very simple.
12 His conclusion's based on the assumption, in terms of
13 return on investment, that there's no recoup on
14 investment through the immediate purchase price of
15 the house. That is, we've always assumed that some
16 of the -- some part of the purchase price of the
17 house in terms of improvements. And I don't know
18 that Killam is the right people to answer that.
19 Again, you are expecting one witness to answer all
20 the questions. That wasn't Killam's charge. It's
21 unfair to infer that they should have answered those
22 questions because those questions weren't answered in
23 that report.

24 MR. MARKS: I'm going to object
25 to that characterization.

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THE WITNESS: If Killian indeed did not answer it, which one of your presenters did answer it?

MR. PRIZELL: Mr. Gilvary, Mr. Gilvary.

MR. MARKS: He answered questions about tap-in fees?

MR. PRIZELL: Mr. Gilvary assumed the cost of the tap-in fee into his cost of the unit, assumed that the tap-in fee was included in the unit, the whole.

MR. MARKS: As a separate item?

MR. PRIZELL: Yes. Having one witness review one report is an unfortunate way of looking at a case through the wrong end of the telescope.

MR. MARKS: I think that's your characterization.

MR. SAGOTSKY: I must confine it to objections.

MR. LARKIN: Are you assuming then within this that the unit would increase in cost to accommodate this tap-in fee? Is that what you are saying?

MR. PRIZELL: What I'm saying is

1 that all this business about return on investment and
2 the whole analysis of this operating cost of this
3 system is based on a very false assumption.

4 MR. LARKIN: Are you saying that
5 someone's going to pay \$85,000 for a townhouse --

6 MR. FRIZELL: Yes.

7 MR. LARKIN: -- within that cost
8 there's a \$1,600 tap-in fee?

9 MR. FRIZELL: Yes. I can't
10 answer what it is. It's somewhat higher for the
11 higher units.

12 MR. LARKIN: Seventeen hundred
13 dollars or \$1,400? Is it spelled out in any of the
14 reports that we saw?

15 MR. FRIZELL: No, it wasn't.

16 MR. LARKIN: I think the question
17 is answered.

18 MR. FRIZELL: When we were asked
19 to provide a more detailed statement, Mr. Gilvary was
20 unable to provide it. He didn't conclude his
21 cross-examination. And he did include it in the
22 total price of the units.

23 THE CHAIRMAN: It's obvious that
24 you are concluded, Mr. Frizell. It's not in Mr.
25 Gilvary's report. He only stated that in his

1 testimony on cross-examination.

2 MR. FRIZELL: He hadn't finished
3 his cross-examination. He was asked to break it down
4 and he said he didn't have the calculation with him.

5 MR. LARKIN: The answer is, it
6 has not been broken down.

7 MR. FRIZELL: He didn't have it
8 there.

9 MR. LARKIN: It was not presented
10 to the Board broken down.

11 MR. FRIZELL: That's correct.

12 MR. LARKIN: That's all we're
13 asking.

14 THE CHAIRMAN: Ergo, at this
15 point, we don't know what the figures are and it's
16 not a fair question to ask until we do have the
17 question.

18 MR. FRIZELL: I have no other
19 questions.

20 MR. SAGOTSKY: I have a question
21 and again I'm a little hesitant. It may or may not
22 have a complete bearing. So if it's something you
23 can't answer, just say so.

24
25 CROSS-EXAMINATION BY MR. SAGOTSKY:

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Q. But assuming that a preferable site for a PUD would be in the Tinton Falls area because of its relationship or its location nearer a public utility; and, assuming that that utility at the present time is not large enough, shall we say, or isn't being built large enough to take care of a PUD of this size which you would want to locate in that area; therefore, it would come into a package plant similar to the type it now offers; there's always a possibility, if that were the case, that the package plant would tap into the larger utility and become part of it. Would there would be any advantage to the consumer for the location -- the PUD, Colts Neck Village, having to put its package plant in an area near a public utility rather than in the center of the Township where it is now located?

A. Presuming --

Q. If it has know relevancy --

A. Presuming somehow that they would somehow share in the costs at a later date of the extension of the sewer that would therefore eliminate the sewage treatment plant, obviously the costs are going to be less, costs to the utility and, therefore, the ultimate cost to the consumer is going to be less.

1 MR. LARKIN: May I ask one
2 question, please? I might have missed something
3 before. I take it the assumption is that there is a
4 profit assumption of eight to nine percent somewhere
5 in these figures.

6 THE WITNESS: Yeah.

7 MR. LARKIN: In your experience
8 and looking at rate elements and so forth, that
9 covers not only in New Jersey but maybe in other
10 states, is eight to nine percent a reasonable
11 assumption to use or too low?

12 THE WITNESS: I think it's too
13 low, right now. But then regulatory agencies look at
14 things over a longer period of time. They tend not
15 to raise the lid or drop the bottom that quickly.

16 MR. LARKIN: Do you know what the
17 rate of return is that American Telephone earns on
18 its investment?

19 MR. PRIZELL: Yes. It is
20 humorous.

21 MR. LARKIN: It was the return
22 that we're talking about with inflation. That is
23 significantly above eight to nine percent as a return
24 figure. That, I think, is significantly higher than
25 the number that you are using. Eight to nine percent

1 is a very, very modest figure. Well, maybe you can
2 bring --

3 MR. PRIZELL: Well, you can bring
4 better information.

5 MR. LARKIN: No. I can bring you
6 rate statements, if you like. American Telephone can
7 earn 13 percent on its investment. I think it's a
8 significant difference between eight to nine and 13.
9 I'm just asking a question as whether you think your
10 assumption might be too low, eight to nine percent.

11 THE CHAIRMAN: He already
12 answered that he thinks it's low.

13 Any other questions of Mr. Alaemo?

14 MR. TISCHENDORF: I have one.

15 You testified that your estimates
16 of construction cost increase per year was 12 percent.

17 THE WITNESS: Yes. I said
18 generally one percent a month is used in the industry.

19 MR. TISCHENDORF: Refresh me.
20 Does that apply to both the cost of the collector
21 system and the cost of the waste treatment system?

22 THE WITNESS: Again, the only
23 thing that I would segregate away from that are
24 asphalt prices. They have gone up 50 percent in the
25 last year.

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MR. SAGOTSKY: Because of oil?

THE WITNESS: Because of oil.

THE CHAIRMAN: Any other

questions?

Thank you, very much for your testimony, Mr. Alaemo.

(Whereupon the witness is excused.)

MR. MARKS: I have no further witnesses tonight.

THE CHAIRMAN: No further witnesses from the Planning Board.

We do have Mr. Orgo in the audience, keeping in mind an 11 o'clock curfew, do you feel that we can hear Mr. Orgo within that time frame parameters?

MR. HERMAN: Mr. Chairman, I'm not sure who you directed that to.

THE CHAIRMAN: It's a general direction. Anybody can help me on that.

MR. HERMAN: I am planning to cross-examine Mr. Orgo. I think with the exception of that, everybody else pretty much has examined him.

MR. SAGOTSKY: You wanted him back.

1 MR. HERMAN: I'm sure I can be
2 finished by eleven.

3 THE CHAIRMAN: In that case,
4 you've got 25 minutes to do it.

5 (Whereupon a recess is taken at
6 10:30 p.m.)

7 (The hearing reconvenes at 10:35
8 p.m.)

9 THE CHAIRMAN: Back to work.

10 MR. SAGOTSKY: I was going to
11 introduce a statement that our Board member, John
12 Rischendorf, has read the minutes of June 26 and it
13 will be the statement of -- the same type that I
14 previously read into the record.

15 MR. FRIZELL: Mr. Sagotsky, I
16 have no objection of your simply submitting the
17 affidavits as part of the record without making a
18 statement on the record.

19 MR. SAGOTSKY: Thank you.

20 THE CHAIRMAN: I have a question
21 before we start. After the hearing dates, how soon
22 are the minutes available for members who did miss
23 the meeting?

24 MR. SAGOTSKY: Well, our -- there
25 should be --

1 THE CHAIRMAN: Someone had
2 mentioned to me -- off the record.

3 (Whereupon there is a discussion
4 off the record.)

5 THE CHAIRMAN: Back on the record.
6 Mr. Herman, representing the
7 School Board, has questions of Mr. Orgo.

8 THE CHAIRMAN: Mr. Orgo has been
9 previously sworn. Does he have to be resworn?

10 MR. SAGOTSKY: Put it on the
11 record.

12
13 **E R N E S T T. O R G O**, a witness called on
14 behalf of the Applicant, having been duly sworn
15 according to law, testified as follows:

16
17 **CONTINUED CROSS-EXAMINATION BY MR. HERMAN:**

18
19 Q. Mr. Orgo, when you were last here, I
20 believe you testified that for many years you've been
21 engaged in dirt farming; is that correct?

22 A. Yeah, and other farming, dirt farming, in Colts
23 Neck.

24 Q. I'm sorry. I'm talking on this piece of
25 property known as the subject premises in terms of

1 this application?

2 A. Right.

3 Q. Have you engaged in only dirt farming
4 there?

5 A. If that's what you want to call a nursery, yeah.

6 Q. You indicate that you are no longer
7 farming on that property?

8 A. I shut the operation down last September.

9 Q. So there's no farming operations going
10 on?

11 A. Only grain that's in the ground; as far as the
12 nursery part, flower part --

13 Q. How much acreage is involved in the
14 grain that you are talking about?

15 A. I would guess we've got about 70 acres in right
16 now.

17 Q. Lane duck things? In other words, when
18 it's harvested --

19 A. I'll probably do it again next year because
20 it's part of the farm assessment. You can't leave
21 the land doing nothing. It would have been better
22 this year.

23 Q. You are still farming?

24 A. Well, to a degree, yeah.

25 Q. You still have your farmland assessment?

1 A. Yes.

2 Q. You indicated -- I think you said in the
3 past four years you've been unable to earn a profit?

4 A. That's right.

5 Q. You didn't share with us any of your
6 data about gross sales gross expenses, et cetera; but
7 you have high -- extraordinarily high capital
8 investment?

9 A. No, labor,; labor was too high.

10 MR. FRIZELL: Mr. Herman, if it's
11 any help, we put a figure in there for what the
12 depreciation was.

13 THE WITNESS: Depreciation is not
14 the killer. Everything there was fully depreciated.

15 MR. FRIZELL: Excuse me. It was
16 two or three thousand dollars, in that range.

17 BY MR. HERMAN:

18 Q. So that in the past few years you didn't
19 purchase much equipment?

20 A. No.

21 Q. Had you purchased the equipment, had you
22 farmed in other fashions, dirt farmed in other
23 fashions, would you have had a more efficient
24 operation? Questionable?

25 A. Not on that acreage.

1 Q. Have you ever done cattle farming on
2 that property?

3 A. No.

4 Q. Horse farming?

5 A. No.

6 Q. You testified about leasing your land to
7 another farmer to let him --

8 A. I leased the greenhouses, I think I said.

9 Q. I don't mean to imply that you have
10 leased. I meant to imply the reverse as one option
11 to you and other land owners, is to lease land out?

12 A. Right.

13 Q. I think you testified that about 20
14 dollars an acre is what you could expect to get on
15 that basis?

16 A. That's right.

17 Q. Would you be surprised in this
18 municipality or immediately adjacent municipalities
19 acreage was leased for dirt farming at \$50 an acre?

20 A. That's the highest figure around. I've heard
21 of them, yeah.

22 THE CHAIRMAN: Interpose a point.
23 I have written down some notes here, that Mr. Orgo
24 testified it's leaseable, or "rentable", I think, was
25 the word, at \$40.00 per year.

1 MR. TISCHENDORF: I think the
2 transcript I just read was \$40.00 max.

3 THE WITNESS: The land is not the
4 best land in the County. The best land in the County
5 is available for about \$50 or more.

6 Secondly, when someone is paying
7 \$50, they're out pirating from one another. They out-bid
8 one another for the land.

9 MR. HERMAN: Nevertheless, they
10 sometimes bid \$50 an acre?

11 THE WITNESS: Right. You can get
12 \$50 today and none last year.

13 MR. PRIZELL: Is that the land
14 that the guy running it, that he can till?

15 THE WITNESS: Yeah, it's going to
16 be more than 30 or 40 tillable acres.

17 BY MR. HERMAN:

18 Q. But you have more than that?

19 A. Yup.

20 Q. You said you never tried cattle or horse
21 farming?

22 A. No.

23 Q. Have you ever tried to lease your
24 acreage, all of it? In other words, to lease all
25 your tillable acreage to a farmer, whether it's 50,

1 40 or 20 an acre?

2 A. No, there's no sense in it. Even at 50, it
3 wouldn't work out.

4 MR. LARKIN: Can I just interrupt?
5 Why would it not work out?

6 THE WITNESS: Not enough tillable
7 acreage.

8 MR. LARKIN: Fifty dollars, 100
9 acres?

10 THE WITNESS: Is \$5,000.

11 MR. LARKIN: There is no other
12 consideration that's paid for the acreage?

13 THE WITNESS: No.

14 BY MR. HERMAN:

15 Q. Regarding your testimony about when
16 forgive if I misphrase it -- but when Mr. Brunelli
17 came along?

18 A. Yeah.

19 Q. I think those are more or less the words
20 that you used?

21 A. Right.

22 Q. Were you trying to attempt to market
23 your property?

24 A. You mean did I put a letter out, contact
25 somebody? No.

1 Q. He contacted you?

2 A. That's right.

3 Q. Had you tried prior to that time to sell
4 your land?

5 A. No.

6 Q. You talked about -- I don't know if
7 "numerous" is the right word -- you talked about the
8 offers that came along to you prior to Mr. Brunelli?

9 A. That's true.

10 Q. How did they come about?

11 A. Letters, telephone calls.

12 Q. People soliciting you?

13 A. They solicit. They say, we have an interested
14 buyer, you know, and then as soon as you say, well
15 now, well, what kind of a deal can we make --

16 MR. SAGOTSKY: Perhaps we could
17 cut the volunteering down a little bit? The hour is
18 late.

19 BY MR. HERMAN:

20 Q. But essentially you had never tried to
21 market the property? People came to you, Mr.
22 Brunelli and others?

23 A. Brunelli wrote me a letter and after a time I
24 answered the letter and we started talking.

25 Q. You never consulted any real estate

1 brokers to list your property?

2 A. No.

3 Q. Therefore, it was never listed?

4 A. That's right.

5 Q. That would include sales? That is, you
6 never attempted to sell it either for a use
7 consistent with the zoning ordinance or for a use
8 such as this, which is not?

9 A. That's right. No is no.

10 Q. That's fair. Did you ever contact any
11 of your abutting neighbors, like the Board of
12 Education or Stavola, about selling acreage to them?

13 A. No. I will say this, in the Fall of, I believe
14 '72, talking about the Stavola property, at that time
15 it belonged to Mr. and Mrs. Neuboldt (phonetic). And
16 Doug had someone that wanted to do something on 400
17 and some acres and he said, your land and my land, we
18 can make it. So my wife and I went over and we
19 chatted one evening. And we discussed our own
20 problems, what we had. And I told him what our
21 situation was. And he says, well -- and then this
22 was -- I think it was August or September. I went to
23 Russia in October. When I came back, I had heard he
24 had sold to Stavola. And that was the only contact I
25 ever had with any neighbor that was said.

1 What you called Stavola, it was Neuboldt at
2 that time.

3 And as far as the Board of Education is
4 concerned, I just donated that little piece of
5 property that juts off. That's back when they wanted
6 to put the addition on.

7 Q. Do you know that the Board of Ed was
8 undersized for their use and they could have used
9 more land?

10 A. They could have contacted me. They never
11 contacted me. When they asked for land, when Bill
12 Buck and those boys were on the Board of Ed, they
13 said to me, we wanted to enlarge the building. And I
14 said take as little land as you need. And that's why
15 they took no road frontage.

16 Q. Did you ever try to acquire any abutting
17 land to increase the number of tillable --

18 A. Yes, I did. I tried to buy some land from Doug
19 Neuboldt.

20 Q. When was that?

21 A. Oh, it was back in the sixties, I would say
22 because I could have used more land. It would have
23 been a good answer. But he had a good herd and he
24 wasn't about to sell.

25 Q. Nothing since then? I mean --

1 A. No.

2 Q. -- you didn't try to purchase anything
3 since the sixties?

4 A. Unless you want me to tackle Earle.

5 Q. Did you ever?

6 THE CHAIRMAN: I guess you didn't
7 pick it up, but I didn't pick up a direct answer to
8 your question.

9 Did you know that the Board of
10 Education plot, I call it "plot", tract was
11 undersized?

12 THE WITNESS: No, I didn't know
13 it was undersized. But if they wanted more land,
14 they should have contacted me. They certainly
15 weren't going to buy 214 acres. I hear they got too
16 much land now.

17 BY MR. HERMAN:

18 Q. You testified, I think, with regard to
19 the tillable and non-tillable acres. Did you ever
20 attempt to subdivide your property and perhaps sell
21 off the non-tillable portions?

22 A. It doesn't work that way. Here's 200 acres and
23 one --

24 MR. SAGOTSKY: Did you ever try?

25 THE WITNESS: No, there was no

1 sense in it.

2 THE CHAIRMAN: I think the best
3 answer to that question, were you aware that it was
4 possible to subdivide it and sell off? I think
5 that's what you are getting at, Mr. Herman.

6 THE WITNESS: No, I never gave it
7 any thought.

8 MR. HERMAN: I'm -- I'm not
9 concerned --

10 THE WITNESS: -- until Mr.
11 Brunelli came to me. I never thought about it.

12 BY MR. HERMAN:

13 Q. When Mr. Brunelli came to you, what did
14 he offer you for the land?

15 A. He offered me an option, all right? He offered
16 me -- we sat and talked. He told me what his ideas
17 were and where he was coming from. And I think Mr.
18 Frizell was with him one trip. He told me what they
19 thought my land had, they could develop it into
20 something. And it sounded pretty good. I thought
21 about it. I didn't say, "we'll do it," right away.
22 I guess we talked for over a year before he really
23 came to terms.

24 MR. BRENNAN: More accurately, he
25 didn't offer you an option, he asked for an option?

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THE WITNESS: Yeah, right.

BY MR. HERMAN:

Q. How much did he offer to pay you for the land?

MR. PRIZELL: I'm going to object to that.

MR. SAGOTSKY: You had no interest in buying the land when you went with Mr. Orgo?

MR. PRIZELL: No, I have no interest other than a professional one. But I'm going to object. I don't think it's relevant, what Mr. Brunelli offered.

MR. SAGOTSKY: Are you finished?

MR. PRIZELL: Yeah. I think there's a business relationship here and it's -- I'll warrant you, it's a complicated one -- and I don't think that it's relevant to the proceedings.

MR. SAGOTSKY: Well, I just want to make this statement: I think it's relevant.

THE CHAIRMAN: I think we're on tenuous ground. I will ask for advice, Counsel, from Mr. Sagotsky, before I rule on it.

MR. SAGOTSKY: Well, I think it's relevant, in my opinion, because it is one of the

1 basics which you have to know in order to determine
2 least cost and all of the phases of least cost. And
3 without knowing the basic answer to that, sometimes
4 it might prove an obstacle in making a real
5 determination of least cost. I think that's one of
6 the elements. And if that question is directed to
7 that, I would think it's pertinent.

8 MR. FRIZELL: Let me just offer
9 this in response to that, Mr. Sagotsky. No doubt the
10 cost of land is a factor in the cost of housing. But
11 the cost of land is a factor in the cost of housing
12 as it is received by the builder. Mr. Gilvary will
13 present evidence as to what the builder will pay.
14 This is all estimates, of course, but what the
15 builder will pay for the land and what factors are
16 then left to the sellers to take care of. And I
17 think that that -- if that figure permits Mr. Herman
18 his arguments about least cost, fine. I think it
19 does. But I think that anything more than that
20 begins to invade the privacy of the business
21 relationship. We will provide to you -- and I can
22 tell you, I think generally the 25 percent rule of
23 thumb, Mr. Herman, if you want to do any preliminary
24 work on that, generally the 25 percent rule of thumb
25 for the improved land going from the seller to the

1 builder is generally accurate. But they will give
2 you more detail on that.

3 MR. HERMAN: Let me respond
4 before there's a ruling from the Chair. My last
5 question to Mr. Orgo was, how much did Mr. Brunelli
6 offer him when he first came to him. I can rephrase
7 that question because I don't think we really need to
8 know that. But the question I'm going to ask is
9 similar; and, I don't know. Mr. Frizell may raise
10 the same objection. And I would like to comment on
11 it. Maybe I'll ask the new question and see.

12 MR. FRIZELL: Let's get to the
13 point.

14 MR. HERMAN: All right. I would
15 like to know what the contract price is, in your
16 contract, to sell your land to Mr. Brunelli. Before,
17 I asked what he offered you. And maybe that is
18 irrelevant because what he offered you may or may not
19 be reflected in that contract. But I think we have a
20 right to know what that land costs.

21 Mr. Frizell, do you still object
22 on that basis?

23 MR. FRIZELL: Yeah, I do because --
24 well, first of all, Mr. Orgo's answer would be -- see,
25 it's not that simple, Mr. Herman. In order to

1 explain it all, I would have to get into a very
2 detailed and complicated arrangement. What Mr. Orgo
3 will ultimately receive for the land is a function of
4 what the sales price to the builder is, in a very
5 complicated arrangement. What I'm telling you is,
6 Mr. Orgo is a partner in the sale of the land to the
7 builder. Now, what the relationship is between Mr.
8 Brunelli and Mr. Orgo, I think, is irrelevant. I can
9 tell you what the land has been offered to the
10 builder at; and, I can tell you that I think that's
11 where your least cost argument may come in. And I
12 don't think anything else is necessary for the
13 argument. But I don't want to deny you the argument.
14 I can tell you why I don't think it holds water but
15 that's another matter. I'll permit you the argument.

16 MR. HERMAN: I would like to
17 comment on that. You mentioned that the arrangement
18 between Mr. Brunelli and Mr. Orgo is, I think you
19 said, detailed and complicated. I don't doubt that
20 this whole application is detailed and complicated;
21 to wit, there have been I-don't-know-how-many
22 hearings, which is, perhaps, extraordinary --

23 MR. SAGOTSKY: Fifteen witnesses.

24 MR. HERMAN: -- perhaps
25 extraordinary before this Board; detailed and

1 complicated water systems and sewer systems and
2 traffic plans and all kinds of things. The fact that
3 it's detailed and complicated is irrelevant.

4 MR. FRIZELL: I'm not objecting
5 on the basis that it's detailed and complicated.

6 MR. HERMAN: I think that the
7 cost of the land is extremely significant in terms of
8 the whole basis which brings you before this Board,
9 the least cost housing. You commented that your
10 architect can bring out certain facts, which is not a
11 direct response to this question. But maybe a
12 response to some other questions. Your architect was
13 here and I cross-examined him. And he had no idea
14 the answer to my question. And he had no idea,
15 answer even, to the improved land what that cost per
16 unit was. And I would say that one of the times that
17 I appreciated your competence was when I interrupted
18 my examination of Mr. Gilvary and arranged for him to
19 come back for some time.

20 MR. FRIZELL: I don't think it's
21 fair to say that he had no idea of the improved land.

22 MR. HERMAN: He told this Board
23 he had no idea. I believe, at that time, he had no
24 idea. He may know now. It wouldn't surprise me,
25 after the meeting, that he learned. I don't care if

1 he comes back and tells how much the land, per
2 improvements -- how much he figures per unit. I
3 think that on a cost as significant as the cost of
4 the land on which the project will be built and on a
5 matter as significant as Mr. Orgo's ability to use
6 this property consistent with the zoning ordinance,
7 as opposed to his being required, as one might argue,
8 that you cannot use his property consistent with the
9 ordinance, I think it is extremely material for this
10 Board to know how much money Mr. Brunelli is going to
11 pay for this land to buy it from Mr. Orgo.

12 MR. FRIZELL: I'll tell you. The
13 answer to that question is totally irrelevant,
14 whether or not Mr. Orgo can use this land consistent
15 with the zoning ordinance. Number one, that is has
16 absolutely no relationship -- I don't want to say the
17 price from Brunellie to Orgo. As I told you, the
18 money received by Mr. Orgo will be received as a
19 function of what the builder will pay.

20 MR. BRENNAN: Exclusively?

21 MR. FRIZELL: It's a formula.
22 You know, when I say exclusively, I don't know what
23 that means except to say it's a formula on which the
24 ultimate result is -- that's one of the factors, a
25 big factor in it.

1 MR. LARKIN: Mr. Chairman, if I
2 could please -- I'm not sure why we're back and forth.
3 I think we've asked a very simple, straightforward
4 question.

5 MR. PRIZELL: It's not so simple
6 and it's a private matter.

7 MR. LARKIN: Will you answer the
8 question or not?

9 MR. PRIZELL: I don't know if
10 there's going to be a ruling. I want --

11 MR. SAGOTSKY: We're asking for a
12 ruling.

13 MR. HERMAN: I would like to make
14 one more brief comment. That is, one week ago
15 tonight, one of the more credible and intelligent
16 witnesses that have been before this Board, namely
17 Mr. Frizell, made a short speech about his desire to
18 cooperate with this Board; not only to give you all
19 the information which he deemed appropriate, but to
20 go even a step beyond. I think he said upstairs --
21 and higher class accommodations -- they would like to
22 give whatever information you wanted. I think
23 because of the things I said before; I think because
24 of the Applicant's offer of a complete disclosure, I
25 think it is critical that we know what the

1 arrangement is. And I would like to say, as far as
2 its complexity, there are four attorneys involved
3 here. And my observation, there are other
4 sophisticated individuals who would have the ability
5 to look at a contract, a detailed arrangement, albeit
6 and understand from that arrangement what the cost is
7 to the developer.

8 MR. PRIZELL: When I made that
9 speech, as you put it, I told you I would give you
10 any information about the project within reason. And
11 I stand by it. There will be no disclosure of the
12 relationship in terms of dollars between Mr. Brunelli
13 and Mr. Orgo. It's private and it's totally beyond
14 the scope of these proceedings.

15 THE CHAIRMAN: That's your
16 pleading.

17 MR. BRENNAN: I think, the Board,
18 that you are trying to pivot off the cost of the
19 improved lot relative to the sales price. However,
20 one of the components of the improved lot is the land
21 cost, the cost for the raw land. Now, in measuring
22 the desirability of this site in contrast to any
23 other site for least cost housing, if it is
24 determined that the cost of improving the land,
25 bringing it to a ready condition is the same on site

1 "A" as it is on the Orgo site but the acquisition
2 costs of the raw land would be less on site "A" than
3 the Orgo site, that would lower the cost.

4 MR. PRIZELL: No, it would not,
5 sir. And I'll tell you why. We live -- no one in
6 this proceeding, neither Mr. Orgo or Brunelli or
7 Pizzo is in the business of giving anything away for
8 free. The prices of those houses -- I'll get to that
9 whole point. I tell you, the prices of those houses,
10 as stipulated in Mr. Gilvary's reports, are market
11 prices. As you pointed out yourself, Mr. Brennan,
12 the prices of those houses is not terribly cheap.
13 It's not cheap housing. Those estimates are not
14 based on the ability to get very, very cheap. What
15 happens is, that the marketplace determines the price
16 of the housing. The fact that you can do that, get
17 that price on this site, is the relevant fact. The
18 fact that you can deliver that product and the buyers
19 will buy it at that site, that's the important fact.
20 We're not giving it away. If a buyer, assumption,
21 could come here and say, I can buy the land cheaper,
22 how are you, therefore, going to pass that savings on
23 to the consumer? Of course not. That's absurd.
24 Because a builder makes a big profit on his land, he
25 doesn't pass that on. He sells the house for what he

1 can get for it. The question, what is the price of
2 the land or anything else, it's a totally extraneous
3 matter. In any event --

4 MR. BRENNAN: We're talking about
5 approximately 500 units that fell into the least cost
6 housing.

7 MR. HERMAN: By the Applicant's
8 definition.

9 MR. BRENNAN: To the extent that
10 the price of anything reaching the market, assuming
11 the same quality of the product, is lower than the
12 competing price and approximate location, you have
13 broadened the population that can acquire that asset.
14 So, I can't really buy -- in other words, your
15 \$45,000 condominium would be more attractive, more
16 appealing to the market at \$40,000. And it would
17 also be less least cost and more affordable.

18 MR. FRIZELL: You mean, if the --
19 yeah, but you see, I think you misunderstood the
20 point. If the buyer is willing to pay 45, that's
21 what the seller will sell it for, the ultimate seller.
22 What you also have to figure in, there's profit all
23 along the line; not only Mr. Orgo makes something and
24 Mr. Brunelli makes something and Mr. Pizzo makes
25 something. You would have to get every one of those

1 people to say, "I'm not going to make any money." And
2 that's not what the Supreme Court said. The
3 development regulations that affect the land should
4 be changed and reduced so that they do not increase,
5 arbitrarily, the cost of the unit to the consumer.
6 Once that's achieved, the free market takes over and
7 that's it. And that's what we're talking. We're
8 saying that the free market price of that land and --
9 somewhere in the vicinity I'll get the ten percent of
10 the total cost of the unit, 15 percent for
11 improvements. We'll give you those figures. I'm
12 giving the rough guidelines. The rules of thumb,
13 generally, apply. Ten percent therefore is listed,
14 which is the standard rule of thumb, the total value
15 to Mr. Brunelli and Orgo combined. And that's
16 approved land. That includes all this cost. But
17 then, if you get to why don't they ask why they're
18 going to pay more for this job, why don't you get
19 every single cost factor?

20 THE CHAIRMAN: The Chair rules
21 that that's totally irrelevant. That is not an
22 analogy at all, Mr. Frizell.

23 MR. PRIZELL: Of course, it is.

24 THE CHAIRMAN: We're relating the
25 cost of the land to the least cost housing. Your

1 expenses have nothing to do with it.

2 MR. FRIZELL: Yes, they do..

3 THE CHAIRMAN: We should not know
4 what the percentage the builder is making, either.
5 I've ruled on that.

6 MR. FRIZELL: That's the end of
7 it.

8 THE CHAIRMAN: Oh, no, it isn't.
9 The end is, how does the cost of the land relate to
10 least cost houses. To my limited knowledge, no one
11 has defined least cost housing.

12 MR. FRIZELL: Mr. Schrupf, if
13 you can get a lawyer ten dollars an hour cheaper than
14 I work, is that least cost? Those are all factors
15 what we're willing to tell you, is what the builder --
16 and that's the only thing. Because, Mr. Schrupf, if
17 the zoning on this property were changed, I would
18 tell you, that would be significant in terms of
19 ultimate cost of the project. That's not really
20 going to reduce the price that the buyer is going to
21 pay. It's only going follow, favor business. This
22 is a free market economy. And if that's relevant,
23 all the other things are relevant. And I'm telling
24 you, as far as I'm concerned, it's private and
25 privileged information, not relevant to these

1 proceedings. And Mr. Orgo is not about to provide it.

2 MR. HERMAN: I don't fully agree
3 with what Mr. Schrupf said, that shows that costs
4 are irrelevant. But maybe some of those other costs
5 are de minimus

6 MR. LARKIN: If your fees are
7 more than the land, he's really in trouble.

8 MR. HERMAN: I submit if Mr.
9 Orgo's property is the most expensive property in
10 town to buy, that is the -- perhaps the most single
11 relevant factor in this proceeding. I insist that
12 the Board direct the witness to answer the question.

13 MR. LARKIN: I'm a little
14 confused. If I understand things correctly, we are
15 here to listen to the question about whether this
16 particular piece of property is going to provide, in
17 the definition of the court, least cost housing, and
18 a variety of housing as far as Colts Neck is
19 concerned. Is that correct?

20 MR. PRIZELL: Yes, sir.

21 MR. LARKIN: I would certainly
22 suspect that, as we look at this analysis and try to
23 decide for ourselves whether this is least cost
24 housing as we define it, we should know if Mr.
25 Brunelli could find a piece of property that is four

1 miles away that is less costly for him to buy, less
2 costly for him to develop because of topography and
3 other things that might be there, to see whether we
4 can decide whether this is least cost housing as it
5 is defined by the court.

6 MR. FRIZELL: Mr. Larkin, there's
7 a false assumption there that assumes that if you
8 could buy it cheaper you could sell it cheaper.

9 MR. LARKIN: We are here to try
10 to provide least cost housing to a population that
11 want it. As you define it, there's a need for it.

12 MR. FRIZELL: Yes.

13 MR. LARKIN: And you are saying
14 to me that if you could buy \$10,000 an acre cheaper,
15 therefore, you wouldn't provide housing any cheaper
16 than the market would vary. You are willing to pay
17 \$200,000 in order to build one house on Orgo Farms
18 and that's what you sell it for. You said the market
19 would make no difference what they pay Mr. Orgo or
20 Mr. Brunelli. What you paid, if they want to do
21 \$200,000 for a townhouse? That's what it would sell
22 for?

23 MR. FRIZELL: That's correct.

24 MR. LARKIN: So therefore, is
25 that least cost housing within the definition as you

1 see Judge Lane's --

2 MR. FRIZELL: It's not. You see

3 MR. LARKIN: I want you to answer
4 my question, please.

5 MR. FRIZELL: It's not that
6 simple.

7 MR. SAGOTSKY: Can you say yes or
8 no?

9 MR. FRIZELL: What the Zoning
10 Board of Adjustment --

11 MR. LARKIN: I asked you a very
12 straightforward question. I asked you whether if the
13 marketplace were \$200,000 for a townhouse within
14 Colts Neck, would that satisfy Judge Lane's and Judge
15 McGann's ruling about least cost questions? That's
16 my only question.

17 MR. FRIZELL: No, no, wait. That
18 question doesn't tell me anything. I can't answer
19 that question.

20 MR. LARKIN: You just said to me
21 before that once the marketplace took over, it's
22 whatever the marketplace would bear.

23 MR. FRIZELL: That's correct.

24 MR. LARKIN: I'm asking you if a
25 marketplace would bear \$200,000 for a townhouse,

1 would that satisfy least cost housing under Judge
2 McGann's ruling?

3 MR. FRIZELL: That unit would not
4 satisfy the least cost ruling. You look at the
5 development plans. You look at whether or not there
6 are any extravagances built into that plan that will
7 artificially increase the cost of that unit.

8 MR. HERMAN: Like?

9 MR. FRIZELL: Excuse me, Mr.
10 Herman. Where the buyer walks in and sees a unit
11 that he will pay \$200,000 for, he's looking for
12 something different from the unit he will pay \$70,000.

13 MR. LARKIN: Is that your
14 judgment?

15 MR. FRIZELL: Yes, that's my
16 judgment, that the same buyer will expect more for
17 \$200,000 than he will for 70. What we have designed
18 in this project is 48 percent of these units with
19 none of those extravagances. I can tell me you that
20 if we had designed them and made this had a high cost
21 project, yes, they would probably sell. But 48
22 percent of this project -- I concede that's our
23 opinion -- has been designed for that market, that
24 least cost market. And they were designed by Mr.
25 Gilvary or Mr. Kovacs and the planner.

1 MR. LARKIN: So the marketplace
2 has no bearing on the 48 percent?

3 MR. FRIZELL: Yes, it does.

4 MR. LARKIN: What does the market
5 decide they're worth?

6 MR. FRIZELL: If the people
7 decide they're willing to pay more, we'll sell for
8 more. This is the price for those units. You have
9 to look at the size of the unit. These are \$50 a
10 foot units. You have to look at the size of the unit,
11 the size, the design, the type of unit that it is.
12 That's what makes it least cost. Because I cannot
13 sell a \$70,000 unit in a free market for \$200,000. I
14 can't do it. I have designed those projects. You
15 cannot hold me to those prices. The market will hold
16 me to those prices. The opinions were never intended
17 to do that. They can't lock us in.

18 THE CHAIRMAN: Will you confirm
19 for me that despite the cost of the land, the unit
20 will cost the same to the buyer no matter where you
21 go? If you got the land for half the price, there's
22 no factoring the land cost in the cost of the unit at
23 all?

24 MR. SAGOTSKY: That's a nice way
25 to put it.

1 MR. PRIZELL: Let me qualify that
2 I'll answer that. I would say generally that is a
3 correct statement, except under certain conditions.
4 Given an extremely high market demand for a unit and
5 given the fact that you've probably seen people come
6 in, make economic arguments for hardship when they
7 say, I had to pay so much for the land; I've got to
8 build something different and get a bigger profit out
9 of it. But I think generally what you said is
10 correct. The builder cannot -- if he lost money, if
11 he paid too much for the land, he loses it. Because
12 the marketplace takes over and he can't get the price
13 necessary to cover his cost of the land. But what
14 we're willing to show you is, based on what Pizzo
15 told you and his analysis and Gilvary's analysis.
16 And we're willing to tell you what the assumption was
17 that the builder is going to pay for the land. And
18 we're willing to demonstrate that's not an
19 unreasonably high number to force the builder to the
20 brink.

21 MR. HERMAN: Mr. Chairman, we
22 respectfully submit that what Mr. Prizell is telling
23 us is gobbledygook. The cost of that land is
24 relevant or more relevant as any other factor. He
25 talked about its being a personal matter. Mr. Orgo

1 tendered a tax return. I think Mr. Frizell did
2 disguise the issue here. I think there is a reason
3 he doesn't want to tell us the cost the land. It's
4 nonsense to think that you could put a least cost
5 unit there when obviously you could put it on the
6 next property cheaper.

7 MR. FRIZELL: The argument will
8 be open to you, Mr. Herman. You can probably figure
9 it out. You figure --

10 MR. HERMAN: I want to know why
11 we can't know it.

12 MR. FRIZELL: You can figure the
13 ten percent as raw land cost which includes all
14 approvals built into it. If you can make that
15 argument, go find someone who's willing -- well,
16 there's not even a comparison, quite frankly, because
17 if it were zoned that way, obviously, you could get a
18 higher price for it.

19 MR. HERMAN: We're not talking if
20 it was zoned differently. We're talking about the
21 land in question, the zoning in question. And I
22 would like a ruling from the Chair on the answer to
23 the -- to this question.

24 THE CHAIRMAN: I make the ruling
25 right now. But I'm going to preface the ruling with

1 the reminder that Mr. Orgo's earlier testimony, I
2 said we were not privileged to examine his income tax
3 returns. We respected his privacy on his income tax
4 return. Do you remember that?

5 MR. PRIZELL: That's correct.

6 THE CHAIRMAN: But I think it is
7 vital to us to determine -- to determine if this is
8 least cost housing. If I direct the Mr. Orgo to
9 answer.

10 MR. PRIZELL: I have instructed
11 Mr. Orgo not to answer that question, the cost of the
12 land as for sale as a package to either Mr. Pizzo or
13 any other builder.

14 MR. SAGOTSKY: You're following
15 your attorney's advice?

16 THE WITNESS: I'm afraid so.

17 MR. PRIZELL: You want to express
18 your own feelings?

19 MR. HERMAN: Is Mr. Prizell your
20 attorney?

21 THE WITNESS: In this matter,
22 yeah.

23 MR. PRIZELL: Yes, sir.

24 THE WITNESS: Sure, everything is
25 Orgo Farms.

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MR. HERMAN: Is he representing both you and Mr. Brunelli?

MR. FRIZELL: In this proceeding, yes. I can assure you I did not when the deal was struck. But in any event, I represent Mr. Orgo now.

Mr. Orgo, you want to express your feelings about that?

MR. SAGOTSKY: It's not feelings. If he wants to tell us the price --

MR. HERMAN: I think all we would like to know if he understands the ruling that the Board has made ordering him to answer and if you are going to answer.

THE WITNESS: If I'm forced to give a number, I'll have to ask for a Fifth Amendment or something comparable.

Off the record?

THE CHAIRMAN: Back on the record. Mr. Orgo is testifying.

MR. FRIZELL: Do you have anything further to add to that, Mr. Orgo?

Let me ask you this: Did you definitively, in terms of a dollar number, determine how much number you will receive at the end of this deal.

1 MR. SAGOTSKY: That's not the
2 question.

3 BY MR. HERMAN:

4 Q. Is the answer that you don't know the
5 answer to the question or that you refuse to give it?

6 A. To that question?

7 Q. To the question I asked you, how much
8 money.

9 A. Mr. Frizell just asked me definitively at the
10 end. The answer is no, I don't know.

11 Q. To my question, how much will you be
12 paid with the contract to Mr. Brunelli are you
13 telling the Board that you don't know the answer or
14 that you refuse to give it?

15 THE CHAIRMAN: He's already
16 answered that.

17 MR. HERMAN: Has he?

18 THE CHAIRMAN: He said you can
19 call it the Fifth Amendment; on the advice of the
20 attorney, I'm not going to answer the question.

21 MR. FRIZELL: No, Mr. Schrumpf.
22 He just said he didn't know how much he will receive.

23 THE CHAIRMAN: Prior, that's the
24 exact -- you used the words "Fifth Amendment"?

25 THE WITNESS: I don't know either.

1 THE CHAIRMAN: But he used it.
2 Let's not say he didn't use it. He said he will not
3 answer the question and then Mr. Herman proceeded to
4 say is Mr. Frizell your attorney, is he representing
5 you

6 MR. LARKIN: We can have the
7 record read back, Mr. Schrupf, if you want to.

8 MR. FRIZELL: Do we have any
9 specific question?

10 MR. LARKIN: I think he answered,
11 the fact is that he doesn't know the question. But -

12 MR. SAGOTSKY: There's a
13 difference how much will you receive; how much does
14 the land cost. They're two questions. And I
15 respectfully suggest that he said he didn't know how
16 much he will receive. But he refused to answer, as I
17 understand it, what the cost is. I'm merely
18 clarifying the way I understand his testimony.

19 THE CHAIRMAN: That was the
20 narrow confines of the question.

21 MR. LARKIN: I would like to
22 broaden it, if I could. Mr. Frizell, are we going to
23 be presented with some kind of a reasonably detailed
24 financial plan of how this transaction is going to go
25 from start to finish?

1 MR. FRIZELL: Financial plan?

2 MR. LARKIN: In some fashion.

3 MR. SAGOTSKY: I apprised Mr.
4 Frizell that that would be forthcoming from you.

5 MR. LARKIN: How the initial
6 purchase was going to be financed, the arrangements
7 Mr. Orgo -- certain part of that arrangement, the
8 utility cost -- I forget the number. Will you
9 refresh me how much?

10 MR. BRENNAN: We concluded five
11 million.

12 MR. LARKIN: Before the buildings
13 went up? I would like to know how this is going to
14 be financed.

15 MR. FRIZELL: Could you relate
16 that to the public interest for me?

17 MR. LARKIN: Because if there's
18 not feasible financing for this project, we shouldn't
19 be sitting here.

20 MR. FRIZELL: In terms of the
21 mortgage market?

22 MR. LARKIN: In terms of
23 everything.

24 MR. FRIZELL: But what would
25 happen if the project didn't get off the ground?

1 You're right, we would have all have wasted our time.
2 But, nevertheless, we're here. We have a right to be
3 here.

4 MR. LARKIN: I understand that.

5 MR. PRIZELL: Every single person
6 for a variance to build a store --

7 MR. LARKIN: We don't talk about
8 100 whatever million dollar project --

9 MR. PRIZELL: There is a public
10 interest. Let me tell you what the public interest
11 is if that's any help. Now, I believe there's a
12 public interest in not starting the project
13 haphazardly, developing it and then abandoning it.

14 MR. LARKIN: That was the basis
15 for my question.

16 MR. PRIZELL: Those interests are
17 protected in several ways. They're protected, number
18 one, in the major capital investment will be made in
19 the front end of the project. And that's something
20 that can be handled either as a condition or as an
21 understanding of the facts of development.

22 MR. LARKIN: And the method of
23 that will be laid out in front of the Board?

24 MR. PRIZELL: See, what happens
25 is, we have a variance proceeding. All right? At

1 some point, we will have a final site plan submission
2 because you can't get a building permit without it.
3 At the time of a first submission for a final of
4 section one of this project -- and the Board has the
5 discretion in terms of is this first section, as it
6 is, self-contained; if you don't build section two,
7 what will happen; are the utilities in place; does it
8 have access via public roads?

9 MR. LARKIN: That's not my
10 question.

11 MR. FRIZELL: That's where the
12 public interest lies.

13 MR. LARKIN: Is the money there,
14 available to put the utilities in prior to section
15 one?

16 MR. FRIZELL: That's not the
17 point. The point is, if there's not, if there is no
18 utility, it doesn't go and section one doesn't go in.

19 MR. LARKIN: And therefore, I'm --
20 we're wasting our time and --

21 MR. FRIZELL: Well, that's the
22 other question you can't know the answer to. Because
23 that's your function. I mean, there are certain
24 things that are totally irrelevant.

25 MR. LARKIN: I happen to think

1 they're very relevant.

2 MR. SAGOTSKY: Mr. Frizell, if I
3 can quote Mr. Frizell directly he says he cannot give
4 you the answer and that could be based on a number of
5 factors. I'm not going to say he won't give you the
6 answer. I'm not sure that's what he said to me. I
7 gather he can't gave you the answer.

8 MR. FRIZELL: I can tell you what
9 I think about all of this business.

10 MR. SAGOTSKY: Can you give us
11 the answer or won't you?

12 MR. FRIZELL: Can I give you the
13 answer?

14 MR. SAGOTSKY: Can you give the
15 answer?

16 MR. FRIZELL: I can tell you, for
17 instance, how it would be arranged. There would be
18 certain financing. Pizzo would obtain financing.
19 Assuming Killam gets in, they get their money from a
20 parent company. They put in the utilities with their
21 money.

22 MR. LARKIN: Can you tell me how
23 it will be financed?

24 MR. FRIZELL: I can tell you
25 gratuitously, Mr. Larkin; but, it's not directly

1 related to the public interest.

2 MR. HERMAN: Are you saying you
3 can tell us what you would like to do or the way it's
4 arranged to be done?

5 MR. FRIZELL: I can tell you the
6 only way you do things in this business.

7 MR. HERMAN: That is based on
8 commitments?

9 MR. FRIZELL: I don't understand
10 the question.

11 THE WITNESS: From lenders.

12 MR. FRIZELL: Have you ever had a --
13 do you have any experience in real estate in terms of
14 obtaining --

15 MR. MARKS: This is irrelevant.

16 MR. FRIZELL: In terms of real
17 estate commitments.

18 MR. HERMAN: I have; but, does
19 that matter?

20 MR. FRIZELL: You are getting a
21 little bit argumentative.

22 MR. HERMAN: I appreciate what
23 Mr. Larkin was getting at. I'm interested in that.

24 THE CHAIRMAN: The finances, the
25 arrangements, can be discussed later. What was our

1 question to Mr. Orgo? Now, he has refused to answer
2 this specific question as to the purchase price of
3 the property on the advice of Mr. Prizell. Now,
4 let's proceed, Mr. Herman.

5 BY MR. HERMAN:

6 Q. Mr. Orgo, having told us that you won't
7 or can't tell us the exact amount of dollars that
8 you'll get --

9 A. Right.

10 Q. -- can you tell us the equation or the
11 formula that establishes how much money you'll get
12 from the sale of this property?

13 A. Well, not really. I don't know what you are
14 driving at.

15 Q. What I'm driving at --

16 A. There's the -- I'm partners with Mr. Brunelli
17 and it's based on, I guess, what profit we show.

18 Q. Mr. Orgo, you indicated that a little
19 while ago that you have Fifth Amendment right. I
20 don't think anyone is suggesting here that the price
21 you are getting is so high it's criminal. But I
22 think that you told us you can't tell us the exact
23 number of dollars involved. And I perceive that to
24 mean that there's some kind of formula and you don't
25 know some of the ingredients to that formula so you

1 can't come up with a dollar amount. I suggest then
2 what the formula is --

3 A. There are personal reasons for that, all right?
4 It's a very simple -- if I have a financial statement
5 and it doesn't show what figure I might get out of
6 this and if I make a commitment tonight, be it "X"
7 dollars or "2X" or "5X", whatever and that gets out
8 and someone comes along and says, here, you've
9 misrepresented, I could be in a lot of trouble when
10 that sale is made. A sale is a willing buyer and a
11 willing seller. And until then, there is no price.
12 That's the way it is; that's the way I'm running it
13 in my books. I'm sorry. I have to stand with it for
14 my own protection.

15 Q. We don't dispute that there is a willing
16 buyer or willing seller or what you may or may not
17 have misrepresented. I don't suggest you have
18 misrepresented anything. We need to know the cost to
19 Mr. Brunelli of that land. And if you can't, in
20 terms of an absolute number, then I'm suggesting that
21 you tell us in some kind of formula or some kind of
22 long paragraph that sets it forth. Preferably, I
23 would suggest that you submit a copy of the contract
24 and we'll all figure out what you are receiving.
25 Would you do that?

1 MR. PRIZELL: I have objected
2 previously the same basis, the cost to Mr. Brunelli
3 from Mr. Orgo. Furthermore, it's not even pertinent,
4 not even on the right track. As Mr. Orgo said, what
5 he gets is to what the builder pays.

6 MR. HERMAN: Mr. Prizell, we
7 spent a lot of time talking about what the utilities
8 would cost. We spent time talking about what all
9 kinds of other things would cost. I asked this
10 question of, I think, two or three of your prior
11 witnesses. Most of them indicated that they didn't
12 know what it cost, even though they could tell us
13 with surety that these units could be marketed with
14 certain prices. I submit there is a matter of
15 credibility. In addition to the matter of the least
16 cost aspect, I think we have a right to know. And I
17 would request that Mr. Orgo submit to us a copy of
18 the contract.

19 MR. TISCHENDORF: I think this
20 Board can influence this formula in an indirect way --
21 not that that's our mission -- but it seems to me you
22 are asking us to buy the parameter of six units per
23 acre and I suspect if we came up with a requirement
24 or recommendation of four units per acre or three
25 units per acre we'd be impacting this unknown formula.

1 We do have some testimony that some planners think
2 three units per acre or four per acre is high density.
3 So far I've had difficulty of a couple witnesses who
4 decided on the density, who decided on the parameter
5 of six units per acre. It's not clear to me. We
6 have no -- it seems to me this Board can take a
7 position that we would want an area in town to be
8 three units per acre or something less. I would
9 speculate that that would impact your formula
10 somewhat. So again here, I don't personally feel a
11 strong need to know directly what this answer is.
12 But I do feel that we still have within our
13 prerogatives some indirect influence on that matter.
14 I don't know whether the other Board members see it
15 that way.

16 MR. BRENNAN: I think you
17 expressed it very well. The density required related
18 to the function of recovering your total costs and
19 making a profit and your land cost, whether raw or
20 improved, is a function of cost that you have to
21 recover.

22 MR. HERMAN: Mr. Orgo, will you
23 submit to us a copy of your contract?

24 MR. FRIZELL: I object.

25 MR. SAGOTSKY: Just say yes or no.

1 MR. PRIZELL: I'm telling him no.

2 THE WITNESS: No.

3 MR. HERMAN: You are telling him
4 no?

5 MR. PRIZELL: I'm answering your
6 question. The contract will not be submitted.

7 Mr. Orgo, you verify that?

8 THE WITNESS: Yeah.

9 MR. SAGOTSKY: Mr. Prizell, if we
10 had any powers of subpoena or compulsion, I don't
11 think you should put yourself in a position of saying
12 no.

13 MR. PRIZELL: Fine. Issue a
14 subpoena.

15 MR. SAGOTSKY: I mean you, as an
16 individual.

17 BY MR. HERMAN:

18 Q. Mr. Orgo, does the amount of money that
19 you receive on the sale of this land fluctuate on the
20 number of units that are approved?

21 A. No.

22 Q. Does it fluctuate --

23 MR. BRENNAN: Can I raise a
24 question, please? I thought that you had said he
25 couldn't disclose anything that's in the contracts

1 and yet now you are permitting Mr. Herman to continue
2 questions about components.

3 MR. FRIZELL: I move to strike my
4 own client's answer.

5 THE WITNESS: That's even wrong
6 because the end result, the partnership end, would
7 vary.

8 MR. FRIZELL: As I said before,
9 we're perfectly willing to provide the very detailed
10 information on what the property is for sale to the
11 builders.

12 MR. HERMAN: The architect
13 couldn't do it and the builders couldn't do it. Yet
14 each of these are convinced the prices at which the
15 market could be set. How about Mr. Brunelli becomes
16 a witness, could he do it?

17 MR. FRIZELL: They assumed a fact.

18 MR. LARKIN: Raw land. They
19 assumed a factor, improved land.

20 MR. HERMAN: Your architect
21 didn't know what he assumed.

22 MR. SAGOTSKY: The builders.

23 MR. HERMAN: I'll be back.

24 MR. FRIZELL: They assumed. It
25 you had asked them, you could have asked.

1 MR. HERMAN: I did. I asked Mr.
2 Gilvary. I asked the people from Pizzo and Pizzo; I
3 think I asked the builder of Expo, whatever.

4 MR. PRIZELL: I don't have a copy
5 of the transcript yet. I just got one. As I recall,
6 you asked him whether the rule of thumb was
7 applicable. I think he said it generally was. It
8 was a detailed analysis. They couldn't recite from
9 memory. I said we'll provide it.

10 MR. HERMAN: He told me it was
11 generally applicable. He also told me he didn't know
12 the cost of the land. He didn't know.

13 THE CHAIRMAN: We're arguing
14 points here that are not pertinent to Mr. Orgo's
15 testimony. He has already stated he will not submit
16 a copy of the contract or anything appertaining to it.
17 And I think these questions do pertain to it. Let's
18 change the questions, Mr. Herman, and save it. And
19 I'm sure you're astute to save it for recall of Mr.
20 Gilvary and so forth. I think it's more pertinent in
21 another place. But I don't think Mr. Orgo's going to
22 answer them. In fact, he's told you he won't no
23 matter how you try to get at it.

24 I didn't mean to dress you down.

25 MR. HERMAN: I'm just reviewing

1 my notes, I'm not sulking.

2 I have a final comment. I have
3 no further questions of Mr. Orgo at this time. I'd
4 like to reserve the right, at a later date in this
5 proceeding, to examine Mr. Orgo again. And I would
6 like to reserve the right, or maybe I could do it now
7 to respectfully request that this Board attempt to
8 ascertain the price, the selling price, in that
9 contract; and, in fact, get a copy of the contract
10 from Mr. Orgo in an attempt to ascertain that
11 complicated formula for the purpose of ascertaining
12 whether or not this project, in fact, qualifies for
13 least cost housing; to ascertain to what extent the
14 witnesses who have testified with regard to the
15 marketability of these units at particular prices,
16 admitting that they didn't know the price of the land.

17 I'll conclude my comment by
18 saying that it is conceivable that between now and
19 the end of the hearing that Mr. Frizell might decide
20 he and or any of the witnesses might decide -- to
21 give us this information. I have no -- I don't mind
22 waiting a meeting or two to get it. When I last
23 asked for it, Mr. Gilvary -- Mr. Frizell said he
24 would think about it. Presumably he has given it
25 thought since then. But I would like to reserve the

1 right to insist you do everything in your legal power
2 to ascertain the answers to those questions.

3 You don't really have to respond
4 to that. I think that it is important that I place
5 it on the record.

6 THE CHAIRMAN: So noted.

7 MR. SAGOTSKY: We'll give that
8 some study.

9
10 CROSS-EXAMINATION BY MR. SAGOTSKY:

11
12 Q. I recall, Mr. Orgo, you testified you
13 had 100 tillable acres. Do you agree?

14 A. In that area.

15 Q. Did you take into consideration 24 acres
16 south of 18?

17 A. That's why there is 70 or 80 acres.

18 Q. You included in the 24 acres?

19 A. Between 20 acres, not all tillable back there.

20 Q. But I asked if you included it?

21 A. Yeah, right.

22 MR. SAGOTSKY: That's all I have.

23 MR. HERMAN: Just one question of
24 Mr. Frizell. Will you agree to make Mr. Orgo
25 available at one subsequent meeting at our request?

1 MR. FRIZELL: Mr. Orgo has been
2 here about five times. Mr. Orgo has been here five
3 times. He's been here, testified twice. He's been
4 ready to testify on two or three other occasions.
5 I'm finished. If you have a question, ask it now.
6 That's why we're here.

7 MR. HERMAN: I have questions he
8 refuses to answer. That's my question.

9 MR. FRIZELL: If Mr. Orgo is
10 directed by a Court to be here, he will be here.
11 Otherwise, he's here to answer questions that you may
12 have.

13 THE CHAIRMAN: The Chair will ask
14 Mr. Frizell directly, on behalf of Mr. Orgo, would he
15 voluntarily return him at the request of this Board
16 without an Order of the Court should we seek some
17 very vital information that you might develop for him
18 and agree to reveal to us?

19 MR. FRIZELL: I don't think --

20 THE CHAIRMAN: Regarding the
21 financial aspects of this?

22 MR. FRIZELL: This has been given
23 a lot of thought, Mr. Schrupf. I believe very
24 strongly that the only relevant information to that
25 whole land cost issue is what is the land worth; is

1 the builder willing to pay for the land; is the land
2 for sale; is that the cost, yes, it is. And that's
3 it. And then the rest of it gets built on top of
4 that, all the other costs. Yes, installation costs
5 have a bearing. But that's it. Now, beyond -- and
6 let me say, if you have a particular question and
7 maybe you can address it to me and it's not too
8 inconvenient for Mr. Orgo, let me address that
9 question when you want to bring him back.

10 THE CHAIRMAN: Looking within the
11 confines of our remaining scheduled meeting dates,
12 August 7, 14 and 21 and as Mr. Orgo just stated he's
13 going to be way from August 15 to the 21 --

14 THE WITNESS: I'll be back the
15 21st.

16 THE CHAIRMAN: How about August
17 14, if we read really needed you?

18 THE WITNESS: Okay.

19 THE CHAIRMAN: Fine. Any more
20 questions of Mr. Orgo at this time from the Board?

21 MR. FRIZELL: I have a question.

22 THE CHAIRMAN: Off the record.

23 (Whereupon there is a discussion
24 off the record.)

25 (Whereupon the hearing is

1 adjourned at 11:30 p.m..)

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CERTIFICATE

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I, KATHLEEN M. SHAPIRO, a Registered

9

Professional Reporter and Notary Public of the State

10

of New Jersey, certify that the foregoing is a true

11

and accurate transcript of the proceedings as taken

12

before me stenographically on the date hereinbefore

13

mentioned.

14

15


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

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Dated: August 14, 1980

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My Commission Expires on
June 7, 1983

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