

CN - Orgo Farms v. Colts Neck Twp

2/20/84

Transcript of Proceedings: Deposition of
Carl ~~A~~ E. Hintz

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
DOCKET NO. L-5299-78
L-13769-80

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ORGO FARMS and GREENHOUSES, CIVIL ACTION
INC., DEPOSITION
Consolidated with
SEA GULL, LTD. BUILDERS, INC.,

-vs- OF

TOWNSHIP OF COLTS NECK, CARL E. HINTZ
Defendant.
x-----x

C O M P U T E R I Z E D T R A N S C R I P T
of the stenographic notes of the proceedings in
the above-entitled matter as taken by and before
MARY T. BOVE, a Certified Shorthand Reporter and
Notary Public of New Jersey, in the office of
STOUT, O'HAGAN & O'HAGAN, ESQS., 1411 Highway 35
North, Ocean, New Jersey, 07712 on Monday,
February 20, 1984, commencing at three-thirty in
the afternoon.

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 of Colts Neck.

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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CARL E. HINTZ

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EXHIBITS MARKED FOR IDENTIFICATION

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1 C A R L E. H I N T Z, previously sworn.

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3 DIRECT EXAMINATION BY MR. O'HAGAN: (Continued)

4

5 Q. Mr. Hintz, we were discussing the
6 factors that went into an area being designated
7 as limited growth and you were talking about the
8 absence of prime farm lands and you were about to
9 go on to the next category and what was that?

10 A. Absence of concentration of public open
11 space and environmentally sensitive land of state
12 wide significance.

13 Q. Let's speak of the absence of public
14 open space. How much land would be required
15 before you would consider it a significant amount
16 of public land?

17 A. I'm not sure how I can answer that question
18 because this was a criteria that the state had
19 used to determining whether or not an area --
20 they might, for example, set aside an area for
21 conservation on the state guide plans.

22 First of all, I'm not sure I agree
23 necessarily with what their recommendation is
24 here, their policy position here is and then
25 aside from that I don't know what criteria they

1 used and so I'm not sure how I can respond to
2 that question.

3 Q. So I understand you to say that you
4 don't agree with the criteria as to a large
5 concentration of public lands and is your
6 disagreement with that fact leading to the
7 designation of land as a conservation land or as
8 to the absence of that block leading to the
9 designation of a limited growth land?

10 A. It was the absence of that block leading to
11 either growth or limited growth or agricultural
12 designations under the guide plans. It was the
13 presence of that criteria that the state used to
14 block out areas they felt were suitable as a
15 conservation designation of the guide plan.

16 Q. You said you agreed?

17 A. I disagreed in part in going over the guide
18 plans for conservation areas. I felt that they
19 had excluded -- I felt they have improperly
20 excluded some areas for limited growth or growth
21 even that were conservation and nowhere can I
22 find in the guide plan what criteria they used to
23 say how much concentrated public open space you'd
24 need to get you into the conservation category.

25 Q. Are you saying then that you feel

1 that some of the areas they designated as limited
2 growth had sufficiently large concentrations to
3 justify its being designated as conservation
4 areas?

5 A. No. I'm saying, well, I'm saying that some
6 of the areas that I found on the state guide
7 plans that are designated conservation don't
8 necessarily hold up to the conservation
9 classification without making any assumptions
10 about limited growth.

11 Q. How much land would there have to be
12 for you to conclude that it should be in a
13 conservation zone or area?

14 A. Well, I wouldn't base it upon a, you know,
15 how much or quantity as much as I would base it
16 upon as to where its location was and whether it
17 was a large enough band of that particular public
18 open space land to be able to link them together
19 and form a, you know, a definitive boundary of
20 state wide significance for conservation purposes.

21 Q. What was the next factor then?

22 A. Just a second. Part of that last or fourth
23 one which was environmentally sensitive land of
24 state wide significance.

25 Q. And speaking of that, doesn't the

1 guide plans indicate that areas within a water
2 shed are environmentally sensitive areas?

3 A. You'd have to show me the language. I
4 don't know specifically where they talk about.
5 They set up like they did with the public, you
6 know, large concentration of public open space.
7 They were looking for large concentrations of
8 environmentally sensitive lands that were state
9 wide significant.

10 Q. Let me ask you this then. In your
11 opinion are lands within a water shed
12 environmentally sensitive?

13 A. If I were following the guide plan criteria
14 it would have to be of state wide importance. It
15 would have to be -- they may be -- they may be
16 surface water. They may be ground water. They may
17 be swamp land. They may be some significant
18 sloped wooded area. It would depend upon an
19 evaluating number of these criteria, but what the
20 guide plans suggest here recommends that be
21 important on a state wide basis so I would like --
22 I would look for those.

23 Q. In terms of the importance for a
24 state wide basis and the guide plan seems to
25 conclude that high density developments within a

1 water shed has the potential to detrimentally
2 affect the water shed. Isn't that so?

3 A. I don't find that in that statement.

4 Q. You understand the guide plan to say
5 that, don't you?

6 A. I don't have a copy of it here so I can't.

7 Q. Have you read it?

8 A. I've read it several times, yes.

9 Q. And you don't feel that it says, and
10 I'm not sparring with you, I'm just trying to
11 find out are you saying that the guide plan does
12 not indicate that high density developments has
13 the potential to detrimentally affect the water
14 shed?

15 A. I'm not sure that that's what they
16 concluded. I know that they represented, for
17 example, in the Newark water shed area.

18 Q. If you just try to answer my
19 questions I'd appreciate it.

20 A. I'm trying to answer as best I can.

21 MR. FRIZELL: Let me express
22 an objection to the form of the question. When
23 you say high density development of the water
24 shed as a whole or are you postulating -- first
25 of all, I don't know how they define high density,

1 but any high density anywhere in the water shed
2 would be detrimental. Just so you state your
3 question clearly so he can answer it as to what
4 his understanding was of what the guide plans
5 says.

6 Q. Don't you understand the guide plan
7 to say that high density development within the
8 water shed should be limited? Don't you
9 understand that?

10 A. No. I don't know what is meant by high
11 density developments.

12 Q. Now, I assume that the density might
13 be as high as six per gross acre or in some areas
14 as high as 16 per net acre. Surely you'd concede
15 that was high density?

16 A. You know, again, I don't know in what
17 context and where you're talking about and so on.
18 It's very hard for me to answer that question.

19 MR. FRIZELL: Let me go off
20 the record.

21 (Whereupon a discussion was
22 held off the record).

23 Q. Mr. Hintz, so that we're not
24 sparring, I'm asking you I think a simple
25 question. Do you recall the SDGP, the State

1 Development Guide Plan indicating that
2 development within the water shed should be
3 limited?

4 A. I don't recall that exact statement.

5 Q. Do you recall the County Growth
6 Management Guide concluding that developments
7 within the water shed should be limited?

8 A. I don't recall the exact statement to that
9 effect, no.

10 Q. Do you recall the Tristate Regional
11 Planning Report something to the year 2000, do
12 you recall that saying that development within
13 the water shed should be limited?

14 A. Again, I don't remember that statement, but
15 without further defining what you mean by water
16 shed the whole state's in a water shed.

17 Q. Let's speak about a water shed to an
18 on the surface potable supply of water. Now, from
19 your viewpoint as a planner you've already told
20 us in the one of the first questions that you
21 felt it was a desirable goal to preserve sources
22 of potable water, isn't that correct?

23 A. Uh huh.

24 Q. Now, you certainly are aware of the
25 literature which speaks of the detrimental

1 effects to the water shed resulting from high
2 density developments, aren't you?

3 A. I don't know that high density development
4 is, the cause and effects of water shed pollution.

5 Q. Now, the Monmouth County Planning
6 Board has concluded that high density
7 developments damages the water shed. Are you
8 saying that they're erroneous in their conclusion?

9 MR. FRIZELL: I'm going to
10 object. I think you have to show Mr. Hintz the
11 exact the precise language that you're talking
12 about and what it's based on and also I don't
13 agree that the Monmouth County Planning Board
14 came to any such conclusion just for the record.

15 Q. Let's assume Mr. Hintz that the
16 Monmouth County Planning Board indicated that
17 areas within the water shed are conservation and
18 that developments should be limited in the water
19 shed. Just make that assumption for the moment.
20 Are you saying that they erroneously, that they
21 made an erroneous conclusion?

22 A. It's very difficult for me to answer that
23 because again without defining what you mean by
24 water shed, when you say surface water shed the
25 whole state or the whole county could be

1 considered to be in a water shed area.

2 Q. Let's speak about a water shed to a
3 potable on the ground source. You're certainly
4 not telling us that the whole state is a water
5 shed to an on the ground surface reservoir, are
6 you?

7 A. A good deal of the state if you take for
8 example counties I'm most familiar with starting
9 with Hunterdon and Mercer and Burlington and so
10 on, they all get their water supply, and
11 Middlesex County and so on. A lot of the water
12 supply from those counties comes from surface
13 water supply from the D & R Canal.

14 Q. What's that mean?

15 A. From the Delaware and Raritan Canal and
16 from the Delaware River. That's a surface water
17 supply and all those towns and all those counties
18 that I just mentioned all drain into that surface
19 water supply so it's all potable water.

20 Q. So then you're concluding that the
21 Monmouth County Planning Board was wrong in
22 counseling that developments within the water
23 shed should be limited?

24 MR. FRIZELL: I'm going to
25 object because again you just mixed two

1 completely different things and I think the
2 problem, Bob, is to say that developments in a
3 potable water supply water shed should be limited
4 is not the same thing as what you just
5 characterized. Maybe it should be limited in what
6 form in terms of the type of developments in
7 terms of the density.

8 MR. O'HAGAN: Let's speak
9 about that.

10 Q. I'd ask you to assume that the
11 Monmouth County Planning Board recommended that
12 higher density developments, and they describe
13 higher density developments in their growth
14 management plan and they indicate that that type
15 of development should not be allowed within the
16 water shed. Assume that. Are you advising us
17 that the Monmouth County Planning Board was
18 erroneous and wrong?

19 A. They may be.

20 Q. And what background do you have in
21 this particular field?

22 A. Quite a bit.

23 Q. Did you conduct a course of study in
24 the effects of urban pollution on sources of
25 potable water?

1 A. I've been involved in the Middlesex County
2 208. It's more than Middlesex County. It's the
3 upper Millstone and Raritan and South River water
4 shed 208 plan as a technical member of that group
5 since 1974 or '73. Something like that.

6 Whenever it was first instituted.

7 Q. Does that come from your post as
8 planner to East Brunswick?

9 A. And as my previous post as planner to South
10 Brunswick Township and in addition to that I've
11 done graduate work and course work in
12 environmental pollution and ground water
13 hydrology. I've studied as an undergraduate. I
14 do environmental impact statements throughout the
15 state for developers for towns and do
16 environmental analysis for towns on environmental
17 impact statements, environmental resource and so
18 on.

19 Q. Surely you're aware of General
20 Whipple studies, aren't you?

21 A. Yes.

22 Q. Wouldn't it be fair to characterize
23 General Whipple as one of the pioneers in this
24 field of nonpoint source pollution?

25 A. Certainly is a pioneer.

1 Q. And wouldn't it be fair to
2 characterize him as an influential knowledgeable
3 figure in the field?

4 A. He had been in the past. I'm not sure what
5 his role is these days.

6 Q. Doesn't he do work for the state in
7 the Division of Water Resource?

8 A. I don't know if he still does or not.

9 Q. And certainly his studies are worthy
10 of consideration, are they not?

11 A. As with a number of other studies, yes.

12 Q. And now you're certainly aware of
13 his studies which led to the conclusion that
14 higher density development causes pollution to
15 sources of water, whether they be potable or not,
16 aren't you?

17 A. Until you show me the statement from which
18 you're pulling that and what you mean by high
19 density developments and define it and define
20 what you mean by potable water shed, you know, I
21 have to answer -- I'm not meaning to spar with
22 you. I'm just telling you I cannot answer the
23 question to any degree to be helpful to you.

24 Q. Now, in the preparation of your
25 report, what consideration did you give to the

1 need to preserve the integrity of the Swimming
2 River Reservoir?

3 A. Perhaps you can rephrase the question.

4 Q. You in your report calculated a fair
5 share number of low and moderate income housing
6 for Colts Neck. In reaching that conclusion what
7 consideration, if any, did you give to the impact
8 of high density development on the reservoir?

9 A. The two have nothing to do with each other.

10 Q. Pardon me?

11 A. The two have nothing to do with each other.

12 Q. Are you saying then that you gave no
13 consideration to that?

14 A. Fair share methodology has nothing to do
15 with protecting the Swimming River Reservoir or
16 any other potable reservoir.

17 Q. Would it be fair to say, Mr. Hintz,
18 that you gave no consideration to the need to
19 conserve the reservoir?

20 A. I didn't look at it in my fair share
21 methodology, no.

22 Q. Are you saying then in determining a
23 fair share number environmental considerations
24 are not considered?

25 A. They're not supposed to be, no. Only with

1 respect to this, that when the one of the
2 criteria that goes into the formula, one of the
3 terms in the equation is a term that I used and
4 that other planners have used called vacant
5 developable land and what the category is, is it
6 takes vacant land and subtracts from that land
7 wet lands, flood plains, areas that the state has
8 previously determined to be environmentally
9 sensitive, and the numbers that I've used for
10 Colts Neck are numbers that come from the housing
11 allocation report prepared by the statement.
12 Those are not independent numbers that I've
13 evolved.

14 Q. Those are numbers that have evolved
15 where they've deducted out environmentally safe
16 land?

17 A. If they've considered the Swimming River
18 Reservoir in their calculations I don't know, but
19 to look at the regionally vacant developable land
20 minus any environmentally --

21 Q. So I understand you to say
22 environmental restraints are important because
23 when the housing allocation report was developed
24 environmental restraints were considered?

25 A. They were used as a subtraction in the

1 vacant land category, yes.

2 Q. And that surely recognizes a state
3 goal to preserve environmentally sensitive land?

4 A. Yes.

5 Q. If one were to conclude that the
6 area within a reservoir was environmentally
7 sensitive, would that factor then be considered
8 in determining the vacant developable land within
9 Colts Neck?

10 MR. FRIZELL: You said within
11 the reservoir. Is that what you meant?

12 MR. O'HAGAN: Let me just
13 rephrase it.

14 Q. If one were to conclude that the
15 lands within the water shed to the reservoir were
16 considered environmentally important, would that
17 be a factor then that would be utilized in
18 determining the extent of vacant developable land
19 within a municipality?

20 MR. FRIZELL: Let me just
21 object to the form of the question. I think it
22 answers itself. You're saying if someone by some
23 methodology were to conclude that potable -- that
24 water shed and feeder areas for reservoirs should
25 be taken out of the formula, would they be taken

1 out of the formula?

2 MR. O'HAGAN: That's what I'm
3 asking.

4 MR. FRIZELL: As I said, I
5 just think the form of question answers itself,
6 doesn't it?

7 Q. Can you answer it?

8 A. Yes.

9 Q. So obviously then if that land were
10 considered environmentally sensitive it should be
11 subtracted from your calculation of vacant
12 developable land, is that correct?

13 A. When you look at vacant developable land as
14 a criteria as a term in the equation for fair
15 share methodology you have to use a data basis
16 that's consistent for the entire area that you're
17 evaluating. The only acceptable data base that I
18 could come up with for vacant developable land
19 was the housing allocation report prepared by the
20 state and their numbers for vacant developable
21 land. I don't recall whether they dropped out,
22 you know, bogs and wet lands and flood plains and
23 so on. I know they dropped out some of those,
24 but if they dropped out potable water shed, I
25 don't know.

1 If they did, fine. If they didn't I don't
2 know, but when I tried to get a data base from
3 Monmouth County and from Ocean County and so on
4 to try to find out if we could get a current data
5 base and knock out sensitive land. It was not
6 available to run a fair share methodology. If I
7 were, and I would argue this, that if vacant
8 developable land does not exclude it and you want
9 to argue that it should be excluded I would put
10 it in at the formula at the end not at the
11 beginning. Not to put in the equation because
12 you have to look at everybody equally.

13 MR. FRIZELL: Could I just --
14 I want to, Bob, indicate an objection to the form
15 of the question because I think we're using two
16 different terms. One is vacant developable land
17 and the other one is the one you use which is
18 environmentally sensitive.

19 MR. O'HAGAN: The reason why
20 I use that --

21 MR. FRIZELL: All land has
22 varying degrees of environmental sensitivity, but
23 there's a point at which it becomes developable
24 or nondevelopable really. It's so sensitive it's
25 nondevelopable and I think we're talking about a

1 term that has a lot of ranges. Environmentally
2 sensitive in terms of its developability criteria
3 whether it's an absolute determinant against
4 developability such as a hundred year flood plain
5 or a fifty year flood plain. As an example they
6 use a fifty year flood plain that's absolutely
7 undevelopable under the definition they used, but
8 there's other criteria such as agricultural land
9 that they may or may not have considered
10 absolutely undevelopable. I don't know.

11 MR. O'HAGAN: I understand
12 your point. I was responding to Mr. Hintz's
13 comment about how the formula was calculated.

14 Q. Mr. Hintz, when during the course of
15 your report you referred to the Growth Management
16 Guide of Monmouth County and you indicated that
17 they did not identify the Orgo site or really any
18 land in Colts Neck as being environmentally
19 sensitive, do you recall saying that in your
20 report?

21 A. I stated on page 10 in my report that the
22 plaintiff's property, it was argued by Robert
23 Clark, County Planning Director, that the
24 Swimming Brook Reservoir must be protected and
25 that limits or limiting growth will protect it.

1 The plaintiff's property is located outside
2 Monmouth County's growth management guides
3 designated environmentally sensitive areas and
4 existing in proposed protection areas for the
5 Swimming River Reservoir.

6 Q. Now, you're not saying that it's
7 outside of Monmouth County's designated area in
8 so far as protection to the reservoir is
9 concerned, are you?

10 MR. FRIZELL: I think we're
11 talking about --

12 MS. HIGGINS: Why don't you,
13 Rich --

14 MR. FRIZELL: The defined
15 term is environmentally sensitive.

16 A. There was a map that they had. I'll refer
17 to that. They had an existing protection area
18 shown in dark green. I referred to their other
19 map, but they had a proposed protection area
20 which is a kind of an a half tone which includes
21 the Swimming Brook Reservoir and then they have
22 another area shown as light green just showing
23 those as stream areas. The plaintiff's property
24 is shown in the third category as being a stream
25 and then one other is a pond, but they don't show

1 it in as an environmentally sensitive area or a
2 proposed protection area or an existing
3 protection area.

4 Q. Doesn't the Growth Management Guide
5 say that development should be virtually limited
6 throughout the area of -- throughout the area
7 within the water shed? Don't they indicate that?
8 Isn't that what they say?

9 A. I don't recall the statement.

10 Q. Would you look at page 38 then.
11 Don't they say on page 38 that there should be as
12 little development as constitutionally
13 permissible within the water shed area?

14 MS. HIGGINS: Statement on
15 these water sheds must be protected from
16 intensive development in order to protect --

17 MR. FRIZELL: There's one that
18 says something about the constitution.

19 Q. Don't they say now -- don't they say
20 on page 40 that areas within the water shed
21 should be protected from intensive developments?

22 A. Okay. But the property is not within their
23 defined area according to their map.

24 Q. Well, isn't it within the water shed?
25 You can look at the map and certainly determine.

1 A. It's draining that way, yes. Part of the
2 property is draining in that direction.

3 Q. So we can conclude that it's within
4 the water shed, can't we?

5 A. Just about all of the Colts Neck is within
6 the water shed.

7 Q. The Orgo tract is in the water shed?

8 A. Yes. But it's not being defined on, called
9 out on the growth management plan as either an
10 existing or proposed protection area or
11 environmentally sensitive.

12 Q. Mr. Hintz, you're referring to a map.
13 Do you have other exhibits that you intend to
14 rely upon?

15 A. Well, the map that I'm referring to is just
16 a black and white print of the growth management
17 plan.

18 Q. Did you bring other exhibits that
19 you intend to rely upon in this matter?

20 A. I'll rely on the town's master plan.

21 Q. Anything else?

22 A. On the town zoning ordinance.

23 Q. Anything else?

24 A. And the town had prepared a background
25 study as a part of the master plan

1 re-examination dated 1982. I'll rely on that.
2 And the county to wait plan.

3 Q. And those are the only documents
4 that you'll rely upon during the testimony in
5 this matter? The only documents that you'll use?

6 A. Well, I've looked at a number of documents
7 in preparing my analysis ranging from state
8 census data, the county's transportation mapping,
9 just a whole range of things. I don't have them
10 all here.

11 Q. Do you have other exhibits?

12 A. I went to the county and went to the state
13 and got a lot of information.

14 Q. Do you have other exhibits that you
15 prepared for the purposes of this trial?

16 A. No. I haven't done an extensive preparation
17 yet.

18 Q. Now, during the course of your
19 report, and I can't exactly tell you where, you
20 indicate that if the Orgo tracts were approved it
21 would relieve the pressures on Colts Neck for
22 developments of this type. Do you recall words
23 to that effect in your report?

24 A. I said it will build development to
25 accommodate Mount Laurel II households. That's

1 on page 11 of my report.

2 Q. Let me ask you this way. If the
3 Orgo tract were approved, you would concede that
4 that would create more pressures on Colts Neck
5 for development, would you not?

6 A. No. I don't think so.

7 Q. Well, do you recall that portion of
8 the Mount Laurel case that says if a large
9 subdivision were approved a municipality might
10 lose its designation as limited growth?

11 A. I think that would be one thing if the town
12 went out on its own and did that, but if it's
13 involved in some litigation and there were either
14 a settlement or a court order for the town to
15 zone for that, I think that would be a far
16 different case.

17 MR. FRIZELL: I think you're
18 mixing something up again just for purposes of
19 the form of the question, Bob. The decision
20 talks about that as a possible indicator of a
21 change in municipal policy. That's a different
22 thing from saying it's an inevitable indicator of
23 future developments within the municipality. That
24 is the approval of a subdivision or by court
25 order is inevitable indicator, indicator of

1 inevitable future development I just think
2 they're two different things.

3 MR. O'HAGAN: Okay.

4 Q. Now, Mr. Hintz, you told us in your
5 report as to how many people you project as
6 living in the Orgo Brunelli tract. How many was
7 that again?

8 A. It was around 27 to 29 hundred. I believe
9 we put down the project size as thirteen hundred
10 and fifty-three units.

11 (Whereupon there was a
12 telephone interruption).

13 THE WITNESS: We had a typo in
14 our report and we therefore calculated everything
15 according to thirteen hundred and fifty-three
16 units, but the maximum number it should have been
17 one thousand two hundred and fifty-three using a
18 factor of 2.2 persons per unit. It would
19 generate around 27 hundred people. That's the
20 maximum that it would yield and I've also seen in
21 the report that it would generate a little over a
22 thousand units which would be about 24 hundred
23 people, so 24 hundred to 27 hundred is the range.

24 Q. Mr. Rahenkamp indicated that that
25 development should be staged over five years. Do

1 you agree with that?

2 A. It's not my place to say how it would be
3 staged.

4 Q. So we could really assume that if
5 that were the case and the units were sold and
6 occupied there would be that many more additional
7 people in Colts Neck?

8 A. Yes.

9 Q. Are you aware of the fact that
10 throughout the history up until 1960 there was
11 only 21 hundred people in the whole town?

12 MR. FRIZELL: To 1960?

13 MR. O'HAGAN: Yes.

14 A. In my report I reported on that number.
15 Yes. Between in 1960 it was 2,177.

16 Q. So now, are you assuming that there
17 would be no growth throughout the balance of the
18 town during this five year period?

19 A. I would assume that there would be that if
20 the town had a court order to provide for a
21 planned development of this kind to handle about
22 a thousand or so units that it could pretty much
23 shut down any other major development in the
24 township or for a number of years. At least six
25 years during the period proposed.

1 Q. So in other words, you're saying
2 that if Orgo were satisfied the town would not
3 have any further obligation?

4 A. I would think that they would have very
5 little or no obligation for providing for any
6 Mount Laurel households and I think also they
7 could get at what I think would be a more
8 effective overall limited growth policy of down
9 zoning even further or other areas of the
10 township where they have what I think is not a
11 preservation policy or a limited growth policy.

12 Q. So then you feel that the Court if
13 it approved the Orgo tract would relieve the
14 pressure on the municipality in so far as other
15 units are concerned?

16 A. Yes. You're bound to have some minor
17 subdivisions here and there, but it's nothing to
18 be like what the town would have if they stayed
19 with their present zoning.

20 Q. How long would that be that the town
21 would be released from pressure?

22 A. How long?

23 Q. Yeah.

24 A. I don't know. If I just look at the past
25 two decades of population growth with single

1 family --

2 MR. FRIZELL: Excuse me. I
3 think you're asking for the period of repose.
4 The decision is six years.

5 Q. So you feel that if the Orgo tracts
6 were approved the town would have a period of
7 repose as Mr. Frizell described for a six year I
8 mean?

9 A. I think I indicated that before, yes.

10 Q. And you're suggesting how many low
11 and moderate income housing units in the Orgo
12 tracts?

13 A. I didn't come up with a number, but it
14 would be 20 percent of whatever number is the
15 final number on the development. If we're
16 talking about twelve hundred and fifty-three
17 units as units as a maximum --

18 MR. LOCASCIO: Two hundred and
19 fifty point six.

20 MR. FRIZELL: Just to clarify,
21 I don't think he said the period of repose and
22 the builder's remedy on the Orgo tract doesn't
23 mean that there would not also be some
24 modifications in the ordinance also where --

25 MR. O'HAGAN: Dave, it's not

1 really appropriate for you to testify in this.

2 MR. FRIZELL: I'm not.

3 MR. O'HAGAN: It sounds like
4 you are to me.

5 MR. FRIZELL: Again, the
6 record is just getting on confused on that point.

7 MR. O'HAGAN: I asked him and
8 that's what he said and you're counseling him now.

9 MR. FRIZELL: I don't mean to.

10 MR. O'HAGAN: It sounds like
11 you testified to me.

12 MR. FRIZELL: I didn't. This
13 is why I said it, Bob, because I think that
14 you're heading towards something where you were
15 misunderstanding.

16 MR. O'HAGAN: Well, I
17 understood him.

18 MR. FRIZELL: Okay.

19 Q. Now, Mr. Hintz, let's get to the
20 fair share numbers because I think that's the
21 meat of what we're doing here. You have
22 calculated a fair share number for Colts Neck and
23 I recall the number that you got was sixteen
24 hundred and ninety-eight units, is that correct?

25 A. Let me find that. That was to the year 2000

1 and --

2

MR. FRIZELL: Page 48.

3

A. I have it also in my technical appendix
4 which is the revised 12th, February 12th report.

5

6

Q. We haven't gotten that report by the
way. Could you make sure we get it?

7

8

A. I'll be glad to. I did give copies to be
sent to the judge and so on.

9

10

MR. FRIZELL: I thought I had
given that to you Friday.

11

Q. What is the number then?

12

13

14

15

16

17

18

A. I said this represents the year 2000 result.
If we projected to 1990 Colts Neck as an
allocation of nine hundred and sixty, eight
hundred and sixty-one prospective demands to 1990,
ninety-nine current or existing demand and then
the total then to the year 2000 is one thousand
six hundred and ninety-nine.

19

20

Q. So you're saying ninety-nine
currently. Let's just go off the record.

21

22

(Whereupon a discussion was
held off the record).

23

24

Q. Mr. Hintz, did you also make a fair
share analysis for East Brunswick?

25

A. Yes. I did.

1 Q. And tell us what number you came to
2 there?

3 A. It was around 14 hundred.

4 Q. Now, did you make a fair share
5 analysis for Manalapan Township?

6 A. Yes. I did.

7 Q. And what was that number?

8 A. I don't have that with me, but I think it
9 was around 23 hundred to 24 hundred.

10 Q. Would that be reflected in your
11 report?

12 A. Not in my report to Colts Neck, on Colts
13 Neck.

14 Q. I appreciate that. In your report
15 to Manalapan?

16 A. My report to Manalapan, yes.

17 Q. Wasn't that figure for Manalapan
18 revised from time to time?

19 A. I presented a range, I believe, using two
20 categories of vacant land, two terms for vacant
21 land in the formula, but the one we finally
22 selected a five term methodology.

23 Q. So a range, what was the number?

24 A. I think it was 23 hundred. I don't
25 remember.

1 Q. And what was the low side of the
2 range?

3 A. I don't have that with me.

4 Q. Could it be as low as 15 hundred?

5 MR. FRIZELL: I just realized
6 we're talking about Manalapan?

7 MR. O'HAGAN: Manalapan, yes.

8 Q. Could your range be as low as 15
9 hundred?

10 A. I don't recall because it may have been 15
11 hundred for the 1990 number prospective need to
12 1990 and then it may have been 23 or 24 hundred
13 to the year 2000, but I don't have --

14 Q. You don't remember?

15 A. I don't have the numbers here. I've worked
16 on something like 12 fair shares so you know I
17 got a lot of numbers.

18 Q. Let's speak to the acres in the
19 growth area. In Colts Neck Mr. Quill has
20 estimated it's two hundred and sixty-two. You
21 have no reason to disagree with that, do you?

22 A. I think it was two sixty, but --

23 Q. Two sixty now in East Brunswick.

24 How many acres are in the growth area?

25 A. Residential acres in the growth area?

1 Q. Any acres in the growth area.

2 A. I think the number was around 11 hundred,
3 but I'm not sure.

4 Q. So somewhere around four and a half
5 times as much as Colts Neck?

6 A. Yes.

7 Q. And now in Manalapan, how many acres
8 are in the growth area?

9 A. I don't recall.

10 Q. Would it be fair to say it was many,
11 many times the Colts Neck figures?

12 MR. FRIZELL: It's got to be.

13 A. I think I have that number with me if you
14 want it.

15 MR. LOCASCIO: While he's
16 getting that I think we should find out the
17 numbers that you gave for East Brunswick an
18 Manalapan as the fair share numbers. Are they
19 also to the year 2000?

20 MR. O'HAGAN: That's a good
21 point.

22 THE WITNESS: I indicated to
23 Mr. O'Hagan that I couldn't recall the exact
24 number for Manalapan. I think that it may have
25 been 15 hundred to the year 1990 and around 24

1 hundred to the year 2000, but I can't swear by
2 that because I don't have that report with me

3 MR. LOCASCIO: And the East
4 Brunswick number of about 14 hundred fair share
5 units, is that to the year 2000 also?

6 THE WITNESS: That was to the
7 year 2000, but that town is nearly developed so I
8 wanted to project it all the way out. I didn't
9 break it down for 1990. Okay. The growth area
10 you wanted for Manalapan?

11 Q. Yes.

12 A. Acres in the growth area were one thousand.

13 MR. FRIZELL: Eleven thousand.

14 THE WITNESS: Eleven thousand
15 five hundred and ninety, ninety-one say.

16 Q. And I think you said that in East
17 Brunswick the acres in the growth area were 14.
18 Would you have that information, too?

19 A. No. I'm sorry. In fact, I was supposed to
20 call somebody today. They were calculating what
21 was in the growth area. I read your question
22 wrong before. What I thought you were referring
23 to was the vacant developable land for East
24 Brunswick. I'm waiting for the number today on
25 what the urban league towns have in terms of

1 growth area percentages and acres.

2 Q. In terms of the SDGP map, wouldn't
3 it be a fair characterization to say that as much
4 as two thirds of East Brunswick is within the
5 growth area?

6 A. It's about that, yes.

7 Q. And how many square miles is East
8 Brunswick?

9 A. Depending on which way we calculate it, 21
10 to 23.

11 Q. So there's a considerable amount of
12 land in the growth area?

13 A. Yes.

14 Q. Now, as I understand your formula in
15 your report one of the factors was vacant
16 developable land, was that right?

17 A. Correct.

18 Q. And did you limit that calculation
19 to the vacant developable land in the growth area?

20 A. No. I did not.

21 Q. Can you tell us why you didn't?

22 A. Because I thought that was a policy
23 question that the Court had to address that none
24 of us planners had any direction on that, for
25 example, no matter what town I've done a fair

1 share for if it had portion of it in the growth
2 area we included the vacant developable land
3 according to the housing allocation report. The
4 only towns that we deducted, and we deducted them
5 at the end of our methodology, were those towns
6 that were totally in a conservation designation
7 or totally in a limited growth or totally in an
8 agricultural designation, but if you had any
9 portion of growth we included.

10 Q. So as I understand it, if the growth
11 area penetrated the town at all the entire town
12 was utilized in your calculations?

13 A. For vacant developable land, yes.

14 Q. Just for the moment now assume that
15 you had a town of a hundred square miles.

16 A. Uh huh.

17 Q. And assume that only two acres were
18 included and designated as growth.

19 A. Uh huh.

20 Q. Would you use the same methodology?

21 A. I would have to for the moment.

22 Q. So you feel that you can't be a
23 little bit pregnant?

24 A. Well, there are policy decisions that have
25 to be made. I felt when I was preparing my fair

1 share methodology that ultimately had to be
2 reviewed by the Court in this and felt that, you
3 know, I would submit them as I understood them at
4 this point in time because otherwise it's just a
5 monumental task to calculate out what's vacant
6 developable, what's vacant developable in the
7 growth areas and so on. The numbers we'll be here
8 for another year doing fair share.

9 Q. You derived a number using land
10 throughout the town as vacant developable.
11 You're not saying that the number that was
12 derived, or are you saying that the number that
13 was derived would be scaled down to fit the size
14 of the growth area?

15 A. I don't know that I would say that it
16 should be or that it shouldn't be. I would rely
17 upon some further review of that by the Court and
18 some direction from the Court in that regard.

19 Q. Well, so you're not in a position
20 then, for instance, in your numbers you talk
21 about sixteen hundred and ninety-eight in Colts
22 Neck. Are you saying that all of those should
23 fit within the growth area?

24 A. No. I did what's known -- I broke it down
25 to existing prospective to 1990 and then to the

1 year 2000 so that I'm saying that over time those
2 units would be phased in. In the township.

3 Q. Throughout the township?

4 A. Well, I don't know where, but that would be
5 up to the township.

6 Q. Wouldn't, if you utilized that
7 formula, wouldn't it have the effect of
8 encroaching further and further onto the limited
9 growth areas of the township?

10 A. Not necessarily, no. Depends on what
11 policy and planning occurs at the township level
12 to dictate where the development should occur.

13 Q. How many people, how many units
14 could fit in the growth area of two hundred and
15 sixty acres?

16 A. How many units could fit there?

17 MR. LOCASCIO: How many low
18 and moderate income units?

19 Q. Let's speak of low and moderate
20 first.

21 A. I don't know the site at all.

22 Q. Let's just assume that it's two
23 hundred and sixty and for the moment we'll just
24 assume there's no environmental constraints, that
25 all two hundred sixty acres could be used.

1 MR. FRIZELL: What density do
2 you want to develop at?

3 MR. O'HAGAN: That's what I'm
4 asking him.

5 Q. How many could fit on that?

6 A. It could be 20 units to the acre. It could
7 be six units to the acre. We have areas in East
8 Brunswick designated at 30 units per acre.

9 Q. Are you saying that's the type of
10 density that we should have in Colts Neck?

11 A. I'm not. You're giving me some, a
12 hypothetical. It's hard for me.

13 Q. Assume there are sixteen hundred and
14 ninety-eight units and as I understood the Court
15 they're to represent 20 percent of the
16 development with the understanding that the other
17 units subsidize those low and moderate income
18 units. Is that your understanding?

19 MR. FRIZELL: Let me just
20 object. I wouldn't characterize the decision.
21 It just says the fair share number of units if
22 the township builds them. You don't have any
23 builders remedies and no 20 percent set aside so
24 conceivably a developer could come in and develop
25 50 percent low income units so it's not

1 necessarily true that you have eight thousand,
2 only 20 percent low income housing.

3 Q. Mr. Hintz, as a rule of thumb aren't
4 you considering that 20 percent of the units
5 would be low and moderate income?

6 A. Of any project, yes.

7 Q. And aren't you assuming that if low
8 and moderate income units were built throughout
9 the township the same percentage would hold true?

10 A. It would have to be at an appropriate
11 density in order to achieve those units.

12 Q. If we were to assume that that 20
13 percent held true and you multiplied the sixteen
14 hundred and ninety-eight by five you would -- the
15 results you'd get would be the total number of
16 units that would be necessary to accommodate the
17 low and moderate income units and those that
18 subsidize them? Isn't that correct?

19 A. First of all, the 1698 is to the year 2000.

20 Q. I appreciate that.

21 A. It's 16 year allocation. It's not
22 necessarily what the Court is -- my understanding
23 of what the Court is looking for is only for the
24 next six years only to the year 1990.

25 Q. Let's use your figures because you

1 espoused them in your report of sixteen hundred
2 and ninety-eight units. If you were to use the
3 20 percent factor that apparently you espouse it
4 would be fair to say then to determine the total
5 number of units that would be built in the town
6 to accomodate this low and moderate income you'd
7 multiply it by five, wouldn't you?

8 A. That's assuming that you're going to give a
9 gross density of five units per acre and have 20
10 percent of them be low - moderate. Again I think
11 it may prove from what my experience has been
12 it's going to take a higher gross density in
13 order to achieve even the 20 percent.

14 Q. So in other words, rather than
15 mulitplying it by five you might multiply by six
16 or seven?

17 A. Maybe even by higher numbers, by 12. It
18 would depend upon the circumstances of the
19 municipality upon the land costs and so on.

20 Q. Let's just for the moment leave your
21 worst fears aside and assume that you had to
22 multiply the sixteen hundred and ninety-eight by
23 five. That would give you the total number of
24 low and moderate income units and the total
25 number of units that would subsidize those

1 dwellings, right?

2 A. The eight thousand four hundred and ninety
3 units.

4 Q. And let's assume for the moment that
5 the balance of the town would remain static with
6 no additional units constructed.

7 A. Uh huh.

8 Q. Now, do you know how many units are
9 presently in Colts Neck.

10 MR. FRIZELL: Can I object?
11 I think again we're getting out of the realm of
12 reality here because you're translating what is a
13 hypothetical fair share that if you, for instance,
14 if you looked at the Rutgers study and you said
15 there were three hundred thousand needed low
16 income units you'd have to build a million and a
17 half, just to use the same analogy, a million and
18 a half residential units in New Jersey by the
19 year 2000. Everybody knows that that's a physical
20 impossibility, has never happened in history and
21 certainly will never happen. Nothing like that
22 magnitude will happen so what you're doing is
23 taking hypothetical fair share allocations and
24 relating them into market and housing conditions
25 as if they were really going to happen. They're

1 apples and oranges.

2 One is a hypothetical fair share
3 calculation that takes whatever that number is
4 and distributes it fairly throughout the region
5 and the other is what you're postulating is that
6 that fair share is going to be built. What you
7 have to also postulate is the whole region is
8 going to be built at the same rate. I don't want
9 to foreclose Carl's comments about this and he
10 can make his own comments, but it's a virtual
11 impossibility. You'd have to have people moving
12 here from China to get that kind of housing
13 demand for that whole million and a half units in
14 16 years.

15 Q. Do you espouse the view, Mr. Hintz,
16 that the sixteen hundred and ninety-eight low and
17 moderate income units that you identified will
18 never be built?

19 A. That's probably true. Either that or some
20 of it may occur through filtering and aside from
21 all that the numbers may be changed, you know, as
22 we get into the 1990 and beyond.

23 Q. So the numbers may be revised
24 downward?

25 A. They may be.

1 Q. Let's just go for the moment along
2 with my hypothetical. Assume that there's, I
3 think you indicated eight thousand four hundred
4 and ninety dwelling units using the multiplier of
5 five and add to that the 22 hundred existing
6 units. Don't we have come to a total of ten
7 thousand six hundred and ninety dwelling units
8 within Colts Neck?

9 A. That's projecting it is to the year 2000
10 and just making your particular assumptions about
11 it, yes.

12 Q. We understand that if you use the
13 multiplier of five you get a number of eight
14 thousand four hundred and ninety dwelling units?

15 A. Right.

16 Q. We understand further that there's
17 2,200 and -- 2,200 dwelling units presently in
18 Colts Neck?

19 A. Correct.

20 Q. I'm asking you to assume that the
21 balance of the town remains static as far as free
22 standing developments. Adding those two numbers
23 together we get ten thousand six hundred and
24 ninety, isn't that correct?

25 A. That's correct.

1 Q. Would you characterize that as a
2 drastic change in Colts Neck?

3 MR. FRIZELL: I'm going to
4 object. The question assumes that, in fact,
5 eight thousand dwelling units are going to be
6 built, would be built and I don't think he ever
7 testified that he recommended eight thousand four
8 hundred new dwelling units. As I said whatever
9 the fair share is if the town built the units
10 you'd only get that many units, so you're saying --
11 and if your question is if we assume that eight
12 thousand four hundred dwelling units are built in
13 Colts Neck, would that be a substantial impact on
14 the town you can ask him that question, but I
15 don't think that the answer is relevant because
16 it has no relationship to the issues in the case.

17 Q. Can you answer the question Mr.
18 Hintz?

19 A. Well, that's assuming that these numbers
20 are correct and that they go to the year 2000 and
21 that in the year 2000, yes. In the year 2000
22 there would be the potential for 10 thousand
23 whatever your number is without any filtering
24 down and assuming that this was all, you know,
25 that all these units would be built through new

1 housing construction and --

2 Q. Would you characterize that as a
3 drastic change in Colts Neck?

4 A. Not necessarily. If it's being done over a
5 20 year period.

6 Q. Would you feel that if those units
7 were built Colts Neck would lose its limited
8 growth designation?

9 A. It may or may not. It depends on what it
10 does in terms of the obligation of the Mount
11 Laurel II decision. It's going to be determined
12 by the policy decision it makes in the master
13 plan it comes up with to meet that hypothetical
14 need if that's the hypothetical number and so on.

15 Q. Now, let's take -- so you're saying
16 they may not lose their limited growth
17 designation. Let's assume that we take the number
18 of units that we've identified?

19 A. I don't think I've finished.

20 Q. I'm sorry. Go ahead.

21 A. I was going to use an analogy in some other
22 towns I'm involved working in where they have
23 partially limited growth and partially growth
24 limited designations. I don't think that that's
25 going to change those limited growth or

1 nongrowth characteristics if they do it in
2 accordance with some court's decision.

3 Q. You don't feel that would change the
4 characterization regardless of the number of
5 units?

6 A. If they're following the court decision, no.

7 Q. Now, assume that there's presently
8 seven thousand eight hundred and eighty people in
9 Colts Neck and assume that this new housing that
10 we described is populated in the fashion that you
11 described it, 2.2 persons per household, may be
12 low, but assume that, and assume that you arrive
13 at a figure of 24 thousand and some other people
14 in Colts Neck, would Colts Neck then be
15 characterized as a high density area?

16 A. It depends. I mean it depends on where you
17 put it. It depends upon how many years it would
18 be phased in. It would depend on where the
19 location is.

20 Q. Would that number of people have the
21 potential to change Colts Neck from a limited
22 growth designation to a growth designation?

23 A. I think that there's a lot of room for
24 change in limited growth and growth that are not
25 necessarily determined by just population alone

1 and that may or may not do it. I don't know.

2 Q. Well, in terms of a change from
3 growth to limited growth, we'd have to
4 acknowledge that if this many people were located
5 in Colts Neck there would have to be
6 infrastructure such as sewer and water facilities,
7 would there not?

8 A. There would have to be some infrastructure
9 for the developments of any higher density
10 developments, yes.

11 Q. Wouldn't we concede if there is
12 infrastructure in place, if there is a high
13 number of dwelling units per square mile and a
14 high number of persons population per square mile
15 that those are factors that go into a description
16 of one area as a growth area?

17 MR. FRIZELL: Could I object?
18 I don't really know what the point is here
19 because you're not -- these questions don't lead
20 to any relevant issue in the case. First of all,
21 the growth area and limited growth area
22 designations were made several years ago and from
23 everything that anybody's able to determine
24 they're never going to be remade. That
25 document's out and it's done and whether or not

1 the same criteria in a similar planning document
2 would be used in the future is purely
3 hypothetical and totally irrelevant to the issues.

4 MR. O'HAGAN: Except though
5 the Supreme Courts indicated if an area changed
6 and had higher density housing it ran the risk of
7 losing its limited growth designation.

8 MR. FRIZELL: No, it didn't
9 have the risk of losing its limited growth
10 designation. It doesn't say that. The decision
11 says if a town affirmatively attracts growth and
12 industrial, commercial developments especially
13 and/or high cost residential developments by
14 approving major subdivisions all over the place
15 that that would indicate that it does not have
16 any legitimate reason to exclude low - moderate
17 income families and therefore the courts would
18 treat it differently. It doesn't say the growth
19 area designation would change because it can't
20 change and that's why this whole line of
21 questioning to whether or not it would maintain
22 or lose its growth area designation is simply not
23 an issue.

24 THE WITNESS: If, for example,
25 the way I understand the decision on that regard,

1 if any town that had limited growth were to
2 approve several large subdivisions, single family
3 detached subdivisions, a couple hundred units
4 here or there according to my reading with the
5 decision and discussion with various attorneys is
6 that that may change their classification in and
7 of itself regardless of all these numbers we're
8 throwing around.

9 Q. So you're saying the numbers and
10 density of housing units per acre and the density
11 of persons per acre would have no impact upon
12 whether the municipality could continue to be
13 designated as limited growth?

14 MR. FRIZELL: Let me just
15 object. I now understand your direction of your
16 question. You're asking him to draw a conclusion
17 as to how some court would treat the township
18 after the trial court had done a builders remedy
19 or a row zoning under Mount Laurel II whether
20 some future court would not take that into
21 account, the developments into account that
22 resulted from that and then further allocate
23 further to the town, you know, additional numbers
24 or change its designation in the future because
25 of what happened in the initial trial court. I

1 don't know how Carl Hintz can answer those
2 questions.

3 MR. O'HAGAN: I'm asking him
4 as a logical result from the numbers that he's
5 generated, wouldn't the town lose its designation
6 as limited growth going through the population
7 arithmetic that we did and the housing number
8 arithmetic that we did.

9 MR. FRIZELL: What do you mean
10 lose its designation, to some court?

11 MR. O'HAGAN: A court or a
12 planning document.

13 MR. FRIZELL: What planning
14 document or what criteria are they going to use?

15 MR. O'HAGAN: I don't know.
16 You know you're -- I think you're belaboring the
17 record. Are you directing him not to answer the
18 question?

19 MR. FRIZELL: I don't think
20 he can answer it. I don't see how anyone can
21 answer that question. I don't see how anyone
22 could possibly understand what the question means.

23 Q. Can you answer the question?

24 A. I think it's very hypothetical and until --
25 you know, I find it hard to respond directly to

1 it.

2 Q. Well, let's get back to your formula.
3 As I understood it, you spoke -- one aspect in
4 the formula was vacant developable land and you
5 said you took the land throughout the town, is
6 that correct?

7 A. I took the vacant developable land from the
8 housing allocation report.

9 Q. Now, did you make any attempt to
10 verify that yourself?

11 A. No. Cause we had to treat all the
12 municipalities in the region the same and we just
13 took the vacant.

14 Q. Well, if the housing allocation
15 report were in error, therefore your figures
16 would be in error, isn't that correct?

17 A. That may be true, but I took the same
18 vacant developable land and I used that same
19 category for any of my clients whether it's a
20 town or whether it's for a developer because I
21 got to use one data base that's current and I
22 cannot check, you know, every last acre of land
23 to determine whether or not it's valid because if
24 I did that, if I did that for Colts Neck I'd have
25 to also go do it for every other town in Monmouth

1 County, every other town in Ocean County, every
2 town in my region in order to determine whether
3 or not that number was valid.

4 I have to make the base assumption that the
5 vacant developable was accurate, as accurate as
6 it's going to get in terms of my plugging in a
7 formula in terms of a five term equation. If
8 it's off by a couple of acres or even 10 or 20
9 acres or a hundred acres it's not going to make
10 that much difference in terms of total numbers.

11 Q. Assume, Mr. Hintz, that rather than
12 it being 55 hundred acres it's a thousand acres
13 so you were in error by five times. Wouldn't
14 that make a big difference in the number that you
15 finally derived?

16 A. I would respond this way, and that is that
17 I used the same methodology that I did for East
18 Brunswick Township and I used the housing
19 allocation report numbers for East Brunswick
20 Township. I'm representing East Brunswick.

21 Q. Mr. Hintz, I'm not interested in
22 what you did also where. I'm just asking you
23 this simple question?

24 A. I'm trying to respond.

25 Q. If, in fact, there were not 55

1 hundred vacant developable acres, but instead
2 there were a thousand developable acres, wouldn't
3 that have a substantial impact in your
4 calculation?

5 A. I would adjust it or take it off at the end.

6 Q. How would you do that?

7 A. By readjusting the calculation.

8 Q. By doing what?

9 A. By putting in a new number or taking the
10 total allocation and redistributing it at the end
11 with other towns.

12 Q. Now, in Colts Neck, by the way, you
13 didn't use just the 55 hundred acres that the
14 housing allocation reports identified, you used
15 fourteen thousand four hundred acres, did you not?

16 A. Right. We added in what we call an adjusted
17 vacant developable land category which included
18 farm land.

19 Q. What was the extent of the farm land
20 that you added in?

21 A. It came out of the state taxation report
22 for farm land.

23 Q. Now, you're not, as I understand it,
24 you did no independent verification. If I were
25 to advise you that the number of vacant

1 developable lands was actually a thousand, would
2 you then go back and readjust your formula and
3 come to a lesser number?

4 A. But I'd have to be, I think to be fair I'd
5 have to adjust it for all the towns.

6 Q. Now, what other factors were
7 involved in your equation?

8 A. Value per capita.

9 Q. Let's speak about that value per
10 capita. Are you saying then that the rich towns
11 can afford more low and moderate income housing
12 units than the poor towns?

13 A. I wouldn't characterize it that way except
14 to say that it's an indicator of the ability to
15 pay for the provision of low and moderate income
16 housing. When you evaluate it in terms of a fair
17 share methodology in terms of the region what it
18 shows is that those municipalities with a higher
19 value per capita are typically a suburban
20 municipality with the infrastructure and the
21 capital facilities and the capital wherewithal to
22 provide the capacity for additional growth,
23 whereas the towns that come very low on the value
24 per capita model are towns that are very poor and
25 are typically the older urban areas of the state.

1 Q. Now Mr. Hintz, does it make any
2 difference as to what the rateable is that goes
3 to make up the capital structure of the town?

4 A. Now, it's based upon an equalization for
5 the whole.

6 Q. My question is, does it make any
7 difference as to whether the rateable that goes
8 to make up the value that you've utilized is
9 commercial, industrial or residential rateable?

10 A. No.

11 Q. So just assume that there is a very
12 wealthy town in terms of its assessed evaluation
13 and assume further that there are no jobs
14 available in the town, would you place the same
15 weight on that factor in the equation that you
16 would if there were an equal division between
17 commercial rateables and residential rateables?

18 A. Let me say this. I would give it the same
19 weight if the one of several factors are in an
20 equation. I would not use it by itself.

21 Q. Doesn't each aspect of this formula
22 have to stand on its own?

23 A. No.

24 Q. It doesn't. Now, just assume that
25 the --

1 A. They shouldn't.

2 Q. Pardon me?

3 A. They should not.

4 Q. Just assume that the town was low in
5 commercial and industrial rateables. How would
6 that be factored?

7 A. It would -- well, they would be factored in
8 two ways. There are two other parts of the
9 equation. The amounts of jobs and the amount of
10 jobs as a percent of the region.

11 Q. Let's leave the jobs alone.

12 MR. FRIZELL: Let's him
13 finish.

14 A. That is very important if you're getting at
15 whether or not there is jobs and whether that's
16 fair. The whole idea is a fair share methodology
17 you're trying for, put as many terms into the
18 equation to make it "fair". If there are not a
19 lot of jobs in a given municipality say, Colts
20 Neck and their total jobs as percent of the
21 region is very low that's going to bring them
22 down in terms the equation. If you've got
23 percent of change of job as a percent of the
24 region and they're very low in that category,
25 without looking at the numbers they probably are,

1 those things all tend to push down the equation
2 and bring them more in line with the total region
3 and make it fair methodology.

4 If we were just to use those two things
5 alone it wouldn't -- it would push all the
6 developments perhaps back to the inner cities and
7 that's not necessarily the way fair share is
8 designed to work.

9 Q. So what you're saying is there's two
10 categories. The type of rateable would be
11 reflected in the number of jobs in the town and
12 the residential rateables in the hypothetical
13 that I mentioned would be in the economic
14 capacity aspects of the formula?

15 A. Correct.

16 Q. Now, so let's assume that the jobs
17 were low, but the assessed evaluations in terms
18 of residential units were high. Would that be a
19 factor that would lead to a low fair share number
20 for a given municipality?

21 A. Well, if you weighed, if you add in all the
22 other numbers, I don't know, it depends. It's
23 going to depend upon all the five parts of the
24 equation I used. We use the vacant developable
25 land. We use the jobs. We use the percent

1 change in jobs. We use the value per capita and
2 we use the income of the households and whether
3 or not they produced, if the town has produced
4 any publicly assisted housing then that would
5 drop off and would lower their number there. If
6 there were a high number of households, well,
7 that fits into the equation.

8 MR. FRIZELL: Just to clarify
9 the question, generally if you had high
10 residential values that would tend to pick up the
11 fair share number versus reduce it?

12 THE WITNESS: Generally, yes.

13 MR. FRIZELL: Given the same
14 population?

15 THE WITNESS: Given all the
16 factors being equal, yes.

17 Q. Why are jobs important in the
18 formula?

19 A. Jobs are where there's a need for housing
20 generally.

21 Q. So there's a need, so I gather that
22 what the Court is saying is that a municipality
23 can't have it both ways. If they zone for jobs
24 they have to provide the housing?

25 A. That's correct.

1 Q. Now, in using that formula, does it
2 make any difference whether the jobs are full or
3 part time?

4 A. Well, with the number that most people are
5 using is covered employment which is, I believe
6 that those are full time but I'm --

7 Q. They're what?

8 A. I'm not sure, but it's covered employment.

9 Q. So then you feel that's full time
10 jobs?

11 A. I don't know, but it's a base. It's the
12 only common base we can find.

13 Q. If the jobs were seasonal, would
14 that make any difference?

15 A. I guess, but we're looking at a data base
16 that's existent for the whole state and covered
17 jobs is the best one, but the definition of
18 covered jobs is, I don't have it with me, except
19 I know people paid into unemployment insurance
20 for the state

21 Q. And it's because of those covered
22 jobs that you didn't use Earle in your formula?

23 A. I don't believe Earle numbers were in there.
24 If we used Earle numbers in there it would bring
25 the number up, bring the fair share up.

1 Q. Do you know whether the Earle
2 employees are reflected in the labor and industry
3 numbers as to covered employees?

4 A. I don't believe they are.

5 Q. But you don't know?

6 A. I'm almost positive they're not.

7 Q. In your reports you referred to
8 Earle. You don't know exactly how many employees
9 of Earle actually work in Colts Neck, do you?

10 A. We did -- I did talk to one of the county
11 planners at Monmouth County and he did some
12 checking with the public information officer at
13 Earle. His number which he reported to both Mr.
14 Clark, County Planning Director and myself was
15 that civilian employees in Earle, and I don't
16 have that with me, but civilian employees in
17 Earle working in Earle in Colts Neck were
18 approximately seven hundred.

19 Q. In was not a published figure, I
20 gather?

21 A. No. This was information that we received
22 over the telephone. That he received over the
23 telephone.

24 Q. And you didn't speak directly to the
25 gentleman?

1 A. No. I spoke to the county planner and I
2 had no reason to doubt him because he was sharing
3 the same information with the county planning
4 director.

5 Q. And you don't have any independent
6 knowledge of your own on that?

7 A. No. I don't.

8 Q. As a matter of fact, not counting
9 the employees goes along with your explanation
10 before as to why jobs were important, doesn't it?

11 A. Right.

12 Q. Because the town didn't zone for
13 Earle not receiving any tax benefit as a result
14 of Earle?

15 A. Not that I'm aware of.

16 Q. Now, you talked about the increase
17 in jobs and in your report you described an
18 increase in the number of Colts Neck jobs. How
19 did you figure that percentage out?

20 A. Well, it's the number of jobs there were in
21 1972. The number of covered employment jobs
22 there were in 1981 subtracting the two dividing
23 by the 1972 to get the increase and then we took
24 those numbers as of the numbers in the region to
25 get a percentage in the region.

1 Q. That's not really a percentage in
2 the region, is it? That's a percentage increase
3 in the particular town?

4 A. We didn't use the percentage increase in
5 the town. We used the percentage increase in the
6 town in relationship to the percentage increase
7 in the county or in the region.

8 Q. So you mean --

9 A. It's explained in here.

10 Q. I didn't understand your
11 calculations on that one.

12 A. I did provide an explanation in here and I
13 want to just refer to that. Colts Neck had five
14 hundred and thirty-two jobs in 1972 and seven
15 hundred and forty-three in 1981 or 39.7 percent
16 increase. That's just Colts Neck.

17 Q. That's just Colts Neck, right?

18 A. Then this increase represents .38 percent
19 of the regional job growth which parallels the
20 municipalities .39 percent of the total regional
21 employment. So in other words, we then examined
22 it in relationship to the total percent change.

23 Q. Why is that factor important?

24 A. Because it shows, it's very important for
25 separating out those towns that have, that are

1 growing and adding more jobs and getting at the
2 Mount Laurel II decision than those
3 municipalities which are remaining stagnant but
4 may have a lot of jobs. The jobs itself doesn't
5 explain a lot.

6 For example, Asbury Park may have a
7 thousand jobs, but they may -- their increase in
8 jobs over the '72 to '81 period may have been a
9 decrease. Asbury Park is not where the Mount
10 Laurel II decision is directed to.

11 Another example I think is Paterson and
12 Wayne. Wayne and Paterson have almost identical
13 numbers of total jobs and I forget what they are,
14 70 thousand or something like that, but if you
15 add in the percentage change in jobs you find
16 that Wayne had a big increase in the percent
17 change of jobs per the region whereas Paterson
18 held steady or went slightly down. By adding in
19 that second factor of job growth do you then
20 begin to assign the methodology to a fair share
21 to those municipalities where it's supposed to go
22 per the decision.

23 Q. Just assume, as I understand your
24 answer you're saying that if it's likely the
25 number of jobs would decrease in the future the

1 town should not be, should not have a higher fair
2 share number, is that correct?

3 A. Well, then their number would go down,
4 right.

5 Q. This is pretty much of a forecaster
6 of the future, is it not?

7 A. It's a way of forecasting although it's not
8 a good one because it doesn't, it really doesn't
9 represent a lot of what's happened in terms of
10 the economy, what's in terms of regional growth
11 in the states. All it does is look at a trend of
12 what has happened over the last decade.

13 Q. Assume that it was a one shot deal
14 for the town. Would you place less reliance upon
15 that aspect of the formula?

16 A. I'm not sure what you mean.

17 Q. The percentage increase in the
18 number of jobs.

19 A. Well, again, in order to do the fair share
20 methodology we have to evaluate everybody equally
21 from the same data base. The data base we have
22 is covered employment. We have to look at
23 covered employment in 1972. We have to look at
24 it in '81. If it varies one year over the next,
25 goes up, goes down, goes up, goes down, we're

1 looking at the overall trend line for everybody
2 in the region treating equally.

3 Q. Would it, if it were a one shot
4 increase, wouldn't that lead you to an erroneous
5 conclusion?

6 A. Not necessarily.

7 Q. Assume that the commercial area in
8 the town was two thirds or three fourths filled
9 up. Wouldn't then the use of the percentage
10 increase in number of employees lead you to an
11 erroneous conclusion?

12 A. No.

13 Q. It would not?

14 A. No.

15 Q. It certainly isn't a forecaster of
16 future growth, is it?

17 A. It's not meant to be.

18 Q. Okay.

19 A. Everything could change in 1990.

20 Q. Pardon me?

21 A. Everything could change in 1990.

22 MR. O'HAGAN: Yes. I have no
23 further questions.

24 MR. LOCASCIO: I have a few
25 questions Mr. Hintz.

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CROSS EXAMINATION BY MR. LOCASCIO:

Q. With respect to the SDGP, is it your opinion that there is insufficient growth areas provided in Colts Neck by the SDGP?

A. No. I didn't say that.

Q. I'm just asking. I don't know whether you did or not. Do you feel that you know there is a two hundred and sixty-two or three acre tract designated by the SDGP as growth area, correct?

A. Correct.

Q. Do you feel from a planning standpoint that that area of growth should be larger for Colts Neck?

A. I didn't really evaluate that.

Q. Do you feel as a planner that, well, do you agree with that designation of that portion of Colts Neck as being a growth area?

A. I didn't evaluate it.

Q. You have no opinion?

A. I only evaluated whether or not in terms of the potential of the plaintiff's site in terms of meeting what I felt to be the objective of the

1 county, the objectives of the State Development
2 Guide Plan, the objectives of the tristate plan
3 that it was consistent or inconsistent with their
4 policies and good planning policies to have a
5 development, planned development located at this
6 particular location and my findings were that it
7 was a very proper location in terms of planning
8 perspective.

9 Q. And that location of the Orgo tract
10 is defined in the SDGP in a limited growth area?

11 A. That's correct.

12 Q. Would you agree that the Orgo
13 proposal is a high density development?

14 A. I wouldn't call it high density.

15 Q. You wouldn't?

16 A. Not with what I'm familiar with as high
17 density, no.

18 Q. How do you define high density?

19 A. Probably 20 to 30.

20 Q. Do you agree with the concept of the
21 SDGP that multifamily development, whether you
22 call it -- forgetting the dwelling units per acre,
23 would you agree that the Orgo tract constitutes
24 multifamily development, the proposal?

25 A. It constitutes a planned development which

1 includes multifamily, yes.

2 Q. And do you agree with the concept of
3 SDGP that multifamily developments should be
4 placed in a growth area?

5 A. I don't know that. I don't recall that
6 being in the State Development Guide Plan at all.
7 If fact, the guide plans says it does not mean in
8 the limited growth area, it means to preclude
9 development from occurring and in my reading of
10 the State Development Guide Plan that means that
11 even in limited growth areas, even in a
12 conservation area, even in an agricultural area
13 you may have hamlets, villages, a mixture of high
14 density and so on to accomodate development.

15 Q. As a planner do you feel that
16 multifamily developments are most appropriate in
17 a growth area and then next to that most
18 appropriate in a limited growth area? Do you
19 understand the question or is it a little awkward?

20 A. It's a little awkward because I think that --

21 Q. Let me rephrase. I thought it was
22 awkward, too. I agree with you. Do you as a
23 planner agree with the concept that multifamily
24 developments should be placed in a growth area as
25 defined by the SDGP?

1 MR. FRIZELL: That's an
2 absolute question. Does he believe that
3 multifamily housing should be built in the growth
4 area?

5 Q. Whether that's the most appropriate
6 place for a multifamily developments?

7 A. As opposed to a limited growth?

8 MR. FRIZELL: I think again
9 there's too many variables required by the
10 question.

11 Q. Can you answer that question?

12 A. My answer is I don't know. I think that a
13 limited growth area also can accomodate and
14 should accomodate multifamily development. I
15 think you can end up with, and I've seen this
16 happen over and over again, you can end up with
17 limited growth areas being nothing but single
18 family developments wall to wall and that to me
19 is the same thing as growth.

20 Q. Let me ask you this question.

21 A. A better way if you're going to limit
22 growth, a better way to do it is to concentrate
23 it and to free up those other lands that should
24 be left alone or as pristine as possible.

25 Q. Let me ask you this question.

1 You're familiar with that particular tract, that
2 two hundred and sixty-two acre tract designated
3 by the SDGP as a growth area?

4 MR. FRIZELL: I'm going to
5 object to the line of questioning, Mr. Locascio
6 and I'm getting close to directing him not to
7 answer and I'll tell you why. The comparative
8 merits of your client's site versus my client's
9 sites is not in issue in this case. I have never
10 made an it an issue in this case. If you insist
11 in making it an issue in this case submit a
12 proposal to amend the pretrial order and we'll
13 make comparative merits of your site and our site
14 an issue and we'll litigate that issue. However,
15 we won't litigate it before March fifth and we'll
16 go forward with our trial.

17 MR. LOCASCIO: It's not an
18 issue.

19 MR. FRIZELL: If it's not an
20 issue you don't have any right to ask questions
21 about it.

22 MR. LOCASCIO: I have right.
23 Mr. O'Hagan went at length on the SDGP and
24 limited growth and as a result of that I think I
25 have the right to go into limited growth areas

1 under the SDGP.

2 MR. FRIZELL: You can ask
3 questions about the goals of the SDGP but when
4 you get down to a taking a particular piece of
5 property in Colts Neck --

6 MR. LOCASCIO: The question is
7 withdrawn.

8 MR. FRIZELL: That's doesn't
9 mean I'm not going to complete my comment.

10 MR. LOCASCIO: If there's no
11 question pending what's the basis of your
12 objection? You don't a right to make speeches.
13 You have only a right to make objections.

14 MR. O'HAGAN: He's doing
15 pretty good with his speeches so far.

16 MR. FRIZELL: If you want to
17 insist on talking over me knowing the Reporter
18 can't take down two people at one time you can do
19 that.

20 MR. LOCASCIO: There's no need
21 for anybody to talk. There's no question pending.

22 MR. FRIZELL: So what --

23 MR. LOCASCIO: That's the way
24 the rules are provided for so you can object to a
25 question. There's no question pending.

1 MR. FRIZELL: I'm giving an
2 instruction to the witness. If you want to
3 insist in making this a test of comparative merit
4 to the property --

5 MR. LOCASCIO: I said that's
6 not the purpose of my question.

7 MR. FRIZELL: Contact Judge
8 Serpentelli and we'll make that an issue and
9 address that issue at that time. Until that
10 becomes an issue I'll direct the witness not to
11 answer questions directed to that issue

12 MR. LOCASCIO: That's not the
13 purpose of question as I've indicated. There's
14 no question pending. I'd like to ask this
15 question.

16 Q. With respect to the SDGP, would you
17 agree with that premise of the SDGP known as
18 premise number five which indicates: However to
19 create a better future a development plan needs
20 to be formulated and implemented and the state
21 government is the place to start.

22 Do you agree with that premise?

23 A. I don't know if I disagree or agree. I
24 don't know what you're reading it from, what
25 context it's coming from.

1 Q. I'm reading it from the SDGP.

2 A. I don't necessarily agree with the SDGP and
3 I've stated so publicly on a number of different
4 areas.

5 Q. That's all I'm asking you. Do you
6 agree with that premise?

7 A. I think that -- read it back to me.

8 Q. Sure. However to create a better
9 future a development plan needs to be formulated
10 and implemented and state government is the place
11 to start.

12 MR. FRIZELL: Excuse me.
13 Just to get the context of the question so he can
14 answer it, is the context they're referring to a
15 state development plan, a state wide plan for
16 guiding developments in the state? Because
17 you're taking one sentence out of context. A
18 development plan can mean anything from a design
19 for a two acre development to a --

20 MR. LOCASCIO: Why don't we do
21 this. I have read the last sentence of premise
22 number five found on page 20 of the SDGP. I'd be
23 happy to show you the entire premise number five
24 rather than burden the record. You read it.

25 Q. Do you agree with that premise?

1 A. The premise is stated, it's premise five.
2 It says a state level development plan and
3 policies are needed to prepare properly for the
4 future. That I agree with.

5 Q. How about the last sentence of the
6 premise?

7 A. That's just an explanation that they're
8 giving to the whole premise which is underlined
9 which I just read and I think that you really
10 have to read everything in there.

11 Q. That's why I gave it to you.

12 A. I would not just hold to that one
13 particular sentence standing on its own.

14 Q. Well, do you --

15 A. Because I don't agree that necessarily
16 state government is the best place to start. I
17 think that it is -- I agree with the premise
18 itself where it says the state level development
19 plan and policies are needed to properly prepare
20 for the future. That I agree with.

21 Q. But you don't agree that the state
22 level is the place to start?

23 A. I don't necessarily agree that's the best
24 place to start.

25 Q. Where do you think the best place to

1 start is?

2 A. At the county level of government working
3 with both municipalities and the state.

4 Q. Now, with respect to growth areas,
5 do you agree as a planner with this statement
6 taken from the SDGP?

7 Sewerage systems in addition to
8 water systems, supply systems are essential for
9 intensive suburban and urban development. They
10 require major investments and are an important
11 factor in the determination of where growth would
12 be appropriate.

13 Do you agree with that?

14 A. You're reading it to me from the State
15 Development Guide Plan?

16 Q. Yes.

17 A. In the context of that plan which I think I
18 answered in answering one of Mr. O'Hagan's
19 questions earlier, when they wrote that statement
20 they were writing it at a time when all sewer and
21 water systems were funded through public, with
22 public tax dollars, with public money through
23 state, federal and for most part grants. And at
24 that particular time their emphasis was on
25 directing state monies to be spent in the proper

1 places. That has all since changed. The policy
2 of the state now is that let private development
3 pay for as much of the development that's induced
4 by private development as much as possible,
5 whether it's roads, sewer, water, whatever. So
6 that a lot of what's in that guide plan has
7 changed and that particular policy is no longer
8 the policy that the state is advocating.

9 Q. Let me ask you the general question.
10 On page 47 of the SDGP the plan sets forth the
11 growth areas criteria.

12 A. Right.

13 Q. I'm sure you're familiar with those,
14 but just for the record, would you agree that the
15 growth areas were delineated by applying the
16 following criteria?

17 One. The location within or
18 adjacent to major population and/or employment
19 centers.

20 Two. Location or proximity to
21 existing major water supply and sewer service
22 areas.

23 Three. Location within or in
24 proximity to areas served by major highway and
25 commuter rail facilities.

1 Four. Absence of large
2 concentrations of agricultural land.

3 And five. Absence of large blocks
4 of public open space or environmentally sensitive
5 land.

6 MR. FRIZELL: My question,
7 Mr. Locascio --

8 MR. LOCASCIO: I haven't asked
9 the question yet.

10 MR. FRIZELL: You asked the
11 question whether or not. I just want you to
12 clarify clearly whether or not you're saying
13 that's what the plan says.

14 MR. LOCASCIO: That's what the
15 plan says.

16 MR. FRIZELL: Whether that
17 case will speak for itself?

18 MR. LOCASCIO: That's not the
19 question.

20 MR. FRIZELL: Or if in fact
21 he knows whether or not that is in fact what they
22 did?

23 MR. LOCASCIO: I'm not asking
24 that either.

25 Q. The question I'm asking is, do you

1 as a planner agree with those criteria for
2 determining of a growth area? That's my question.

3 A. To some degree.

4 Q. Now, let me ask you this question.

5 Do you agree with the concept map of Monmouth
6 County where the SDGP delineates the growth area
7 for Colts Neck?

8 A. Do I agree with it?

9 Q. Yes.

10 A. Do I think the map is true?

11 Q. Do you agree with where they've
12 placed the growth area?

13 A. I haven't evaluated it. I think I answered
14 your question earlier to that with respect to
15 that, but I didn't evaluate.

16 Q. I'd like to ask you this, Mr. Hintz,
17 correct me if I'm wrong, but did you say that you
18 do not find the development of the Orgo tract
19 which is approximately say, two and a half or
20 three miles from the closest development corridor
21 which would be Freehold, did you say that that
22 would not constitute leapfrogging because it's
23 only two and a half to three miles away from
24 Freehold?

25 A. More than that. I felt that as a location,

1 as a setting within Colts Neck, as a setting
2 within the region that it was a very proper
3 location for, you know, the density that's being
4 proposed.

5 Q. I'm limiting the question to the
6 leapfrogging aspect about it. I know what you
7 said about the propriety of the location, but
8 with respect to leapfrogging, is it your feeling
9 that it's not leapfrogging because it's only two
10 and a half to three miles from the Freehold Area
11 town?

12 A. Well, depends on what you define as
13 leapfrogging. I think that if planned
14 developments put in its proper location, I don't
15 define that as being leapfrogging, whereas I do
16 define leapfrogging development that is a pattern
17 of development that is developing on one section
18 of town developing in another and it moves all
19 around and the next thing you know there's a
20 patch work quilt of development throughout a town
21 or an area. That to me is leapfrog development.
22 It pops over one or two properties and moves to
23 another property and that is leapfrog development.
24 If developments though is centered on a location
25 one that meets certain planning criteria.

1 Whether you agree with the planning criteria or
2 not that to me is not leapfrog development, but
3 is concentrated development that can be done
4 properly.

5 Q. Now, you've said that you thought
6 the particular site of the Orgo tract is a proper
7 site for a PUD?

8 A. Uh huh. I think it's an excellent location.

9 Q. But what I'd like to ask you is
10 whether you feel the same -- strike that question.

11 Is it a proper, an appropriate site
12 for low and moderate income housing?

13 A. Yes.

14 Q. Do you feel that the Orgo tract
15 using the criteria of the SDGP which we've just
16 gone over, those five criteria, do you feel the
17 Orgo tract comes within those criteria and really
18 constitutes a growth area?

19 A. I don't know that the state development
20 guide, well the State Development Guide Plan was
21 not looking at areas of, you know, what is this,
22 two hundred acres or something like that. In the
23 middle of a limited growth area or in the middle
24 of an agricultural area or whatever it was, not
25 looking at that detailed in terms of it was a

1 concept map for the entire state. They do
2 general boundaries which went in various
3 locations, but they did not necessarily pick out
4 two hundred acre pieces of land and say that
5 should be growth, that would be limited growth
6 and so on. They were suggesting that refining
7 process occur at the county and municipal level.

8 Q. My question, isn't that how they did
9 their map? My question is, you as a planner do
10 you feel that this, and you know this tract, the
11 Orgo tract, you've studied I assume, you've been
12 retained to render a report on it, do you feel
13 that it fits within the criteria of the SDGP as a
14 growth area?

15 MR. FRIZELL: I think he just
16 answered the question. You're mixing two
17 different concepts. One is a concept map that's
18 drawn on millions of acres at a time and you're
19 asking him to compare a two hundred acre site to
20 the principles expressed in that type of concept
21 and it's impossible.

22 MR. LOCASCIO: I'm asking him
23 to use the criteria.

24 A. I would only apply the criteria on a much
25 broader basis. You might designate all of Route

1 18 through Monmouth County. You might designate
2 that, you know, five hundred feet on either side
3 as a growth area if you were doing the state
4 development guide plan.

5 Q. In other words, you wouldn't take a
6 spot right in the middle and say that's in the
7 middle say of Colts Neck?

8 A. Just as you wouldn't take an area in the
9 growth area and pinpoint that as being, you know --

10 Q. Limited growth?

11 A. Limped growth because it's going to be
12 limited growth in the growth area. There's going
13 to be agricultural areas in the growth area. I
14 think Mr. O'Hagan asked me questions about that
15 earlier. There's going to be a whole mixture,
16 but at a two hundred acre scale they didn't look
17 at it this way.

18 MR. FRIZELL: Incidentally,
19 this is not an issue in the case I don't think.

20 THE WITNESS: I didn't think
21 it was.

22 Q. Do you as a planner feel that
23 multifamily residential housing is more
24 appropriately to be placed in a growth area than
25 a limited growth area, or a limited growth area,

1 not than, or a limited growth area?

2 A. You asked me that before.

3 Q. I don't remember. What was your
4 answer?

5 A. I said I felt that you could have
6 multifamily developments in a limited growth area
7 just as you could have it in a growth area. That
8 does not necessarily make that limited growth
9 area a growth area. That's a way of
10 accommodating a certain amount of growth and
11 limiting it.

12 Q. With respect to your fair share
13 formula, and I don't plan to get into that much
14 at all, you said there were three different towns,
15 Colts Neck, New Brunswick and Manalapan. Did you
16 use the same formula for all of them?

17 A. I did the methodology for something like 10
18 counties and I don't know how many municipalities.

19 Q. Do you use the same formula? You
20 use the same one?

21 A. My formula is all in the computer and I
22 enter all the data in, plugged in the numbers.
23 This is what it spits out. This is what it spits
24 out. I didn't play with anything.

25 Q. One last question on this. Mr.

1 O'Hagan went through the numbers with you, the
2 eighty-four, ninety units, et cetera, but let's
3 assume that, well, let me give you the framework.
4 I think I have to give you a foundation here.

5 Mr. O'Hagan asked you about if the
6 number is 1698 fair share number and using the 20
7 percent figure that would require eight thousand
8 four hundred and ninety units which in the year
9 2000 would result in ten thousand six hundred and
10 ninety units in Colts Neck. He then asked you
11 about whether that was a drastic change. And
12 with that in mind I'd like to ask you not the
13 same question, but if the number, the fair share
14 number were two hundred and using the same 20
15 percent figure which would require one thousand
16 dwelling units in Colts Neck in addition to the
17 2,200 dwelling units now in Colts Neck by the
18 year 2000, would the three thousand two hundred
19 dwelling units in the year 2000 be consistent
20 with the present growth of Colts Neck as you
21 understand it to have been as a result of your
22 studies?

23 A. No.

24 Q. No, it would not be consistent with
25 the growth?

1 A. No. I indicated that I felt that to the
2 year 1990 that would be an appropriate level of
3 growth.

4 MR. FRIZELL: The question, I
5 think in response to your question --

6 THE WITNESS: You said to the
7 year 2000?

8 MR. FRIZELL: Consistent low
9 or consistent high? I think what he's saying is
10 that it would be consistent to the year 2000, the
11 year 1990, but perhaps slow to the year 2000.

12 Q. Is that what you're saying?

13 A. Yeah. I don't think it's appropriate to
14 the year 2000. I think to the year 1990 that
15 would be appropriate, yes or not be a drastic
16 growth and it's perfectly appropriate.

17 MR. LOCASCIO: Thank you, Mr.
18 Hintz. I have nothing else.

19

20 CROSS EXAMINATION BY MS. HIGGINS:

21

22 Q. Mr. Hintz, your region that you used
23 on this was Ocean Monmouth County, is that right?

24 A. That's correct.

25 Q. You factored in the number of

1 households?

2 A. Number of households.

3 Q. Can you define household for me?

4 A. Defined by the census.

5 Q. You used the census number?

6 A. I used the census.

7 Q. How does that differ from the family
8 figure?

9 A. The family is a much longer figure.

10 MR. FRIZELL: Off the record.

11 (Whereupon a discussion was
12 held off the record).

13 Q. Why don't you put that on the record
14 so we have a good record here?

15 A. A household is one or more persons forming
16 a household and therefore essentially residing in
17 a dwelling unit, whereas a family is defined as
18 two or more persons living together as a living
19 unit occupying a housing unit.

20 Q. Thank you. Well done.

21 A. I think that's right, but that was from the
22 census.

23 Q. You indicated in your report that
24 Colts Neck houses only about one third of the
25 regional average of the low or moderate income

1 housing?

2 A. Wherever that is.

3 Q. Did you take into any consideration
4 the proportion of Colts Neck which is in a growth
5 area as compared to the total amount of the
6 entire regional growth area or no?

7 A. No. I think I've responded to Mr. O'Hagan
8 to that, that I had to take an overall number.

9 Q. I understand your fair share
10 methodology is purely mathematical. You don't
11 take into consideration any of the other factors?

12 A. It has to be mathematical. I'm dealing
13 with so many variables here.

14 Q. Understanding that, understanding
15 how you arrived at your fair share figures, is
16 there any room for modification from these
17 outside factors at a later date. Is it
18 appropriate to modify them?

19 A. Certainly it's appropriate to modify, but
20 ther}tainly be proofs given that would
21 modify. For example, one of the proofs might be
22 that we factored in our methodology if there was
23 any public assistance housing and that got into
24 the household part of the formula. If we didn't
25 pick up, you know, 10 or 20 units of public

1 assistance housing that occurred in our number
2 and a proof can be supplied by the given town at
3 the end it says, okay our number shouldn't be a
4 thousand. Our number should be nine hundred and
5 eighty because here's 20 more units, you didn't
6 figure them in and they weren't in your number.
7 Fine. There's got to be some modifications like
8 that.

9 Q. I want to get it straight for my own
10 understanding. Once these fair share numbers are
11 determined they're not to live and die with, they
12 can be modified by a certain amount of input from
13 towns or even you may have a changed circumstance?

14 A. Right. And there may be proofs presented
15 that would modify that.

16 Q. And in your total developable land
17 calculation you included the vacant land as you
18 got from the, wherever you got that from, housing?

19 A. Housing allocation report, State Department
20 of Community Affairs.

21 Q. And you also factored in the total
22 farm assessed land in the town?

23 A. We added that in because the housing
24 allocation report for vacant developable land
25 that they used, they did not include land that

1 was farm land, that was farm land assessed. They
2 dropped that out and in looking at it and trying
3 to be fair about it a lot of the vacant
4 developable land and a lot of suburban
5 municipalities is, in fact, farm land assessed.
6 I go back to my example of East Brunswick where
7 the most developable land in the town happens to
8 be farm land assessed. We know it's going to be
9 high density development at some point.

10 Q. I know you only used the raw figures,
11 there was no determination made in Colts Neck as
12 to how much of the farm assessed land was
13 actually being farmed?

14 A. No. It was whether or not it showed up on
15 the records.

16 Q. As farm assessed?

17 A. Right.

18 Q. Your figure for the vacant
19 developable land in Colts Neck was somewhere
20 around 55 hundred?

21 MR. O'HAGAN: Fourteen
22 thousand four hundred or something like that.

23 MS. HIGGINS: Not the total.
24 Not including the farm land.

25 Q. Do you remember what that was?

1 A. Vacant developable.

2 Q. Right. Without the farm land?

3 A. Okay. Vacant developable without farm land
4 was five thousand eight hundred and fifty-four
5 and then if we added in the farm land it was
6 total taxable land. Farm land was another nine
7 thousand eighty-six so fourteen thousand.

8 Q. So it's almost three times as much
9 as the vacant developable?

10 A. Correct. Correct.

11 Q. So that taking what you said before
12 that figure could alter drastically then if it's
13 shown that it would be farm assessed land in
14 Colts Neck, all additional nine thousand whatever
15 acres there that would actually be farmed, would
16 that change your calculation?

17 A. Not necessarily because a lot of farm land
18 without getting down to town by town, property
19 owner by property owner doing it for the entire
20 regional municipalities, a lot of that land is
21 typically held by speculator for development. We
22 had to include that in. If it was approved that
23 the guy was swearing on a stack of bibles he was
24 going to farm into the year 2000 maybe that would
25 modify the formula but we had to use a consistent

1 base.

2 Q. I understand that and I understand
3 how you're taking the equities into consideration.
4 That's why you would factor all these in?

5 A. Right.

6 Q. For instance, if we do have a case
7 where the farm assessed land is across the board
8 at least 80 percent being farmed, would it or
9 would it not --

10 A. I think a better representation might be
11 where somebody says, look I got 2000 acres and
12 I've sold off all the developments rights from
13 the property or I put a restriction on it that it
14 could only be used for farm land for the next 20
15 years then that would be a valid thing to drop
16 out of the number.

17 Q. Okay. You were talking somewhere
18 here in your report of, I've lost the place again,
19 that you felt that this development was
20 appropriate being near the Village Center and
21 that it was consistent with the Monmouth County
22 growth management plan for the village dot?

23 A. Correct.

24 Q. Isn't it true that the Monmouth
25 County plan actually calls for a Village Center

1 to be no more than the two hundred single family
2 dwelling units?

3 A. That's correct. In my report I said from a
4 location point of view that really that dot is
5 sitting right on the plaintiff's property because
6 if you look at where the dot sits right at the
7 intersection of 527 and --

8 Q. 537?

9 A. 537 and Route 34 and if you drive out there
10 when you live there and you know where the
11 property is there's nothing there to accommodate
12 two hundred units and the only vacant developable
13 land is near that intersection and those dots are
14 meant to be general. I was a county planner in
15 Hunterdon County. I did the same thing. I put
16 dots down and let the town worry where that dot
17 is actually going to sit. Well, the dot is
18 perfect for the location of plaintiff's property,
19 but I'm saying that the scale is not the same. I
20 disagree. The scale shouldn't be six hundred
21 people. It should be two hundred units. It
22 should be more like a thousand units and more
23 like 27 hundred people or whatever.

24 Q. Are you then, if I can understand
25 you then, you would say then really Village

1 Center is not appropriate for Colts Neck, you
2 would move it up to a town?

3 A. They have a town center classification in
4 there. I felt that would be more appropriate,
5 yes.

6 Q. So you disagree with Monmouth County,
7 their decision that it should remain a Village
8 Center and you'd elevate it up to a town?

9 A. I think in order to accomodate the needed
10 growth in the township, the needed low moderate
11 housing, the fact that the property will in fact
12 be done over at least several years that it's
13 more fitting and appropriate to designate. Maybe
14 it's not town center designation. Maybe they
15 need something in between. I don't know. But
16 we're dealing with one piece of property that's
17 sitting surrounded by commercial developments and
18 two state roads and you've got to deal with that
19 whole piece of land.

20 Q. Taking that line and you're saying
21 there it's surrounded by commercial development,
22 I think that's kind of an inflated term for what
23 actually exists in Colts Neck.

24 A. That commercial development is lined along
25 the properties boundaries with Route 34 and

1 there's a school on Route 537 and there's a state
2 highway on Route 18 and so on.

3 Q. Taking this particular piece of land,
4 which I agree with you, you're neighboring that
5 elementary school there and across the street
6 from it you have several single family dwellings
7 if you traverse that Route 537 until you got out
8 of Colts Neck, what kind of a neighborhood would
9 you find or do you know?

10 A. It's been a while since I've driven through
11 on 537.

12 Q. If I told you if you drove from the
13 Orgo tract all the way out to Colts Neck you
14 would see nothing other than farm area --

15 A. East or west side?

16 Q. East towards Tinton Falls.

17 A. Well, I could look at the township's land
18 use map that shows existing land use. We did our
19 own analysis and we have a map showing where new
20 subdivision activities has occurred.

21 (Whereupon a discussion was
22 held off the record).

23 THE WITNESS: If you're on 537,
24 you pass the school on the right, you pass single
25 family homes on the left and a couple farms on

1 both the right and the left continuing on down
2 you come to a subdivision single family homes,
3 more farms on the right, continue on down more
4 farms on left and the right, continue on down
5 more farms, more farms and until you're out of
6 town. So the further east you get the more farm
7 development.

8 Q. So the only major subdivision
9 development you see is this one which is a couple
10 miles down the road on the left?

11 A. I wouldn't say it was a couple miles.

12 MR. FRIZELL: It's probably a
13 half mile at the most.

14 MR. LOCASCIO: Is that
15 Cranbury Road?

16 MS. HIGGINS: It's past
17 Maryann's.

18 THE WITNESS: It's 24 hundred
19 feet past the property Orgo Farms so that's about
20 a half a mile.

21 Q. Rough guesstimate about how much
22 further on 537 do you have until we're out of
23 Colts Neck?

24 A. One inch equals eight hundred -- or eight
25 thousand -- no. Wait a minute. One inch equals

1 2000 feet as I can read it from the scale of this
2 map. Starting at Orgo Farms the one --

3 MR. O'HAGAN: Three miles and
4 two tenths.

5 THE WITNESS: Right.

6 MR. O'HAGAN: Is that right?

7 THE WITNESS: It's about right.

8 Q. Getting back to it then from Orgo
9 Farms out of Colts Neck is approximately three
10 miles?

11 A. A little over three miles.

12 Q. And there's one other subdivision
13 approximately a half mile?

14 A. Further east.

15 Q. Aside from that one subdivision the
16 rest of it is basically farm land?

17 A. Across the street from the Orgo Farms
18 property is a subdivision that goes back along
19 Cranbury Road to Phalanx Road and then on the
20 westerly boundary of the property is commercial,
21 primarily commercial development strip
22 developments along the Route 34 frontage and then
23 on the southerly boundary of the property is
24 State Highway 18 and south of that Earle.

25 Q. When you were describing leapfrog

1 development you described it as a subdivision
2 development rather than centralized plans
3 development; is that basically it?

4 A. Right.

5 Q. Subdivisions popping up here and
6 there?

7 A. Planned development even if it's clustered
8 development, but clustered around following some
9 planning principles and not to be jumping all
10 over the place.

11 (Whereupon there was a
12 telephone interruption).

13 THE WITNESS: If it's other
14 than that it's more leapfrog development, but
15 looking at the existing development pattern of
16 the township by reading Mr. Tindle's map we've
17 got subdivisions jumping all over the place here
18 leapfrogging over this farm and this one and this
19 one and so on, and what that means is that the
20 developments leaped here, it leaped to here and
21 sooner or later it's going to develop in here.
22 It's going to develop in here and so on and
23 that's not going to keep the town open in farm
24 land.

25 Q. If the Orgo tract were developed

1 subdivision, two acre type subdivision, would
2 that be a leapfrog also in your opinion?

3 A. If it's Orgo Farm -- well, the Orgo Farms
4 property is already pretty much surrounded by
5 development with the exception of the easterly
6 side.

7 Q. So no matter what was in there be it
8 two acre subdivision or planned unit development
9 it wouldn't matter?

10 A. If it was the first thing in town and it
11 hopped from there to there it wouldn't make a
12 difference, but leapfrogging is developing
13 scattered type of developing pattern.

14 Q. Did leapfrogging also mean a high
15 density than what's already existing in the area,
16 a higher density type of development farther away
17 from that type development and density? The
18 density in Colts Neck as you can see is pretty
19 sparce. Placing a higher density in a
20 considerably higher density development in the
21 middle of this sparce development?

22 A. Leapfrogging refers more to a consumption
23 of land than a density of land or even the use of
24 the land, but it typically refers to land being
25 eaten up by development whatever the nature,

1 whatever the intensity.

2 Q. The development of any type?

3 A. Correct.

4 Q. Do you feel that development in
5 order to be consistent with sound planning should
6 coincide or emanate from growth corridors?

7 A. I think it should following planning
8 principles. For instance, location and certainly
9 transportation corridor is one of the location
10 criteria you should be given as to where
11 development might occur as opposed to out in the
12 boondocks somewhere where there's no road
13 transportation.

14 Q. In looking at the Monmouth County
15 Growth Management Guide which has designated two
16 distinct areas as growth corridors, that being
17 along Route 9 and along the parkway, would you
18 agree are they proper growth corridors for the
19 entire region?

20 A. They may be proper growth corridors, but
21 the limited growth designation it's a very funny
22 one and it doesn't apply very well. When you
23 look at this particular map for example, the --

24 MR. FRIZELL: For the record
25 you're referring to Mr. Tindle's map which is --

1 THE WITNESS: Existing land
2 use map, right. Which shows a lot of developments
3 here there and everywhere throughout the town
4 with the exception of the more easterly side of
5 town around 537 Hockhocksens.

6 Q. Hockhocksens?

7 A. Yeah. Laird Road and so on where there
8 seems to be more farms south where there's Earle.

9 Q. Taking that into account and
10 accepting that as true, would good planning
11 dictate that you would consider development in
12 this area now or should you just stop development
13 and focus it towards the growth areas?

14 A. I think you should try to make sense of
15 what's going on here. It doesn't make any sense
16 and the whole town is going to be overrun by
17 development with or without Orgo Farms being
18 developed as a planned development. It's going
19 to be overrun from single family large lot
20 subdivisions and whether it's in six years or ten
21 years there's going to be wall to wall houses.

22 Q. Unless something is done to stop
23 that or limit that growth, is that correct?

24 A. I don't know what you can do unless you
25 really start to concentrate development.

1 Q. That's one alternative. Would
2 another alternative be to halt development?

3 A. If you've got a way legally to do that,
4 fine. All the more power to you.

5 Q. I'm not asking you a legal question.

6 A. You're the attorney. I'm not.

7 Q. So your position then is from a
8 planning standpoint it makes no difference
9 whatsoever to try to keep growth towards those
10 growth corridors along Route 9 and along the
11 Parkway taking into account what's already there?

12 A. I think that, you know, that's the primary
13 location for development to concur in the county
14 or according to State Development Guide Plan, but
15 that does not preclude development from occurring
16 at logical points that meet good planning
17 principles and again, I'm involved in several
18 matters of this kind where it makes logical sense,
19 I see the same kind of thing happening over and
20 over again where you've got a center of sorts,
21 where you've got residential development, where
22 you've got good transportation facilities. It's
23 not going to stay farm land and it's a good point
24 to put higher concentrated development.

25 Q. Would it make better sense to put a

1 higher concentrated development next to those
2 areas which are already so developed around Colts
3 Neck rather than put it into an area which is
4 certainly not as developed as this area or this
5 area?

6 A. It I think it makes the most sense to put
7 it where there's existing commercial facilities,
8 where you've got good road networks, where you've
9 got a school even though it's only grades four
10 and five. It had in the past been a full grammar
11 school. I mean it just makes sense that that's
12 where the development should occur as opposed to
13 say down here or over here or --

14 Q. How about further down on 537 then
15 since there is a large development over here?

16 A. But there's no commercial development.
17 Otherwise what that's going to do is just move
18 the thrust of further commercial development to
19 occur here. You're going to get variances for
20 commercial development to occur where the higher
21 density development is. And then your planner
22 will come along and say I think it's logical
23 sense now to put some commercial to go with all
24 the people here. Why not do it where the people
25 are already.

1 Q. Then a heavily weighted factor then
2 was the factor there was a bus line along Route
3 537?

4 A. I would not call it a heavily weighted
5 factor. I would say it is a factor. Where the
6 bus line is is certainly one factor. That means
7 anything along 537, but then how many places do
8 you have Route 34, and how many places do you
9 have Route 18, and how many places do you have
10 existing commercial facilities within walking
11 distance. You start to add up all those where
12 you have environmentally -- where you have
13 developable land that's environmentally not
14 sensitive right here and maybe here and so on,
15 but you start to add up all those factors and
16 there's a logical place for it.

17 Q. Are you familiar with the type of
18 commercial activities which are located there
19 along Route 34?

20 A. Yes. I've been out there several times and
21 I used the town's own master plan document.

22 Q. I just wanted to make sure that you
23 were familiar with it.

24 A. I have photographs of it too if you'd like.

25 Q. Do you feel then that the existing

1 commercial center, so to speak, in Colts Neck is
2 adequate to meet the needs of the people who will
3 be residing in this planned development?

4 A. More than likely it will pretty much hold.
5 There's not -- this development will generate a
6 thousand or so units and maybe two or three
7 thousand people with the existing population in
8 town of what is it, eight thousand or so. Maybe
9 that will bring it to the point where a
10 supermarket might be able to be located there,
11 but given the -- it takes really for a
12 supermarket you really need around 25 to at least
13 15, preferably around 25 to 40 thousand people to
14 make a supermarket.

15 Q. What are the type of commercial
16 facilities located in that commercial district
17 currently existing which are within walking
18 distance of your proposed development which make
19 your site particularly suited for that type of
20 development?

21 A. According to the town's planning report
22 there's a general store. There's at least a
23 couple restaurants. There's a farm market and
24 that farm market has regional people come there
25 from all over the region. We've known that for

1 years. There's a gas station. I think there's
2 another couple small farm markets. There's a
3 retail pet supplies. There's a Money Store.
4 There's a liquor store. I think there's a barber
5 shop. There's a bar. There's a variety of small
6 stores which can also be converted to other store
7 retail uses, but their components are there for
8 the day-to-day needs of a community of, you know,
9 24 hundred people within walking distance. I
10 mean I live in exactly the same type of setting
11 in a town of around 24 hundred people and we can
12 walk to all those things. We don't have a
13 supermarket. We've got to drive in our car and
14 once a week we drive in our car to go to the
15 supermarket, but that's the way with most people.

16 Q. You said that you didn't consider
17 this development high density. For this region
18 what's the approximate highest density area that
19 you know of in the region?

20 A. I didn't evaluate that. I'm sure if you go
21 out towards Red Bank or you go to more northern
22 parts of the county you'll find higher density
23 development, but I don't go to the eastern shore
24 to find a much higher density, but what it is, I
25 didn't evaluate that.

1 Q. You don't consider this a high
2 density for Colts Neck?

3 A. No. This is what we generally classify as
4 a low to medium.

5 Q. Did you, in making your report did
6 you read any studies or are you aware of any
7 studies regarding the traffic flow on the two
8 existing routes 537 and 34?

9 A. I read something about that, but I don't
10 remember anything significant hitting me.

11 Q. So you don't know whether they're at
12 high capacity or low capacity?

13 A. As I recall they were not.

14 Q. Both of those routes are both one
15 lane each direction, is that correct?

16 A. Yes. Route 34 and the county road.

17 Q. Right.

18 A. Yes. Then you've got Route 18. There's a
19 freeway.

20 Q. So one lane of traffic going in each
21 direction for both of the two roads plus you have
22 Route 18 freeway?

23 A. Uh huh.

24 Q. Do you have any opinion on what
25 effect the addition of three thousand people will

1 have on those?

2 MR. FRIZELL: I think just
3 for the record that there is a full blown traffic
4 study by Henry Ney which you can read in the
5 transcript and Carl really is not responsible for
6 that. He can certainly deal with it from a
7 planning perspective, but if you want to get into
8 the details and you can read the traffic study
9 and read the testimony on that subject. It's
10 already in the record.

11 Q. The only thing I wanted to get at is
12 you are siting Route 537 and Route 34 and Route
13 18 as something which makes your plan very
14 appropriate that there's no place else in Colts
15 Neck, so you just told me, that has those two
16 routes.

17 A. Well, there's only one other place that I
18 see and that's Wheilan Road maybe.

19 Q. Right. So my understanding is that
20 that would be, or it seems appears to be a rather
21 heavy factor in your consideration of why this
22 particular tract is so appropriate?

23 A. It's a good location in terms of the
24 regional network. It's easy to get to the Garden
25 State Parkway.

1 Q. But then you didn't take into any
2 real consideration the amount of travel already
3 existing on the roads and the amount of travel
4 which will be existing, is that correct?

5 A. As I think I answered Mr. O'Hagan's
6 question earlier, if it were high volumes it
7 would be a way of reducing those volumes. That
8 means they're developing from Freehold east or
9 vice versa to get to jobs from housing, from jobs
10 to housing. This would reduce the job trips on
11 either 537 or on Route 18. If it were north,
12 south heavy traffic then that means they're
13 moving south, north to get to jobs. It would
14 provide them for a place to make home that they
15 wouldn't have to take that long trip any more.
16 If there were very low volumes that just says
17 that there shouldn't be any problem at all for
18 developing a thousand units and a thousand units
19 is not very significant in terms of traffic
20 studies.

21 Q. I think this is my last question.
22 What factors would you or do you consider in
23 designating an area for agricultural preservation?
24 I don't mean SDGP designated areas. What would
25 you consider important factors?

1 A. I would consider the land use pattern,
2 existing land use pattern. I would consider the
3 transportation systems. I would consider
4 property ownership. I would consider the who's
5 farming what and, you know, in other words, are
6 they tenant farmers, are they just leasing the
7 land, are they actually owner occupied farms.

8 Q. What difference does that make if I
9 can interrupt?

10 A. It makes a lot of difference.

11 Q. Tenant farming?

12 A. Tenant farming in a lot of cases it's
13 farming where the farmer -- it could mean several
14 things, but typically a tenant farmer is one
15 that's being hired to farm the land while a
16 speculator holds it for development purpose or
17 tenant farmer can't afford to own his own land
18 and is using the land because it's reasonable to
19 do so for him. But it generally, if you don't
20 have ownership of the lands I would weight it
21 more towards ownership of the lands.

22 Q. Rather than the actual use of the
23 land?

24 A. Rather than the actual use of the land. I
25 would consider the type of crops, the type of

1 agricultural activity that is occurring. I would
2 consider the farm land itself, the soils
3 themselves and by the way there's a new -- I see
4 that the town is using a class one, class two.
5 There's a far more current evaluation method that
6 the soil conservation uses for farm land that, in
7 fact, throws out a lot of these prime
8 agricultural land designations so I would use
9 current soil conservation designations for
10 evaluating farm land. Look at the potential of
11 where it is, how big that area could be in terms
12 of the farm land preservation and the context in
13 the county or several municipalities around it. I
14 mean if you're going to have development coming
15 up right to your borders it's going to be higher
16 density development. Then it may not make sense
17 to have farm land preservation.

18 Q. Did I understand you to mean then
19 that higher density developments would discourage
20 agricultural use?

21 A. I said that if you had -- I said in terms
22 of the context of the county or the region if you
23 had a surrounding municipality having development
24 right up to its borders next to where you might
25 want to preserve farm land that might be

1 inappropriate. I'm not talking about one, but
2 then when you start to look at this I would say
3 the chances of preserving farm land right there
4 are pretty slim.

5 MR. FRIZELL: Referring to the
6 subdivision areas in the map?

7 THE WITNESS: Right.

8 MR. FRIZELL: Just for the
9 benefit of the record.

10 THE WITNESS: I don't know.
11 Those are several criteria that were used. We're
12 working on several studies right now in several
13 towns on farm land preservation. I didn't come
14 here to evaluate farm land though.

15 MS. HIGGINS: That's all I
16 have.

17 MR. LOCASCIO: I just forgot
18 one line. I'll be very brief.

19

20 RE-CROSS EXAMINATION BY MR. LOCASCIO:

21

22 Q. You told us about your fair share
23 numbers. Do you have an opinion as to how many
24 of the, how many units of the Orgo tract will
25 provide if developed as proposed for low and how

1 many for moderate income?

2 MR. FRIZELL: Hold it. His
3 opinion on this isn't important, but we'll tell
4 you the exact number if you want to know. His
5 opinion on this is not important.

6 MR. LOCASCIO: I agree.

7 MR. O'HAGAN: What are the
8 exact numbers?

9 MR. FRIZELL: Off the record
10 for a minute.

11 (Whereupon a discussion was
12 held off the record).

13 MR. LOCASCIO: Let me ask him
14 a question and you can find the numbers for us.

15 Q. In order to provide your low and
16 moderate income housing to fit those fair shared
17 numbers, would you agree that two major factors
18 in providing for low and moderate income housing
19 are the cost of the land and the cost of the
20 improvements?

21 A. No.

22 Q. You won't agree with that?

23 A. No. I'm evaluating the potential for low
24 and moderate income housing on a number of pieces
25 of land and it's a matter of providing it.

1 Q. Maybe I misstated the question. What
2 I want to know is, in order to provide low and
3 moderate income housing wouldn't you say if you
4 pay less for the land you can charge less for the
5 unit?

6 A. Just increase the density.

7 Q. Assuming the density remains the
8 same, assuming that's a known.

9 A. Then you have to view it competitively with
10 other developments. I mean if you've got a bunch
11 of developments next door and they've only bought
12 it for two hundred dollars an acre and you may 10
13 thousand dollars an acre and they've got the same
14 density and their increment costs a little less
15 they might be able to provide the lower moderate
16 income housing a little easier, but it comes out
17 of the developer and nobody else.

18 MR. LOCASCIO: Okay. Thank
19 you.

20 MR. O'HAGAN: I just want to
21 ask him one thing.

22 MR. FRIZELL: Go ahead.

23
24 REDIRECT EXAMINATION BY MR. O'HAGAN:
25

1 Q. Mr. Hintz, we talked about the
2 factors that you utilized in developing the fair
3 share, and as I understood it first of all you
4 used the labor and industry population
5 projections or did you?

6 A. No. We didn't factor that into our formula.
7 I collected them and I included them in the data
8 base, but ultimately we didn't use them in the
9 fair share methodology.

10 Q. Somehow you utilized?

11 A. You mean in terms of allocation?

12 Q. You used data that had been
13 developed to project the number of persons
14 residing within a particular region?

15 A. In terms of the need for lower and moderate
16 income?

17 Q. Yes. Right.

18 A. We used for that. We used the Center for
19 Urban Policy Research, the Rutgers study and
20 Mount Laurel II, their numbers for Monmouth and
21 Ocean County for existing and prospective needs.

22 Q. So you accepted those numbers?

23 A. We accepted their methodology as being
24 valid.

25 Q. Without doing any independent

1 calculations or determinations on your own?

2 A. No. Legal municipalities and New Jersey
3 Home Builders got together and paid for an
4 excellent study and why should we in a year try
5 to redo that.

6 Q. Then once you got the total number
7 in terms of allocation to a specific municipality
8 you considered various factors among them were
9 jobs, job increase, vacant developable land, the
10 economic capacity indicator and then the last one
11 was a factor that related to the number of
12 subsidized housing units in a particular town or
13 the absence of them, isn't that correct?

14 A. No. In the formula we used households and
15 then we deducted from that the number of low and
16 moderate income households as of 1980 and then we
17 deducted from that any publicly assisted housing.
18 We obtained those numbers from the county
19 planning boards of Monmouth and Ocean so you get
20 a modified total number of households and that
21 was the number that went into the formula. That
22 and as a percentage of the region we didn't go to
23 the end and knock out. I'm just saying, I think
24 it was in response to somebody's question earlier,
25 if we come up with a number of one thousand and

1 the town proves, proof by proof before the Court
2 that it also provided another 20 units that we
3 didn't know about that weren't available to us as
4 public housing that 20 units would come off the
5 fair share number.

6 Q. I think my question wasn't clear. H
7 five which I understand is adjusted households,
8 you utilized that in the ingredients of your
9 calculation?

10 A. Right.

11 Q. And as I understand it that was
12 designed to move the housing units away from
13 areas that already provided for subsidized
14 housing, isn't that correct?

15 A. That was one reason for using it, yes.

16 Q. Now, that factor was supplied
17 regardless of whether or not the area in question
18 had a multitude of jobs, isn't that correct?

19 A. Well, we used jobs as well.

20 Q. As I understood the formula you said
21 that if towns previously had provided subsidized
22 housing they would have a reduced obligation in
23 the future?

24 A. That's correct.

25 Q. And doesn't that have the effect of

1 moving the population away from areas where there
2 presently are jobs?

3 A. No. What it has the effect of doing is
4 deducting out those towns that are provided for
5 low and moderate income housing.

6 Q. Isn't it accurate to say that that's
7 where most of the jobs are?

8 A. Well --

9 MR. FRIZELL: I don't know
10 how you can possibly --

11 Q. I mean if it's not accurate just say
12 it's not accurate.

13 A. I don't think it necessarily is, no.

14 Q. Isn't it accurate to say then that
15 you're moving the population away from areas
16 where there's existing infrastructure?

17 A. You may have high jobs and low households
18 or conversely you may have high households and
19 low jobs. It may be a bedroom community and
20 these are all just pieces of looking at the total
21 picture.

22 Q. Let's go to the infrastructure. If
23 you utilize this H five portion of your formula,
24 doesn't that have the effect of bringing people
25 away from developed areas?

1 A. Not necessarily. If there's a low number
2 of households it wouldn't, or as a percentage of
3 the total in the region if the number of
4 households as a percentage of the total is very
5 low then it wouldn't do that.

6 Q. Well, as I understood it you
7 indicate you're trying to move the households
8 away from municipalities that have a high
9 percentage of existing low moderate income
10 households and a high percentage of existing
11 publicly assisted housing units?

12 A. Yes. But then also have a high number of
13 households total that are not low and moderate.
14 So in other words, that's an exclusionary
15 suburban bedroom community of a lot of people.
16 That's where that would come into play.

17 Q. Isn't the effect of this H five part
18 of the equation to move the people away from the
19 urban centers such as Long Branch and Asbury and
20 Neptune and so on?

21 A. It moves them, but it moves them to places
22 like Holmdel where there's a large number of
23 households, but not low and moderate income
24 houses.

25 Q. In any case it moves them from

1 Asbury and Long Branch and Neptune?

2 A. Sure.

3 Q. Would it be accurate to say that
4 Asbury, Long Branch and Neptune have a high
5 number of jobs?

6 A. By adding in the another piece of the
7 formula percent change in growth in jobs as a
8 percent of the region it will show that they're
9 very low.

10 Q. Mr. Hintz --

11 MR. FRIZELL: Excuse me.
12 Just so we don't get too far, are you using the
13 same formula for redistributing present need as
14 prospective need?

15 THE WITNESS: Yes.

16 Q. Mr. Hintz, do me the courtesy of
17 answering the question.

18 A. I'm trying.

19 Q. Doesn't this have the effect of
20 moving persons from areas where there are now
21 jobs? That's a yes or no.

22 A. That doesn't do as much as value per capita
23 might do it or percent change in jobs.

24 Q. But also H five does it, the
25 adjusted household that has the effect of moving?

1 A. Not necessarily.

2 Q. Let me just rephrase it. Then the
3 result of your formula is to move households away
4 from the Asbury, Long Branch and Neptune, isn't
5 that correct?

6 A. I don't think so. Not the households.

7 MR. FRIZELL: Can we get
8 something straight? The problem I'm having with
9 your question is moving people away. As I
10 understand it the share of what he's talking
11 about here is prospective housing need. These
12 are households that do not currently exist.
13 There's a small minute percentage of present need.

14 Q. Doesn't that have the effect of
15 causing the location of people in the future away
16 from the Asbury, Long Branch and Neptune?

17 A. It's where there's -- it's going to come up
18 in a number of categories. They're going to be
19 very low in the vacant developable category.
20 They're going to be, in terms of value per capita
21 they're going to be low in terms of percent
22 change in jobs, in terms of the region. They're
23 going to be lower and negative. The existing
24 jobs and existing households that will keep them
25 in the fair share, but over time the need is to

1 go to those towns that have vacant developable
2 land, have the ability to pay for low and
3 moderate income housing and to provide the
4 systems to build it and so on.

5 Q. Isn't it fair to say that if you use
6 your formula people will relocate away from areas
7 where there's presently an existing high number
8 of jobs? Isn't that fair to say?

9 A. It's not a relocation formula as much as it
10 looks at the prospective need.

11 Q. That the people in the future will
12 locate in areas away from where there presently
13 are jobs?

14 A. No. If the jobs are high then they'll stay
15 there.

16 Q. Isn't it fair to say then if you use
17 this dispersal theory that you're talking about,
18 and that's what I understand the effect is the
19 people in the future will establish households
20 away from the Long Branch, Neptune areas. Isn't
21 that correct?

22 A. Well, that's what the decision is in the
23 way of saying --

24 Q. Isn't that correct?

25 A. Yeah.

1 Q. And isn't it fair to say that the
2 Long Branches and the Asburys and the Neptunes
3 have existing infrastructure?

4 A. Probably over capacity and probably
5 deteriorated, yes.

6 Q. Mr. Hintz, you have an extreme
7 difficulty in just simply responding to a
8 question, don't you?

9 MR. FRIZELL: Hold it. Hold
10 it. Let's not lecture the witness, Mr. O'Hagan.
11 I really take exception to the way you made that
12 comment. You're not here to lecture witnesses.
13 If you want to ask a question, ask a question. I
14 don't like witnesses being lectured at six
15 o'clock when we should have called the deposition
16 at five o'clock.

17 MR. O'HAGAN: He's been doing
18 that throughout these depositions. You've been
19 lecturing and interjecting and at times I thought
20 it was grossly inappropriate. I just refrained
21 from commenting as a courtesy to you.

22 MR. FRIZELL: I think this
23 whole deposition was a courtesy. I think you
24 should have done the deposition in accordance
25 with the Court order which was supposed to be

1 over by January 30th and this is now February
2 20th.

3 MR. O'HAGAN: Similar to Mr.
4 Quill's then I guess.

5 MR. FRIZELL: I have no
6 reports from Mr. Quill.

7 MR. O'HAGAN: I have no
8 report from Mr. Hintz.

9 MR. FRIZELL: I gave you his
10 name and I told you what he was going to say.

11 MR. O'HAGAN: I didn't have
12 that. I had nothing like that.

13 Q. But in any case, can you answer that
14 question, Mr. Hintz, with a simple yes or no?
15 Doesn't your dispersal theory have the effect of
16 moving people away from areas or causing people
17 to relocate in the future away from areas where
18 there's existing infrastructure?

19 A. Not necessarily.

20 Q. Okay.

21 A. Because I think of several towns come up
22 very high in terms of the numbers in Middlesex
23 County. Woodbridge and Edison, for example, come
24 up with the highest demands according to the
25 methodology that I've used. And Woodbridge and

1 Edison have total sewer capacity. That's where
2 there's high jobs -- a high job of households
3 per capita.

4 Q. So you're saying the use of your
5 formula will not have the effect of a dispersal
6 away from certain urban centers?

7 A. Not necessarily, no.

8 MR. O'HAGAN: I have no
9 further questions.

10 MR. FRIZELL: While we're on
11 the record in response to the questions by Mr.
12 Locascio and also by Mr. O'Hagan concerning the
13 low and moderate income housing, alternate B
14 contains one hundred and eighty manufactured
15 units.

16 MR. LOCASCIO: What was that?

17 MR. FRIZELL: A hundred and
18 eighty. Plus fifty-six manufactured housing
19 units in section development. Now if alternate A
20 were --

21 MR. O'HAGAN: We're talking
22 about two hundred and thirty-six?

23 MR. FRIZELL: Manufactured
24 houses, yes. Now the difference between two
25 hundred and thirty-six and 20 percent of twelve

1 hundred and fifty-three is about 20 units.

2 MR. LOCASCIO: That would come
3 to two fifty, right?

4 MR. FRIZELL: Two hundred and
5 fifty, right. So it's about 14 units. The
6 balance in order to make up any required 20
7 percent figure by the Court if the Court wanted
8 exactly 20 percent would be made up by
9 restricting the condominium flats, the highest
10 density garden apartment condominium units for
11 low or moderate income families. Probably
12 moderate income. If alternate A were selected
13 the fifty-six manufactured houses in section 12
14 would still exist and the entire balance of
15 approximately one hundred and fifty units, up to
16 one one hundred fifty units, assuming that it was
17 a 20 percent mandatory set side as required,
18 would be in the form of condominium flats.

19 MR. LOCASCIO: Do you have a
20 break down on which is low and which is moderate?

21 MR. FRIZELL: Well, the
22 proposal would be according to the Court
23 requirement, but we're thinking 10 and 10 as a
24 general requirement. Ten percent low, 10 percent
25 high.

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MR. LOCASCIO: Okay.
(Whereupon the deposition was
adjourned).

CERTIFICATE

I, MARY T. BOVE, a Certified
Shorthand Reporter and Notary Public of the State
of New Jersey, certify that the foregoing is a
true and accurate Computerized Transcript of the
Deposition of CARL E. HINTZ, who was previously
sworn.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the action in
which the Depositions are taken, and further that
I am not a relative or employee of any attorney
or counsel employed in this case, nor am I
financially interested in the action.



MARY T. BOVE, C.S.R.

Dated: February 25, 1984
My Commission Expires on
January 13, 1988

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
DOCKET NO. L- 3299-78

L-13769-80

x-----x
ORGO FARMS, et al.

Plaintiffs,

-vs-

TOWNSHIP OF COLTS NECK,
Defendant.

x-----x
DEPOSITION OF: CARL E. HINTZ

DATE: Monday, February 20, 1984

AT: STOUT, O'HAGAN & O'HAGAN, ESQS.

STATE SHORTHAND REPORTING SERVICE, INC.
212 Monmouth Road
Oakhurst, New Jersey, 07755

MARY T. BOVE, C.S.R.

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