

RHS-AD-1976-80

7/22/1976

• Deposit of Will Allen

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S-1290

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2
3 THE ALLAN-DEANE CORPORATION,
4 a Delaware corporation,
5 qualified to do business in
6 the State of New Jersey,

:
: Civil Action

Plaintiff,

:
: Deposition of:
: WILLIAM W. ALLEN

-vs-

7
8 THE TOWNSHIP OF BERNARDS,
9 in the County of Somerset,
10 a municipal corporation of
11 the State of New Jersey,

: (Volume II)

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Recorded Bk. Page

Defendant.

DEPOSITION of WILLIAM W. ALLEN, taken by and

before Henry E. McGrorry, Jr., a Notary Public and

Shorthand Reporter of the State of New Jersey, at the Municipal

Building, Basking Ridge, New Jersey, on Thursday, July 22,

1976, commencing at 9:35 a.m.

APPEARANCES:

For the Plaintiff : Messrs. Mason, Griffin & Pierson
By: Henry A. Hill, Jr., Esq.

For the Defendant : Messrs. McCarter & English
By: Nicholas Conover English, Esq.

JOSEPH F. READING
Certified Shorthand Reporter
13 Ramson Avenue
Trenton, New Jersey
882-3088
587-3251

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INDEX TO WITNESS

Direct

William W. Allen

by Mr. Hill

2

INDEX TO EXHIBIT

Exhibit No.

Description

Page

PWA-9 for ident.

Document entitled "Potential
Parks and Recreation Sites"

2



1 W I L L I A M W. A L L E N, previously sworn,
2 resumes.

3 DIRECT EXAMINATION CONTINUED BY MR. HILL:

4 Q Mr. Allen, you are still sworn.

5 I would like to introduce this plan. It is entitled
6 "Bernards Township Potential Parks and Recreation Sites", and
7 it is dated 7 July 1975.

8 Mr. English, would you like to look at it?

9 MR. ENGLISH: I would, thank you.

10 MR. HILL: We can call that PWA-9.

11 (Document entitled "Potential Parks and Recreation Sites"
12 marked PWA-9 for identification.)

13 Q Mr. Allen, have you ever seen that plan?

14 A Yes. Well, excuse me. I believe I have seen this
15 plan. I can't remember whether it encompassed the Deane
16 property. Certainly, I have seen this plan. I believe I have
17 seen a plan similar to this.

18 Q Do you know who drew up this plan?

19 A Well, Maurice Wrangell is the name on the bottom,
20 and he was commissioned by the Township Recreation Committee,
21 and did most of his work during 1975 to develop a recreation
22 master plan, and he is listed here as a landscape architect,
23 but I believe he specializes in recreational matters.

24 Q By whom was he commissioned to do this plan?

25 A The recreation committee of Bernards Township, and

1 authorized by the Township Committee.

2 Q Do you recall any discussions at which the
3 possibility of acquiring land from Allan-Deane for park
4 purposes was discussed?

5 A Word had come to me informally that Allan-Deane
6 was interested in selling this. It was one item. The second
7 item was that Maurice Wrangell independently surveyed the
8 township on his own time, or not on his own time, but
9 unaccompanied by others, and in doing that, he came across
10 this particular piece of land that he thought would be of
11 interest for recreational purposes.

12 Q Do you recall why he thought this particular
13 would be of interest for recreational purposes?

14 A I personally went out there with him and Fred
15 Conley one day, and my recollection of it was that it was
16 actually two valleys, but you can call it one valley, somewhat
17 set off from the surrounding territory. It seemed to have a
18 natural geological boundary, if you will, or topographical
19 boundary. It had meadows at the bottom, a stream running
20 down at one end, some trees on the slopes. It
21 seemed like a natural setting for a park from his viewpoint.

22 Q A park to be used by who?

23 A By the municipality.

24 Q Is it near any population center in the municipality?

25 A I don't believe you would say that there is any

1 population center near there, no. It is to the west of
2 Liberty Corner, which is a village. That was not our concern,
3 its proximity to a population center. It was looking far
4 down the road toward the need for open space in the township.

5 Q What is the status of that plan?

6 A This was a recommendation that he made to the
7 township to consider. I am no longer affiliated with the
8 recreation committee this year. I was last year. There is
9 a subcommittee of the recreation committee which is, I believe,
10 charged with the responsibility of reviewing open space
11 requirements and opportunities, and I would think that this
12 might be one of those things, but I don't believe
13 any active program now to acquire that or to get the money
14 for it.

15 Q Such an acquisition would depend on acquiring
16 Green Acre funds, is that right?

17 A It was not a specific decision, because we didn't
18 even know how much it would cost. I think that my own feeling
19 at least was that the township would probably not be able
20 to acquire it without some outside financial support, but it
21 never reached a public dialogue stage. I would venture that
22 most members of the public were not aware even that this
23 proposal was existent.

24 Q Do you know who was asked to contact Allan-Deane
25 and give them that map?

1 A As far as I can recall, no one was asked to contact
2 Allan-Deane. I personally don't think we ever had an emissary
3 to Allan-Deane. It could have happened, there was no secret
4 about it, but I don't think we ever got to the official formal
5 negotiating stage.

6 Q You say that that is one of several pieces that is
7 being considered, to your knowledge, by the Recreation
8 Committee?

9 A This was a specific large tract. It was probably
10 the only specific large tract that was proposed during my
11 two years with the Recreation Committee. In the [REDACTED]
12 had been some other tracts proposed, and I am not [REDACTED] tion
13 to tell you where they are. There was not an active program
14 on the Recreation Committee in this field. One of the reasons
15 we developed a recreation master plan was to try to define
16 our needs and our options better than had been in the past.

17 Q Have the needs, to your knowledge, of the township
18 for future parks been defined at this time?



19 A I indicated earlier that I believe there is a
20 [REDACTED] of the Recreation Committee which is charged with
21 [REDACTED] responsibility of reviewing this on an ongoing basis.

22 The master plan that Maurice Wrangell prepared, and I believe
23 there was subsequent modifications of it, but it was
24 officially adopted and incorporated into the overall township
25 master plan this last spring. So, it is an official document



1 now, and it does have in it some comments with regard to open
2 space requirements. The status of the investigation of this
3 matter of open space and any additional parcels, and any
4 additional discussion of this, I am not aware of.

5 Q Do you know if this map, or that parcel, is
6 incorporated in the recreational master plan?

7 A This first was mentioned in a separate memo from
8 Maurice. I honestly am not sure whether this particular
9 parcel is cited in the master plan in its official form.

10 Q Then, to your knowledge, there are no efforts being
11 made at the present time to acquire, or to obtain 
12 funds, and the proposal for the acquisition of the 
13 dormant. Would that be a fair statement?

14 A I think that is reaching a little. I said I am not
15 familiar with the present deliberations, the status of the
16 deliberations of a subcommittee of the Recreation Committee
17 on this matter. I don't know whether they have gone any
18 further or not.

19 Q Who is on that subcommittee of the Recreation
20 
21 

21 A I am not even sure of that.

22 Q Who is on the Recreation Committee?

23 A Jerry Kienlen is the present chairman.

24 MR. ENGLISH: Could you spell that.

25 THE WITNESS: K-i-e-n-l-e-n, I think. It is

1 a matter of public record.

2 The Recreation Committee now has some 20 some
3 people. It was greatly expanded at the latter part
4 of last year and early this year. Most of the
5 membership is new. They divided themselves into
6 several subcommittees, and some have been more
7 active than others. I'm not familiar with the
8 personnel of each subcommittee and what their
9 progress has been.

10 Q Now, Mr. Allen, can you tell me how many people are
11 on the Bernards Planning Board at the present time?

12 A I would rather not quote a number. I can probably
13 tick them off. Is it seven with a couple of alternates?
14 I think that is a matter of record.

15 Q Will you tell me who is on the Planning Board this
16 year.

17 A May I simply go get the township summary that is
18 handed out at the desk here and just read off the names?

19 Q Surely. I have summaries for '74 and '75 but I
20 don't have the '76 summary.

21 A If you want, I can read off the names listed here.

22 Q Yes.

23 A This is from page one, at the bottom, of a document
24 entitled "Bernards Township 1976 Information Guide." It is
25 a handout available at the Town Hall.

1 The chairman is Godfrey K. Preiser; vice chairman,
2 Robert Mann; regular members, Harry Dunham, Wayne Koppes,
3 John Campbell, Robert Conway, Robert Deane, who is also mayor,
4 and Ralph Skklenker, who has now resigned. He is chairman
5 of the Environment Commission, and was not able to continue
6 in both roles.

7 Q When did Mr. Skklenker resign?

8 A Officially, about two months ago. He has added
9 job responsibilities, and he had to retrench somewhere, and
10 he decided to resign from the Planning Board.

11 Also, William Allen, who I am, and the attorney is
12 Robert Brokaw.

13 Q Are any of these members alternates?

14 A Now, lower down we have alternates of W. Barnum
15 Wahl and Robert P. Haycock, and I guess that's that.

16 Q Mr. Allen, we served Bernards Township with
17 interrogatories, and one of the questions, and I will read
18 it to you, was: "Did one or more members of the defendant's
19 public bodies attend a meeting on March 18, 1976 called by
20 the Somerset County Planning Board to discuss the zoning of
21 Somerset Hills, or the Allan-Deane development proposals",
22 and the answer we got to that question was yes, and we asked
23 who attended, and we were informed that on March 18, in the
24 first floor conference room of the county administration
25 building, Robert M. Deane, William W. Allen, Godfrey K.

1 Preiser and Ralph Scklenker attended that meeting. That
2 was the meeting at which the Court Reporter was present. Is
3 that your recollection as to who attended?

4 A That is my recollection.

5 Q Do you recall if anyone else attended besides that
6 from Bernards Township?

7 A No, I believe we had a car with four people.

8 Q I am going to repeat my question, and Mr. English
9 may wish to object, and I am going to ask you what occurred
10 at that meeting.

11 MR. ENGLISH: I will object, Mr. Hill, for
12 the reason that that was held as a closed meeting,
13 and the issue as to whether or not it was closed
14 is the subject of litigation, and therefore, I direct
15 the witness not to answer the question.

16 (Discussion off the record.)

17 Q Were there any other meetings, if you recall, with
18 the Planning Board, or Bedminister Township, or Far Hills
19 regarding the Allan-Deane proposal or the plan to save the
20 ~~Far Hills~~ Far Hills from residential development?

21 A That last phrase colors the question somewhat. I
22 recall no meetings with representatives of Bernards Township,
23 Far Hills and/or Bedminister this year other than the one
24 that has been mentioned earlier.

25 Q Do you recall any meetings last year?

1 A No, I do not recall any such meetings last year.

2 Q Do you recall any meetings with the county Planning

3 Board this year, other than this one on March 18, regarding

4 the Allan-Deane proposal or the general plan to save the

5 Somerset Hills?

6 A I certainly can speak for my own participation or

7 lack thereof, and I have not participated in any discussions

8 with the county Planning Board as a body at any time other

9 than the meeting that was referred to before. I think we

10 must agree though that there have been some informal

11 discussions with representatives of the township and the

12 staff of the county Planning Board from time to time

13 variety of subjects.

14 Q I am just concerned with what you were involved in.

15 Were you involved in any meetings with the staff of the

16 Planning Board of Somerset County specifically on the Allan-

17 Deane proposal or specifically on the general plans to keep

18 sewers out of the Somerset Hills?

19 A No.

20 Q Were you involved in any such meeting in the year

21 1975?

22 A Not a meeting as you have described it, no.

23 Q I gather from your answer that it was not a meeting

24 at which the Allan-Deane proposal was talked about.

25 A There was a meeting which I attended in 1975 in the

1 office of Bill Roach to discuss the general question of Mt.
2 Laurel, and how we would go about developing our fair share
3 under that decision.

4 Q Can you tell me approximately when that was?

5 A I'm not positive, but I believe it was in the summer
6 of last year. There was a small subcommittee of the Planning
7 Board formed which was called the Mt. Laurel Committee. I
8 was a member of it. Those people, one of which was Peggy Fox,
9 and I, and I am not sure who else, met with Bill Roach and
10 Arthur Rubin, but the thrust of the meeting was the general
11 question of Mt. Laurel obligations.

12 Q Do you recall what Mr. Roach's general position was
13 with regard to Bernards and its obligations under Mt. Laurel?

14 MR. ENGLISH: I think that calls for hearsay,
15 but I will make the objection and I will not direct
16 him not to answer the question.

17 A At that time, we were told that we were one of the
18 first who were working on this, and he wished us well,
19 essentially.

20 Q Did he indicate to you in any manner how he thought
21 that problem should be tackled or what he thought the extent
22 of the obligation might be?

23 MR. ENGLISH: Same objection.

24 A He was not in a position to tell us what our
25 obligation would be.

1 Q As a result of that meeting, Mr. Allen, the first
2 Mt. Laurel report was submitted to Judge Leahy in the Lorent
3 case, of which I have got a copy, is that right?

4 A Certainly not as a result of that particular meeting
5 with Bill Roach. The submittal to the court in September, or
6 August, late August or whenever it was, was a combination of
7 many things, and documents generated within Bernards and
8 things generated outside of Bernards that were put together
9 primarily by Margaret Fox. In fact, at this point I cannot
10 recall everything that was in that set of documents, but there
11 were many meetings, and a lot of research done by ██████████
12 that led up to that submittal.

13 Q Can you tell me anything of Mrs. Fox's expertise?
14 It seems to me that we are talking about a fairly technical
15 understanding, and I just wondered what her background was,
16 if you recall it.

17 A She was the lay coordinator of this effort. Not
18 being a full time employed person as some of the rest of us
19 are, she was in a better position to do this. Her professional
20 background is that she is a degreed person, and had done
21 computer programming at Bell Labs. She was familiar with
22 the analysis of data. She was assisted by Fred Conley. A
23 great deal of Mr. Conley's time during the last year has
24 been related to or has been assumed in this matter. She was
25 also assisted by Mr. Agle, who is our planning consultant.

1 Q I have been reading Mr. Conley's memoranda to the
2 Committee, and they are concise and probative, and seem to
3 be the product of tight thinking. What is Mr. Conley's
4 background, if you know it?

5 A You asked me that before, and I really can't
6 expand on that. His profession is municipal administration.
7 Before he became a line person, if you will, he was in staff
8 positions of various types in municipal government. I think
9 it is best probably if his background was presented by
10 himself.

11 Q Going back to your fair share analysis, Mr. Allen,
12 I have a couple of questions. You called the analysis that
13 are the letters again? JORD, Job Oriented Residential Distribution.

14 A JORD, Job Oriented Residential Distribution.

15 MR. ENGLISH: Excuse me. Just for the record,
16 are you referring to Exhibit PWA-4 for
17 identification?

18 MR. HILL: PWA-4 and PWA-6.

19 Q There is a memorandum from Mr. Conley in which he
20 reviews the Lindbloom analysis. He reviews the old, and
21 compares the old Margaret Fox analysis, and then he compares
22 an analysis called "The Commuter Shed Analysis". Is The
23 Commuter Shed Analysis and the JORD analysis the same?

24 A I'm not sure. The JORD is a mathematical
25 representation of the--the Commuter Shed is the name for the

1 quantitative concept, and the JORD is an attempt to quantify
2 it, but you are referring to something from Mr. Conley and
3 I'm not sure.

4 Q Well, I'm looking for a memorandum dated March
5 1976 to the Township Committee in which he compares the
6 various analyses.

7 (Discussion off the record.)

8 MR. HILL: We all have copies of this, and I
9 would rather not put it in as an exhibit. I don't
10 mind marking it but we all have copies.

11 MR. ENGLISH: Just identify it sufficiently
12 on the record so that we can find it.

13 MR. HILL: What I am speaking of is a memorandum
14 from Fred C. Conley to the Township Committee and
15 Planning Board, dated March 24, 1976, and entitled
16 "Preliminary Work Paper, Mt. Laurel Ordinance."

17 Q Now, there are three approaches which are analyzed
18 by Mr. Conley. The first is the Mt. Laurel subcommittee
19 fair share approach. The second is Mr. Allen's Commuter Shed
20 approach. The third is the Lindbloom approach.

21 A First, let me say I don't believe I ever read this.
22 This looks to me like I may have received it, but I don't
23 believe I read it. This looks to me like a memo that was
24 submitted to the subcommittee. I can't remember the exact
25 date of the start of the subcommittee's work, but this may

1 well be something submitted to them. I'm not sure. Anyway,
2 I can't place this.

3 There were many, many documents floating around
4 during the early part of this year. My concern was
5 primarily on the employment zones during the early part of
6 this year. So, I can't place this. If you can ask me a
7 question specifically, I will try to deal with it, but offhand,
8 I don't recall this report. It is rather extensive. I think
9 I would have read it.

10 Q The report describes three different approaches,
11 and the first approach is the Mt. Laurel subcommittee approach,
12 and it divides into various boxes the regions of the three
13 approaches.

14 A Yes.

15 Q The Mt. Laurel subcommittee region is Bernards
16 Township only, the Allen region is the Commuter Shed, and the
17 Lindbloom region is the area within one-half hour's drive of
18 the center of Bernards Township, according to this report.

19 A Yes.

20 Q The report is dated March 24, 1976. When,
21 approximately, did you submit your "Mt. Laurel, a Truly
22 Regional Response"? It is dated September 1, 1975.

23 A It was submitted--I believe September 1 may have
24 been a Monday of that week, or Sunday, because I finished it
25 up on Labor Day Weekend, and it was submitted that following

1 week.

2 Q Did you have any other proposals in March of 1976
3 besides your "A Truly Regional Response" proposal before the
4 municipality?

5 A My main energies were directed toward the question
6 of employment zones during the first part of this year, and
7 I was not involved in any serious way in the low and moderate
8 income housing issue until approximately April, which is the
9 date, I believe, on one of the exhibits that has been marked
10 here. Those work sheets represented the initiation of my
11 effort this year on this question.

12 Q You have never seen this report dated [REDACTED]
13 1976?

14 A I don't want to lie. I cannot recall it. Believe
15 me, there have been many documents of this nature circulating,
16 and I presume you have seen most of them. This one does
17 not ring a bell though, but I may have received it. It may
18 have become buried in the mountain of paper that we were
19 discussing earlier. I do not recall the specific document.

20 [REDACTED] This document characterizes the Lindbloom fair
21 share approach as naive and simplistic. Do you recall that
22 characterization?

23 MR. ENGLISH: Just a minute, I object to the
24 question if you are asking if he recalls the
25 characterization from the document, because he has

1 said he has no recollection of it. If your
2 question means does he recall other discussions
3 involving that term, that is different. Could you
4 clarify it?

5 Q Do you recall other discussions involving that term?

6 A There have been some verbal discussions of the
7 Lindbloom report. There has been mention of this report,
8 I presume, in some of the memos that have gone back and
9 forth, and it has been our position that that report was
10 not a sophisticated analysis.

11 Q And your JORD analysis, on the other hand, you
12 view to be sophisticated.

13 A The JORD model, with regard to its use for
14 establishing a region, I believe is more sophisticated than
15 the method used by Lindbloom. There are many other
16 components, however, to the analysis of fair share. Region
17 has been one of the sticky questions, and I believe the JORD
18 model does a better job with regard to characterizing region.

19 Q As a result of the JORD model, and we went over
20 that yesterday, you came to the conclusion that Bernards'
21 fair share for future low and moderate income housing was
22 354 units, is that correct?

23 A That is the result of what we term Computation One,
24 which is the computation that was of a preliminary nature,
25 but it was used to develop Ordinance 385.

1 Q And that 354 represents prospective need only, is
2 that correct?

3 A That 354 was based on analysis only of a prospective
4 six year need, yes.

5 Q And Computation One does not include any figure
6 for Bernards' present need, is that correct?

7 A That is correct.

8 Q Do you have an opinion as to whether or not
9 Bernards has a present need for low and moderate income
10 housing?

11 A I read the Mt. Laurel decision to require
12 make an estimate of present need, and Computation
13 incorporate an estimate of present need.

14 Q How do you get a handle on present need, or how do
15 you propose to get a handle on present need in Computation
16 Two?

17 A I have used the Department of Community Affairs
18 report. I believe it is the same that Mr. Lindbloom used,
19 and let us just identify that. This report is entitled
20 "Analysis of Low and Moderate Income Housing Needs in New
21 Jersey." It is published by the New Jersey Department of
22 Community Affairs, or DCA. My particular copy is a copy of
23 a copy. I have not been able to determine the publication
24 date of this. It doesn't seem to be listed.


25 Q It should be April of 1975.

1 A Okay, I didn't find that ever specifically stated.
2 I will take your word for that.

3 Q That is my recollection. I have a copy of that
4 report, and if Mr. English wants it marked for reference,
5 or if he doesn't have a copy, we will mark it for reference.
6 I don't need a copy.

7 MR. ENGLISH: I don't know whether I have a
8 copy or not, but like you, I am inundated by papers.


9 MR. HILL: You can obtain one from Mr. Allen.
10 I don't propose to mark it because I don't need
11 more copies of the same paper.

12 THE WITNESS: I have no idea what 
13 reference is.

14 Q I think I can find a date for you.

15 A I thought it was probably 1974 from the language
16 in the text, but I'm not sure.

17 Q It came out in the middle of a trial that I was
18 involved in, Mr. Allen, so I was made aware of the publication,
19 but it may have been prepared before that.

20  Now, you used that report, and that report, as I
21 recall, assigns an existing need for Bernards Township of
22 191 units of low and moderate income housing. Did you accept
23 their figure?

24 A I did not use the figure you just quoted. I worked
25 from the data that was presented in the report.

1 Q Let's go over the data that they presented for
2 Bernards Township. What data is in that report?

3 A Well, there are a total of ten columns on this
4 page, and this page refers to Somerset County, and each of
5 the 21 municipalities in the county.

6 Q I will just read into the record what the columns
7 say. The first column says, "Bernards Township Physical
8 Housing Need, 81 units of moderate housing, 45 units of
9 dilapidated housing, 25 units lacking plumbing, total, 151
10 units."

11 The next column is Bernards Township's financial
12 housing need, low income, 44 units, moderate income,
13 for a total of 65 units.

14 Now, when you add the 65 units of financial housing
15 need to the 151 physical housing need, you get the number
16 216, but they deduct 25 from that for overlap, and their
17 conclusion is that Bernards Township has a need of 191 units
18 of low and moderate income housing, which are divided into
19 physical units needed and financial units needed, is that
20 correct?

21 I haven't followed your figures, but I believe you
22 correctly read off what the page says. I haven't followed
23 your figures.

24 Q You used those figures in order to determine
25 Bernards present housing need, or you propose to use those

1 figures in your second calculation, is that correct?

2 A I propose to use data from this report in
3 determining present need.

4 Q How do you propose to go about that?

5 A This report divides housing need first into two
6 major subcategories, one related to the physical
7 characteristics of the dwelling, and one related to the
8 financial resources of the inhabitants of the dwelling, so-
9 called financial need.

10 Now, it is my position that the remedy for
11 inadequate financial resources is not to be found in zoning
12 for new structures. So, inadequate financial resources
13 not influence a Bernards Township obligation for zoning. I
14 have not considered those units.


15 Q Does the municipality intend to undertake a program
16 to update their existing housing stock?

17 A There has been no discussion in my presence to do
18 so.

19 Q Well, if the report indicates that there is a
20 physical housing need due to lack of maintenance, lack of
21 repairs, lack of plumbing, do you think that the governing
22 body has any affirmative obligation to undertake programs
23 which might result in the upgrading of that existing housing
24 stock?

25 A I do not believe that today a township governing

1 body is legally required to subsidize through financial
2 means, through the use of local moneys, the rehabilitation
3 of housing. I have seen no mandate of that type.

4 Q Well, a number of municipalities in New Jersey
5 have a requirement, and they have it by ordinance, that
6 before a house can change hands, before it can be sold, it
7 must be inspected by the building inspector, who checks to
8 see if the house is above or below standards, and if it
9 doesn't meet the municipal standards, it must be upgraded
10 before it can be sold. Such a legislative technique would
11 end up over a period of time, through the use of
12 moneys, upgrading your existing housing stock. 
13 thought of such?

14 A I am not aware of the procedures that you have
15 just described.

16 Q So, it is your testimony that there is no intent
17 that you know of on the part of the governing body to
18 undertake procedures which would require that the existing
19 housing stock in Bernards Township be upgraded.

20 MR. ENGLISH: I object to that question.

21 He has not testified that there is no intent to
22 do that. The question is leading, and I think it
23 goes far beyond anything the witness has stated.

24 MR. HILL: Well, I will rephrase it.

25 Q Is there any intent, to your knowledge, on the part

1 of the local legislature, the governing body of which you
2 are a part, to undertake programs which would tend to upgrade
3 the existing housing stock of Bernards Township?

4 A That question can't be answered yes or no. There
5 is an active program by our building inspector to see that
6 the building codes and zoning codes are enforced, and this
7 in some cases involves the identification of substandard
8 structures, and negotiating first informally and then through
9 more formal procedures with the owners of those structures
10 to either have the structures razed or have them improved,
11 and this is an ongoing policy of the township through the
12 building inspector, and we have a man who wears two hats.
13 He is called the zoning enforcement officer and the building
14 inspector.

15 With regard to the other part of the question, I
16 again repeat that I can recall no discussions in which I
17 have participated or observed which were intended toward
18 the use of local tax money for the purpose of rehabilitation
19 of private structures.

20 Q So, your testimony is that it is your conclusion
21 that the only part of the present need obligation which the
22 State Department of Community Affairs has identified in that
23 report which Bernards is obligated to add to their fair
24 share is the financial need, it is not the physical need,
25 is that correct?

1 A I think you may have said that differently than
2 you intended. It is my position that an estimate of present
3 need that one derives from this report--excuse me, let me
4 back up.

5 If you are dealing with the specific phrase in the
6 Mt. Laurel decision which says "shall provide in their land
7 use regulations", and that is the part that we are talking
8 about here, that the remedy for housing need that land use
9 regulations can supply is best reflected by the structures
10 that are identified here as physically inadequate.

11 I think I probably had a very involved sentence
12 there, but what I am saying is that we are dealing today
13 with Ordinance 385, or the support for such an ordinance,
14 and the thrust of that ordinance is toward land use
15 regulations, which, by my way of thinking, means new structures
16 If I am trying to get a handle on the number of new structures
17 that are required, I would take the data from this report
18 that deals with physically inadequate structures, and I would
19 ignore that data which deals with inadequate financial
20 resources.

21 Q Did you read the preface to this report?

22 A Yes, two or three times, and I'm not sure exactly
23 yet what it says.

24 Q Does the Department of Community Affairs state in
25 the preface that in defining financial housing need, they

1 looked for people who were renting within the municipality
2 that were paying more than one-quarter of their annual
3 income for rent, and they determined as a matter of policy
4 that that was improper, and that those people had a financial
5 housing need for lower cost housing?

6 A There were statements of that nature in there. I
7 can't speak to the specific one you refer to. They did have
8 some rules of thumb regarding the definition of financial
9 need. They may have been as you have described.

10 Q If it is true that there are 65 families in
11 Bernards Township--I'm not saying that is true, but if it is
12 true that there are 65 families in Bernards Township
13 are paying more than the state thinks is a proper per cent
14 of their income for rent, would you agree that they have a
15 housing need for lower cost housing than they are now living
16 in?

17 A If a family is resident in a dwelling, and the
18 rental, or mortgage, or whatever, if the carrying costs of
19 residency in that dwelling are greater than the financial
20 resources of the family, then there is a need of some kind.
21 I think you could also argue that the need is financial, that
22 there is a need for more money. I don't think you can
23 translate that into a need for a house.

24 Q Does the report contain this sentence: "The second
25 important indicator of housing need, financial housing

1 inadequacy, consists of low and moderate rent, or households
2 paying 25 per cent or more of their incomes for rent."

3 Is that a correct reading of a sentence in this
4 report?

5 A I take that sentence to be a description or
6 identifier of an additional set of data in the report. It
7 may also reflect a policy of the writer of the report, or a
8 philosophy, I'm not sure. It is not necessarily mine.

9 Q Do you have a policy in this regard?

10 A I have no data which suggests that a family is
11 able to pay X per cent of its income for housing purposes.
12 I have never made a study of that subject.

13 Q Is it your proposal then to take the number of
14 units listed in the state report indicating physical housing
15 need and to add those to your prospective housing need in
16 order to come up with Bernards' fair share?

17 A Partially, yes, I am making use of that data.

18 Q Are you aware that that data was for the year 1970?
19 In other words, it was derived from 1970.

20 A Yes.

21 Q The 1970 census, which really the latest figures
22 were 1969, is that correct?

23 A There is some discussion in the narrative here
24 about the methodology. It is certainly not a very clear
25 methodology. In fact, it would appear that some of the data

1 goes back to the 1960 census. I'm not at all clear how
2 they have done this. However, I have not seen any more
3 recent data which appears to be more clearly derived. So,
4 lacking a superior alternative, I have used this.

5 Q Let's look at some of the assumptions in your
6 JORD formula. By way of preface, the obligation, we all
7 seem to agree, is that each municipality provide their fair
8 share, and "fair" can mean different things to different
9 people. The federal government, in determining people's
10 fair share of their income for tax purposes, has a policy
11 that the more you earn, the more taxes you should pay. You
12 should pay a graduated income tax because it is fair that
13 wealthier people pay a larger per cent of their income for
14 taxes to support our government than poorer people. Does
15 your JORD formula contain the assumption that it may be
16 fair that wealthier communities such as Bernards, which
17 enjoys a population of relatively affluent people relative
18 to other communities in the State of New Jersey, should
19 perhaps bear a larger share than a less affluent community?
20 In other words, is there built into your JORD formula some
21 device which would increase the share of wealthier
22 communities as opposed to a community next door that
23 theoretically might have an income, mean population income,
24 of less than Bernards Township but was like Bernards
25 Township in every other way?

1 A No.

2 Q So, there is no income redistribution provision
3 in your JORD formula, is that correct?

4 A Correct.

5 Q Does that reflect your belief that it is not fair
6 that wealthier communities should have a higher fair share
7 than poorer communities?

8 A "Fair" is a subjective term. Now, I don't myself
9 see in the Mt. Laurel decision, or any other related decision
10 with regard to zoning that I have seen, and I have not made
11 a major study of the subject but I have read a ~~comprehensive~~
12 mandate to correct all the ills of society. First, ~~of~~
13 the ills are defined differently by different members of
14 society.

15 What I do see in Mt. Laurel is a mandate to each
16 municipality that it provide in its land use regulations for
17 an appropriate variety of housing, housing in terms of a
18 prospective and future regional need. I do not see in that
19 any mandate to correct income disparities such as you have
20 alluded to.

21 Now, it seems to me that what is fair at this point
22 in time is a simple formula which can apply equally to everyone
23 and be applied objectively to everyone in a manner which is
24 not suspected of being self-serving, and in a manner which
25 does not include a lot of subjective factors, and the analogies

1 that come to mind, which are again imperfect, would be
2 affirmative action plans for major employers to try to
3 establish a better balance with regard to the employment
4 and promotion of minority groups or females, basing for
5 purposes of establishing better balance of races in schools.
6 These are not perfect solutions, but because there is not
7 a clear concensus in society to use a more sophisticated
8 approach to deal with these problems, a somewhat mechanistic
9 approach is being used. I think that is where we are with
10 regard to housing, and so, my approach is a mechanistic
11 approach, admittedly so, and intentionally so, and I think
12 that a quota system based on a mechanical application of a
13 formula, at this point, is satisfactory.

14 Q So that if Bernards Township had a mean family
15 income of \$5,000 per family, according to the 1970 census,
16 instead of the mean family income which it has, its fair
17 share under the JORD formula would be the same as it is in
18 your calculation.

19 A There is nothing in Computation One or Computation
20 ~~Two~~ which deals with the incomes of the people who already
21 ~~reside in~~ this municipality, or in any other municipality
22 of the region, other than the estimate of that proportion
23 of new households which will be of low and moderate income.
24 Now, in determining that proportion, I have utilized data
25 on incomes, but aside from that, I have not utilized data

1 on incomes.

2 Q You have used data on Somerset County income?

3 A No, in the second computation, I have used data
4 on the income of each of the contributing counties.

5 Q But isn't it true that the population of Bernards
6 Township is better able to afford higher taxes to pay for
7 services for low and moderate income people who may not be
8 able to pay their way in municipal taxes than a community
9 such as Manville which has a considerably lower mean income
10 than Bernards?

11 A There are two aspects to that question. Number
12 one, you have to know what the burdens of low and moderate
13 income housing on a municipality will be, and the only
14 experience that I have had with that is an attempt to
15 determine what the burdens of the senior citizen housing
16 called Ridge Oak on Bernards Township will be, and we were
17 not very successful in determining that. So, I don't know
18 what these burdens are.

19 Secondly, one would have to determine the past
20 capacity of the municipality to support those burdens, and
21 I have never made a study of that either. So, I don't think
22 I can answer your question.

23 Q Does your JORD model contain any mechanism in it
24 which would prevent, if applied on a statewide basis, fully
25 developed municipalities from acquiring a fair share?

1 A The JORD model as now put forward assigns a fair
2 share to a municipality on the basis of what is happening
3 in the region around it and in it, and the fair share is
4 based on the area, geographical area, of its municipality.
5 It does not include any provision for existing housing, that
6 is, the degree of development that already exists. If it is
7 found that a particular municipality, by virtue of full
8 development, such as Judge Furman stated in Dunellen, or by
9 virtue of environmental restrictions, cannot support the
10 fair share, then presumably that fair share would be
11 apportioned in some way across those municipalities that can
12 afford a fair share.

13 I believe the Mt. Laurel decision leads one easily
14 to the concept that we are talking about here, that you first
15 assign a fair share, and then the burden of proof falls on
16 the municipality to show that it can't support it. But,
17 initially at least, you assign that fair share to the
18 municipality and wait and see what happens.

19 Q Let us suppose that Plainfield is fully developed
20 and it cannot support a fair share, and Manville is fully
21 developed and it can't support its fair share, and Somerville
22 is fully developed and it can't support its fair share, and
23 Newark is fully developed and it can't support the additional
24 housing which should be allocated to it under the JORD formula
25 as its fair share. Does your formula add to Bernards Township

1 its share of the housing which other municipalities cannot,
2 because of their present state of development, accommodate?

3 A The formula does not. I will speak for myself
4 only, but I think it is important to emphasize that this is
5 step one in a process. The kind of premise that you have just
6 referred to requires greater knowledge of the region and its
7 ability to absorb housing, and its need for housing than we
8 have in this township. If a sharing technique were developed
9 and applied throughout the region, and if it were found that
10 individual municipalities could not support their share,
11 then I personally would recognize and support additional
12 shares for this township, if I were in a position
13 government to do so. But, that information is not available
14 to us today. I think that what we are putting forth now is
15 a very adequate step one in this process.

16 Q Do you have any opinion as to whether or not
17 Bernards is limited either through environmental constraints
18 or its state of development from supporting its fair share?

19 A I do not believe that the number of housing units
20 put forward in Ordinance 385 is in any way not feasible over
21 the period of six years that we are talking about. I do not
22 believe that there are any local environmental restrictions
23 that would prohibit that. There may be financial restrictions
24 that are imposed from outside, I don't know that, but one
25 premise, however, is that the capacity of the sewerage plant

1 will increase to in the neighborhood of three million gallons
2 per day, which is the proposal of the sewerage authority,
3 and we have in our plans assumed that at some reasonable
4 time in the future, that that expansion will be in place.
5 There have been many delays, and no one in the township that
6 I know of is able, with any accuracy, to predict the actual
7 schedule for completion of that expansion. So, we have
8 assumed that that will take place, and have based our planning
9 decisions on that.

10 Q In your documents, you refer a great deal to
11 Princeton Community Housing. I happen to live in Princeton
12 and am familiar with the project, and I guess you refer to
13 it because Mr. Agle is familiar with it, and his partner
14 worked on it. Have you seen Princeton Community Housing?

15 A Yes.

16 Q Do you know how many years it took from conception
17 to construction?

18 A No.

19 Q Mr. Agle never told you?

20 A He may have. I suspect it was a long time, as our
21 own Ridge Oak is taking a long time.

22 Q When was Ridge Oak first proposed?

23 A I don't know when it was first proposed. The
24 Board of Adjustment affirmatively acted on it in 1973, I
25 believe. So, certainly there was work done before that.

1 Q Assuming that the experience in New Jersey
2 indicates that it takes some seven or eight years to first
3 begin construction of a housing project, depending on
4 governmental funds and approvals, and local approvals, and
5 tax abatements, do you think it is reasonable to bite off
6 your fair share in six year chunks rather than a longer
7 period?

8 A Yes.

9 Q Why did you pick six years?

10 A Six years is a period of time that receives some
11 endorsement in the new municipal land use law in that they
12 suggest that a master plan be reviewed, and zoning regulations
13 be reviewed and revised where necessary at least every six
14 years. The origin of that particular six years, prior to
15 the land use law, I am not sure of. In other words, I don't
16 know how that particular number, six years, appeared in the
17 municipal land use law, but it seems to me that a period of
18 time should be allocated such that people can lay their plans
19 and implement their proposals. I think that the period of
20 six years should be adequate for that.

21 Q Isn't it true that if you converted your JORD
22 formula to a 20 year formula to conform with the Carl
23 Lindbloom approach, that the numbers aren't that different?

24 A I have not made a comparison, numerical comparison,
25 between the two approaches in a detailed sense. I kind of

1 mentally made some gross comparison, but I can't answer your
2 question precisely because I haven't made that kind of
3 detailed comparison.

4 Q If a developer comes before the requisite boards
5 and bodies of Bernards Township, and intends to build in
6 accordance with Ordinance 385, some low and moderate income
7 housing, and one of your Allen doughnuts, or Agle doughnuts,
8 or Dunham doughnuts--

9 A Larry Dunham is a member of the Planning Board, and
10 it was his idea, so it is called a Dunham Doughnut.

11 Q All right, one of those Dunham Doughnuts, and he
12 has consultants of some experience who tell him that
13 the time he applies to the time he can probably start
14 building, given the usual federal delays, that the experience
15 in New Jersey is seven years, how can he operate under your
16 ordinance which gives him no assurance that when he is ready
17 to construct, that there will be any fair share available?

18 A I don't accept the premise. The Planning Board
19 today, the Board of Adjustment, would have to act on the
20 special exception application, which is the procedure under
21 which a person would make this proposal. I guess under the
22 new law, the municipal land use law, the Planning Board
23 would make this decision.

24 But anyway, as I understand it, Ordinance 385 will
25 permit the Planning Board to approve development up to a

1 particular quota, or to approve a project which in the
2 aggregate reaches up to a particular quota.

3 Now, there will be some tallying of the approvals
4 here. Certainly, the first man that comes in with a
5 proposal for up to 150 dwelling units has no problem. If he
6 got the approval to proceed, there is no indication that
7 anyone will change the rules of the game and in some way
8 frustrate his proposal. As subsequent proposals come forward,
9 and the quota is almost used up, there might be a degree of
10 uncertainty for that last proposal, but I don't think that
11 it is a real problem today.


12 Q The ordinance was designed to make damn sure that
13 Bernards doesn't get more than its fair share, wasn't it?

14 A I think an editorial in the Bernardsville News
15 deals with this concept rather well, but I will refer to my
16 own personal case. I personally believe that the federal
17 income tax is full of loopholes which should be closed, that
18 the scheme of deductions is entirely too complex, and
19 essentially unfair, and should be greatly simplified.

20 However, as long as those deductions are in force, I will
21 take advantage of them as an individual taxpayer to the
22 fullest extent possible, because that is the way the game
23 plays. If the law permits that, I suggest that individual
24 citizens have every right to take advantage of those laws.

25 Now, I think the same thing is true here. The

1 representatives of the township of Bernards do not have a
2 mandate or a responsibility to try to correct alleged evils
3 in our society. I think they have an obligation to adhere
4 to the mandate of the court, and of every subsequent mandate
5 by the legislature or executive departments, to provide its
6 share of housing, but we have no mandate from our own
7 citizens to go far beyond that. Therefore, our attempt was
8 to come up with an estimate which was defensible but which
9 was not excessive.

10 Q You must be aware that Judge Furman has assigned
11 fair shares to some 14 municipalities in Middlesex County
12 three to five times what Bernards has projected 
13 share.

14 A I have read Furman's report. I have seen the
15 numbers. I don't mean his report, his decision or opinion.
16 There may have been some subsequent amendments or explanations
17 as to what I have read, I can't say. I certainly was not
18 present at the trial. I cannot determine from what I have
19 read the methodology that he used to determine his numbers.
20 So, I really can't comment on the application of those numbers
21 or the consistency of those numbers with regard to anything
22 we are doing in Bernards Township.

23 Q In your report, you refer to the Montgomery case.
24 Are you familiar with that case?

25 A I don't know that I referred to it in any report

1 that I have written. I think we have verbally here mentioned
2 it. I remember reading something in the newspapers, but I
3 don't know that I ever read the actual report that Lindbloom
4 submitted in Montgomery Township. I think most of what I
5 know about it came out in the newspapers.

6 (Brief recess taken.)

7 Q In Ordinance number 385, you have 354 units of low
8 and moderate income housing. You then have a number of
9 units--what is it, 190 for market housing?

10 A It is half of that 354, whatever that is. 177,
11 I think.

12 Q 177?

13 A Yes.

14 Q How do you define market housing?

15 A Moderate income housing, as we have understood it
16 up until now--by the way, I understand these definitions
17 change from time to time, and also the specific dollar figures
18 change from time to time, but market income housing begins
19 where moderate income housing leaves off. Now, moderate
20 income is up to \$8,000, thereabouts. Low is up to five.
21 Again, I emphasize that this is a sliding scale depending on
22 the subsidizing agency at the time the application is made,
23 but then market income begins at \$8,000, let us say, and
24 goes up to the neighborhood of 23, 24. The word "market"
25 comes from the concept that these people will live in the

1 structures that have been built, utilizing subsidy money
2 but they will then pay their full rent. The rentals of these
3 people will not be subsidized.

4 Q Is that your estimate, that there are 177 families
5 that can be expected to move into Bernards Township within
6 the six year period that will be making between \$8,000 and
7 \$23,000?

8 A No. I would say the ratio came about by a different
9 route. I personally wasn't involved with the selection of
10 this fraction. I believe it was stated by Mr. Agle and Mrs.
11 Fox after consultation with the housing finance agency, that
12 a ratio of two thirds low and moderate income and one third
13 market income was an acceptable ratio for their purposes.

14 I suspect, and my memory may fail me here, that the
15 one third market was the maximum that the housing finance
16 agency would support, that this was the maximum non-subsidized
17 per cent that they would support. But, I believe that the
18 origin of that fraction came about through discussions with
19 the subsidizing agency rather than through any demographic

20 study.

21 Q Assuming that your Ordinance 385 in fact looks
22 after people making less than \$8,000, and that it does
23 provide Bernards' share of low and moderate income housing,
24 would you agree that there are people making more than \$8,000,
25 or whatever the cutoff for moderate income housing is, but

1 less than \$30,000 or \$40,000, or whatever income it takes
2 to buy new housing in Bernards Township today, who cannot
3 live in Bernards Township because of their means?

4 A I think you better redo that question.

5 Q What is your estimate as to the approximate cost
6 of new housing in Bernards Township today?

7 A There has been a building of new housing on 40
8 thousand square foot lots, which is well over \$100,000, and
9 in terms of the housing that has actually been sold, new
10 housing that has actually been sold, most recently, it is
11 certainly in the \$100,000 plus range.

12 Q Do you have any opinion as to what the house
13 could be expected to cost that will be built in the PRN zones?

14 A Not a well calibrated opinion. I have seen a study
15 of hypothetical costs based on certain premises, and I am
16 trying to remember what those units costs were, and I can't
17 remember, and it is best for me not to try to guess. They
18 are in a report that Mr. Agle has published, which I presume
19 you have.

20 Q Do you recall if they were in the \$40,000 range,
21 or \$50,000 or \$60,000?



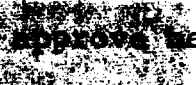

22 A I think they probably are below 50, maybe mid-30's,
23 40's. I'm not sure. Again, let me not guess at that, because
24 it is in the report that he submitted, and housing costs, as
25 we all know, are dependent on other things, what the person

1 wants to pay in the way of housing, the development costs,
2 the going rate in the market. In other words, how much
3 you can get for it as opposed to how much it costs to
4 construct it. I am not an expert in this field.

5 Q Are you aware that there was approval in Bernardsville
6 for 53 townhouses?

7 A I am aware of a proposal off Child's Road. I
8 attended one public meeting on the subject. I don't remember
9 the exact number of units.

10 Q Do you recall the approximate density?

11 A I did some quick figuring the night I 
12 but I am not sure that I had the right square fo 
13 determine density in our municipality now primarily in terms
14 of a floor ratio, which is the ratio between the constructed
15 floor area with some additional parking added on, and the
16 total land area upon which you are developing. That is the
17 statistic we use. I suspect that the numbers I got the day
18 I was there at the Bernardsville hearing, that the numbers
19 they were talking about were in excess of what we would
20  approve, but without knowing how they define their
21  statistics, I couldn't be sure.

22 Q Do you know what those townhouses are selling for,
23 approximately?

24 A No.

25 Q Would you agree as a general proposition that it

1 is difficult for people making more than \$8,000 but less
2 than \$25,000 to buy housing in Bernards Township?

3 A That is a very wide range. Between eight and 25,
4 did you say?

5 Q Yes.

6 A I believe that people near the lower end of that
7 range have trouble buying houses anywhere. I don't believe
8 the private housing market is able to accommodate people
9 near the lower end of that range anywhere in the state,
10 from what I have heard.

11 Q Assuming that people can afford to pay ~~the~~ ~~same~~ ~~amount~~ ~~of~~ ~~their~~
12 annual income, in your opinion, can any substantial ~~amount~~ ~~of~~ ~~housing~~
13 of housing be found in Bernards Township for \$50,000 or less?

14 A For purchase?

15 Q For purchase.



16 A We did a study, using the tax assessor's data,
17 and there was a percentage that was valued at less than
18 \$50,000. What that percentage was, I don't know, but it
19 certainly wasn't the majority of the housing in town, but
20 there are at least some.



21 Q Those are theoretical studies. Have you ever seen
22 housing listed for under \$50,000 in Bernards Township?

23 A I will argue with you very strenuously when you
24 say they are theoretical. A tax assessor's records, which
25 include all of the assessable property in the township, are not

1 theoretical. They are probably the best picture or profile
2 of the price of housing in this township, because they
3 represent everything.

4 Q Do you think your house is assessed at what you
5 could sell it for?

6 A I think if houses of the type that I live in
7 collectively were placed on the market, that they collectively
8 would bring a price very close to the adjusted assessed value.
9 Remember, there is an equalization ratio which is developed
10 by each year. It takes the assessed value on the books, and
11 in our case the reassessment took place in 1972, 
12 which takes that assessed value on the books and 
13 up in terms of what the actual arm's length transactions
14 have been. Now, if you use that factor, I believe you will
15 come very close to the true market value of the houses.

16 Remember now, if you go by sales, you are not
17 dealing necessarily with a representative sample. I think
18 that intuitively, and if you are at all close to the movement
19 of people in the township, you will find that the higher price
 houses are the ones that turn over more. Also, if you look
 at real estate ads, you are going to get an inflated view of
22 housing costs. People settle for something less than they
23 advertise for.

24 Q But in the meantime, there are large quantities of
25 the population making between \$8,000 and \$30,000, and they

1 have housing needs. I am asking you if you think those
2 people can typically find housing in Bernards Township.

3 A There are certainly many people who cannot afford
4 to live in Bernards Township, and I suspect that there are
5 many people who could not afford to buy in any township,
6 at least this is what the press usually states, and what the
7 general qualitative statements of matters are.

8 Q Do you know if your policemen and school teachers
9 live in Bernards Township?

10 A I have made no personal survey of the residences
11 of the township people. I don't think there is ~~any~~
12 point in belaboring the subject. I think it is ~~very~~
13 hard for people to buy housing in Bernards as it is hard
14 to buy housing anywhere, and if you want to look at the tax
15 assessment records and demonstrate that the assessed values
16 with equalization factors applied in Bernards Township are
17 higher than in Manville say, you will probably find that
18 could be the case. I am not denying the average housing
19 price in Bernards is higher than some of the more urban areas.

20 Q What does a policeman in Bernards Township make?
21 Do you recall what the starting salary for a policeman is?

22 A Well, we just changed it. We just had a contract
23 approval. It is in the neighborhood of nine or ten.

24 Q What does the starting schoolteacher in Bernards
25 Township make?

1 A I'm not sure. Somewhere in the high part of the
2 first decade.

3 Q Do you, as a member of the Planning Board and the
4 governing body, feel that it would be desirable or that you
5 have any obligation to undertake land use policies which
6 would allow those people who protect your streets and those
7 people who teach your children to live in the town?

8 MR. ENGLISH: I object to the question because
9 there has been no showing that those people do not
10 live in the township at the present time, or that
11 the policemen and teachers are not recruited from
12 existing inhabitants of Bernards Township.

13 Q You can answer the question, Mr. Allen.

14 A The PRN legislation was a step which this township
15 took as a result of its recognition of a need for a greater
16 variety of housing. Now, thus far, no builder has availed
17 himself of the PRN option, but it was a step which the
18 township took in recognition of the need for a different
19 kind of housing.

20 Q If sewers and water were available on the Allan-
21 mane property, what would you consider to be the appropriate
22 zoning for that property?

23 MR. ENGLISH: I object to that question because
24 the sewers and water are not available, and the
25 Somerset County master plan proposes that they not

1 be made available for the foreseeable future,
2 which I think is defined as being to the end of
3 this century.

4 You can answer the question, Mr. Allen.

5 MR. ENGLISH: Also, you say if sewers and
6 water are available. I think that question cannot
7 rationally be answered without attention being
8 given to where the sewerage effluent is to be
9 disposed of, that the present studies of the New
10 Jersey rivers pursuant to the Federal Water
11 Pollution Control Act Amendments of 1972
12 indicate that the capacity of the stream
13 vicinity of Bernards Township, or that are accessible
14 to it, to absorb additional quantities of sewerage
15 effluent, is nonexistent, and that there may have
16 to be in effect a freeze, or a virtual freeze, on
17 additional population in this area.

18 MR. HILL: Mr. English, I don't appreciate
19 your feeding the witness an answer by way of an
20 objection, and you have had a lot of discovery, and
21 you have objected to my making those kinds of
22 statements, and if that is the way you want to play
23 it, I will in future discovery object and tell the
24 witness what I think the answer should be, and we
25 can conduct discovery in that fashion. But, I

1 don't think that that is a proper kind of
2 objection, and I think you know it.


3 MR. ENGLISH: Mr. Hill, you misconceive my
4 purpose, and I do not accept your characterization
5 of my objection. I am trying to state on the
6 record grounds why I think the question is an
7 absolutely ridiculous one and totally unrealistic.


8 MR. HILL: Mr. Allen is as intelligent and
9 able as any member of the governing body, I'm sure,
10 and I think he can answer the questions without
11 any help.

12 Q Will you try to answer the question, 

13 A Would you restate it.

14 Q If sewers and water were available on the Allan-
15 Deane property, what would you consider to be the appropriate
16 zoning for that property?

17 A I don't think that I can answer that question
18 on the basis of the premise that you have supplied. Planning
19 is an integrated--a plan should be an integrated plan with
20  more considerations than just water and sewerage.

21  is no set of hypotheses that I can envision which would
22 depart radically from the master plan that we now have, that
23 that area of the township should be low density, and I don't
24 believe that the factors of water and sewerage are the only
25 controlling factors. They have an influence, certainly, but

1 I don't think it is proper to hypothesize on the proper
2 density as a result of two specific factors that are changed
3 from our present plan. In toto, I think the zoning that we
4 have proposed in our master plan, which suggests a higher
5 concentration around the existing village, and a lower
6 concentration in the outlying part of the township, is
7 appropriate zoning, and appropriate for many reasons.

8 Q Have you seen any on-site soil studies of the
9 Allan-Deane property?

10 A I have been present while such studies have been
11 referred to. They are referred to in our master plan. But,
12 again, each of us has our own specialty, and I have
13 delved into the real meaning of these studies or the
14 authenticity of them, or whatever.

15 Q Do you know what geological conditions were observed?

16 A In layman's qualitative terms, the recollection I
17 have is that that general area of the township, and I am not
18 now going to be specific with regard to Allan-Deane's holdings,
19 but that general area of the township, on both sides of 78,
20 is characterized by an underlying rocky structure which has
21 little holding capacity for water, which dictates two
22 considerations, as I understand it: Number one, that it won't
23 absorb water very well from the viewpoint of septic, and
24 secondly, it won't produce water very well from the viewpoint
25 of wells, and taken together, this dictates rather low

1 density if public sewers and water are not available.

2 Q Might it not dictate that the land should not be
3 used at all if the land can't absorb effluent by way of
4 septic systems?

5 A I think it would have to be established that the
6 absorption capacity of the soil were so limited that you
7 could not have any septic systems on it. I have never heard any
8 testimony to that effect. It seems to me that almost any
9 real world soil condition will absorb some septic effluent.
10 It is not like putting it on barren rock. It is just the
11 amount of absorption that we are talking about.

12 So, I think your question was wouldn't
13 that there should be no development, and I have never seen
14 evidence to support that restrictive a proposal.

15 Q If there are septic limitations, isn't that a good
16 reason to put sewers in the area, or to allow developers to
17 bring sewers in?

18 A If one has septic limitations, and one has other
19 motivations for development, and these septic limitations
20 accompanied by other kinds of limitations, then you
21 I guess theoretically, fine, let's overcome the
22 septic systems by virtue of sewers, but again, that is a hypothetical
23 question and not necessarily applicable to the land in
24 question.

25 Q In the Lorent suit, your attorney stipulated that

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Bernards was a developing community within the meaning of Mt. Laurel. Do you believe it to be such?

I personally believe, from the language in Justice Hill's decision, that we have a developing municipality, and this government has so conceded.


MR. HILL: I have no further questions.

MR. ENGLISH: I have no questions.

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C E R T I F I C A T E

I, HENRY E. MC GRORRY, JR., a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the named witness was first sworn and that the foregoing transcript of deposition is a true record of the proceedings and testimony as taken by and before me at the offices of the Municipal Building, Basking Ridge, New Jersey, on Thursday, July 22, 1976.


Henry E. McGorry, Jr.
Notary Public and Certified
Shorthand Reporter of New Jersey

