

RULS - AD - 1980 - 150

18 March 1980

Stenographic Transcript of Proceedings

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THE & LAJEM&EANE CORPORATION,

Plaintiff,

vs.

THE TOWNSHIP OF BERNARDS,

et al,

Defendants.

Entered

Indexed

STENOGRAPHIC TRANSCRIPT
OF
PROCEEDINGS

Place: Somerset County Courthouse,
Somerville, New Jersey

Date: March 18, 1980

BEFORE: HON. B. THOMAS LEAHY, J.S.C.

TRANSCRIPT ORDERED BY:

ALFRED L. FERGUSON, ESQ.

RULES - AD - 1980 - 150

PENGAD CO., BAYONNE, N.J. 07002 • FORM 8046

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APPEARANCES:

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For the Plaintiff,

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NC CARTER & ENGLISH, ESQS.
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JOHN F. RICHARDSON, ESQ.
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JAHES E. DAVIDSON, ESQ.
For the Defendant Bernards Township.

Marian V. Balerno, C.S.R.
Official Court Reporter
Somerset County Courthouse
Somerville, NJ 08876

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2048

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MR. FERGUSON: Your Honor, before we proceed, perhaps it's in order to give a brief statement of why we're here today.

ft- This action, as the Court knows, is approximately four years old. It's a very large-in-issue and large-in-scope zoning suit against Bernards Township.

During the course of the litigation, many things have happened in Bernards Township. The Court is familiar with the Lorenc trial and the Appellate proceeding and the proceedings after the Appellate Division proceeding.

During the course of those proceedings and this litigation, the Bernards Township Committee and the Planning Board began to consider to look at its land use plan and master plan very hard in preparation for the litigation and part, of course, just due to the passage of time.

Indeed, the Land Use Law states that the master plan must be reviewed and updated every six years.

The 1976 master plan is due, therefore, for update in 1982, and that's not very far away.

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During the course of this review,
it became obvious that with updated and
"Increased Information made available through
Its consultants and in part due to the
litigation process, that there were proposals
which the Township Committee would Implement
in the normal course of events.

Discussions with the Allan-Deane
Corporation ensued. And after some negotiation,
Allan-Deane Indicated that they were in
agreement with those proposals insofar as they
affected the Allan-Deane land.

Those discussions became refined,
and the Township Committee decided to tell
Allan-Deane they were willing to go ahead and
do these various modifications to Its ordinance.
And Allan-Deane informed the Township Committee
that if those changes were Implemented, Allan-
Deane would be satisfied. In effect then we
have an accord between the parties as a result
of the Township Committee moving on Its own
to Implement certain changes, and those changes
being acceptable to Allan-Deane.

This set of understandings has been
reduced to writing in a letter of February 1,

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1 1980, between Mr. Hill and myself. And we soon
2 after these were reached, we came down and
3 informed the Court that these understandings
4 hfd been reached.

5 The Court set today as the hearing for
6 the disposition of the action. What we Intend
7 to do today is to present brief evidence to the
8 Court as to what these things are, their
9 historical roots and to give a schedule for
10 their Implementation and with the under&t\$jdij*cu
11 that Allan-Deane would agree to them, WOUS& ^J^
12 agree to dismiss the suit if those changes are
13 made. • /> ^

14 And I think that's why we're here,
15 and we would anticipate probably one or two
16 witnesses on behalf of Mr. Hill and three brief
17 witnesses on behalf of the Township.

18 THE COURT: Mr. Hill.

19 MR. HILL: We were on the telephone
20 until late in the evening last night, and we
21 came to an agreement as to the form of the final
22 judgment, Your Honor. The final judgment,
23 basically, in return for Bernards agreeing to
24 be ordered to do those things, we would agree
25 to dismiss the lawsuit, and the final judgment

1 should be here.

2 It's -- there were no secretaries when
3 finished at our office, and it should be
4 Imre by 10:30 or so this morning.

5 And if it please, with everyone's
6 approval, we're hopeful that this case can be
7 a matter of history by noon.

8 THE COURT: All right, very good.
9 All right, you may proceed.

10 MR. RICHARDSON: Your Honor, I **
11 still involved in this litigation and hSSWmi[^]
12 been a party to the discussions that Mr. HUT
13 and Mr. Ferguson had, although I was apprised
14 and given a copy of the letter of February 1.

15 It is my understanding from talking
16 with Mr. Hill there will be a dismissal as to
17 the Somerset allegations against the Somerset
18 County Planning Board which are contained in
19 the first count of the complaint.

20 MR. HILL: The form of judgment
21 which will arrive shortly dismisses the action
22 in its entirety. It provides that all counsel,
23 except you, agree to the form and the entry of
24 the judgment which I believe is the procedure
25 to make the judgment not appealable. You only

1 agree to the form of the judgment since the
2 Somerset County Planning Board did not participate
3 in the process.

4 MR* RICHARDSON: Exactly, yes.

5 MR. HILL: I guess we agreed I would
6 begin and I would like to call Mr. Lindbloom
7 if Mr. Ferguson has no objection. I'll give
8 you a copy of Mr. Lindbloom's report. It has
9 pictures and graphs which you can look at more
10 closely, which will be introduced into evidence.

11
12 CARL LINDBLOOM,

13 being duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. HILL:

16 Q Mr. Lindbloom, what is your profession?

17 A Planning Consultant.

18 Q Can you briefly describe to this

19 Court your educational background and experience?

20 I have undergraduate degree in architecture and

21 a master's degree in city design from Miami University

22 in Oxford, Ohio. I have about 23 years experience in the

23 field of planning. Most of it in New Jersey as a planning

24 consultant, and for the last eight years or so as head

25 of my own firm located in Princeton.

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Q Do you have any publications,

Mr. Lindbloom, specifically in the field of fair share?

A There was a -- I have forgotten the name of
~~ttim~~ ready. One that was published by Rutgers, and
I co-authored a chapter on fair share in that publication.

Q Turning to Bernards Township, did you,
In connection, did you for Allan-Deane conduct a land use
and zoning analysis of Bernards Township?

A Yes. Originally in 1977 and updated it last
year, late last year.

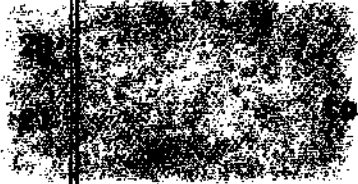
Q And what methodology did you use/how
did you conduct that analysis?

A We first obtained a base map from the Township
planning consultant, Mr. Agle.

Q Do you have that base map? Perhaps
we should mark it into evidence.

A This is actually the land use and-

Q All right, why don't I request that
this be marked.



THE COURT: All right, any objection
it being marked?

MR. FERGUSON: No, Sir.

THE COURT: All right, P-1 in evidence,

map .

(Map was marked Into evidence as P-1.)

1 Q Mr. Lindbloom, using P-1, can you
2 explain how you conducted the land use analysis?

3 A P-1 is an existing land use map. The map itself
4 is an -- there is an overlay on the land use map of the
5 existing zoning. The land use map is on a -- the base
6 map is 800 feet to the Inch.

7 It's a street map of the Township with
8 the lot lines -- the different colors represent the different
9 uses as of October of last year.

10 The yellow color is residential. The
11 reds are commercial, and the blues are community serving,
12 and the green is agricultural use, and the white is vacant.

13 The land uses were determined by a
14 field survey of the Township. My report also
15 includes analysis of the amount of land in each use and
16 the amount of land in each zone category and the amount of
17 land use within each zone category.

18 The acreage for these various categories
19 were determined by planimetering areas from the map.

20 Did you also determine what amount of
21 land was developed or in use and what amount of land was
22 in agricultural or vacant at this time?

23 A Yes, as I said earlier, the green represents
24 agricultural use, and the white areas -- by green, I
25 should say the green hatched which may not read very well

1 where you are, Your Honor, but the green hatch areas are
1 agricultural. The solid green is open space, and the white
2 areas are vacant lands.

4 Q Did you prepare a pie chart to
5 illustrate your findings as a result of this analysis of
6 the land use of Bernards Township?

7 A Yes. The report contains two pie charts, one
8 which indicates the percent of land in various zones and
9 one which represents the percent of land area in the
10 different existing uses.

11 Q All right. Til turn to the pie chart
12 entitled Graph 2 Existing land Use and Percentage of Total
13 Area of the Township, and ask that that be marked.

14 (Pie chart was marked into evidence as
15 P-2.)

16 Q In using this pie chart, tell us what
17 your findings were from your land use analysis of Bernards
18 Township?

19 A The shaded area of the pie chart indicates the
20 amount of land that's developed, and the unshaded area is
21 the vacant and agricultural or undeveloped land area. The
22 developed land represents 52.61 percent as of October of
23 last year, and the undeveloped represents 47.39 percent
24 of the total land area.

25 A little over 27 percent was residential, .98

1 percent in a quarry use, 1.69 use commercial, 15.99 percent
2 iii.coMiunity-serving uses, 6.5 percent in streets, 30.69
3 percent agricultural and 16.7 percent vacant.

4 the actual acreage figures are in various tables
5 in the report.

6 Q Have you studied the zoning ordinances
7 presently in effect in Bernards Township?

8 A Yes.

9 Q And did you do a zoning analysis and
10 try and calculate how much land was in each zone in
11 Bernards Township and what percentage in acre*, how much
12 of that land was developed and how much was avallawi* for
13 development? w .\M

14 A Yes.

15 MR. HILL: I'd like to have a graph
16 entitled, Existing Zoning and Percent of Total
17 Area of the Township marked as P-3 Into evidence.

18 THE COURT: Mr. Ferguson, any objection?

19 MR. FERGUSON: No objection.

20 i . THE COURT: Very well, it may be

21 admitted.

22 (Existing zoning and percent of total
23 area of the Township map was marked
24 Into evidence as P-3.)

25 Q Can you explain what your findings were

1 from your zoning analysis?

2 A This pie chart indicates the 15 zone districts
3 In the Township and the amount of land by percentage in
4 the different districts.

5 The shaded area represents the non-residential
6 which is just under 5 percent, 4.97.

7 The residential zone districts are in the
8 white, representing 95.03 percent of the Township.

9 The tables in the report also indicate the
10 acreage of each zone district.

11 There are six residential districts. The largest
12 which is the three-acre lot size district, is the largest
13 representing 47.72 percent of the Township.

14 The next largest is the R-40 which is 40,000
15 square foot lots, represents 23.83 percent of the Township.

16 Next comes the R-30, 30,000 square foot lots,
17 8.8 percent of the Township.

18 The R-20, 20,000 square foot lots, is 3.34
19 percent.

20 The R-2, a two-acre size lot is 3.93 percent, and
21 the Unplanned Residential Neighborhood district is 7.41
22 percent of the Township.

23 Q Did you calculate the undeveloped
24 acreage in each residential zoning district?

25 A Yes.

1 Q Could you just run those figures
2 through?

A They're not on the charts. The charts are all
4 In percentages. The undeveloped acreage for the R-3A is
5 4,400 acres.

6 The R-2A is 350. I'm rounding these figures off.
7 The R-40, 1,111. The R-30, 204, the R-20, 4.6.
8 and the PRN, 1,003.

9 Q Could you explain -- have you read
10 the current zoning ordinances in Bedrainster Township?

11 A Yes, I have. ^fSK - ' %

12 Q Can you explain how the density %<' .:
13 provisions in the residential zones work in each residential
14 zone and what the allowable densities are?

15 A Well, the R-3A is the three-acre minimum lot
16 size, and if you allow for roads and assume that the entire
17 area would be developed for residential use, that, would --
18 the density would be about 0.3 units per acre.

19 The R-2A is a two-acre minimum lot size which
20 if you take the maximum yield again, allowing for roads and
21 if you develop residentially, I say that -- I
22 mean there wouldn't be open space or churches or schools
23 within that zone which are permitted, would be 0.45 units
24 per acre.

25 The R-40 is a 40,000 square foot lot size

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1 minimum. The density there would be about .9 units per
2 acre.

3 The R-30 is a 30,000 square foot lot size. The
4 density would be approximately 1.2 units per acre.

5 The R-20, 20,000 square foot minimum lot size.
6 The density there would be approximately 1.8 units per
7 acre. And then the PRN zone is a little difficult to
8 calculate, but it's -- the theoretic maximum achievable
9 density would be 6.5 units times the dry land area in the
10 zone. There is an additional, not a zone, but an overlay
11 type of zone, the balance residential complex which allows
12 development in certain zones, the R-2A, R-40 and R-20 as
13 a conditional use approval by the Planning Board if certain
14 conditions are met. It allows a high density of development.

15 Q Did you calculate the approximate zone
16 capacity for new housing in each zone using the undeveloped
17 land in each zone and in the theoretical maximum achievable
18 densities?

19 A Yes.

20 What were those figures?

21 f'VII|SW9U the yield, giving the undeveloped acres
22 for each zone that I have already given and the potential
23 density, maximum theoretical achievable density, the yields
24 would be as follows:

25 In the R-3A zone, 1,320 units, the R-2A zone,

1 157 units, the R-40 zone, 1,000 units, the R-30 zone, 244
 2 units, the R-20 zone, 83 units and the PRN zone, 2,512
 3 units. These are maximum achievable and does not -- do
 4 not allow for other community-serving uses such as schools
 5 and parks and recreation facilities that might be located
 6 in those zones.

7 Q Are you familiar with the proposed
 8 master plan changes and zoning changes which have been
 9 proposed by Bernards Township and agreed to by Allan-Deane?

10 A I'm familiar with the proposed form of settlement.
 11 I've seen that, yes, if that's what you're referring to.

12 Q Can you explain what Bernards is proposing to do?
 13

14 A Well, it's my understanding that insofar as the
 15 Allan-Deane property is concerned, the 1,046 acres, the
 16 settlement would permit 1,275 units to be built on that
 17 acreage, divided into two areas, an allowance of two
 18 units per acre in the Raritan Watershed portion of the
 19 zone of the Allan-Deane property and which is approximately
 20 545 acres. and a half a unit per acre in the Passaic Water-
 21 shed portion of the property which amounts to approximately
 22

23 Q What --

24 A The settlement would also permit - requires a
 25 minimum of 35 percent of the units to be in single-family

1 or two-family units. It requires certain amount of open
2 space and permits some commercial development in the Raritan
Watershed.

3
4 Q Does the proposal allow for clustering
5 within -- are you familiar with the clustering?

6 A It doesn't restrict the development as to type of
7 unit or arrangement of units. There is complete flexibility
8 for variety and type of unit.

9 Q What do you think of the proposed
10 land use changes as a planner practicing in New Jersey from
11 a planning point of view?

12 A Well, I think the settlement represents good
13 planning because it does allow a good deal of flexibility
14 in development of this large area. The 1,046 acres of
15 Allan-Deane represents about 25 percent of the vacant land
16 in this particular zone, the R-3A zone,

17 I think it's good planning because the dividing
18 up of the density by the watershed, that allows the
19 compatibility of development in the Raritan Watershed area
adjacent with Bedminster Township.

20
21 Are two units per acre compatible with the
22 High density case regarding the Allan-Deane
23 land in that Township, The lower density in the Passaic
24 Watershed will be compatible with the existing and future
25 development in that area. The settlement will allow - I

PENGAD CO., SAYONNE, N.J. 07002 - FORM 2046

Lindbloom - direct

17

1 think it expands the housing, the variety and choice of

2 housing potentially possible in the Township by this

3 dedstoru \

4 ff

Did you do a fair share study of

5 Bernards Township for Allan-Deane in connection with the

6 litigation?

7 A Yes, I did.

8 Q

How did you do it, just generally?

9 A The technique I used in doing fair share is to

10 relate future housing need with future job potential in the

11 townships where I do the studies, and this was done by

12 taking the - using data from covered jobs or jobs that

13 are covered by New Jersey unemployment compensation*

14 And we have data on this information from the

15 Department of Labor and Industry. And we get the records

16 for the amount of jobs in the community in the region of

17 the community from 1970 up until - actually, the fair share

18 for Bernards was done in '75, so we had the years of '70 to

19 '75 of covered jobs.

20 I should have said initially that we first

21 determined the region, and this is done by a commuting

22 time. Approximately half hour distance in commuting time

23 represents, in my terminology, the region for the community.

24 In the case of Bernards Township, the region took

25 in 109 surrounding communities in parts of six counties. As

1 I say, we then projected the jobs in the region in the
2 Township from 1970 -- using data from 1970 to '74 projected
3 jobs to 1980 and then converted the covered jobs to total
4 jobs. Not all covered jobs -- covered jobs don't represent
5 the total amount of jobs.

6 Using available data, we converted covered jobs
7 to total jobs, and then the total jobs to household jobs.
8 There is less households than there is jobs because in
9 some households more than one person is working.

10 The region was expected to gain 201,582 covered
11 jobs between 1975 and 1990. This job increase would
12 require 190,166 households.

13 Q How did you allocate Bernards
14 percentage of those households?

15 A We then determined the number of covered jobs
16 Bernards would gain between '79 and '90, which was
17 5,254, And this represented 2.61 percent of the regional
18 increase in jobs. And it would equal 4,963 households.
19 That number of households or dwelling units, to that we
20 added a four percent factor for vacancy for loss by fire,
21 and that equaled a need -- I'm sorry, that equals a need
22 for 5,162 units for the 15-year period. That's all its
23 total housing need for all categories.

24 We then determined of that total need, the
25 amount that would be needed for low- and moderate-income

1 housing, and we did this by using the HUD definitions for
 2 low- and moderate-income which was, under low income, is
 3 40 percent of median family income. Moderate income
 4 is 50 to 80 percent of median family income, and using
 5 regional income data we found that in the region 13.6
 6 percent of the regional families had low incomes and 19.8
 7 percent of the regional families had moderate incomes.

8 Then we simply applied those percentages to the
 9 local housing need and came up with 702 units of low-income
 10 and 1,022 units of moderate-income housing would be needed.

11 THE COURT: 1,022 for the 15-year
 12 period?

13 THE WITNESS: Yes.

14 Q Do you have an opinion based on your
 15 land use and zoning analysis and your fair share study
 16 as to whether or not Bernards Township with this settlement
 17 will be affirmatively providing its fair share of the
 18 regional housing need for a variety and choice of housing?

19 A The settlement will, I think, I mentioned before,
 20 permit up to 65 percent of the total units in the Allan-
 21 zone which is 1,275 or 828 of the units to be multi-family.
 22 This additional multi-family potential, together
 23 with the existing potential in the PRN zone and in the
 24 conditional use balance residential complex overlay, there
 25 is a potential for - there's a potential for a 2,792 multi-

1 family units in the Township.

2 My low- and moderate-income projection which was
3 T.724 pttiy|5 units which was the -- which represents the
4 existing low- and moderate-income need for a total of
5 1,809 low- and moderate-income units can be -- I would think
6 there is an opportunity to accommodate that number of units
7 within the potential 2,792 multi-family units.

8 Q Do you think that the existing three-
9 acre zoning which is proposed to be changed, as it applies
10 to the Allan-Deane property, was feasible?

11 A Well, the R-3A zone represents 7,452 acres, which
12 is almost 12 square miles in over a 47 percent of the
13 Township, of which over 4,000 acres are vacant, presently
14 accounting for 60 percent of all the vacant land in the
15 Township.

16 And I think that that represents an excessive
17 amount of land area. So I don't think it was defensible
18 for that reason, and also the three-acre restriction is
19 based on, I understand, the Township natural resource
20 inventory which concludes that because of the soil
21 conditions in that area, that sewer and water lines are
22 not feasible and that the three-acre minimum is then
23 needed to balance the on-site, what would be required
24 on-site water and sewer.

25 And Allan-Deane studies have shown that the

1 basalt is fracturable and water and sewer lines could be
2 lain in it, and In fact, some areas of the Township that
3 #*fs^fc. And if so, the three-acre zoning is then not
4 supportable and serving three-acre lots, of course, with
5 sewers, is not economically feasible.

6 It seems to me that in areas where sewers are
7 not feasible or not desirable and where you have poor
8 percolation conditions but where you have very large
9 holdings, as in the case of Allan-Deane, the owner should
10 be able or the developer should be able to cluster his
11 development without lot restriction, developing ~~on the~~
12 developable portions of his land and leaving the ~~less~~
13 developable land areas in open space. And without this
14 flexibility to the large land owner, the three-acre
15 restriction, I think, is meaningless where 10 acres might
16 be needed for percolation, and it's unduly restrictive,
17 obviously, where less than one acre is adequate.

18 Q Do you think that this proposed
19 zoning change strikes a reasonable balance between rendering
20 an economically feasible use to the land owner and
21 regional planning considerations to keep the southwestern
22 portion of the Township in fairly sparse residential
23 mode?

24 A Yes. As I say, the Ran*tan Watershed area
25 borders the Bedminster Township, and that area would have

1 the higher density of two units per acre which will use
 2 the Infra-structure from the Allan-Deane property in
 3 ~~the~~ ~~area~~ ~~of~~ ~~the~~ ~~property~~
 4 ~~of~~ ~~the~~ ~~property~~ it will be able to use that sewer facility,
 5 though that -- those community facilities. It will be
 6 oriented to the Pluckemin area whereas the lower density
 7 of half unit per acre overall in the Passaic Watershed
 8 will be oriented to Bernards. It will be developed with
 9 on-site water and sewer and contain the lowest density
 10 of development. And so it will be a balance there, and
 11 you'll have the opportunity for a variety still within
 12 those restraints of variety of housing type, and it will
 13 be an alternative to an additional choice of housing to
 14 that that's now possible in the PRN and the BRC zones.

15 Q Thank you, Mr. Undbloom. I have no
 16 further questions.

17 MR, FERGUSON: I'd like to make a
 18 statement, Your Honor, as to the latter portion
 19 of Mr. Undbloom's testimony.

20 We contend that the three-acre zoning
 21 is defensible, but we submit that up to .5 per
 22 acre is better; therefore, I will not cross-
 23 examine this witness as to his testimony as to
 24 the defensibility of the three-acre. That's
 25 what we're trying to eliminate by this proceeding

1 A Yes, because I was only addressing myself to the
2 Allan-Deane settlement in terms of the increase in the
3 number of units that is potential in the R-3A.

4 Q If I recall your figures correctly,
5 there were approximately 4,000 acres in R-3?

6 A Undeveloped acres.

7 Q And Allan-Deane had 1,046?

8 A That's correct.

9 Q So if we use a rough figure of 3,000 of
10 R-3, not including the Allan-Deane land, that would give us
11 a unit count of 1,500 plus or minus for the rest of the
12 R-3 and of that, 65 acres could be multi-family, am I
13 correct?

14 A 65 percent can be multi-family. 35 percent can
15 be single-family and/or two-family,

16 Q All right, the 65 percent of 1500
17 then would be an additional - the approximation of the
18 additional multi-family units that could be built under
19 the cluster provision in the rest of the R-3?

20 A Yes.

21 Q How does that affect, if at all, your
22 opinion about the fair share, that additional potential
23 multi-family unit count?

24 A Well, it provides for additional capability to
25 meet the fair share considerably.

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MR. FERGUSON: I have no further questions, Your Honor.

(The witness is excused.)

MR. FERGUSON: Our own witnesses will explain the origin of this and how it fits in with regional planning. As I said, we don't necessarily agree with this witness as to the defensibility of the three-acre, but we do submit that what we're proposing is better, and therefore -

MR. HILL: We don't need to

MR. FERGUSON: We don't need to

THE COURT: Mr. Richardson, do you have any questions?

MR. RICHARDSON: No, I don't have any questions.

MR. HILL: I'll call John Kerwin.

JOHN KERWIN,

being duly sworn, testifies as follows:

~~EXHIBIT~~ EXHIBITATION

BY MR. HILL:

Q Mr. Kerwin, what do you do for a living?

A I'm in the land development business, employed by

PENGAD CO., BAYONNE, N.J. 07002 - FORM 3046

1 Johns-Manville Properties Corporation.

2 Q Are you an officer of Johns-Manville
3 **Properties** Corporation?

4 A Yes, I am. I'm a vice president.

5 Q Are you familiar with the letter
6 agreement between Mr. Ferguson and myself regarding the
7 disposal of this litigation?

8 A Yes, I am.

9 Q Have the Board of Directors of Johns-
10 Manville Properties Corporation and the Board of **Directors**
11 of its wholly-owned subsidiary corporation, Allan-**Beane,**
12 authorized Mr. Gaver and myself to dismiss this **lawsuit**
13 upon the entry of an order requiring Bernards to do **those**
14 things which they have promised to do in that letter
15 agreement?

16 A Yes, they have.

17 Q I show you a Xerox copy of the letter
18 I dated February 1, 1980,

19 MR. HILL: I'd like to enter that into
20 evidence as P-4.

21 MR. FERGUSON: No objection.

22 THE COURT: It may be admitted.

23 (Letter dated February 1, 1980, was
24 marked into evidence as P-4.)

25 Q Is this the letter to which you

FENGAD CO., BAYONNE, N.J. 07001 FORM 1046

1 referred?

2 A Yes.

3 Q And Is that the letter that has been
4 transmitted to the Boards of Directors of both Johns-Manvilli
5 Properties and Allan-Peane?

6 A Yes. It*s been reviewed by them and approved*

7 Q And so the dismissal of this litigation
8 upon entry of an order incorporating the terms of that
9 letter is satisfactory to both corporations?

10 A That's correct,

11 MR. HILL: No further questions

12 THE COURT: Any question?

13 MR. FERGUSON: I suffer from # tasks
14 of frustration of undelivered questions, Your
15 Honor, and I must say no, I have no questions.

16 (The witness is excused.)

17 THE COURT: Thank you, Mr. Kerwin.

18 MR. HILL: No one else.

19 MR. FERGUSON: Mr. Hill has no more
20 witnesses. I'd like to call Frederick ConVey.

21
22 F R E U F R I C K C O N L E Y ,

23 being duly sworn, testifies as follows:
24
25

PENGAD CO., BAYONNE, N.J. 07002 - FORM 3849

1 DIRECT EXAMINATION

2 BY MR. FERGUSON:

3 JJ Mr. Conley, by whom are you employed?
4 township of Bernards.

5 Q In what capacity?

6 A Township administrator.

7 Q And how long have you been so employed?

8 A Since January 6, 1975.

9 Q And would you tell the Court the scope
10 of your responsibilities of your employment insofar as they
IX concern planning, land use and zoning?

12 A To a large extent, those roles have been of a
13 I coordinating nature in the sense of providing for meetings
14 of both the Planning Board and the Township Committee on
15 land use matters, seeing to it that the necessary and
16 proper experts are available to those Boards for those
17 discussions, and that the issues and questions are defined
IS for discussion.

19 Q Have you attended most, if not all,
20 of the meetings of the Planning Board?

21 A Yes.

22 Q Have you attended most, if not all, of
23 the meetings of the Township Committee?

24 A Yes.

25 Q And that since 1975 when you came?

PENNSAID CO., BAYONNE, N.J. 07002 - FORM 2046

1 A Yes.

2 Q Have you been active in your role as
3 Township administrator in the on-going developments and
4 revisions of the planning and zoning for Bernards Township?

5 A Yes.

6 Q Mr. Conley, I would ask that you,
7 in your own words, state the history and reasons for the
8 proposal which you heard briefly outlined by Mr. Lindbloom
9 and which are incorporated in the letter of February 1, 1980,
10 between myself and Mr. Hill, and I believe you might want
11 to refer to the map that's underneath.

12 A If I could, P-1, and if I could have some help
13 so I don't destroy the courtroom, Your Honor. There's an
14 overlay which would be helpful on this, I think.

15 Basically, starting in approximately May of 1979,
16 subsequent to the resolution of the PRN matter, the
17 Township began to review its land use plan in its entirety.

18 Most particularly, looking at the three-acre
19 zone, the Township referred back at that particular point,
20 during that review to an extensive period of time during
21 1978 and to some extent early 1979 when the Township was
22 involved in extensive discussions at the Tri-State Regional
23 Planning Commission in New York, particularly relative to
24 this area of the Township, the southwestern area of the
25 Township and most of the three-acre zone.

1 The Township learned in that process that the
2 basic thrust of the Tri-State Regional Planning Commission
3 tit the center and intermediate rings is, as a general
4 guideline, two basic land use categories were provided for
5 in terms of residential development. Those areas where
6 sewer was to be provided, or generally, public utility,
7 infrastructure, the density should be two dwelling units
8 to the acre to seven dwelling units to the acre.

9 This particular category, the two was based
10 on an analysis they had done in which they had made
11 extensive use of the studies done by HUD on the cost of
12 sprawl in that if you had a density thinner than two
13 dwelling units to the acre, the economics, both from
14 the standpoint of construction of the sewer lines and
15 other infrastructure lines, and secondly, the economics
16 of the cost of maintaining public utilities, it started
17 to become uneconomical, and they proposed the two to
18 seven for areas that were to get that time of development.

19 Q Are you referring to dwelling units

20 to the acre?

21 A Yes. In areas that were not to get that type
22 of development for a variety of planning reasons, part
23 of which were in using their determinations to bend
24 the trends to suburban sprawl so that all of the
25 suburban areas would be eaten up in the same kind of

1 development in order to have some kind of extensive areas
2 of open space and not have the public investment in sewer
3 tilts extending out into open areas, they said those
4 areas not proposed to get sewer lines and other types of
5 public utilities should have a density of .5 dwelling units
6 to the acre or less so two acres for every dwelling unit
7 or less than that.

8 The thrust of that being that if, indeed, those
9 kinds of services are going to be provided on-site as
10 opposed to by the suburban process, additional land is
11 needed to accommodate the development.

12 The Township reviewed its entire plan in this
13 particular regard and in this particular framework. The
14 initial change it made was, as Mr. Lindbloom testified
15 earlier, there is approximately 1,100 acres in the R-40
16 zone of the Township which is roughly one acre per
17 dwelling unit. That is yet still undeveloped. The first
18 step that the Township did in dealing with this was to
19 take that traditional R-40 development, maintain the
20 gross density of it, but permit clustering within that
21 R-40 down to R-20, 20,000 square feet per lot.

22 So as the development occurred in the R-40
23 zone, the actual lot sizes would be smaller. The streets
24 would be shorter, the frontages would be less. The sewer
25 pipes, street lengths, et cetera, would have been the

Conley - direct

32

1 length prescribed by both the Federal government and Tri-
2 State In terms of economics.

* The second was to look at the three-acre zone
4 itself, And on this map, by the way, some of the colors
5 aren't visible within, but the dark red line that you see
6 here basically shows the area of the Township that is
7 sewerred, this basic core area.

8 And this line here is a line that has been on
9 the master plan of the Township for some time for an
10 additional trunk sewer that would sewer these already
11 developed areas near the Passaic here and already developed
12 areas that are up here that, Indeed, have sewer, ultimately
13 at the same time provides sewerage in the PRN zone, and
14 it would be below the flood plain lines, so it would all
15 flow in.

16 Q For the record, you're referring to a
17 dotted red line running through the PRN zone?

18 A Yes, I am.

19 The area out here is the area that traditionally
20 ~~ERASE~~ years has been shown as low development, not
21 ~~to receive the~~ suburban type of services such as sewer,
22 ~~the overlay~~ that is over this shows the Tri-State map
23 which is spelled out in square mile squares, grids. Each
24 of these squares is approximately a square mile, and they
25 designate each of these square miles to be either urban,

1 suburban, that is either 2 to 7 or what they call rural
 2 which is .51 units to the acre or less. This has been
 3 overlaid on the Township's land use map. The squares
 4 that have the X through it are the urban, suburban.
 5 This represents the plan approved by Tri-State in
 6 September of 1979. This overlay -

7 Q Let me interrupt. Has that plan
 8 been cross-accepted by the Somerset County Planning Board?

9 A Yes, it has. These are the ones with the
 10 cross-hatches through them that I shaded yellow are
 11 the urban-suburban, 2 to 7 units to the acre, ~~the~~
 12 ones that you can see clearly without no cross-hatching
 13 is rural. As you can see, it conforms very closely to
 14 the Township's rural area. At this point, we're almost
 15 a duplicate of the Tri-State regional map.

16 This is the area that was then examined, and
 17 a number of other things came into the picture at this
 18 time also.

19 The Township also reviewed a zoning decision
 20 ~~in the~~ eastern part of New Jersey in which the Tri-State
 21 ~~proposal of~~ a maximum density of .5 dwelling units per
 22 ~~acre with~~ clustering units in it was specifically upheld
 23 and endorsed by the Court. And the Township began then
 24 to consider whether or not it could achieve the goal that
 25 it sought and the goal that the regional plan sought of

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1 a low density more typically rural-type development in
 2 the southwest area of the Township without imposing a
 3 specific lot configuration line. And it spent a number of
 4 months studying that particular proposal, analyzing the
 5 pros and cons of it when we're basically convinced. In
 6 addition to that, also reviewed the fact that one section
 7 of that in an area abutting Bedminster was in the Raritan
 8 Watershed. That's shown basically as red on that map in
 9 this southern corner of the town and abutted an area of
 10 another town where that master plan of that town provided
 11 for a type of development more typical of sewer service. ^ "

12 And so the concept developed that as you dealt
 13 with the center of Bernards Township around the Basking
 14 Ridge center area, you had basically an old village area
 15 with higher density development around it. And as you
 16 moved out, the development got thinner and less dense
 17 until you reached the green area which was the basic
 18 rural area not to extend lines, sewer lines, other type
 19 utilities further,

20 you reached the point, as you kept going on
 21 out, when you get to that Raritan section where you had a

22 S.F.B.U.F.

23 piece or Bernards Township which participated or was
 24 effected by the central village area of another community.
 25 Thus, the concept developed that one area of it would be
 of a different type development than the green rural.

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1 At this point, the twofold plan of .5 for the
2 green and what amounts to two dwelling units to the acre.
3 Again* th^ density for the Tr1-State developed, and after
4 really feeling comfortable with this particular proposal
5 which we were developing for purposes of updating our
6 master plan and, Indeed, making the plan more defensible
7 and, Indeed, in anticipation of defending the plan In a
8 major Allan-Deane trial which was coming up, we decided
9 to review these proposals with plaintiff at this point.

10 Q Would you focus in on the Allan-Deane
11 property, and I guess we can see it through the ~~overlay~~
12 and tell us the problems which the Township Committee
13 recognized as a result of the Allan-Deane presentation in
14 the litigation and how •- what the process was with
15 respect to their property?

16 A I'm not sure I understand the question.

17 Q Tell us about the negotiations in
18 effect with Allan-Deane, what resulted from them?

19 A Basically, we reviewed -- Allan-Deane had
20 ~~property~~ afterwards Township of 1,100 acres. That entire
21 1,100 *cfqf3* as in the area that the Township had zoned as
22 3-acre in Wat green belt that you see on that map in the
23 southern portion. Of that 1,100 acres, approximately 500
24 was in the Raritan abutting Bedminster. The Township, in
25 its discussions with Allan-Deane, reviewed, as I said, the

1 proposals which I mentioned. From the standpoint of we
2 did not want to negotiate what amounted to a settlement
3 of the AlJan-Deane case, it did -- that did not fit with
4 the basic roaster plan concept of the Township of higher
5 development around village centers, less development as
6 you moved out into what is known as the hinterlands or
7 the totally undeveloped open areas in the southwestern
8 portion but would only attempt to resolve the matter if
9 we could come up with a plan that, indeed, fit those
10 concepts, and, indeed, could result from a change in the
11 whole master planning development concept for that
12 that southwestern area.

13 Q Would the proposal affect the rest of
14 the R-3 in the Township as well?

15 A Yes, that is presently the Intent.

16 Q Would you describe specifically what
17 the proposal is?

18 A The proposal is that in the three-acre zone
19 instead of zoning that for development of a minimum of
20 ~~three acres~~ per dwelling unit as a lot with a lot configura-
21 ~~tion equaling~~ three acres, that instead, total density
22 ~~would be~~ controlled, in this case, .5 dwelling units to
23 the acre which is the provision in the regional plans
24 for rural development. And it is a maximum of .5 dwelling
25 units to the acre in that if, indeed, a particular point,

1 a particular piece of property has such severe soil
 2 problems and is unable to get percolation or/and take
 3 care "of their sewage in that manner, know how much they're
 4 permitted to cluster and the problems -- they are not a
 5 problem, and therefore, they can't get that density. Those
 6 are not a problem that has been created by the Township but
 7 the problem with the quality of land that they own there
 8 as opposed to a situation where it was all divided into
 9 three-acre lots.

10 If some of those lots would not perk and some
 11 of them would and yet we do not permit them to cluster
 12 where their land has perked, then we've denied them
 13 dwelling units by the grid we superimposed, not because
 14 of the land.

15 And that's where we found the other, .5, a
 16 better approach.

17 We also felt as a result it provided for greater
 18 opportunity for imaginative planning of the area that,
 19 indeed, more permitted open space may result.

20 ~fSfi& *-% Is there a proposal in this letter of
 21 f^fntr^ ip?1980, about open space?

22 A " " " " Yes, there is, on the Township's master plan there
 23 is. That has been on there for some time, a plan in for --
 24 in the center of the Allan-Deane land in the Passaic basin
 25 of approximately 90 to 100 acres of land that is in a

1 ravine that has long since been proposed by the Township's
2 recreation open space master planner as an appropriate
3 •fjtiW\$sk''Jif.%\$ Township for a passive park which is --

4 It What's a passive park?

5 A This would be sort of a balance. Next to the
6 VA Hospital, the Township has a piece of land which it
7 is In the process of developing as an active park by which
8 we mean ball fields and these kinds of facilities for
9 active recreation,

10 A passive park is that the land is largely left
11 In its present state, developed only to the extent of
12 providing for trails, possibly picnic benches, tk||f kind
13 of thing, not organized sports activities. Open space
14 is its primary quality. And the letter of understanding
15 that you referred to specifically states that as clustering
16 occurs In Passaic under the ,5, that a park, passive park
17 will be deeded to the Township in accordance with the
18 master plan roughly following the lines of the master
19 plan.

20 Is there anything in the proposal

21 about a school site?

22 A Yes. In the Raritan area, there is a proposal
23 that the clustering will result in a piece of suitable
24 land for a school site, not developed as such but suitable
25 for one.

1 Q Does that describe the in-bare-bones
2 outline the proposal which you're asking this Court to
3 approve and direct the parties to comply with?

4 A Yes.

5 Q Would you tell us whether the town has
6 to go through a master plan revision process along with
7 the implementation of this proposal, give us the time
8 schedule set forth in the February 1, 1980 letter and
9 relate that to the master plan process, if you would?

10 A The February letter to which you refer indicates
11 that if this proceeding results in a judgment, that the
12 town will implement zoning I described. The Township will
13 have a zoning ordinance providing for it by June 1, 1980,
14 The Township is in the process of revising its master plan,
15 not only because of the anticipated changes, but also
16 because of the series of other changes that have occurred,
17 some of them as a result of court decisions since the
18 Township's master plan was written in 1976.

19 That process, because of the comprehensive nature
20 probably take longer than June 1 and take most

21
22 Q Approximately how long would you estimate
23 for the completion of that master plan process?

24 A Approximately end of 1978 or a little longer,
25 end of '78 or early '79 -- end of '80, early '81.

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THE COURT: Those involved in this litigation get that syndrome.

(Resolution passed by the Township

X.

Committee at meeting on March 13, 1980, was marked for identification only as D-1.)

Q I show you a document marked D-1 for identification and ask you to tell us what that is?

A This is a resolution passed by the Township in open session at the meeting on March 13, 1980. .-É just

Q And what does that resolution in your own words? zoning

A This resolution refers to the proposed changes that I've been describing, states that those have been reviewed by the Planning Board with public comment. Planning Board has voted in favor of those, and the resolution authorizes the Township attorneys to appear in court March 18th and inform the Court that the Township to enact these zoning ordinances.

~~HEIM~~
~~ERAS~~

Is the original of that resolution on Township records?

Yes, it is.

MR. FERGUSON: Into evidence, Your Honor?

THE COURT: All right, any objection?

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MR. HILL: No, Your Honor.

THE COURT: All right, It may be admitted.

(D-1, previously marked for Identification, was marked Into evidence.)

MR. FERGUSON: I think that's all the questions I have, Your Honor,

THE COURT: Do you have any questions?

MR. RICHARDSON: No, Your Honor.

MR. HILL: No, Your Honor.

THE COURT: Thank you, Mr. Conley.

(The witness is excused.) W

MR. FERGUSON: Marshall Frost.

M A R S H A L L F R O S T ,

being duly sworn, testifiest as follows:

DIRECT EXAMINATION

BY MR. FERGUSON:

Mr. Frost, by whom are you employed?

I am employed with the firm of Frost Associates of which I am president.

Q Are you a registered professional engineer?

A I am.

1 Q Are you a planner?

2 A Yes.

3 Q Both in the State of New Jersey?

4 A Yes.

5 Q y&ry briefly, would you give the Court
6 a resume or a summary of your qualifications?

7 A I have an undergraduate degree from Lehigh
8 University on civil engineering, masters of science from
9 Brooklyn Polytechnical. I have been Involved in the
10 transportation planning engineering end of the field for
11 approximately 13 years now, and I've been president of
12 ray own firm for the past 5 years. And during the period
13 of 1978, I was the acting Township engineer. Siirce
14 Mr. Messina has been employed, I have been a consultant
15 to the Township In both engineering and planning matters.

16 Q Have you been consulted from time to
17 time by Bernards Township with respect to the problems
18 of planning and zoning from jour engineering point of view?

19 A Yes, sir.

20 Q Would you -- have you been consulted
21 at with respect to the proposal about which Mr. Lindbloom
22 and Mr. Conley have testified this morning?

23 A Yes, sir.

24 Q Have you, in fact, remained an Integral
25 part of the negotiations leading up to that?

1 A For the past two years plus, yes.

2 Q Have you given the Township advice as
I
II
to, In effect, go forward with those
and adopt this proposal?

A Yes, I have.

5 Q Do you have an opinion about whether
6 the proposed zoning of up to .5 dwelling units per acre
7 In the currently zoned R-3 acre constitutes good planning
8 and zoning, and if so, give us your opinion and tell us
9 on what basis it is?

11 A As Mr. Conley just previously testified; this
12 process began, I guess, really began on the staff level
13 about a couple of years when this discussion started with
14 the Township officials.

15 One of the problems I think which has continuously
16 cropped up before the town in their large-lot zoning has
17 been the problem associated with the lack of percolation
18 for septic systems in the town. And while certainly, the
19 three-acre zoning in face value in many areas may provide
20 the necessary land area for percolation, the unique soil
21 characteristics of Bernards Township made it difficult at
22 times to be able to develop property to the potential that
23 the zoning ordinance has set forth.

24 Q Using Allan-Deane land as an example,
25 what is the underlying geology of that property?

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1 A There is both water table problems with the
2 property and problems with high rock with the property,
3 and as a fact statement, there are large sections of
4 the property, based upon information done by studies,
5 done by the Township, as well as information submitted
6 by Allan-Deane where there are large sections of the three-
7 acre zone where it would appear that percolation would
8 be extremely difficult, if not impossible.

9 Q What kind of rock is underneath that
10 ground, shale or basalt?

11 A They've indicated through their studies that
12 fractured basalt,

13 Q Proceed, please.

14 A In the discussions that we went through on the
15 Township level, it seemed that quite possibly, that a
16 number of the complaints the plaintiff in this case may
17 have validity about, the inability to develop on a grid
18 system, and so we investigated the potential of removing
19 the arbitrary grid system and allowing relatively low
20 density to take place on a clustered basis. I think from
21 my standpoint it seems probable that with the new State
22 law on septic systems they would be able to obtain something
23 close to a maximum of .5 units per acre in a cluster type
24 of concept. It is entirely possible that they might not
25 be able to get it throughout this entire portion of the

1 land. It's entirely possible that there might be other
2 pieces of land in town where that type of density would
3 not be attainable. But at least the Township ordinance
4 would not be structured in such a way as to prohibit
5 development because of septic problems.

6 In fact, it would be the land itself which the
7 town has very little control that would ultimately
8 establish the density involved,

9 From the same standpoint, because the Township
10 exhibits somewhat severe terrain, especially in the green
11 areas of the map, this type of clustering should in the
12 long run help the Township in encouraging development
13 stay out of the environmentally sensitive land, which
14 which has steep slopes, land which may have significant
15 forested areas. Keep the roads off these steep slopes
16 and out of the areas where the drainage would be affected.

17 And I think after the entire discussion, it
18 was generally felt that while the town felt it was
19 desirable to maintain the low density throughout that
20 area, at the same time, there were enough benefits gained
21 to allow a high degree of clustering. And from my stand-
22 point, both as an engineer and planner, it makes sense
23 to me and should allow development to occur in a manner
24 in which I think would result in more affordable housing
25 than a straight grid system approach.

1 Q In your opinion, are site development
2 costs jut down by a flexible clustering arrangement?

3 A ; The potential certainly is there to happen.
4 The market, I assume, would dictate the type of housing
5 that would take place. But if the marketplace dictates
6 cluster, then I would assume the site construction costs
7 would be reduced.

8 Q It's not the zoning ordinance which
9 is going to make housing expensive, it would be the
10 physical characteristics of the land, given Its **condition**
11 and quality or the market itself?

12 A I would expect that, yes. T -..

13 Q Can you comment upon the feasibility *^
14 well, withdraw that. You heard Mr. Conley talk about the
15 plans for the extension of the sewer service to the PRN
16 zone and up to the right-hand side of the map along the
17 Passaic River. Is there any chance to expand sewer service
18 out of the three-acre in Bernards Township?

19 A No, there are not. There are certain developed
20 *4#eJs in town which Mr. Conley Indicated which do not have
21 I sewers aval'Table now. And there are severe septic
22 problems. There are other areas within that proposed sewer
23 limit which ultimately we anticipate development ln, and
24 given the development within the existing and proposed
25 limits of town, also given the continual problems the town

1 has had to gain approval for expanding their sewerage
2 plan, I would anticipate that at such time as the town
3 ~~gets the approval~~ for the expansion of that plant, the
4 ~~area to be~~ sewerred, will make use of the capacity for
5 that expansion.

6 There are no plans to expand the sewer system
7 into the green area, the three-acre zone, nor do I
8 anticipate there would be adequate capacity available to
9 do so.

10 Q Thank you.

11 MR. FERGUSON: I have no further
12 questions, Your Honor.

13 MR. RICHARDSON: I have no questions.

14 MR. HILL: I have no questions, Your
15 Honor.

16 THE COURT: Let me Interrupt at this
17 point. I want my staff to have a recess, so
18 we can take a recess.

19 (A recess was taken.)

20 MR. FERGUSON: Before proceeding, I'd
21 like to mark the map and the overlay which
22 ~~for~~, Conley testified from, if I may.

23 THE COURT: I think we need three
24 markings, I suppose since It's disassembleable,
25 mark 1t D-2-A, B and C, A and B will be the over-

1 lays.

2 (Map was marked Into evidence as 0-2.)

3 (Overlays were marked Into evidence
4 as D-2-A and B.)

5 MR. FERGUSON: Mr. Abeles.

6

7 P E T E R A B E L E S ,

8 being duly sworn, testifies as follows:

9 D I R E C T E X A M I N A T I O N

10 B Y MR, FERGUSON:

11 Q Mr. Abeles, by whom are you employed?

12 A I'm employed by a planning company by the name
13 of Abeles, Schwartz, Hackel and Silverblatt.

14 Q Where is that located?

15 A Located in New York City.

16 Q What is your profession?

17 A Pm an urban planner.

18 Q Would you give us a brief summary of
19 your professional qualifications and experiences?

20 A I have an undergraduate degree from Cornell. I
21 have a graduate degree from MIT in urban planning.

22 I started work in 1958, I had my first
23 professional job in New Jersey which was 1962 with a
24 consulting firm, and I opened my own firm in late 1967
25 and have been working there ever since.

1 I've -- I'm employed by the Federal, State
2 and a variety of local governments, as well as private
3 clients.

4 **HEMM**

5 Would you tell us what work you've
6 done in the field of housing, and specifically, in New
7 Jersey, your areas of testimony and work with respect
8 to the Mount Laurel Madison Township constitutional
9 obligations?

10 A Well, directly in the field of housing, I've
11 been involved in the production of some perhaps 3000
12 dwelling units in New Jersey of either least-cost itFp
13 low- and moderate-income housing since 1968. &

14 I've acted in that capacity both as a consultant,
15 developer and occasionally even as a contractor.

16 In the area of housing litigation, I was
17 involved in both the two Madison trials and all of the
18 Mount Laurel matters as an expert witness.

19 Q Did you testify before this Court in
20 this matter of Lorenc vs. Bernards Township at one of the
21 court proceedings?

22 A Yes, I did.

23 Q Would you -- withdraw that. Were you
24 retained by Bernards Township?

25 A Yes, sir.

Q Would you tell us when and for what

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1 purpose in?

2 A I don't recall the exact date, but I would
3 estimat[^]-It was probably in February or March of 1979, just
4 about offe year ago. The purpose of my being retained was
5 to supplement the local planning staff and the Planning
6 Board, specifically in the area of housing, housing
7 obligations, planning for least-cost and that type of
8 planning issues because my involvement both in housing
9 and housing litigation was felt that I could supplement
10 the local Planning Board and professional staff ~~with~~
11 knowledge in those specific areas.

12 Q Mr. Abeles, you've heard the ~~testimony~~
13 this morning about the proposed zoning revisions ~~which~~
14 would result in a change to the ordinances with which
15 the Allan-Deane plaintiff says it will be satisfied. Are
16 you familiar with that process and that proposal?

17 A Yes, sir,

18 I wasn't directly involved in negotiations, but
19 I was kept apprised of the events, I was directly
20 ~~involved in~~ formulating some of the ideas.

21 Q Would you comment on that proposal and
22 the oViftnances as they will be amended in Bernards Township
23 from your perspective of a planner whose primary area of
24 responsibility is housing and appropriate responses to
25 the constitutional obligation of Mount Laurel and Madison

1 Township?

2 A ri In light of the fact that the Allan-Deane lands
3 are located at the outer extremities of the community and
4 In areas wfcich, until recently, were considered not to be
5 open for development, it seems the response is rational
6 and meets the needs of planning as we see it today.
7 Obviously, some parts of any community which is undergoing
8 development have to be least dense. Not everything can
9 be the village center, so to speak. It made sense
10 originally when the master plan was enacted in Bernards*
11 Township to have certain parts of the community to be ' . * . * ' - - <
12 low density.

13 The proposals which have developed which are to
14 be enacted now continue that concept, that there are
15 areas of Bernards Township which, for a variety of physical
16 and other planning reasons, would remain to be low density.
17 However, by allowing a great deal of flexibility through
18 zoning, in the utilization, the same areas which are in
19 part reservations for the future, part open space areas,
20 **also contribute** significantly and substantially to meeting
21 the r»ee<^ip| Bernards Township in terms of least-cost
22 housing by the very simple and rather elegant notion of
23 having half a unit per acre with a minimum restriction,
24 land which originally was simply not part of the inventory
25 available for least-cost housing, can now play a role in

1 meeting that particular part of the market's needs.

2 The Idea of using a part, I think It's 490 acres
3 Of approximately 1,270 acres of Allan-Deane at a somewhat
4 higher density is also responsive to another Important
5 physical set of facts, namely, the possible construction
6 or the very likely construction of a public sanitary
7 system In the adjacent Township.

8 Q You're referring to Bedminster?

9 A Yes, sir,

10 Q Are you referring to the litigation
11 that has resulted in the decision by this Court and an
12 ongoing process of Implementing for more dense development
13 in Bernards Township? I

14 A Yes.

15 Q Particularly, the Pluckemin corridor?

16 A Yes, sir,

17 Q Proceed.

18 A Since the corridor will contain a sanitary
19 system and It makes sense to take that part of Bedminster
20 which is physically related by means of topography to the
21 Sfrirt<fe|p^#p using that area for a somewhat higher
22 density.

23 Q Are you talking about the red shaded
24 area in Bernards Township?

25 A On an exhibit before the Court, yes. I'm not

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1 sure of the number of the exhibit.

2 Q It's D-2-A and B.

3 H On D-2, the second inlay for the record, shows
4 an area colored in red which is that part of Bernards
5 which flows into the Raritan basin. And there the density
6 will be two dwelling units per acre. The combination of
7 zoning changes for the Bernards parcel, the Allan-Deane
8 parcel in Bernards results in some 1,260 maximum dwelling
9 units. That is, and because of the flexibility of those
10 dwelling units, make a significant contribution to meeting
11 least-cost needs of Bernards as a community as a whole.

12 Q Are you familiar with the other parts
13 of the Bedminster Township zoning ordinance and what would
14 be the zones testified to by Mr. Lindbloom this morning,
15 in particular, the PRN zone?

16 A Yes, sir, I am familiar.

17 Q Do you have an opinion as to whether
18 the housing response which is represented by those
19 ordinances is appropriate for a township such as

20 Bernards?
21 I think they're most suited at this point in
22 time as a response by Bernards Township to the emerging
23 needs of its own community and of the region. The PRN
24 zone first is located between two Interchanges on the
25 Interstate system. Probably the most logical place in

1 terms of living space and in terms of future employment
2 within the region.

3 The PRN zone also deals with a very specific
4 environmental physical problem. Part of the land, the
5 southernmost part of Bernards Is land subject to flood
6 by the Dead River, land which normally might not be
7 suitable for any kind of development. Land certainly
8 where you would not want to have any heavy investment
9 Infrastructure or housing.

10 By combining lands which are essentially not
11 suitable for development, upland type of areas whfc% are
12 a substantial portion of Bernards ls made available for
13 housing development, approximately 3,980 odd units can
14 be obtained from the PRN zone. Whether all those will
15 eventually be reached or not, I don't know. But the
16 numbers are very significant in a larger number.

17 It certainly plays a major role in letting the
18 market know that there is land available for housing
19 development in Bernards by the fact of letting the

20 there are almost 4000 units, just one part
21 of which which can be developed in the near future,
22 meet the obligations of Bernards towards
23 least-cost housing.

24 Q Putting the PRN and the new .5 which
25 is going to replace the three-acre zone or the maximum of

1 .5 In the other zones, do you have an opinion to the overall
2 response of the ordinance to the constitutional obligation
3 of Mount Laurel Madison Township?

4 k. I have an opinion. The total response is
5 approximately 5000 dwelling units which can be classified
6 as least-cost. It will take into account the PRN, the
7 BRC and the new zoning in the old 3-A zone. Depending
8 upon whose fair share you use or whose least-cost housing
9 plan you use, the numbers vary. The highest numbers I've
10 seen proposed have been close to 4000. The lower numbers
11 have been close to 2000.

12 In any case, the fact that presently with these
13 changes, there will be 5000 dwelling units available in
14 terms of capacity, certainly is a very strong and a
15 complete reaction to those fair share plans.

16 I've examined all of them in some detail for
17 this case which obviously is no longer necessary, and I've
18 satisfied myself that for the foreseeable future between
19 now and the year 1990, Bernards Township stands in the
20 very good position to meeting the mandate of the Mount
21 Laurel Act. Non.

22 Q

Thank you.

23 MR. FERGUSON: Your Honor, no further
24 questions.

25 MR. RICHARDSON: No questions.

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MR. HILL: No questions, Your Honor.

THE COURT: All right, thank you,

Mr. Abeles.

(The witness is excused.)

MR. FERGUSON: At this point, Your Honor, we would present to the Court a form of final judgment which in about five minutes will be consented to by Mr. Hill, Mr. Gaver, Mr. Davidson and myself as to form and entry, and Mr. Richardson as to form only,

MR. RICHARDSON: Your Honor, nothing in the order as I have read it indicates that the complaint as it pertains to the Somerset County Planning Board is dismissed with prejudice.

MR. HILL: It says complaint is dismissed. Your Honor, It's a final judgment,

MR. FERGUSON; Your Honor, I'd like five minutes to go over the judgment with the changes we made late last night and maybe be*
vnteen Mr. Richardson and myself we can figure but a way of solving that problem.

THE COURT: Why don't I read the draft in chambers, and that will leave you freer to discuss it right here.

1 MR. HILL: Your Honor, the original
2 order has been signed by all parties.

3 THE COURT: All right.

4 MR. HILL: We have agreed with
5 Mr. Richardson, if he wishes to submit a form
6 of order separate from this dismissing as to
7 the County with prejudice, we'll consent to
8 the entry of same.

9 MR. RICHARDSON: Thank you. I'll
10 do that, Your Honor.

11 THE COURT: All right, very

12 MR, RICHARDSON: On that basis ^ I
13 consented to the form of that order..

14 THE COURT: As I'm about to sign this,
15 I should state for the record that I'm
16 Impressed by the testimony today which, of
17 course, I realize was submitted in an
18 extraordinary amicable context, that what is
19 being done is reasonable, and it's a reflection
20 \$T» I think, a responsible community response,
21 and I think a reasonable accommodation to that
22 by the plaintiff. So both parties are to be
23 complimented, and those who assisted them in
24 reaching this are to be complimented. I might
25 let you just file this rather than take it for

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filing, and you can m*ke that substitution^ v*

MR, HILL: And I have the fourt's
permission to make the changes on the original?^

THE COURT: Yes.


(The matter was concluded.)

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CERTIFICATE

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63 ^ MARIAN V. BALERNO, C.S.R., one of the
Official Court Reporters in and for the State of New
Jersey, certify that the foregoing is a true and
accurate transcript of my original stenographic notes
to the best of my knowledge and ability.



MARIAN V, BAU&trQ, C.S.ft,

Dated: April 2, 1980.

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