

MM - Mt. Laurel → general

6-13-77

Transcript from trial

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I N D E XEXHIBITS

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WITNESSES

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<u>MR. YALE RABIN</u>				
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1 (MONDAY, JUNE 13, 1977, BURLINGTON COUNTY COURT HOUSE,
2 MOUNT HOLLY, NEW JERSEY.)

3 (Present at counsel table are Carl
4 Bisgaier, Esq., John Reisner, Esq., Robert F.
5 Rogers, Esq., John Patton, Esq., John Trimble,
6 Esq., Kenneth E. Meiser, Esq.)

7 THE COURT: Good morning ladies and
8 gentlemen, please be seated.

9 When we were last together, gentlemen,
10 I think we had just finished the testimony of
11 Mr. Abeles and I assume we are ready to proceed
12 from there?

13 MR. PATTON: Your Honor, I have a
14 motion I would like to address to the Court.

15 THE COURT: Very well, sir.

16 MR. PATTON: Your Honor, I would re-
17 spectfully move to amend defendant's answers to
18 interrogatories to include Dr. John C. Weicher,
19 Dr. Harrison G. Wehner, Jr., and also Dr. Richard
20 F. Muth expert witnesses for the defendants.

21 The substance of their testimony would
22 be: A, directed toward the economic impact of
23 Federal and State housing subsidy programs and,
24 B, the economic folly of the Mallach Brooks 42.5%
25 fair share plan, the basis for the -- I am today

1 prepared and I would like for purposes of this
2 motion to mark for identification an exhibit, a
3 document entitled, "Public Housing and Economic
4 Evaluation by Richard S. Muth, document entitles
5 sections two thirty-five and two, six, economic
6 evaluation of Hud's principal housing programs
7 by Dr. Wehner, and a document entitled, Urban
8 Renewal National Program for Local Problems, by
9 John C. Weicher.

10 I would also like at the appropriate
11 time during the course of this motion to mark
12 for identification the resume of Dr. Harrison G.
13 Wehner, Jr., and a brochure concerning Phoenix
14 Associates, Inc., a Washington based economics
15 and land planning firm of which Mr. Wehner is
16 president.

17 Your Honor, I know it is most unusual
18 in the middle of trial for an attorney to make
19 such a motion, let alone for the Court to enter-
20 tain such a motion, but I know that this is the
21 exception of the rule and the perfect opportunity
22 for the Court to invoke its powers under Rule 4.
23 The reasons I say this are as follows:

24 THE COURT: Just a minute.

25 Under evidence Rule 4 --

1 MR. PATTON: Under the rule concerning
2 the relaxation of evidence rules --

3 THE COURT: -- yes, but that -- you're
4 asking -- you're asking to amend interrogatories,
5 amend your answers to interrogatories in the
6 middle of trial.

7 MR. PATTON: That is right, Your Honor.

8 THE COURT: And to add a bunch of wit-
9 nesses we never heard of before.

10 MR. PATTON: That is right, Your Honor,
11 and I think there is three reasons which justify
12 such an amendment.

13 One, answers to interrogatories were
14 not served upon this defendant until one week
15 before trial.

16 B, with respect to Mr. Mallach's,
17 although we took his deposition and we had his
18 report via answers to interrogatories, it was
19 not until the third day of trial when Mr.
20 Mallach's fourth report was served upon us that
21 we fully understood the implication and the
22 ramifications of the 42.5% fair share plan.
23 Almost the identical argument can be made for
24 Miss Brooks. We didn't have that report until
25 about a week before trial and both with respect

1 to Mr. Mallach's and Miss Brooks', the economic
2 ramifications of the 42.5% plan were simply
3 not brought out or understood, I don't think
4 by anyone, until cross-examination. I think,
5 Your Honor, that a third reason for making an
6 exception to this rule and permitting the amend-
7 ment is because this is an acknowledged public
8 interest case in which the primary goal is the
9 search for truth and I think that it's critical
10 that the Court have before it a clear economic
11 understanding of the impact of Federal and State
12 housing subsidy programs; and I think it is even
13 more critical that before ruling in this case
14 the Court have before it economic, as distinguished
15 from land planning, testimony with respect to the
16 disastrous economic impact of the implementation
17 of the 42.5% fair share plan.

18 THE COURT: All right. Bear with me a
19 minute and I'll hear you, Mr. Bisgaier.

20 All right, Mr. Bisgaier, I think what
21 we are dealing with here is an application under
22 Rule 4:17-7.

23 MR. BISGAIRE: Yes, Your Honor. I
24 would first like to state this is the first time
25 that I have been apprised that this motion was

1 going to be made or even what its contents were
2 and I resent that fact in light of the fact that
3 we've been now in recess for a week and a motion
4 of this magnitude is being made and I'm expected
5 to respond to it essentially just off the top
6 of my head.

7 My reaction to it that the Rules to
8 the extent they provide for amendment to answers
9 to interrogatories at the stage of litigation,
10 certainly should only be based in the most extra-
11 ordinary circumstances. The circumstances pre-
12 sented by Mr. Patton are not only not extraordi-
13 nary, but I think they are essentially matters
14 which should have been anticipated as early as
15 the filing of the original complaint in this
16 matter in 1971.

17 The issues of fair share were raised
18 in that original complaint. The issues as to the
19 impact of the Federal Housing programs were
20 raised in that complaint. The initial trial in
21 this action involved considerable testimony as
22 to the impact of Federal and State programs.
23 As to the Mount Laurel, doing its fair share,
24 certainly, since the decision of the New Jersey
25 Supreme Court in 1975, these matters were well

1 known as being involved in this litigation and
2 certainly, since the filing of our amended
3 complaint, it was clear they were involved in
4 this litigation; but, regardless of that, the
5 substance of the testimony as to Mr. Mallach
6 and Mr. Abeles as I take it is what Mr. Patton
7 is referring to in terms of the subsidized
8 programs were before the defendant as part of
9 depositions that were taken many, many, many
10 months ago. Certainly nothing has changed in
11 terms of Mr. Abeles' testimony with regard to
12 the subsidy programs.

13 In fact, there was his testimony in
14 this case was a shorter piece compared to what
15 his testimony was in the original case and the
16 only reason it was kept short was in the inter-
17 est of time and the fact this is essentially a
18 continuing record.

19 Worse than that, Mr. Mallach's and
20 Miss Brooks' testimony was something like 2½
21 weeks ago and there had been no application,
22 there was no application at that time, Mr. Abeles'
23 original direct testimony was approximately two
24 weeks ago. There was no application at that
25 time. We had a request from the plaintiff inter-

1 venors last about a week and a half ago, to take
2 a deposition of one of the defendant's witnesses
3 and also of an engineer. the defendants intended
4 to call who had not previously been deposed and
5 that was vigorously objected to. The introduc-
6 tion of three new expert witnesses; the needs
7 for extensive depositions by them. I suppose
8 they would have to file some sort of report for
9 Mr. Patton, even if they would not have to file
10 such a report, we would have to take extensive
11 depositions and then be prepared on rebuttal to
12 counteract whatever testimony they might intro-
13 duce that we did not anticipate.

14 I think it's just to extraordinary at
15 this time and first of all, don't see any reason
16 why the plaintiffs', the defendant's own witnesses
17 that they have on their witness list which include
18 their consultant who has done their fair share
19 plan and presumably have advised them for now
20 five to seven years as the Federal and State
21 housing programs could not accomplish this
22 testimony.

23 THE COURT: All right. Mr. Patton, let
24 me say -- let me ask you why you catch your ad-
25 versaries and also the Court completely by sur-

1 prise with a motion like this after two weeks
2 interval in the hearing of this case?

3 MR. PATTON: Well, Your Honor, I can
4 represent to the Court that it was only last
5 Friday that I spoke with Mr. Weicher and it
6 was only the beginning of last week that I
7 spoke with Mr. Wehner; and although I have not
8 spoken with Dr. Muth, it was only because I
9 understood that he was at Stanford and now I find
10 out on Friday he's on a sabbatical in Washington.
11 This was the first opportunity that I had to
12 make the motion because we were off for a week.

13 THE COURT: Could have made it in
14 writing, couldn't you? Couldn't you have at
15 least given your -- given your adversary a notice?

16 MR. PATTON: I suppose.

17 THE COURT: You were going to make this
18 motion?

19 MR. PATTON: I think technically, Your
20 Honor, probably the earliest I could have given
21 Mr. Bisgaier notice was the same day that I
22 advised Mr. Rogers and Mr. Trimble of my inten-
23 tions which was Tuesday or Wednesday of last week.
24 I certainly do not mean to put Mr. Bisgaier in
25 an unfair situation by springing this motion on

1 him as a surprise.

2 THE COURT: It comes as a complete sur-
3 prise to everybody and you must realize that,
4 Mr. Patton.

5 MR. PATTON: I do, Your Honor. I
6 don't deny that it comes as a surprise but I
7 don't want either the Court or Mr. Bisgaier to
8 think that I have been contemplating this for
9 the last two or three months or even a month
10 or even three weeks and then suddenly decided to
11 spring it right in the middle of trial.

12 The motivation for the motion that
13 I'm making was caused: A, by a report that was
14 served upon us the third day of trial and, B,
15 the nature of the direct and the cross-examination
16 testimony.

17 Now, Mr. Bisgaier is very correct when
18 he says that generally speaking everybody has
19 been aware of the concept of fair share and
20 fair share plans; but you will remember that
21 Miss Brooks testified and I think Mr. Mallach
22 backed it up that the only fair share plan that
23 they knew of that had this 42.5% distribution
24 element was their own and then they said it's
25 really not our own, it's the Supreme Court's and

1 it was this element, the 42.5% that was present
2 in the Mallach's plan and present in the Brooks'
3 plan that motivated my desire to contact economic
4 experts.

5 THE COURT: Isn't that a matter of
6 somewhat of argument and haven't you had ample
7 opportunity to, with your own experts who already
8 consulted and whom you have ready to testify in
9 this case? Aren't you really prepared to meet
10 those arguments?

11 MR. PATTON: Yes, Your Honor, but one
12 thing about this --

13 THE COURT: Well --

14 MR. PATTON: -- case that it just seems
15 to me that in this type of case testimony from
16 an economist is critical and plaintiffs' counsel
17 has offered us a wide variety of qualified wit-
18 ness, but each and every one of those witnesses
19 candidly admitted they didn't have any economic
20 training and they weren't qualified to give
21 economic opinions.

22 THE COURT: May very well be so, but
23 my recollection also is they weren't necessarily
24 weighted to any given percentage, what they
25 were discussing was the -- and what they dis-

1 cussed at great -- in great detail and under --
2 on direct and also very vigorous and penetrating
3 cross-examination was what they considered the
4 deficiencies in the present Mount Laurel ordin-
5 ance, the 1976-5 and what in their opinion, their
6 considered expert opinion as planners they would
7 consider a way of remedying those defects and
8 more effectively complying with the Supreme
9 Court mandate.

10 Now, what you're asking is that you
11 be allowed at this stage to, for the first time,
12 give those that you intend to produce three more
13 experts whose identity has not previously been
14 disclosed or been known to anybody except per-
15 haps yourself.

16 Rule 4:17-7 provides that if a party
17 who has furnished answers to interrogatories
18 thereafter obtains information which renders
19 such answers incomplete or inaccurate, amended
20 answers shall be served not later than 20 days
21 prior to the first day fixed for trial. There-
22 after, amendments may be allowed only for extra-
23 ordinary or compelling reasons and to prevent
24 manifest injustice and upon such terms as the
25 Court directs. In no case shall amendments be

1 allowed at trial where it appears that the evi-
2 dence sought to be introduced was known to the
3 parties seeking such leave more than ten days
4 prior to trial.

5 Now, maybe the identity of these ex-
6 perts wasn't known to you ten days prior to
7 trial because you just picked them out of the
8 hat during the course of the trial. I don't
9 think that is sufficient reason to grant this
10 motion.

11 I don't consider that the -- that
12 there is any prevention of manifest injustice
13 to be served by granting this motion at this
14 time. It seems to me that the granting of such
15 a motion could only serve to saddle this entire
16 hearing with further inordinate delay, possibly
17 necessitating many additional days of hearing,
18 many days of delay when their testimony could
19 be adduced in view of the fact that of course
20 the opportunity would have to be given to the
21 plaintiff to at least interview these witnesses,
22 if not take their depositions. I can see no
23 justification -- I can see no reason, let alone
24 extraordinary or compelling reason for allowing
25 this motion at this time.

1 Again, you referred to evidence Rule
2 4 which simply provides that if the Judge may in
3 his discretion exclude evidence if he finds its
4 probitive value is substantially outweighed by
5 the risk that it's admission with either neces-
6 sitate, A, either A, necessitate undue consump-
7 tion of time or, B, create substantial danger
8 of undue prejudice or confusing the issues or
9 misleading the jury.

10 Certainly, allowing the amendment to
11 interrogatories to, in effect, give notice of
12 the production of three more witnesses with
13 respect to issues which are -- which are clear
14 and which have been well drawn and which have
15 been before the Court since the commencement of
16 this litigation would seem to necessitate undue
17 consumption of time, far outweighing the probi-
18 tive value of anything that these witnesses
19 could offer.

20 It seems they are really in a sense
21 being called as to aid the weight of numbers to
22 the defendant's contentions.

23 Now, the defendant hasn't had an oppor-
24 tunity to put in its case yet. I fully expect
25 its experts are well prepared to deal with the

1 matters that have been stated and have been dealt
2 with by the experts and by the other witnesses
3 produced by the plaintiff; but in the circum-
4 stances and in this context and in the midst
5 of trial I consider that the motion for all the
6 reasons stated, this present motion must be denied.

7 MR. PATTON: Your Honor, may I drastic-
8 ally modify my motion, simply to include Mr.
9 Wehner and represent that at this moment I'm
10 ready to furnish the Court and counsel with a
11 copy of his report, a copy of his resume, a copy
12 of his Phoenix Associates and further represent
13 to the Court and counsel that we will produce
14 Mr. Warner for deposition at the plaintiffs'
15 convenience; and further represent to the Court
16 that we would be pressed to put Mr. Wehner on
17 last so that means about two or three weeks down
18 the road.

19 THE COURT: It was represented to me
20 when a request was made at the conclusion of our
21 last hearing, one request was made by the inter-
22 vening plaintiff, Davis, for leave to take some
23 additional depositions, this would constitute
24 an absolutely inordinate and unjustifiable burden
25 on counsel who are already burdened with the on-

1 going trial of this case and by reason of that
2 burden have been seriously hampered in just --
3 in handling their other routine work. I deny
4 that motion. I see no reason to grant this one.

5 MR. PATTON: May I have these marked
6 for identification?

7 THE COURT: Yes, you may have them
8 marked for identification. These are all defen-
9 dant's exhibits, just a second.

10 This would be D-21 for identification.

11 How do you identify them, Mr. Patton?

12 MR. PATTON: Let's see. Wehner's
13 resume, D-21 for identification.

14 THE COURT: Wehner's resume by or of --
15 resume of or resume, reported by --

16 MR. PATTON: It's curriculum vitae I
17 think is the proper term.

18 THE COURT: Curriculum vitae and what's
19 the name of the gentleman?

20 MR. PATTON: Harrison G. Wehner, Jr.

21 THE COURT: Wehner, W-E-R-N-E-R?

22 MR. PATTON: W-E-H-N-E-R.

23 THE COURT: Wehner or is it W-E-H-R-N-

24 E-R?

25 MR. PATTON: W-E-H-N-E-R, and he pro-

1 nounces it Wehner.

2 THE COURT: All right. That will be
3 D-21 for identification.

4 MR. PATTON: Next is a summary of
5 Phoenix Associates, Inc., which is an economic
6 and land planning firm in Washington, D.C. of
7 which Mr. Wehner is the president.

8 THE COURT: D-22 for identification.

9 MR. PATTON: Next is a book entitled
10 Sections 235 and 236, an economic evaluation of
11 HUD's principal housing subsidy programs by
12 Harrison G. Wehner, Jr.

13 THE COURT: D-23 for identification.

14 MR. PATTON: Next is a book entitled, --

15 THE COURT: Just a minute, please.

16 MR. PATTON: I'm sorry.

17 THE COURT: All right. That's the
18 economic evaluation by Wehner is D-23 for iden-
19 tification.

20 MR. PATTON: Next is a book entitled,
21 Public Housing, An Economic Evaluation by Richard
22 F. Muth, M-U-T-H.

23 THE COURT: Public housing and --

24 MR. PATTON: Public Housing, An, A-N,
25 Economic Evaluation --

1 THE COURT: An Economic Evaluation.

2 Richard F. Muth. M-U-T-H?

3 MR. PATTON: Yes.

4 THE COURT: D-24 for identification.

5 MR. PATTON: Next is a book entitled,
6 Urban Renewal National Program for Local Problems
7 by John C. Weicher, W-E-I-C-H-E-R.

8 THE COURT: D-25 for identification.

9 (A document was marked D-21 for identi-
10 fication.)

11 (A document was marked D-22 for identi-
12 fication.)

13 (A document was marked D-23 for identi-
14 fication.)

15 (A document was marked D-24 for identi-
16 fication.)

17 (A document was marked D-25 for identi-
18 fication.)

19 THE COURT: Okay. Mr. Bisgaier, are
20 you ready?

21 MR. BISGAIER: The plaintiff calls as
22 our next witness Mr. Yale Rabin.

23 THE COURT: Mr. Rabin, would you step
24 forward and be sworn, please, over here.

25

1 M R. Y A L E R A B I N, called as a witness, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BISGAIER:

5 Q Mr. Rabin, would you state your name
6 and current address for the purpose of the record?

7 A My name is Yale Rabin and I live at 106 Stewart
8 Circle in Charlottesville, Virginia.

9 Q And what is your current employment?

10 A I'm an Associate Professor in the Division of
11 Urban and Environmental Planning at the University of
12 Virginia.

13 Q And could you describe for the Court
14 your educational background?

15 A Yes. I studied planning and architecture at the
16 University of Pennsylvania from which I graduated in 1960.
17 I did my undergraduate work at Kempler University from
18 which I received degrees, Bachelor of Fine Arts in 1952
19 and a Bachelor of Science in education in 1953.

20 Q Would you chronologically state for the
21 Court what your professional experience has been?

22 A As my first employment as a planner was for the
23 City of Camden, New Jersey, where I was employed as a senior
24 planner with responsibilities for the preparation of the
25 municipal facilities sections of that City's comprehensive

1 plan.

2 In 1961 I went to London, England, where I was
3 employed as a town planning officer for the London County
4 Council with specific design responsibility for four of
5 London's twenty-eight boroughs; also, while there, I taught
6 in the graduate program of town planning at the Pola Tech-
7 nique (phonetical) in London.

8 I returned to the United States in the fall of
9 1963 and joined the administration of the University of
10 Pennsylvania as senior planner and later principal planner
11 concerned with the planning of the campus and its facili-
12 ties in West Philadelphia.

13 I left that position at the end of 1967 to go
14 into private practice as a planning consultant and worked
15 full time as a planning consultant from 19 -- the beginning
16 of 1968 until September of 1975 with the exception of
17 brief periods during which I taught and, of course, inter-
18 mittent lectures and then in September of 1975 I joined the
19 faculty of the University of Virginia where I'm presently
20 employed.

21 Q Would you state where you have taught
22 or lectured prior to your present appointment at the
23 University of Virginia?

24 A As I indicated before I taught town planning in
25 London, 1962-1963 academic year. I was a special lecturer

1 in urban studies in the spring term of 1973 at Temple
2 University; also conducted series of seminars around the
3 country for legal services, attorneys under the auspices
4 of the National Institute for Education and Law of Poverty
5 at Northwestern University Law School and that was over a
6 period of several years from 1969 to 1970.

7 Then over the whole range of time during which I
8 was a consultant I was invited to lecture at a number of
9 places including Harvard University Law School; Columbia
10 University Law School; the University of North Carolina,
11 Department of City and Regional Planning; LaSalle College,
12 Department of Urban Studies; Princeton University, Transpor-
13 tation Program; and the University of Pennsylvania, Depart-
14 ment of City and Regional Planning.

15 Q What was the subject matter I believe
16 you said that you conducted a series of seminars for the
17 National Institute for Education of Law and Poverty? Would
18 you state what those seminars involved?

19 A Those seminars involved discussions of the
20 methods of analysis and evaluation of the provision of
21 municipal facilities and services and principally the im-
22 pact of disparities in the provision of those services
23 on low income and minority groups.

24 Q Have you written any publications deal-
25 ing with development controls and low and moderate income

1 minority housing opportunities?

2 A Yes. I did a report for the U.S. Commission on
3 Civil Rights and the effects of development control on
4 housing opportunities for black households in Baltimore
5 County. That was done in 1970. Also, in that year I did
6 a report on discrimination in the public use control and
7 development of land in Selma, Alabama for the N.A.A.C.P.
8 Legal Defense Fund; and also did a report on minority group
9 housing in Minneapolis, Minnesota, that was for the City
10 of Minneapolis, Department of Civil Rights.

11 Q Could you describe generally the work
12 you have done as a consultant?

13 A Well, in general, I would say that my practice
14 as a consultant has been concerned primarily with the
15 impact of planning programs, policies and activities on
16 low income and minority groups.

17 Q What are some of the specific experiences
18 you have had as a consultant?

19 A Well, currently I'm involved in the study of
20 investment in an area adjacent to the downtown Charlottes-
21 ville, Virginia, a study being sponsored by the Piedmont
22 Urban Observatory under the auspices of the U.S. Department
23 of Housing and Urban Development and the City of Charlottes-
24 ville.

25 I'm also currently involved in a study of the need

1 for housing to accommodate low and moderate income families
2 in Urvine, California and that's being done for the center
3 for law in the public interest and the N.A.A.C.P. Legal
4 Defense Fund.

5 Some recent projects have involved advising the
6 State of Alabama Development Office in the preparation of
7 the comprehensive plan and zoning ordinance for the City
8 of Selma, Alabama.

9 Q That was done for the State of Alabama?

10 A Yes. That was done as a consultant to the State
11 of Alabama. I prepared a plan for relocating displaced
12 black households and increasing the supply of low and moder-
13 ate income housing for the City of Hamtramck, Michigan and
14 that was done by direction of the U.S. District Court.

15 Q When you say that was done by the
16 direction of the Court, was it ordered by the Court or
17 appointed by the Court?

18 A I was appointed by the Court, yes, to do that.

19 THE COURT: This was where?

20 THE WITNESS: This was in a case called
21 Garret vs. Hamtramck, Your Honor, in which the
22 town had been ordered to prepare the plan which
23 I described and had been given 90 days within
24 which to do that and apparently failed to comply
25 with the Court's order and the Court in response

1 appointed me to prepare the plan and ordered, in
2 effect, the town to retain me and pay me to do
3 that.

4 Of course, there was also the study I
5 did in 1972 of the effects of restrictive develop-
6 ment control practices by the Township of Mount
7 Laurel, New Jersey, on the housing and employment
8 opportunities of low income-minority groups and
9 that was done for Camden Regional Legal Services.

10 I have also done fairly large number
11 of studies of disparities in the provision of
12 municipal facilities and services and of the
13 effects of those disparities on low income and
14 minority residents and I have done them in Shaw,
15 Mississippi; Inabena, Mississippi; West Point,
16 Mississippi; Belzoni, Mississippi; Prattville
17 and Mobile, Alabama; Pine Bluff, Arkansas; Sanford,
18 Florida; Ocilla, Georgia; and Fairfax County,
19 Virginia and those were done for a variety of
20 clients.

21 Q Other than the testimony that you
22 gave in the previous trial of this matter, have you given
23 testimony in other cases?

24 A I have and as I indicated, I've often been called
25 upon by public agencies such as the U.S. Commission on

1 Civil Rights and the U.S. Department of Housing and Urban
2 Development to advise on policies such as development on
3 guidelines and procedures for locational criteria and things
4 of that kind; but the cases in which I've testified included
5 Hawkins v. Shaw, which was a case involving municipal fac-
6 ilities. Swan v. Meccenberg, which was a school city
7 segregation case in Charlotte, North Carolina. Keys v.
8 Denver, which was also a school desegregation case.
9 Denver v. Colorado, Garret v. Hamtramck, which is the
10 case I referred to before, and Burlington County N.A.A.C.P.
11 v. Mount Laurel.

12 Q And did you previously testify as an
13 expert in this case; is that not correct?

14 A That is so, yes.

15 MR. BISGAIER: Your Honor, I would
16 offer at this time Mr. Yale Rabin as an expert
17 in the fields of planning, evaluation of munici-
18 pal services and the use of development controls
19 and impact on low and moderate income persons.
20 I would state, as Mr. Rabin has testified, that
21 he previously was accepted as an expert by this
22 Court and testified at some length at the first
23 trial of this matter.

24 THE COURT: Any cross-examination on
25 qualifications, Mr. Patton?

1 MR. PATTON: Yes.

2 VOIR DIRE CROSS-EXAMINATION

3 BY MR. PATTON:

4 Q Do you have a degree in economics?

5 A No, I do not.

6 Q Did you ever have responsibility for
7 the distribution and allocation of resources and facilities
8 of a municipality, a county or a state?

9 A In an administrative capacity.

10 Q In a decision making capacity, giving
11 you the decision as to where money is spent, where
12 resources are placed and in what direction allocation is
13 made?

14 A Mr. Patton, planners only advise on those matters.
15 No planner is retained as a planner in a decision making
16 capacity, as you describe.

17 Q Then, your answer to that question is
18 no?

19 A That is correct.

20 Q Okay. Now, you mentioned some work
21 you did in Mississippi?

22 A That's true.

23 Q As a planner?

24 A That is correct.

25 Q And that work was to combat the effects

1 of racial discrimination, wasn't it?

2 A That work was to examine the effects of disparity
3 in municipal facilities and services.

4 Q Based on racial discrimination; isn't
5 that right, Mr. Rabin?

6 A In those cases it was based on racial discrimina-
7 tion; that is correct.

8 Q The Shaw case you mentioned was a
9 racial discrimination case, wasn't it?

10 A That is correct.

11 Q And you worked in Alabama and Virginia
12 and Georgia, didn't you?

13 A That is correct.

14 Q As planner?

15 A As a consultant.

16 Q And you were concerned with the effects
17 of racial discrimination, weren't you?

18 A I was concerned in those cases with the effects
19 of disparities in those services on black households in
20 those areas.

21 Q And that's racial discrimination, isn't
22 it?

23 THE COURT: Well, the witness answered
24 your question.

25 MR. PATTON: All right.

1 Q And you mentioned a case in Michigan
2 where the Court requested that you implement some plan on
3 the municipality?

4 A That is correct.

5 Q That case dealt with racial discrimina-
6 tion, didn't it?

7 A That is correct.

8 MR. PATTON: Your Honor, I have no fur-
9 ther questions.

10 I would move at this time that Mr.
11 Rabin not, Mr. Rabin's qualifications not be
12 accepted.

13 We listened very carefully to his testi-
14 mony. All of his planning work was done in the
15 area of racial discrimination and, as everybody
16 knows, from the Supreme Court of New Jersey on
17 down, this simply isn't a racial discrimination
18 case. It's an economic discrimination case and
19 I think it's unfair to use low income minority
20 rights interchangeably. The Supreme Court of
21 New Jersey on the Mount Laurel case said there
22 was no racial discrimination on the part of
23 Mount Laurel. This is an economic discrimination
24 case. I think there is a world of difference
25 between an allocation that a town discriminates

1 on the basis of race and that a town discriminates
2 on the basis of income and this gentleman has
3 come into court and qualified himself as an expert
4 in those situations in which there were dispari-
5 ties in the distribution of municipal facilities
6 based on racial discrimination and that's not
7 the case we have before us.

8 THE COURT: I think that's a distinc-
9 tion without a difference, Mr. Patton.

10 It's clear that the witness is thor-
11 oughly qualified as an expert in the field of
12 municipal planning and whether the cases in
13 which he has, with which he had dealt have all
14 been racial discrimination cases and that
15 doesn't necessarily, entirely appear, doesn't
16 seem to me to be material at all.

17 The fact is that discrimination by
18 whatever -- by whatever name you call it or in
19 whatever guise it appears, if it's improper,
20 if it's based on improper criteria, is a matter
21 with which this witness can deal and discrimina-
22 tion in allocation of having opportunities is
23 no less discrimination because it's based on
24 something called economics rather than something
25 called race. I think the witness, quite aside

1 from any issue of what kind of discrimination we
2 are talking about, is -- has thoroughly demon-
3 strated his qualifications as a municipal planner,
4 as an expert in the field. Not only he's dealt
5 with municipal planning problems, not only in
6 this country but abroad and it's quite obvious
7 that he's -- and he's also been retained before
8 and granted that, as you point out this is not
9 a racial discrimination case as such, the witness
10 has previously been qualified and has testified
11 and has done research in connection with the
12 very problems which are presently before us.

13 His qualifications will be recognized
14 and he may testify.

15 All right, Mr. Bisgaier, you may pro-
16 ceed, sir.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. BISGAIER:

19 Q Mr. Rabin, were you retained by the
20 plaintiffs to conduct certain studies for this second
21 trial?

22 A Yes, I was.

23 Q And what were the studies that you
24 conducted?

25 A I was asked to examine the impact of development

1 control practices of the Township of Mount Laurel on low
2 income residences and low income areas of the Township of
3 Mount Laurel and on the prospective sites for low income
4 housing and as reflected in the recent zoning ordinance
5 and/or at least those sites which are referred to as R-5,
6 R-6 and R-7.

7 Q What specific development control
8 practices are you referring to that you based your study
9 on?

10 A Well, I examined first a whole range of practices
11 and then narrowed those down to those which seem to be
12 more relevant to the situation in Mount Laurel. I looked
13 at zoning which is obviously recognized as a development
14 control practice, establishes, permitted uses, identities,
15 lot sizes, set-backs and as such has whatever, everybody
16 recognizes to be a very important effect on future devel-
17 opment or somewhat less recognized is the impact of zoning
18 on existing development and this was a primary concern,
19 zoning functions as a development control on existing
20 development in several ways.

21 First of all, zoning can affirm what already
22 exists. Thereby stabilizing the pattern of development
23 which is there or zoning can be superimposed in such a
24 way as to destabilize what's there by rendering existing
25 uses non-conforming.

1 Another way in which zoning impacts very signi-
2 ficantly on existing development is through the granting
3 of variances or through spot zones and this is particularly
4 sensitive in residential areas and particularly sensitive
5 where those variances or that spot zoning is for uses
6 which are incompatible or disruptive in residential areas.

7 Another obvious development control is subdivi-
8 sion regulation. That, of course, effects exclusively
9 future development or new development and it's -- it's my
10 understanding that has been gone into at some length
11 already, being as I was concerned primarily with existing
12 development, I did not devote attention to that.

13 Another development control is code enforcement.
14 Again, this is a form of development control whose prin-
15 cipal impact is on existing development and like zoning,
16 its impact can be positive or negative. Code enforcement
17 can be carried out in such a way as to upgrade the housing
18 supply by bringing out improvements in substandard housing.

19 The code enforcement can eliminate from the
20 supply housing which is not fit for habitation and when a
21 code by the necessary provision of relocation resources,
22 the overall effect of such activities is to upgrade the
23 housing supply in the community. Code enforcement carried
24 out in the absence of relocation has the effect of slimming
25 the supply and actually forcing people out of a community.

1 Another development control activity is the
2 provision on improvement of access. This is an extremely
3 important development control. It takes little sophis-
4 tication and planning to understand that a site which is
5 inaccessible, is undevelopable or that a site which has
6 poor access is less desirable for development than one
7 which has good access and the absence of access effects
8 things like borrowing and insurance and becomes an impor-
9 tant element in the process of development control.

10 Another vital development control activity is
11 the provision of basis utilities. Water, sewer. Again,
12 not to belabor the obvious, the existence of a public
13 water supply assures quality water, reasonable pressure,
14 fire protection, control over the quality of the water
15 supply. The absence of those things deprives an area of
16 all of those benefits.

17 When in addition those facilities are absent
18 from an area where lot sizes are small and there is the
19 need to both furnish water and dispose of wastes within
20 a small site, then there is the increased risk of con-
21 tamination of ground water and pollution of wells.

22 So, this becomes an important impact on develop-
23 ment.

24 And finally, an activity which contributes to
25 the immunity of existing areas and that's the provision of

1 recreation facilities.

2 Q Now, when you refer to access as being
3 a development control, what specific aspects of access
4 did you consider in evaluating the practices in Mount Laurel?

5 A Well, I considered the nature of the right-of-way,
6 that is, its condition, clarity, whether it was paved or
7 unpaved. If it was paved what its condition was, how well
8 it was lit, drained.

9 Q Could you describe for the Court how
10 you went about these studies and what your sources of data
11 were?

12 MR. PATTON: Your Honor, at this moment
13 I'm going to have to object to all of his testimony
14 to date on the basis that, A, it wasn't included
15 in his written report which he never furnished
16 us to begin with and, B, I have before me a copy
17 of Mr. Rabin's deposition in which I attempted
18 strenuously to elicit from Mr. Rabin what he
19 was going to testify to at trial; and I suggest
20 that everything that he mentioned on the witness
21 stand right now was not mentioned when I took
22 his deposition three days before trial. I didn't
23 know he did a study on access and basic utilities
24 and water and recreation facilities. I asked him
25 whether he even at that time, he had made an oral

1 report to Mr. Bisgaier and he said, no. He said
2 he took a couple of driving tours through Mount
3 Laurel and now I see on the witness stand on
4 direct examination that Mr. Rabin has apparently,
5 is going to testify to a whole mass of material
6 which apparently he wasn't going to testify to
7 three days before trial when I took his deposi-
8 tion; and I'm prepared to read chapter and verse,
9 I think this is extremely prejudicial, A, no
10 report; B, we take his deposition three days
11 before trial and he doesn't tell us he's going
12 to testify to any of this material --

13 THE COURT: Maybe you didn't ask him.

14 MR. PATTON: I did. You want to, I'll
15 be very happy to write down his deposition line
16 as to what he's going to testify to at trial and
17 he doesn't mention any of this stuff.

18 MR. BISGAIER: Your Honor, in the first
19 instance Mr. Rabin has filed no written report,
20 of course, he's not required to by the rules to
21 file such a written report.

22 In the second instance, I think the
23 deposition will reflect that we will, without
24 going into characterizing the way the deposition
25 was conducted, ultimately at the end of the

1 deposition Mr. Rabin was asked to state what he
2 meant by development controls and did in fact
3 state that he meant roads, that he meant all the
4 very things he has stated here and the question-
5 ing, I believe, involved a total of approximately
6 five minutes out of a two hour deposition. That
7 of course is not a liability of the plaintiffs.
8 That was the nature of the interrogation.

9 MR. PATTON: Your Honor, I rest my case
10 on pages 1 through 7 inclusive of Mr. Rabin's
11 deposition which speaks for itself.

12 THE COURT: Well, the witness has so
13 far testified really to no more than general
14 effects that zoning -- the witness has so far
15 testified to no more than the general effects
16 that zoning may have on development both exist-
17 ing and prospective. He has talked of the vari-
18 ous phases of development all of which have, are
19 indigenous against and are integral to the
20 consideration of this case. There is nothing he
21 has said so far within the gambit of everything
22 that we are -- that this Court is considering,
23 we are considering in the course of this -- of
24 this hearing.

25 Now, the mere fact that he may not have

1 dealt with it in great specificity when you took
2 his deposition as he has here in the past few
3 minutes, doesn't lead me to deny him the right
4 to testify. He's talked about general principal
5 and these are general principals that we have
6 been hearing about for several weeks.

7 MR. PATTON: Your Honor --

8 THE COURT: And he's prepared to testify
9 to his study of these -- of the situation in
10 light of these general principals.

11 MR. PATTON: But, Your Honor, the point
12 is that three days before trial he doesn't make
13 those studies. I tried to find out what studies
14 he had, Your Honor, and he said I made a couple
15 of road trips through Mount Laurel.

16 I have no objection to his testifying
17 to these general principals as general principals,
18 but now where he's going to apply them to Mount
19 Laurel, why take an expert's deposition three
20 days before trial to find out what he's going to
21 testify to at trial, we find out, A, he doesn't
22 give a written report, then we find out he gave
23 a halfhearted oral report to Mr. Bisgaier. We
24 tried to find out what kind of an oral report he
25 gave to Mr. Bisgaier and, Your Honor, I really

1 don't want to read into the record pages 1 to
2 7 of his deposition transcript because it's
3 self-evident but I just don't see how this man
4 has an expert witness and come in here and testi-
5 fy to these general principals made applicable
6 to Mount Laurel.

7 I find it very interesting to sit here
8 seeing Mr. Rabin is reading his answers almost
9 verbatim. He's got to be reading it from some-
10 thing. We asked him for something three days
11 before trial. He couldn't give us anything.

12 THE COURT: Mr. --

13 MR. PATTON: I think it's unfair to
14 have him testify.

15 THE COURT: All right, Mr. Patton. You
16 took his deposition. That you have the right to
17 do, so you have his deposition and you may use,
18 of course, in cross-examination of this witness.
19 I don't -- I consider your position to be entirely
20 without merit.

21 Your motion is denied.

22 MR. BISGAIER: Your Honor, if you will
23 indulge me just for the purpose of the record,
24 I'll only indicate Mr. Rabin's name was given
25 as a potential witness in this case approximately

1 a year ago. He was offered for depositions
2 almost within a week of being asked for the
3 deposition and I'm not going to read his deposi-
4 tion into the record either. I think if it
5 comes to that it will reflect --

6 THE COURT: I've ruled on the motion,
7 Mr. Bisgaier.

8 MR. BISGAIER: Yeah.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. BISGAIER:

11 Q Mr. Rabin, I believe the pending is
12 for you to please describe for the Court how you went about
13 your analysis that you did in Mount Laurel and what speci-
14 fic data you relied upon?

15 A Well, I began by reviewing my own data from the
16 earlier trial and my transcript of my own testimony from
17 that trial. I reread the opinions of Judge Martino in
18 the Supreme Court, I also reviewed a number of official
19 planning documents and studies of the Township of Mount
20 Laurel including the Mount Laurel master plan report, the
21 housing conditions report which was done in 1959 by the
22 Township's consultant, Mr. Kletsly (phonetical), the
23 Springville report which was done ten years later in 1969.

24 THE COURT: Housing conditions recorded
25 of what year?

1 THE WITNESS: 1959, Your Honor.

2 THE COURT: 1959?

3 THE WITNESS: Yes, sir. Ten years later

4 a report on Springville by the Township's then

5 consultant, Mr. Susna (phonetical). I refreshed

6 my memory from the 1970 census data and using

7 the building permit data developed some estimates

8 on what current population might be. I took the

9 area photographs, 1970, area photographs we had

10 used in the earlier trial, compared those to the

11 1975 photographs we have now in order to get a

12 better distributional picture of the changes

13 which the statistical data revealed. I reviewed

14 the records which had been furnished by the

15 Township Building Inspector on demolition permits

16 covering the period, 1 January 1972 to 15th of

17 April, 1970, and also the relocation records of

18 the Burlington County Community Action Program.

19 The relocation records of the State of New Jersey

20 Department of Community Affairs. I reviewed

21 school district data on the distribution of low

22 income children by elementary school. I read

23 the pretrial depositions of the Mayor and of

24 the Superintendent of Public Works, Mr. Johnson,

25 and was given the attachments to those deposi-

1 tions which included a table furnished by Mr.
2 Johnson of public improvements made by him on
3 streets and recreation areas from 1970 through
4 the years 1976, and a map which showed the loca-
5 tion which Mr. Johnson marked with the locations
6 of those improvements.

7 I reviewed some answers to interroga-
8 tories by Mr. Talbot which discussed some similar
9 work by the Township of Mount Laurel and which
10 included, in addition, work which was done on
11 street lights.

12 I reviewed the zoning maps, both the
13 old one and the new one. It's also furnished with
14 three maps of Mount Laurel, one of which showed
15 the distribution of water in the Township,
16 another of which showed the new street light
17 fixtures which have been installed in the Township
18 and third, of which showed the sewerage disposal
19 system in the Township. These materials were
20 supplemented by number of surveys, physical sur-
21 veys which I made in the Township April 18th
22 and 19th and the 6th to the 10th of May and the
23 13th to the 16th of May and on the 31st of May.

24 Q Based on the studies that you have done,
25 your findings in 1972, how in a general way would you char-

1 characterize any changes which have taken place in Mount Laurel
2 since the first trial?

3 MR. PATTON: Your Honor, I object to
4 the question on the basis that the witness' last
5 answer was that he supplemented all his work by
6 three walking trips or field trips through Mount
7 Laurel and each of those dates was after the
8 first day this trial began..

9 I think any testimony based on any
10 information that he received after we took his
11 deposition or, more importantly, after the first
12 day of trial should not be permitted.

13 THE COURT: I really can't see the
14 point of that objection, Mr. Patton. All the
15 witness said he did was to go out and look at
16 conditions and is now simply being asked to state
17 what within his knowledge or in his opinion he
18 considers changes that have taken place between
19 the first trial and the second.

20 MR. PATTON: But Your Honor, if --

21 THE COURT: He certainly is quite com-
22 petent to do that and his observations are matters
23 of fact.

24 MR. PATTON: I don't challenge his com-
25 petency, Your Honor, I challenge the fairness of

1 this man being permitted to take field trips
2 of Mount Laurel after this trial began and then
3 to come in here and testify to his impressions
4 as an expert witness or as a fact witness.

5 THE COURT: What difference does it
6 make whether he made those walking trips or
7 field trips as you call them, last week or two
8 or three months ago?

9 MR. PATTON: The big difference is,
10 Your Honor, because if he made it two or three
11 months ago we could have found out what he was
12 going to testify to by virtue of his deposition
13 which we took three days before trial to begin
14 with.

15 THE COURT: Just got through telling
16 me his deposition said he made walking tours.

17 MR. PATTON: He took a driving tour,
18 one or two driving tours, he never gave us those
19 dates. He said he took a driving tour through
20 Mount Laurel, now we find out he took a field
21 trip through Mount Laurel.

22 THE COURT: Very --

23 MR. PATTON: As a matter of fact, he
24 has three days all in May.

25 THE COURT: Well, the objection is over-

1 ruled. I think maybe, Madam Reporter, we'd
2 better have the question read back, if you don't
3 mind.

4 THE REPORTER: "Question: Based on
5 the studies that you have done, your findings in
6 1972, how in a general way would you characterize
7 any changes which have taken place in Mount Laurel
8 since the first trial?"

9 THE COURT: The objection is overruled.
10 You may answer the question, Mr. Rabin.

11 A Yes, Your Honor.

12 Well, the changes that I've been able to both
13 observe and confirm from the data are very substantial.
14 There has been considerable growth in the Township in the
15 intervening years. Growth both in residential and in
16 industrial and office development. They are going back to
17 the 1970 census, almost 1200 more dwelling units in the
18 Township, about 500 of which are apartments. There is an
19 additional million three hundred thousand square feet of
20 industrial floor space and a large amount of office floor
21 space totally almost two million square feet altogether.

22 In addition, there have been substantial improve-
23 ments made to roads in some areas of the Township and to
24 recreation facilities in some areas of the Township but in
25 other areas of the Township there are very few changes at

1 all, Your Honor.

2 Conditions in what were found to be the low
3 income areas in the 1972 trial and which remain as those
4 low income areas today, although some were smaller than
5 they were in 1972, remain essentially unchanged.

6 The public facilities which serve those areas
7 are no better than they were then; nor is the condition
8 of housing improved over what it was then, nor have there
9 been any units of low income housing provided during the
10 intervening period.

11 Q Getting back to the specific develop-
12 ment controls, which did you focus on for the purpose of
13 this evaluation?

14 A Well, road improvements, recreation, fire protec-
15 tion, zoning and code enforcement.

16 Q From your past experience, prior
17 studies and analysis, have you been able to determine
18 whether there are widely used planning standards which
19 were employed by local government in determining the needs
20 of, provide or to improve the various types of public
21 facilities that you described as development controls?

22 A There are, yes.

23 Q And would you list the types of planning
24 factors which might influence the provision or the improve-
25 ment of streets, specifically, leaving aside State, County

1 ~~and Federal~~ highways, streets. I'm speaking now speci-
2 fically of streets that would be provided by the local
3 government.

4 A Well, the first planning consideration, of
5 course, would be traffic volume and second one would be
6 the type of traffic which makes that volume and obviously
7 those two factors are used by most municipalities in order
8 to establish a classification system for the roads within
9 the municipalities and a large city such as classification
10 symptom may divide roads into four or five different
11 categories in a Township like Mount Laurel, only three
12 are used; arterial streets, collector streets and local
13 streets are referred to in the Township's plan, they're
14 commonly used, designations and those designations would
15 determine things like the width of the right-of-way that
16 is necessary, the type of road bed in both in terms of
17 materials and thickness that are used, the number of
18 lanes that are permitted, the spread limits that are per-
19 mitted, the shoulders that are necessary.

20 Another planning factor which is taken into
21 consideration in the planning of streets are the abutting
22 uses because streets obviously not only function to
23 accommodate vehicular traffic but also to permit the move-
24 ment on foot along them and the need for facilities to
25 accommodate pedestrian traffic would depend on the nature

1 of the facilities which are accessible by way of that
2 street, so that a school, for example, would clearly
3 create a situation in which sidewalks were necessary or
4 some safe pedestrian walkway out of the vehicular right-of-
5 way in order to provide access to those things.

6 Q Would you say that for those very
7 improvements which are prayed for, I'm speaking now strictly
8 out of municipal funds or general revenues that there is
9 a common practice in terms of identifying need in a symptom-
10 atic were using the type of criteria which you have dis-
11 cussed?

12 A I would say so, yes.

13 Q And assuming this rational considera-
14 tion was undertaken of these functional criteria that we
15 discussed, how would two separate streets characterized
16 by similar needs and conditions be constructed or improved
17 by the municipality?

18 A Well, I would assume they would be constructed
19 or improved similarly.

20 Q Did your personal examination of road
21 conditions in Mount Laurel reflect the operation of such
22 a rational system of decision making as you described in
23 terms of implementation of improvements on municipally
24 owned roads and various residential neighborhoods?

25 A No, it does not.

1 Q Can you tell us what your findings
2 ~~have or had~~ been which lead you to that specific conclusion?

3 A Yes. I have found that taking for the moment
4 purely local streets, and by local streets, I mean those
5 streets whose sole function is to provide access to the
6 properties which abut them, that is they do not serve as
7 means of access across the Township in any way, the kinds
8 of cul-de-sacs which exist in subdivisions, the kinds of
9 streets whose primary function is to accommodate traffic
10 which is destined to abutting uses on those streets. If
11 we look just at those we find that the Township of Mount
12 Laurel has paved and improved many such streets which
13 serve very, very little development and corresponding
14 little traffic while a number of other streets which are
15 more densely developed and which accommodate more traffic
16 have been left unimproved.

17 Q Now, how did you go about this? What
18 kind of study, specifically, as to this?

19 A Well, I drove or was driven over every street
20 in Mount Laurel and I classified all of the streets or
21 parts of them into three categories. Either as smoothly
22 paved or roughly paved, which means that the street is
23 paved but it's either broken up or it has rough and bumpy
24 patches or unpaved, the third category.

25 I then examined the depositions of Mr. Johnson,

1 the superintendent of public works and the attachments to
2 that deposition which described the nature, extent and
3 expenditures by year on road improvements throughout the
4 Township and all of that data was then plotted on a map.

5 MR. BISGAIER: Your Honor, at this time
6 the plaintiffs would like to have marked, if
7 Your Honor pleases, for identification a map of
8 the Township of Mount Laurel which is entitled,
9 "Street Conditions and Street Improvements By
10 The Township of Mount Laurel, 1970 through 1976."

11 THE COURT: P-45 for identification.

12 (A document was marked P-45 for iden-
13 tification.)

14 MR. PATTON: Your Honor, at this time,
15 I'm going to object to any questions with respect
16 to this map. It's been marked for identification
17 because I view this map as in the nature of a
18 report of the expert witness and Mr. Rabin said,
19 quote, I drove over every street in Mount Laurel.
20 I classified them with a threefold classification
21 and then I read Johnson's deposition.

22 I think the critical question here is
23 when did Mr. Rabin drive over every street in
24 Mount Laurel and make that classification that
25 supposedly appears on that map and I think we have

1 to find out the answer to that question before
2 this should be permitted to be discussed at all
3 because it's in the nature of an expert's report.

4 Your Honor, when I made my motion Your
5 Honor read very clearly the rules with respect
6 to expert testimony and expert reports. And
7 this is an expert report and we know that it
8 wasn't prepared until after he drove over every
9 street in Mount Laurel, classified them, then
10 read Johnson's dep, and I think we have a right
11 to know who prepared that map and whether that
12 map was prepared before or after he drove over
13 every street in Mount Laurel.

14 THE COURT: Maybe we can have the ques-
15 tions regarding that but this is not an expert's
16 report. This is simply a visual aid. I don't
17 classify a map of which certain illustrations has
18 been placed and which is incomprehensible except
19 with the witness' explanation of what it's sup-
20 posed to portray as a report that is the obliga-
21 tion of the plaintiff to furnish you in advance.

22 The objection is overruled.

23 MR. BISGAIER: I'm just concerned,
24 Your Honor now -- off the record.

25 (An off the record discussion was held.)

1 THE COURT: Maybe this is a good time
2 for a short recess and maybe we can make some
3 rearrangements of the furniture.

4 (Recess.)

5 BY MR. BISGAIER:

6 Q Mr. Rabin, I show you P-45 which has
7 been marked for identification.

8 Would you please explain and describe this map
9 and what the designations are on it?

10 MR. PATTON: I would object to that
11 question, Your Honor, because during the break
12 we made very careful study of that map and we
13 find that none of the roads that appear on that
14 map are broken down viz-a-viz which are State
15 roads, which are County roads and which are
16 local roads. Something that could be very, very
17 easily done.

18 THE COURT: Well, can't the Court
19 pretty much take judicial notice particularly
20 of what are State roads, how many State roads
21 are there, Route 38 throughout 73 and what else,
22 Interstate 295?

23 MR. PATTON: Turnpike.

24 THE COURT: The Turnpike.

25 MR. PATTON: And there are several

1 County roads.

2 THE COURT: There are, of course, there
3 are a number of County roads. I think I don't
4 see any reason to exclude the testimony because
5 of that. The witness can tell us which are which,
6 I'm sure.

7 Do you want the question repeated, Mr.
8 Bisgaier?

9 MR. BISGAIER: Only if the Witness needs
10 it.

11 THE WITNESS: I think I remember the
12 question.

13 THE COURT: All right.

14 THE WITNESS: Your Honor, may I go down
15 there?

16 THE COURT: Yes, you may, sir.

17 (The witness left the witness stand to
18 go to the board.)

19 A On the map which is up here on the stand, I've
20 indicated with a light blue shading those areas of the
21 Township which are residential and developed and I would
22 call attention at the outset, Your Honor, to an error in
23 my own designation here because I see that in the Ramblewood
24 Subdivision in the area between Church Road and Church
25 Street where the apartments are in Ramblewood, I have neg-

1 lected to color those in as they should be, but they
2 appear on other maps which will subsequently be shown and
3 if I may, I could, may I indicate that on here?

4 THE COURT: Well, that area that you
5 just indicated down there largely fronting along
6 what, Church Road?

7 THE WITNESS: Well, this is along
8 Country Club Parkway.

9 THE COURT: Yes.

10 THE WITNESS: In the Ramblewood Sub-
11 division and on both sides of Academy Drive in
12 the Ramblewood section.

13 THE COURT: And that should be colored
14 blue; is that right?

15 THE WITNESS: Yes, sir.

16 THE COURT: I think I can remember
17 that. If you want to make some kind of an in-
18 dication in order to -- well, to indicate that
19 should be done, you may do so.

20 THE WITNESS: Thank you, Your Honor.

21 I can do it approximately at any rate.

22 I might add, that there were also a
23 number of errors in the map itself which it was
24 necessary to correct at the outset. Errors which
25 are revealed by the study. For example, there

1 were streets shown going under the Turnpike
2 which go over the Turnpike or streets going the
3 other way over the Turnpike which go under the
4 Turnpike, the streets shown which do not exist,
5 streets which do exist which are not shown and
6 I'll come to those.

7 THE COURT: All right.

8 A As I say, the area shown in light blue shows the
9 residentially developed portions of the Township and by
10 residentially developed, Your Honor, I have used the
11 arbitrary minimum designation of clusters of six or more
12 houses in one location. So, this is not to suggest that
13 there are not other isolated residences. In fact, many
14 of them located around the Township but this is where the
15 clusters of housing are and even the small groups which
16 I've shown may be smaller than what might be otherwise
17 regarded in planning terms of developed to suburban den-
18 sities, for example, then superimposed on this light blue
19 area, I have shaded those areas which from the census data,
20 from the testimony in the earlier trial and from my own
21 observation as to the conditions of housing, I've charac-
22 terized as the low income areas.

23 The major one is along Hartford Road between
24 Hainesport Road and Elbow Lane in the area which is known
25 as Springview and a smaller area in the northwest section

1 of the Township along Texas Avenue between Church Street
2 and Elbow Lane.

3 The map also shows the alignment of the proposed
4 high speed line. It shows the three residential zones
5 which are referred to earlier, R-5, R-6 and R-7; and
6 finally, it shows the designations of road conditions and
7 road improvements which I described earlier.

8 The road conditions are shown by a color applied
9 within the double line which indicates the street on the
10 map. So that the yellow color indicates those streets
11 which I found to be smoothly paved.

12 The road, orange color, indicates those streets
13 which I found to be roughly paved.

14 And the brown color indicates those streets
15 which I found to be unpaved.

16 Now, the road improvement work is shown by a
17 colored line placed alongside the road indicating by means
18 of the color the type of improvement which was made and
19 by the length of the line that portion of the road which
20 according to the description of Mr. Johnson was improved.

21 So that --

22 THE COURT: Improved when?

23 THE WITNESS: This is in the period
24 from 1970 through the end of 1976.

25 THE COURT: Right. Thank you.

1 A A purple color alongside the road indicates a
2 road which has been reconstructed or a new road which has
3 been built.

4 A green line alongside the right-of-way indicates
5 a road which has been resurfaced, that is, a coating has
6 been placed over the surface of an existing paved road
7 varying in thickness from a half an inch to two inches in
8 order to provide a smooth riding surface and an unpaved
9 road is simply that ground which has no paving, which is
10 a dirt road.

11 Q Mr. Rabin --

12 THE COURT: How is that designated?

13 THE WITNESS: By a brown color.

14 THE COURT: Brown.

15 Q Mr. Rabin, based on the analysis reflected
16 on this matter, can you or have you determined whether
17 certain roads which are similar in terms of needs in Mount
18 Laurel have been similarly treated?

19 A Yes, I have.

20 Q And what is that analysis, conclusion
21 that you have come to?

22 A Well, that was, as I indicated earlier, that a
23 number of streets which serve very little development and
24 corresponding little traffic have been smoothly paved while
25 streets which are more densely developed and consequently

1 accommodate more traffic have been unimproved, and some
2 examples of that are, for example, on Orchard Way which is
3 a street in the northeast corner of the Township which is
4 a dead end street which has only a few houses on it but
5 which has been paved and repaved during the period in ques-
6 tion. Wedell Avenue which is a short dead end street off
7 of Hartford Road near its intersection with Warren Highway
8 has two houses, but it is a smoothly paved street.

9 Near the intersection of Hartford Road and Route
10 38 there is a small older residential area with the streets,
11 6th Street, Walnut Avenue and Chestnut Avenue, those streets
12 also which accommodate a small cluster of houses have been
13 paved and repaved.

14 In the north central portion of the Township an
15 old housing development, a rather modest houses have had
16 the streets entirely reconstructed by the Township. That's
17 in a development known as the Hunt Tract which is off
18 Church Street between Route 295 and Haughton Road.

19 Ramblewood Parkway, an arterial street has been
20 entirely reconstructed by the Township.

21 Many purely local streets in an older area of
22 Town known as Fellowship in the northwest corner of the
23 city, Waverly, Oregon, Beaver, Federal streets, have all
24 been paved and repaved during the period that I described
25 by the Township.

1 Almost all of the streets in the Rancocas Sub-
2 division have been, have been repaved since 1970 and
3 almost all of the streets in Masonville, another old
4 residential area of Mount Laurel immediately to the west
5 of Rancocas Woods have also been repaved.

6 Q Would you also describe the condition
7 of the streets in the Laurel Wood Subdivision?

8 A In the northwest corner?

9 Q Yes.

10 A They're an entire subdivision, Laurel Wood which
11 is in the far northwest corner of the Township, have been
12 entirely repaved.

13 Q What was the character of those streets
14 in terms of their use, R-3 through streets or cul-de-sacs
15 or --

16 A There are, there is only one street which provides
17 access into the subdivision. There are no other uses
18 within the subdivision abutting those streets other than
19 the residential homes and a recreation area which serves
20 that subdivision. The streets are purely local in nature
21 and yet have been entirely repaved by the Township.

22 While in the Springville area and in the Texas
23 Avenue area, these improvements have not been made.

24 Texas Avenue during the course of my several
25 visits changed from a rough street with holes to a rough

1 ~~street~~ with bumps. At some point intervening the holes
2 had been roughly filled. I don't know when that was done
3 but apparently some time in April or May.

4 In the Springville are either street, Washington
5 Street, Locust Street, you will -- all of which are sub-
6 stantially more heavily developed than a number of streets
7 which I have described remain unpaved entirely and to the
8 south of that area, R-2, unnamed dirt streets which are
9 also residentially developed.

10 Q What is the condition of those streets?

11 A Those merely have dirt rights-of-way. There is
12 no improvement to those streets at all, but perhaps most
13 strikingly among the disparities that I find is Hartford
14 Road itself.

15 Hartford Road, I'm sure for those who live in
16 Mount Laurel and are familiar with it, is a busy arterial
17 street. It is so designated in the city's plan and in
18 the county highway plan and yet, for some reason, Hartford
19 Road has been paved smoothly from the northern boundary of
20 the Township to Hainesport Road where the Springville area
21 begins and then from Elbow Lane to the southern boundary
22 of the Township, but that portion of the Hartford Road
23 which passes through the low income community in Spring-
24 ville has been left bumpy.

25 Q What are the nature and extent of abut-

1 ~~ling~~ uses on Hartford Road exclusive of Springville sec-
2 tion?

3 A Well, there is a group of about six houses at
4 this point on Hartford Road. Most of the other area except
5 for scattered and an occasional single home are relatively
6 undeveloped. There is, as I indicated before, at the
7 intersection of Hartford and 6th Street a cluster of
8 houses but those houses are mainly off Hartford Road within
9 this little enclave.

10 There is at the intersection of Warren Highway
11 and Hartford Road another cluster of housing but by far
12 the most densely developed area of Hartford Road is in the
13 area which has been unimproved and at this point where
14 Hartford Road intersects with Church Road is the Regional
15 High School. A major designation for numerous cars, buses
16 which must traverse Hartford Road in order to reach there.

17 Q Now, you say Hartford Road has been
18 unimproved, can you characterize more specifically the
19 nature of the road between, in the Springville area?

20 A Yes. The road is paved, in some sections of the
21 road there have been long parallel patches applied over the
22 surface of the road which have broken edges in most places.

23 Q What do you mean when you characterize
24 it as long parallel patches?

25 A Well, these are patches of overlay which are less

1 than a lane wide because they do not meet in the center,
2 there is a rut in the center of the road and they're not
3 continuous. That is, there are two sections of the road
4 in which those patches exist and both of those sections
5 are toward the northern end in this area shown by the
6 green line on here.

7 The green line on the map which represents what
8 Mr. Johnson described as repaving or resurfacing shows the
9 area in which those essentially four patches exist.

10 Q Now, what is the nature of Hartford
11 Road in terms of your observation as to its use by resi-
12 dences as well as traffic, use by people as well as by
13 traffic in the area known as Springville?

14 A Well, it's a pedestrian as well as a vehicular
15 right-of-way. So densely developed along its length, in
16 fact, there is no other area in Mount Laurel where along
17 the frontage of a single street there are so many houses.

18 Q To your knowledge, do the pedestrians
19 have any other way of traversing down that road other than
20 by using the road itself?

21 A No. The roadway is paved virtually to the tree
22 line which borders it. There is no walkway. There is no
23 shoulder off the paved road within which pedestrians could
24 safely walk.

25 Q Have you examined the expenditures that

1 the municipality has incurred for the road improvements
2 which you described to be reflected on P-45?

3 A I have, yes. These were contained in the list
4 which was furnished by Mr. Johnson which summarized, as
5 I said, the nature and extent of the improvements and
6 their cost by year.

7 Q Have you been able to evaluate those
8 in terms of comparing the extent of expenditure and the
9 various neighborhoods of the Township?

10 A I have and what I've done is examined that pro-
11 portion of the road funds which were spent in the Spring-
12 ville area as compared to the total expenditures, taking
13 into consideration or eliminating from the calculation
14 those roads which are initially provided by developers.
15 They are approximately 23 miles of streets outside the
16 subdivisions, that is, outside the roads which were
17 provided by developers and I'm not counting the Turnpike
18 or 295, but I have included a number of streets which are
19 the responsibility of the County and the State. So that
20 of that total the two mile stretch of Hartford Road,
21 approximately two mile stretch is eight and a half, 8.7
22 percent, but something like four-tenths of one percent of
23 the money which was spent on road improvements was spent
24 in placing these four linear patches over Hartford Road.

25 THE COURT: Now, let me get this straight.

1 Eight-tenths of -- or did you say eight percent
2 or eight-tenths of one percent?

3 THE WITNESS: The Hartford, the length
4 of Hartford Road?

5 THE COURT: Yes.

6 THE WITNESS: Represents little more
7 than 8½ percent of all the non-subdivision
8 streets.

9 THE COURT: Okay.

10 THE WITNESS: In the Township.

11 BY MR. BISGAIER:

12 Q That percent would obviously increase
13 greatly, wouldn't it, if you excluded the County roads
14 from the total?

15 A Oh, yes. If I excluded those roads, if I exclu-
16 ded Route 38 and Church Road, Elbow Lane, Moorestown-Mt.
17 Laurel Road, Hainesport-Mt. Laurel Road, all of which are
18 County roads, then the percentage which Hartford Road
19 represents of those streets for which the Township has
20 responsibility would be much, much higher.

21 Nevertheless, what was spent there, the actual
22 figures some \$881,000 was spent during the six year
23 period according to Mr. Johnson's figures and about \$3500
24 of that was spent on that portion of Hartford Road within
25 Springville.

1 Q Now, other than the specific road
2 improvements such as paving, have you evaluated or discerned
3 any disparities with regard to other street improvements?

4 A Well, the other significant one, of course, is
5 lighting and there as in the case of road improvements, in
6 the case of paving improvements, the Township has been very
7 active.

8 Q What, specifically, are your findings
9 with regard to how the Township has used its funds in
10 terms of street lighting?

11 A Well, according to the answer to interrogatories
12 which were provided by Mr. Talbot, the Township has in
13 recent years, at least since the first of January, 1970,
14 installed 881 Mercury vapor street light fixtures in the
15 Township and has removed 355 of the old aluminum filament
16 lights from -- from my surveys I find that virtually
17 every residentially developed area in Mount Laurel with
18 the exception of Springville and Texas Avenue have been
19 furnished with these new lights. Some parts of Spring-
20 ville, of course, like Cedar, Locust and Washington have
21 no lights at all, nor do the outer unpaved streets in
22 Mount Laurel and yet, if we look at some of the streets
23 which were referred to earlier under paving, Wedell Avenue
24 which has two houses and has a modern Mercury vapor fix-
25 ture at the end of Orchard Road, Burt Street, all of the

1 ~~Masonville~~ area have been furnished with new Mercury vapor
2 fixtures. All of the older Friendship area in the north-
3 west section of the Township has been furnished with a
4 new Mercury vapor fixtures. The Hunt Tract which is an
5 older development here has been furnished with the new
6 Mercury vapor fixtures and again one finds this strikingly
7 is the only word I can find, Your Honor, change which
8 takes place when you come south and reach this corner.
9 For from here down are the old incandescent filament fix-
10 tures which have been replaced elsewhere. From here
11 down, from Mount -- from the intersection of Mount Laurel
12 Road or Hainesport Road -- excuse me and Hartford Road
13 going south on Hartford Road and there are very few of
14 those incandescent fixtures in that area; and one practice
15 which has been followed almost without exception in the
16 rest of the Township, that is the placing of a light fix-
17 ture at least at the intersection of two streets has not
18 been done at these intersections, the two unnamed streets
19 which intersect Hartford Road in the Springville area.

20 Q When you continued on Hartford Road
21 north of the Springville area, had new lighting fixtures
22 been provided?

23 A Yes, they had.

24 Q To your knowledge are there street
25 lights on Texas Avenue?

1 A There are not.

2 Q And at the intersection of Texas Avenue
3 and Elbow Lane, is there any street light to your knowledge?

4 A I don't know.

5 Q Now, with regard to the three new
6 zones or sites that have been provided as a result of
7 ordinance No. 1976-5, specifically, the R-5, the R-6 and
8 the R-7 zones or sites, how have these or how are these
9 influenced by the development control which you have
10 termed access relating to street and street lights and
11 such?

12 A Well, the R-5 site which is at the northern
13 boundary of the Township as the map very clearly indicates
14 has no access at all. There is no public right-of-way which
15 provides access to that site.

16 The R-6 site which is located on the west side
17 of Hartford Road in the Springville area is subject to all
18 of the deficiencies which the rest of Springville is sub-
19 ject to as I've described them just now.

20 The R-7 site on the other hand appears to be
21 adequately served by access facilities being located as
22 it is at the intersection of two well improved roads.

23 Q Now, could you now briefly summarize
24 your finding with respect to road improvements?

25 A Yes. As I indicated earlier, the Township has

1 apparently followed a practice of improving streets which
2 show relatively little development and little traffic,
3 while other streets which are more densely developed and
4 accommodate more traffic have been left unimproved and
5 the only difference is which I could find, which are
6 consistent in this pattern are in the areas which are
7 unimproved have two characteristics. They are the areas
8 where there is the greatest concentration of lowest income
9 housing and the greatest concentration of low income
10 people and I might add, that neither of these is a valid
11 criteria for determining the need for the provision of
12 street improvements.

13 Q You referred to two streets which are
14 indicated in brown as unpaved off of Hartford Road in the
15 Springville area as not being named. What is the signi-
16 ficance of that for a planning point of view?

17 A Well, first there is the psychological disadvan-
18 tage of living on a street that has no name. In the case
19 of an emergency there might be a more substantial disad-
20 vantage. I can well imagine having to call an ambulance
21 or a fire engine and being and telling them that you have
22 to come to that unnamed street on the west side of
23 Hartford Road and if you don't get it right the first
24 time, it will be the second one, because there are two
25 of them; and the situation is rather complicated by the

1 fact there are no lights there which show you where the
2 streets are.

3 Q What implications are there for health
4 and safety in terms of the road conditions and access
5 that you found in the low and modern income areas of the
6 Township?

7 A Well, Hartford Road, of course poses the major
8 safety problem in that it exists as I indicated earlier
9 as both vehicular access and as a pedestrian access, be
10 it hazard lies in the fact there is no opportunity to
11 walk along the road except in that area provided for ve-
12 hicular traffic. The dust and mud which alternatively
13 characterizes the unpaved streets creates conditions which
14 I think speak for themselves.

15 Q Now, could you specifically now turn
16 to Texas Avenue itself in terms of how that street is
17 constructed and from health and safety point of view dis-
18 cuss what impact that would have speaking now of the
19 alignment as well as the question of shoulders and such?

20 A Well, the street is rough and bumpy and again
21 creates the same need which exists on Hartford Road,
22 although it certainly must be noted that the density of
23 development is less and that the amount of traffic, both
24 vehicular and pedestrian, would be smaller and the road
25 has a rather blind turn in it which creates a hazard. I

1 think I should also note for the record that there are
2 two Texas Avenues, Your Honor, one of the things that I
3 encountered was that there are two instances in town where
4 there are streets with the same name. There is this Texas
5 Avenue which is the low income area and there is another
6 Texas Avenue in the far northeastern corner and there are
7 also two Orchard Ways. One in Masonville which is here
8 and one in the Hunt Tract which is here.

9 Q You referred to Orchard Way in your
10 testimony. Which one were you referring to?

11 A Both. Well, one was reconstructed, the one in
12 Hunt Tract; and the one in Masonville was resurfaced.

13 Q Mr. Rabin, I would like you to turn
14 now to the development control that you referred to as
15 the provision of recreational facilities and first, if
16 you can explain for the Court what's or the evaluation
17 you made and how you went about doing that?

18 A Well, I -- as I did for roads, I went around
19 and examined all of the recreation areas within the Town-
20 ship of Mount Laurel using as a reference again the testi-
21 mony and exhibits provided by Mr. Johnson and supplemented
22 by my own findings.

23 I plotted all of those on a map and I also
24 assembled a list which describes the facilities which are
25 provided at each one of the sites.

1 MR. BISGAIER: Your Honor, at this
2 time the plaintiffs would like to have marked
3 for purposes of identification a map of the
4 Township of Mount Laurel which is entitled,
5 Recreation Facilities, Township of Mount Laurel,
6 1970.

7 THE COURT: P-46.

8 (A document was marked P-46 for iden-
9 tification.)

10 MR. BISGAIER: Perhaps as P-46A there
11 is an attachment or at least a table which goes
12 along with this map which also is entitled,
13 Recreational -- Recreation Areas, Mount Laurel,
14 New Jersey, Description of Facilities.

15 THE COURT: Yes. That may be marked
16 P-46A to associate it with P-46.

17 (A document was marked P-46A for
18 identification.)

19 MR. BISGAIER: Your Honor, I just
20 note for the purpose of the record P-46A is
21 a three page document.

22 THE COURT: Very well.

23 BY MR. BISGAIER:

24 Q Mr. Rabin, I show you a map that has
25 now been identified for the purpose of the record as P-46

1 and a chart or a table which has been identified as P-46A,
2 could you describe the map and the designations which are
3 found on it?

4 A Yes. May I step down again.

5 THE COURT: Yes.

6 (The witness left the stand.)

7 A As I did on the map which showed the road improve-
8 ments, I have shown in a yellow color on this map those
9 areas of the Township which are residentially developed
10 using the same standards for designating those as I had
11 earlier with an orange cross-patching, I have indicated
12 the two low income areas and Texas Avenue and Springville
13 along Hartford Road.

14 Then in a blue color I've shown the locations
15 of public buildings in the Township which include the fire
16 stations, the schools, the sewerage treatment plant,
17 senior citizen center, the Board of Education, post office
18 and the complex of municipal buildings.

19 Then in green with numbers which correspond to
20 the list which have been designated P-46A are shown all
21 of the recreation areas.

22 Q What appears on the P-46A that cor-
23 responds to the numbers on the map?

24 A P-46A is a list which by number and location
25 then describes what exists in the way of facilities at

1 each one of the 13 recreation areas which are shown on
2 the map.

3 Q Based on your reading of Mr. Johnson's
4 deposition and any other knowledge which you may have
5 ascertained, you have been able to determine as to the
6 ownership and the maintenance and construction of these
7 various recreational facilities?

8 A To my knowledge except for the schools and the
9 recreation area which is designated for Penny Bridge Park,
10 the others are all owned and maintained by the Township.

11 The schools on the facility at Penny Bridge Park
12 are maintained by the Township.

13 The facility at Penny Bridge Park was also built
14 by the Township but the land is owned by the utility
15 authority.

16 Q Now, do you have knowledge as to who
17 built or how the others were constructed?

18 A Yes. The one which is designated number one,
19 which is at the end of Chatham Road in the Laurel Wood
20 subdivision was constructed by the Township and is, in fact,
21 still under construction. There is a basketball court
22 which is not yet complete there.

23 The facilities which were -- which existed Country
24 Side School, I do not know who built them but they are as
25 I indicated maintained by the Township which includes, I

1 would assume, the replacement of any facilities which might
2 ~~need replacement~~ from time to time.

3 The same applies to number three which is the
4 Markway School at number four as I indicated before, the
5 facilities were built by the municipality.

6 Number five, which is on Virginia Lane in Ramble-
7 wood was built by the Township. That's divided into two
8 sections. There is a tot lot on one side of the street
9 and a basketball court on the other. Number six is lo-
10 cated adjacent to the Mill Run subdivision and according
11 to the testimony of Mr. Johnson is not a Township facility.
12 However, there exists on Church Road at the entrance to it
13 a sign which identifies it as a park and which cites the
14 hours when it opens and on the gate of the tennis court
15 another sign which says, Mount Laurel Public Tennis Courts
16 Residents Only, and the trash receptacles within the facil-
17 ity which have the Township seal on them. So, I have in-
18 cluded that one as well, but I did not know who built it.

19 Number seven is in the Ramblewood Farms subdi-
20 vision on Cornwallis Drive that was built by the Township.

21 Number eight which is on Dorchester Drive in
22 Cantenbury was built by the Township.

23 Now, number nine is the site of two schools,
24 the Hillside School and the Middle School. At least one
25 of the basketball courts located there was provided by the

1 Township but I have no idea who provided the other facil-
2 ities that exist there.

3 Number ten is the facility on Hartford Road
4 and that was provided by the Township.

5 Number eleven is a facility on School House Lane
6 at the site of School House Number Two and I do not know
7 who initially provided those facilities.

8 Number twelve is on Creek Road and the Township
9 built that.

10 And number thirteen is at the Fleetwood School
11 and once again, I do not know who provided the facilities
12 initially.

13 Q What does a commitment to maintain
14 facilities regardless of who did the initial construction
15 mean in terms of municipal expenditures and future municipal
16 expenditures?

17 A Well, I would assume it means as I indicated
18 earlier that at such time as any facilities located there
19 require repair or replacement that that would be part of
20 the obligation.

21 Q Are there widely used standards which
22 customarily would govern the provision of recreation at
23 the facilities just as you testified there were four street
24 improvements?

25 A There are, yes.

1 Q And what are they generally?

2 A Well, there rather specific ones included in
3 the master plan report of the Township and if I may, may
4 I refer to those?

5 THE COURT: Yes, sir.

6 (The witness resumes the witness stand.)

7 A Page 51 of the master plan report from Mount
8 Laurel Township of 1969 deals with recreation and open
9 space and as under it the subheading standards and needs
10 and under that further subheadings for various levels
11 of recreation facilities which are to be provided under
12 the general heading of public parks. If I can take a
13 moment, Your Honor, and just read two of these and I'll
14 then summarize the others?

15 THE COURT: Sure.

16 A Because the first two are really the relevant
17 ones. Number one is a play lot, a land area some 2,000
18 to 10,000 square feet is sufficient and a play lot is
19 intended primarily to serve children of preschool age
20 under parental supervision in populated neighborhoods.
21 This facility as an ideal service area of four blocks or
22 less, it is preferably located in the center of a block
23 sheltered from busy streets. Access should be provided
24 by sidewalks or walkways designed with a baby carriage
25 and small children in mind and then it goes on to say a

1 play lot can be provided private such as F.A.P.U.D. or
2 by the municipality or school board.

3 The second deals with neighborhood playgrounds
4 which are facilities which accommodate older children and
5 even include ballfield, basketball courts and things of
6 that type.

7 The standards then go on to discuss larger fac-
8 ilities which I don't think need be gone into because
9 no facilities of those kind exist within Mount Laurel
10 outside the schools and there is no point in taking the
11 time, I think, with that.

12 Q Do your findings reflect whether the
13 standards which have been observed by the Township in its
14 provision of recreational facilities?

15 A They have not been.

16 Q And in what ways is it your opinion or
17 observation that the Township has departed from those
18 standards?

19 A Well, without getting into the issue of how well
20 distributed the facilities are, but merely addressing our-
21 selves to the facilities which they have provided, there
22 are two basic types.

23 They are essentially what are tot lots and almost
24 every recreation facility in the city; and then there
25 are in addition the kinds of neighborhood facilities which

1 are used by older children which include baseball diamond,
2 ~~Basketball~~ court and so on. The majority from the stan-
3 dards exists in the provision of these tot lot facilities,
4 virtually without exception.

5 (The witness leaves the stand.)

6 A Each one of these tot lot facilities is accessible
7 by pedestrian right-of-way, safe pedestrian rights-of-way
8 to relatively small children.

9 The Chatham Road facility is located at the end
10 of a dead end street which has sidewalks.

11 The Country Side School facility is accessible
12 from the backs of all the houses which abut on it.

13 The same can be said of the facilities at the
14 Markway School.

15 The Penny Bridge Park facility is also accessible
16 by sidewalks along Locust Street and from the backs of the
17 properties alongside Ramblewood Parkway.

18 The same can be said for Virginia Lane.

19 For the facility which is in Ramblewood Farms,
20 for the facility which is in Cantenbury.

21 The large community facility here where the
22 major ballfield are clearly doesn't meet that criteria, but
23 here again, in Masonville these facilities are accessible
24 by local streets and even the Rancocas children have to
25 cross one major street at one point to reach the facilities.

1 Walnut-Hartford Road area, it's a mile and a half
2 from the southern end of Hartford Road to the facility
3 which is located there and the only way of getting to it
4 is within the traffic right-of-way along Hartford Road.
5 Then there is another important distinction. In all of
6 these other facilities those tot lot facilities are either
7 located away from the street or fenced from the street,
8 recognizing that of the standards indicates small children
9 need some protection.

10 Creek Road for example, the tot lot facilities
11 are as far as from Creek Road as it is possible to get and
12 remain within the recreation site, but on Hartford Road
13 the tot lot facilities are on the street and are not
14 fenced.

15 Q Mr. Rabin, in terms of the differences
16 in recreational facilities which are reflected both in
17 your testimony and the map and document P-46A --

18 (The witness resumes the stand.)

19 Q -- yes, your studies revealed any
20 differences in need for recreational facilities which
21 might account for the differences which you have just
22 described?

23 A Well, to the extent there might be differences
24 in need, I can only conclude that those differences have
25 been exacerbated.

1 Q How is that?

2 A Well, the facilities that have been provided,
3 have been provided most lavishly in those areas which
4 are characterized by a great deal of private open space
5 and where much of that private open space has been pro-
6 vided with recreation facilities by the people who own it.

7 While in the Hartford Road area where not only
8 private open space is limited but by the very nature of
9 the low income population that leaves there that private
10 open space is certainly undeveloped as far as recreation
11 facilities are concerned, it's rather ironic that what's
12 been provided is a tot lot facility which from a safety
13 point of view is really accessible only to the one or two
14 houses which are directly adjacent to it.

15 Q Now, the private open space you are
16 referring in the recreational facilities that might be
17 in there, you are referring there to private home owners
18 who might provide recreational facilities for their own
19 children?

20 A Yes, you need only drive through most of the
21 subdivisions to see the swings and play equipment which
22 many people furnish on their own and which the Township,
23 of course, provides in addition.

24 Q I would like you to turn your atten-
25 tion, Mr. Rabin, to the subject of fire protection, access

1 ~~to firehouses~~ and the like and I ask you whether there are
2 generally accepted, widely used standards for the provi-
3 sion of fire protection and if so, what would their
4 characteristics be?

5 A With respect to fire protection, the standards
6 are considerably less flexible than they are with respect
7 to other types of municipal facilities and services.

8 There is the intervention, of course, in that
9 process of fire underwriters, the insurance companies, the
10 building codes and as might be expected standards are in-
11 corporated in the plans and ordinances of the Township of
12 Mount Laurel. The master plan again notes the need for
13 the location of fire stations to be within a mile and a
14 half of all residential areas developed to suburban
15 densities.

16 Now, as I indicated in my earlier testimony there
17 may be one or two of those very small clusters of housing
18 which I have colored in on the map which might not rise
19 to the level of that classification of suburban level of
20 density. The subdivision ordinance very specifically
21 requires that fire hydrants be placed at 600 feet inter-
22 vals. So, the standards are incorporated in, as I say,
23 in the plans and ordinances of the Township of Mount
24 Laurel and --

25 Q And what have you done to evaluate the

1 impact of those standards and their implementation in the
2 Township?

3 A Well, using the data that was provided on the
4 location of fire hydrants, once again supplementing that
5 data by my own surveys for I found that data to be in-
6 complete, I plotted on the map the locations of all the
7 fire hydrants and then I measured 1½ miles along the roads
8 from each of the three fire stations which exist in Mount
9 Laurel and plotted all that information on a map.

10 MR. BISGAIER: Your Honor, at this time
11 the plaintiff would like to have marked for iden-
12 tification purposes of identifying the map of
13 the Township of Mount Laurel which is entitled
14 fire protection, Township of Mount Laurel, 1970.

15 THE COURT: P-47 for identification.

16 (A document was marked P-47 for identi-
17 fication.)

18 Q Mr. Rabin, I show you now what is marked
19 map which has been marked, if Your Honor pleases, for
20 identification, as P-47, would you kindly describe the
21 designations which appear on that map?

22 (The witness leaves the stand.)

23 A Yes. This map as the ones which proceeded it
24 does have indicated on it using a yellow color the
25 residentially developed areas of Mount Laurel and by

1 shaded lines over those areas, the locations of the two
2 low income residential areas in Texas Avenue and Spring-
3 ville.

4 In addition, it shows the locations of the
5 three zones R-5, R-6 and R-7.

6 Using a solid red line it shows all of those
7 streets and roads within the Township, which, exlcuding
8 the Turnpike and 295 which are within a mile and a half
9 of a fire station.

10 Using a dotted red line it shows all of those
11 proposed roads within the Township which are within a mile
12 and a half of a fire station; and then by circles shaded
13 with a light blue line it shows all the areas of the
14 Township which are within the 600 foot radius of a fire
15 hydrant.

16 THE COURT: 600 feet of a fire hydrant?

17 THE WITNESS: Yes, sir, and oh, one
18 other thing, it shows the locations of three
19 fire stations. One on Church Road at the inter-
20 section with Oregon Avenue which is the Fellow-
21 ship Fire Station. One, a new one on Elbow
22 Lane which was not shown yet on the Township map
23 but which is four-tenths of a mile from the inter-
24 section with Union Mill Parkway; and the third
25 one which is on Masonville Road at the intersec-

1 tion of Garrett Avenue in Masonville.

2 THE COURT: Would you mind pointing
3 out the one on Church Road again, please?

4 THE WITNESS: (Indicating). That one
5 is right here between the older Fellowship area
6 and the new subdivision.

7 THE COURT: Thank you.

8 THE WITNESS: On the west side of the
9 road.

10 BY MR. BISGAIER:

11 Q Mr. Rabin, using the map P-47, would
12 you describe the relationship between the standards that
13 you have mentioned and the distribution of fire protection
14 services in the Township?

15 A Yes. Ideally, of course, each residential area
16 should meet both standards. Not all areas of the Township
17 do, but almost every area meets one or another of the
18 two standards.

19 Once again, except the Springville area. The
20 Springville area is two and three-quarters miles from one
21 fire station and three miles from the other.

22 Q In the absence of fire hydrants, what
23 is necessary assuming that the location of Springville were
24 in close proximity to a fire station in order to provide
25 fire services to the residents of that area?

1 A Well, a pumper truck, that is a tank truck which
2 carries its own water would have to come to the site and
3 assuming that what was in the truck was enough to put out
4 the fire, the fire would be fought in that way.

5 Q Now, aside from the fact that the
6 Springville area, as you have testified, lacks the hydrants
7 and is not within the standard you referred to in terms of
8 proximity to a fire station, what or how else would the
9 residents be effected by this condition other than just
10 safety?

11 (The witness resumes the witness stand.)

12 A The other important respects in which it would
13 be effected would be number one, obviously the cost of
14 fire insurance are greater. Those are two criteria which
15 are asked for on every application for fire insurance. The
16 distance to the nearest fire station and the distance to
17 the nearest hydrant.

18 MR. PATTON: Your Honor, I would object
19 to that statement unless he can, if he's by the
20 answer that question, he's intimated the cost of
21 fire insurance is greater, it is some Springville
22 than any other areas then I think we have to sub-
23 stantiate that other than by speculation. He
24 never qualified himself as an expert in fire
25 rights.

1 MR. BISGAIER: Your Honor --

2 THE COURT: Well, all right, Mr.

3 Bisgaier.

4 MR. BISGAIER: Isn't that proper cross-
5 examination, Your Honor?

6 THE COURT: I would think it probably
7 is, Mr. Patton. Certainly it seems almost
8 common knowledge that in the areas where there
9 are no fire protection facilities the insurance
10 rates are probably higher.

11 A The second and very important impact and my
12 studies have shown this whenever, I've carried them out
13 have been that the absence of these protections is a
14 deterrent to lending. That is, agencies, conventional
15 lending agencies, not talking about finance companies
16 now which are customarily the sources of funds for housing
17 renovations, are deterred from making such loans in
18 areas which are less well protected than others and of
19 course when one combines these two things, it's clear that
20 the additional costs incurred for insurance is simply rep-
21 resent dollars that are not available for repair or renova-
22 tions as they might otherwise be.

23 Q The amount also reflects, does it not,
24 the proposed new zones or not the proposed, actually, the
25 zones that are reflected in the 1976 amendment and I wonder

1 if you could discuss how these zones are impacted by the
2 fire protection services as indicated on the map?

3 A Yes. The R-5 zone which is in the northwest
4 portion of the Township clearly does not meet either stan-
5 dards. It is not within a mile and a half of the fire
6 station or within 600 feet of the hydrant.

7 The R-6 zone in Springville is similarly not
8 served.

9 The R-7 site is certainly within a mile and a
10 half of the fire station and I would assume being a part
11 of a subdivision development would ultimately be provided
12 with fire hydrants as well.

13 Q I believe you said the R-6 site, you
14 mean the R-7?

15 A I meant the R-7 site.

16 Q I would like you to turn now to
17 earlier part of your testimony where you described the
18 impact of zoning on existing development as either
19 stabilizing or destabilizing in terms of its influence
20 and I wonder if you could share with the Court what you
21 have found to be the relationship between zoning in Mount
22 Laurel and the neighborhood which existed prior to the
23 impact of the zoning controls?

24 A With two major exceptions, the zoning that was
25 superimposed on the existing development generally affirmed

1 the nature of the development that was there. The two
2 exceptions were that a considerable amount of land in
3 agriculture use was zoned for residential or industrial
4 development.

5 The second exception that I would consider to be
6 significant is that the residential zoning which was super-
7 imposed on the Springville area rendered a substantial
8 number of the properties there non-conforming by virtue
9 of the small size of the lots which are there.

10 Q Do you know what the zoning is that
11 was superimposed?

12 A Yes, R-3.

13 Q And what, when you say the nature of
14 the lots that existed there prior to that, what were those,
15 what are those lots?

16 A The zoning requires a minimum of 20,000 square
17 feet and many of the lots are smaller than that, particularly
18 in the central part of the area and particularly on the
19 west side of Hartford Road.

20 Q And in what way does this lack of
21 correspondence correlation between the going and the exist-
22 ing development impact on the existing development?

23 A Well, again, it acts of a deterrent to renewal
24 in that a homeowner, faced with the problem of borrowing
25 funds to repair or renovate a property which is non-conforming,

1 something which lending agencies, given the choice are
2 not prone to do. It creates a problem also for anyone
3 who wants to develop in that it saddles them with the
4 burden of assembling parcels of land in order to gather
5 sites which are large enough to meet the standards.

6 Q Have you found any evidence of other
7 zoning practices which have had adverse effects in your
8 opinion of existing development, particularly residential
9 development?

10 A Yes. Another zoning practice which has adversely
11 impacted residential areas is the granting of variances
12 for industrial uses and I have found four instances in
13 which industrial uses have been permitted in existing
14 residential areas. One of those uses is on a piece of
15 land which runs from Texas Avenue to Elbow Lane.

16 Another is a variance which was granted for the
17 construction of a tool and die factory on the south side
18 of Texas Avenue and on the east side of Hartford Road in
19 Springville, there are also two industrial uses which have
20 been permitted to be established. One is a farm which
21 makes and sells storm windows and another is a machine
22 shop which is near the southern end of Hartford Road, both
23 of those on the east side.

24 Q Now, in your opinion, experience, did
25 the introduction of these industrial uses^{have} impact on the

1 residential neighborhood?

2 A Well, first of all, they introduce pollution,
3 noise, additional traffic in the form of employees, cus-
4 tomers, the receipt of raw materials, the shipment of
5 products, all of those things are disruptive intrusions
6 in a residential area.

7 Q In terms of the residential neighbor-
8 hoods in which these uses have been introduced, what
9 characteristics would you say essentially describe those
10 residential neighborhoods?

11 A Well, those two areas in which these uses have
12 been permitted are those areas which comprise the largest
13 concentration of low income and low quality housing in
14 the Township of Mount Laurel.

15 Q Have you had an opportunity to review
16 the code enforcement activities of the Township of Mount
17 Laurel?

18 A Yes, I have.

19 Q And could you describe the nature of
20 that review that you carried out?

21 A Yes. That review consisted of several different
22 elements.

23 First there was obtained from the files of the
24 Township Building Inspector all of the citations which had
25 been issued for the period from the 1st of January, 1970

1 through the middle of April, 1977.

2 There was also obtained a list by owner, lot
3 number, block number and date, the dates of all demolition
4 permits which had been issued in the Township of Mount
5 Laurel during that period. Then --

6 Q Did you --

7 A -- then interviews were held.

8 Q Sorry.

9 A -- with the relocation personnel of the Burling-
10 ton County Community Action Program and with the staff of
11 the relocation office in the New Jersey State Department
12 of Community Affairs. All of this material was very care-
13 fully screened in this way.

14 Both the citations and the demolition permits
15 were screened to first of all, identify those structures
16 which at one point or another were clearly identified as
17 residences. All others were set aside. In each case
18 where no reference was made to existing occupancy in a
19 residence it was assumed to be vacant. That is, vacant
20 at the time that it was cited or at the time the demoli-
21 tion permit was issued. If no reference was made to the
22 number of dwelling units in the structure, the number was
23 assumed to be one. Using that screening process there was
24 then identified a list of residential structures which had
25 either been ordered demolished because of the faults found

1 or for which a demolition permit had been issued as a
2 result of a citation and that information was then mapped.

3 MR. BISGAIER: Your Honor, at this
4 point the plaintiffs would like to have marked
5 for purpose of identification one further map of
6 the Township of Mount Laurel which is entitled
7 Housing Code Enforcement, Township of Mount
8 Laurel, 1972 through 1977.

9 THE COURT: P-48 for identification.

10 (A document was marked P-48 for identi-
11 fication.)

12 MR. BISGAIER: I would indicate for
13 purpose of the record in clarity that the map
14 also contains a chart placed on it which is
15 entitled, Housing Code Citations Ordering
16 Demolition, Mount Laurel Township, January '72
17 through April 15, 1977.

18 BY MR. BISGAIER:

19 Q Mr. Rabin, I show you P-48 marked for
20 identification and would you kindly describe for the
21 Court what that map is, its designation and the table
22 which is attached to it?

23 (The witness leaves the witness stand.)

24 A Each of the citations which were reviewed and
25 each of the demolition permits which were issued refers

1 to the property by lot and block number. Using the tax
2 maps of the City of Mount Laurel, each one of these was
3 located in its proximate location on this map and each one
4 is shown by a purple circle. Where the circle is colored
5 in solid the records indicated that the unit was occupied.
6 Where the circle is open in the center there was either
7 no reference made to occupants or the record specifically
8 said that the property was vacant.

9 The list on the side has numbers which corres-
10 pond to numbers which appear next to each unit shown on
11 the map and then for each unit gives the street on which
12 it is located, the block number, the lot number and the
13 number of units in the structure, whether or not the
14 structure was vacant or occupied, the date on which the
15 last citation was issued for some of these properties,
16 Your Honor, there were many, many citations and finally
17 the date on which demolition permit was issued.

18 Q Mr. Rabin, do you feel that this exhibit
19 and the chart accurately reflects the number of housing
20 units which were moved from the housing stock in Mount
21 Laurel Township and the number of households displaced
22 since the first trial in this matter in 1972?

23 (The witness resumes the witness stand.)

24 A No.

25 Q Why is that?

1 A Well, for some of the reasons which I indicated
2 earlier.

3 I think it's an extremely conservative estimate
4 of that number, as I said before. First of all, I excluded
5 some consideration any property which was not specifically
6 referred to as a house and given the rather unsystematic
7 nature of the letters which were sent, I would think it
8 is entirely probable that at least some of the structures
9 which were really, merely referred to as buildings were
10 also housing. So, they have not been counted.

11 A second undercounting likely results from the
12 way in which I have done the estimating on the number of
13 units. It was very seldom that any reference was made
14 to the number of units and knowing from my own observations
15 and surveys that in the Springville area, for example,
16 many of the houses are subdivided in more than one unit,
17 that fact also likely results in an undercount and then
18 finally the data on occupancy appears similarly sketchy
19 and in order to be on the conservative side as I've said
20 unless there was specific reference to an occupant I
21 have assumed the building to be vacant.

22 Q How many buildings have you thus been
23 able to derive from the study have been lost from the
24 housing stock since 1972?

25 A Well, there were 28 structures containing 38

1 dwelling units according to my count.

2 Q And of the individuals are families
3 that might have been displaced, do you have knowledge as
4 to how many of those are received relocation assistance?

5 A To my knowledge only three.

6 Q And to your-- who

7 A Do you want me to identify those are, where they
8 are from?

9 A No, sir. That's not necessary.

10 How many are, do you have knowledge of any of
11 the individuals who are in the process of being relocated
12 or receiving relocation assistance?

13 A There are two which are currently being processed.

14 Q And where do the -- or where did, I
15 guess the word is, the predominant number of units which
16 have been removed from the housing stock normally --
17 formerly existing?

18 A Well, of the 38 which have -- which appear there
19 on the map, 21 were in Springville between Hainesport Road
20 and Elbow Lane.

21 Q And again, these findings are limited
22 between the years 1972 and 1977; is that correct?

23 A That's true.

24 Q And now, can you summarize what the
25 effects of housing code enforcement by the Township of

1 ~~Mount Laurel~~ has been since 1972?

2 A Well, the effects have been to substantially
3 reduce the number of dwelling units which are available
4 to low income households.

5 In the Springville area alone the housing
6 stock since the last trial has been reduced by over 20%.

7 Q In summary, Mr. Rabin, over all, how
8 would you characterize the combined effects of these
9 development control practices which you have examined on
10 the housing opportunities for low and moderate income per-
11 sons in Mount Laurel Township?

12 A Well, my view after having reviewed these in-
13 dividual development control activities and the increased
14 impact which they really have in combination, is that
15 the development control activities of Mount Laurel can
16 almost be analogized to a blockage in a war. The with-
17 holding necessary residential support services and facil-
18 ities has starved development in that area. The use of
19 zoning to render property non-conforming and to introduce
20 other disruptive uses into the areas have been like a
21 kind of disruptive infiltration and then to end it all,
22 the code enforcement program has picked off members of
23 the community one at a time reducing their numbers very,
24 very substantially --

25 MR. PATTON: Your Honor, I object to

1 that last statement as being entirely unwarranted. He
2 said the code enforcement program has picked out members
3 of the community and his only testimony was that housing
4 units were demolished.

5 THE COURT: He didn't say that.

6 MR. PATTON: Not members of the commun-
7 ity.

8 THE COURT: He didn't say picked out,
9 he said picked off.

10 MR. PATTON: He said picked off members
11 of the community.

12 I object to that slur.

13 THE COURT: In other words, I assume
14 by that, and of course, this can be elaborated
15 on either direct or cross examination what's
16 meant is actually forcing them to leave the Town-
17 ship. We have had certain evidence and testimony
18 with respect to that.

19 The objection really can be considered
20 an objection is overruled. Certainly so far as
21 it's a conclusionary statement it may be examined
22 on cross-examination as to the basis for it.

23 BY MR. BISGAIER:

24 Q Mr. Rabin, to stay with this code
25 enforcement for a moment.

1 How would you --- are you opposed to code en-
2 forcement?

3 A No, not at all.

4 Q What ways do you think code enforce-
5 ment can be used detrimentally or positively for low and
6 moderate income communities?

7 A Well, I think what we've seen is clear evidence
8 of how it can be used detrimentally. While this number
9 of units was removed from the housing supply not a single
10 unit of relocation housing available to low income people
11 was provided within the community. The inevitable conse-
12 quences of that kind of program must be that those people
13 who are displaced are forced to leave the Township. If
14 my language was overcolorful before, I apologize but
15 nevertheless, the impression is inescapable that what is
16 effectively being done is the implementation of a negative
17 fair share plan.

18 Q What in your opinion, Mr. Rabin, should
19 or could the Township have been doing during this period
20 or in the future with regard to these development control
21 practices, their impact on low income residential neighbor-
22 hoods and low income persons themselves?

23 A Well, focusing at first on existing low income
24 residences in Mount Laurel, there is the need for the
25 Township to raise the level of the infrastructure and

1 facilities which serve those low income communities to
2 the levels that the rest of the community is provided with.

3 To pave the streets properly. To light the
4 streets adequately. To provide water and sewer and fire
5 protection. To provide recreational facilities and to
6 provide safe access to those recreational facilities. I
7 would think those would be minimal actions which the Town-
8 ship needs to take in order to serve the needs of additional
9 communities.

10 Q How could this be funded?

11 A Well, this could be funded either the Township --

12 MR. PATTON: I object, Your Honor. He
13 testified on qualifications. He's never been in
14 a position of responsibility in a Township,
15 County or State to make an allocation of resources
16 or monies and now he's being asked to speculate
17 how funding of these programs could come about.

18 THE COURT: Well, only in a very general
19 way, Mr. Patton.

20 The witness is a planner and certainly
21 one of the things he can state is his opinion as
22 to where, not necessarily -- certainly not binding
23 on anybody, but his opinion at least is to where
24 available funds can come from to do the things
25 which he has stated are necessary or should be done

1 to eliminate what appears to be and what he
2 has testified is discriminatory treatment of
3 one or of some areas of the Township, viz-a-viz
4 other areas of the Township.

5 Certainly again he may be asked on
6 this on cross-examination.

7 The question is, how could you, the
8 things you mentioned be founded, do you have any
9 idea on that, Mr. Rabin?

10 THE WITNESS: Yes, sir, I do.

11 THE COURT: All right.

12 THE WITNESS: Your Honor --

13 THE COURT: You may answer the ques-
14 tion.

15 A Well, for one thing they obviously could be
16 funded as they have been for the rest of the Township out
17 of municipal funds.

18 For another, there is always the funds which are
19 available under the housing and community development act.

20 Q Other than the infrastructure improve-
21 ments that you have referred to, what about the actual
22 rehabilitation of homes and the like?

23 A Well, it's necessary to couple a code enforcement
24 program with the availability of funds to low income house-
25 holds for the renovation of those houses in order that a

1 code enforcement program might achieve what is customarily
2 undertaken to be the goal of code enforcement. A pattern
3 of accessibility which I might add is available in most
4 of the other municipalities in Burlington County under
5 the terms of housing community development act.

6 In addition --

7 THE COURT: Pardon, I didn't mean to
8 stop you in midstream. It's almost 12:30,
9 suppose you finish your answer to this question
10 and then we will recess for lunch.

11 MR. BISGAIER: Your Honor, I might
12 represent that this will be the end of the
13 direct examination.

14 THE COURT: Very well.

15 All right. I beg your pardon for inter-
16 rupting your answer, Mr. Rabin.

17 A -- to go back again, for one thing, there must
18 be coupled with code enforcement program the availability
19 of loan funds or grant funds to permit the renovation of
20 those houses which can be renovated by low income occupants;
21 and finally, where the condition of housing is such that
22 it is unsafe and unfit such housing must be replaced on a
23 one for one basis so that people, many of whom have been
24 in Mount Laurel for generations have the opportunity to
25 continue to live in the Township; and in addition, there

1 must be provided additional housing so that the normal
2 growth of that low and moderate income community and
3 those persons in that income category who might be expected
4 to reside in the community, were it not for artificial
5 barriers might be able to do so.

6 MR. BISGAIER: Thank you, Mr. Rabin.

7 Your Honor, at this time I have no
8 further questions of this witness on direct
9 examination.

10 THE COURT: Very well.

11 Ladies and gentlemen, we will recess
12 at this time until 1:30.

13 (Luncheon recess.)

14 * * *

AFTERNOON SESSION

(John Trimble, Esq., not present in the courtroom.)

THE COURT: Mr. Rabin, just for the record, let me remind you you are still under oath.

Whenever you are ready, Mr. Patton. Anything further on direct examination, Mr. Bisgaier?

MR. BISGAIER: No, Your Honor.

THE COURT: Mr. Patton, you may cross-examine.

CROSS-EXAMINATION

BY MR. PATTON:

Q Mr. Rabin, I notice during your direct examination testimony you referred on a number of occasions to documents and I would like, if I may, to examine the documents that you referred to and upon which you based your direct examination.

A Yes. The only documents that I referred to, this, which I believe you have a copy of and these are some of my notes which are, which I had but did not, this I referred to because I had made a lengthy list of the procedures which I followed and didn't want to leave any of them out. This is a continuation of that list. This

1 is the date on which I was here and I have the data and
2 expenditures, the number of and these other things, the
3 rest of this I did not refer to. These --

4 MR. PATTON: May we mark this for iden-
5 tification and call them, what about the rest
6 of this?

7 A I did not refer to those during the course of
8 my direct examination.

9 MR. PATTON: Why don't you staple them
10 and mark them?

11 THE COURT: Do you need them marked
12 for identification or did you just want to
13 examine them, to use them for purpose of cross-
14 examination.

15 MR. PATTON: Well, either/or, maybe
16 I'll follow Your Honor's suggestion on marking.

17 Do you think they should be marked?

18 THE COURT: If you want them marked
19 for identification there is no reason why you
20 can't have them.

21 MR. PATTON: All right. Why don't you
22 mark them.

23 THE COURT: D-26 for identification.

24 (Document marked D-26 for identifica-
25 tion.)

1 BY MR. PATTON:

2 Q Now, Mr. Rabin, when did you make
3 that driving tour over every street in Mount Laurel?

4 A Well, it was made in parts over the entire times
5 that I visited Mount Laurel.

6 Originally it was my understanding that I was
7 going to testify during the latter part of the first
8 week of the trial, that is the week of May 9th, I believe
9 it was and so that part of the driving tour was done in
10 April and another part of it was done during that period
11 when I came to give my deposition and I would have been
12 prepared, had it been necessary, to testify as I had
13 been led to believe I would be required to testify on
14 Wednesday of Thursday of that week. I was then called
15 at least twice in the expectation that I might again be
16 needed to testify and I came up from Charlottesville on
17 each of those occasion and each time when it happened
18 that I was not required to testify, I simply continued
19 to refine the data. I would say that the only difference
20 that would have been produced would have been that my
21 testimony would have taken three or four times as long
22 and what the additional time has done which has been
23 provided me in these calls to come up here was to enable
24 me to distill and refine the information which I gathered
25 so that it could be presented much more succinctly than it

1 would have been able to be presented had I been called
2 upon to testify in the beginning.

3 THE COURT: In other words, what
4 you're saying is, that you made this tour over
5 a period of time commencing in April and extend-
6 ing up to the present time?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Very well.

9 THE WITNESS: Or within Mount Laurel
10 this morning, Your Honor.

11 BY MR. PATTON:

12 Q When was the last day that you com-
13 pleted your road tour of the streets in Mount Laurel?

14 A I did my initial road tour completely in April.

15 Q How long --

16 A And as I say, I refined that by simply going
17 back and answering the questions which arose in my
18 mind and in my notes that the subsequent opportunities
19 that were presented to me to do that.

20 Q Oh, your testimony is that in April --

21 A And a couple of days in May between the 6th and
22 the 10th.

23 Q How many, how long did it take you to
24 drive over every street in Mount Laurel?

25 A Well, just to do it once didn't take terribly

1 long, it can be done in less than a day and that's driving
2 quite slowly.

3 Q Did you have anybody with you?

4 A Oh, yes. I mean when I say drive, what I mean
5 is, that I rode in a car, someone drove at my direction.

6 Q I see. And who drove you?

7 A Well, various people, some of the attorneys in
8 the case and so on.

9 Q Mr. Rabin, I direct your attention to
10 the subject of water and sewer facilities. I would ask
11 you to give me an instance in which the Township of Mount
12 Laurel or the M.U.A. put in water facilities or sewer
13 facilities or for that matter, fire hydrants?

14 A I made no findings with respect to who had
15 provided the fire protection facilities which I described.
16 I only found that the facilities which existed served
17 those areas as I described them and as they are portrayed
18 on that map.

19 Q Let's go back to water facilities.

20 Do I understand your testimony to be correct that
21 you don't know who put in the water facilities that you
22 found and referred to on the map?

23 A I know in an informal way.

24 Q Well --

25 A Who provided many of the facilities.

1 Yes, for example, there is an area in Fellowship
2 which is an older residential area in the northeast sec-
3 tion, in the northwest section of the Township which the
4 map of water distribution facilities showed no fire hy-
5 drants in and yet my surveys show that that area was
6 furnished with fire hydrants as regularly as the areas
7 which were shown on the map. I have no idea who provided
8 those facilities.

9 Q Okay. Do I understand your answer to
10 be, then, that you do not know who provided the water
11 facilities, who provided the sewer facilities or who
12 provided fire hydrants?

13 A It is my understanding that the mains are pro-
14 vided by the municipal utility administration and that
15 local systems are installed within subdivisions by
16 developers in accord with the subdivision regulations
17 and then dedicated to the municipal or to the municipal
18 utility authority. With respect to water facilities,
19 there is a clear division of authority between the
20 municipality and the municipal utility authority in
21 that one installs or operates the water supply, but the
22 fire department which is totally dependent on the existence
23 of that supply is operated by the Township and not by
24 the utility authority.

25 Q Not talking now about the fire hydrants,

1 I'm just talking about water facilities and sewer facil-
2 ities as those terms are commonly used.

3 A Yes. I can, I have answered that question to
4 the extent that I know the answer.

5 Q Your understanding is that the Town
6 pays for and installs the water mains?

7 MR. BISGAIER: What he said, he said
8 the municipal utilities authority.

9 A I said it was my understanding that the major
10 lines such as, for example, the line which traverses
11 the Township from east to west was installed by the utility
12 authority and that within the subdivisions the lines and
13 the other facilities which depended on those lines, including
14 the fire hydrants are provided by developers in accord with
15 the standards set forth in the subdivision ordinance
16 and upon completion of those things they're dedicated,
17 the fire hydrants in this particular instance to the
18 fire department and the water lines to the utility author-
19 ity.

20 Q Okay. And what about sewer facilities?

21 A The same would hold for those.

22 Q Okay. The M.U.A. and the developers?

23 A Yes.

24 Q Okay. Now, you furnished us with some
25 statistics with respect to the demolition of certain dwell-

1 ing units during a five or seven year period of time in
2 the Township of Mount Laurel. Does your information
3 reveal to you who requested that the particular units in
4 question be demolished?

5 A The demolition permits and the citations are
6 all issued by the Township Building Inspector.

7 Q That wasn't my question.

8 A I didn't understand your question.

9 Q My question was: Did the information
10 available to you indicate who made the initial request
11 which resulted in the issuance of the demolition permit?

12 A If by request you mean complaint? I don't
13 know.

14 Q So, you don't know whether a complaint
15 was made by the owner of the unit in question or by the
16 renter or occupant of the unit in question or perhaps
17 by the Camden County Legal Service Office?

18 A No, I have no idea who made the original com-
19 plaints.

20 Q Your data simply indicated to you the
21 eventual issuance of the demolition permit?

22 A That is correct.

23 Q And the information didn't tell you
24 how or why the initial request was made?

25 A It's told very clearly why but not from whom.

1 Q From whom?

2 A The complaint had originated.

3 Q Okay.

4 A That is, the complaint sets forth each article
5 in the housing code for which the house has been found to
6 be in violation, so they're quite specific in that regard.

7 Q Now, did you ever visit or inspect or
8 examine any one of the 28 structures that were made sub-
9 ject to the demolition procedure?

10 A Yes.

11 Q Okay. How many and when?

12 A Well, during those same days, I don't have a
13 note of the exact days on which I visited them. I visited
14 one on Church Street. I visited one on Cedar Street and
15 I visited the sites of two houses on Hartford Road which
16 had been demolished.

17 Q Okay. I'm sorry, perhaps you misunder-
18 stood my question.

19 I mean, did you ever visit any one of those 28
20 structures prior to the point in time that they were ac-
21 tually demolished?

22 A Yes, two of them.

23 Q Okay. Which two?

24 A The one which is one of the two which is numbered
25 4 on the map; and the other one I would have to go down to

1 the map.

2 THE COURT: You may do so.

3 A Which is numbered 23 on the map. I have been
4 in both of those structures.

5 Q I see. Mr. Rabin, do you make any
6 distinction between a dilapidated unit and a deteriorated
7 unit?

8 A I made no findings about deteriorated units in
9 this study at all. The list was limited only to those
10 structures in which the deficiencies were considered by
11 the building inspector to be severe enough to warrant
12 either an order to demolish or a citation as unfit for
13 human habitation.

14 Q Now--

15 A I should have properly noted during my initial
16 explanation of the screening that were from the citations
17 it was clear that the violations being submitted were not
18 severe enough to require demolition, those units are not
19 included in that list.

20 Q Okay.

21 A The only units reflected there are those which
22 ultimately resulting in an order to demolish or a cer-
23 tification as unfit.

24 Q Okay. Are you familiar, Mr. Rabin,
25 with the distinction that as many times made with respect

1 to the substandard housing to the effect that, A, there
2 is a kind of substandard housing which requires major
3 repair or renovation to make it habitable and, B, there
4 is a kind of substandard housing in which no repairs or
5 renovations could make it habitable and therefore it
6 would be necessary to demolish the structure?

7 A Well, the second instance which you describe is
8 more an accurate one. In the second case, I think a more
9 accurate description is that the condition of a house
10 makes it economically not feasible to do what needs to be
11 done in order to make it habitable. Yes, there are those.

12 Q Okay.

13 A Those two kinds of --

14 Q Now, with respect to the 28 structures,
15 which category did they fall into?

16 A I would presume that all of them are in the
17 second category.

18 Q Namely the category that you classify
19 as being economically unfeasible to rehabilitate?

20 A Well, not that I would classify them as such.

21 Q Well, who would?

22 A But the people who owned them saw fit not to do
23 that and I would assume for the reason that I've cited.

24 Q Are you familiar with the Division of
25 State and Regional Planning of the State of New Jersey?

1 A Familiar in what respect?

2 Q In particular, are you familiar with
3 study they made called the State White House Allocation
4 Plan for New Jersey?

5 A No, I'm not.

6 Q Okay. What's the difference between
7 a unit being in such a state of disrepair that it should
8 be demolished and a unit which is in such a state of
9 disrepair that it would be economically unfeasible to
10 rehabilitate it?

11 A The distinction must be made by whoever it is
12 that owns the property unless the unit is in such condi-
13 tion that it provides a clear and present danger to health
14 or safety. A building which is in danger of imminently
15 falling down.

16 Q Okay.

17 A But, otherwise it is entirely conceivable that
18 one person may make a decision about an investment in
19 the renovation of a property, which another owner under
20 the identical circumstances would not make.

21 Q All right. Do you have any quarrel
22 with the decision of the owners of the 28 units in question
23 that it would not be economically feasible to rehabilitate
24 same?

25 A I've made no attempt whatever to evaluate their

1 - decisions in that respect.

2 Q Okay. Now, assuming then that the
3 decision of the owners that it would be economically
4 unfeasible to rehabilitate them and assuming that the
5 action of the Town of Mount Laurel was proper in condemn-
6 ing them, how would you replace them on a one to one basis?

7 A I would replace them by constructing new houses.

8 Q Okay. Once the 28 structures, once
9 the decision has been made that each of the 28 structures
10 are -- that it would be economically unfeasible to rehab-
11 ilitate them, and once those 28 structures are demolished,
12 who would build new housing?

13 A From a planning point of view and in the light
14 of what's common practice, not only in New Jersey but
15 elsewhere in the country, the government agents, which
16 assumes the responsibility for eliminating a unit of
17 housing and displacing a family should replace that unit
18 of housing or make some determination that such replace-
19 ment is available in safe standard, sanitary housing
20 within the means of the household being displaced before
21 that unit is ordered demolished unless that unit presents
22 a danger to health and safety.

23 Q Well, I want to be sure I understand
24 your answer.

25 Are you suggesting that once one of these 28

1 structures are demolished, it becomes the financial
2 responsibility of the Township of Mount Laurel to build
3 new replacement housing?

4 A Not once it's demolished, before it's demolished.
5 Once it's demolished the family in it has no place to go.
6 The housing has to be made available in advance of demoli-
7 tion. So that the deomolition can then take place without
8 disrupting the life of some household and requiring it to
9 leave the Township.

10 Q All right. Let's go back then. Let's
11 assume that a decision has been made that it is economic-
12 ally unfeasible to rehabilitate a particular housing unit.
13 Let's further assume that the building inspector of a par-
14 ticular municipality upon the request of the owner or the
15 occupant or the Camden Legal Services Society inspects
16 that building and comes to the same conclusion. It is
17 at this point in time that before the demolition permit
18 is issued that the Town has the obligation to build new
19 replacement housing?

20 A Reason alone would dictate such a response.

21 Q Okay. Let's follow, then, the hypo-
22 thetical. We determine that it's economically unfeasible
23 to rehabilitate the unit, the Township Building Inspector
24 confirms that.

25 A I don't know.

1 Q A decision is then made but the
2 demolition permit hasn't been issued yet. Are you suggest-
3 ing that before a demolition permit is issued with respect
4 to a dwelling unit that the Town must build new replacement
5 housing?

6 A If it's the finding of the Town that that dwell-
7 ing unit may not be occupied because of its condition, yes.

8 Q Okay. And where would you propose that
9 the Town obtain the funds?

10 A Where the Town obtains the bulk of its funds
11 from making all of the various improvements which the Town
12 customarily makes, whether they be in the construction of
13 roads or recreational facilities or other capital expen-
14 ditures.

15 Q General revenues?

16 A General revenues are through some program which
17 the Town may choose to seek outside assistance from.

18 Q Okay. Now, we've got to the point in
19 time where the Town then appropriates the necessary funds
20 to build replacement housing.

21 The question now is whether the new house or
22 housing unit should be placed on the same location where
23 the existing unit is to be demolished?

24 A Well, what we are building up to, Mr. Patton, is
25 a kind of irrational description of how the process should

1 ~~really~~ be carried out.

2 Q It's irrational, it's your description,
3 not mind.

4 A No. No. It's not --

5 Q Could you answer --

6 A -- in the ordinary --

7 THE COURT: Gentlemen, please.

8 A Well, I need to describe the process in order to
9 answer your question, if I may do that.

10 Q I think in fairness, Mr. Rabin, I
11 asked you a question which calls for either for a put it
12 where the demolished building is demolished or put it
13 someplace else or it depends on the circumstances. I
14 didn't ask you to give me the process.

15 MR. BISGAIER: Your Honor, the answer
16 to that question was, that to answer that ques-
17 tion would be to participate in an irrational
18 process and I believe unless another question
19 is forthcoming so Mr. Rabin can explain that
20 answer, the answer must stand.

21 THE COURT: Well, the answer of course
22 will stand but I think counsel may press for a
23 more definitive answer. I think the question
24 is quite clear and I don't think it has been
25 definitively answered.

1 A If the process is irrationally carried out as
2 you propose it be --

3 Q I didn't --

4 A -- then --

5 Q All right.

6 A -- then it would depend upon the circumstances
7 whether that house should be put there or somewhere else
8 and those circumstances would depend on whether they are
9 blighting influence in the neighborhood, whether there
10 exists appropriate support facilities which would result
11 in the replacement house being substandard, or whether
12 there are other blighting influences. There are a whole
13 variety of circumstances which would govern that determina-
14 tion which I'm just not aware of right now.

15 Q Well -- let me suggest you are aware
16 because we are talking about a particular section in a
17 particular town which you have described at length and in
18 detail.

19 So, my question to you, then, is: If the
20 decision is made to demolish a unit of housing on Hartford
21 Road in the Springville section do you -- did -- should
22 the Township of Mount Laurel provide the new replacement
23 housing on Hartford Road or should it provide the new
24 replacement housing in some other section of --

25 A My only --

1 Q -- the Township of Mount Laurel.

2 A -- my only response to you can be as I did before.
3 That to answer that question specifically is to participate
4 in what, from a planning point of view, is a totally
5 irrational process. No town --

6 Q I don't want to interrupt you, go ahead.

7 A -- a town which is seriously interested in pro-
8 viding replacement housing would not on an ad hoc basis
9 go look at a house now and a house then and respond to each
10 individual citation with the need to identify a site. There
11 would be a symptomatic analysis evaluation inspection of an
12 entire area which is composed very obviously and is revealed
13 in a whole series of studies conducted by the Township of
14 Mount Laurel to contain a large number of substandard
15 housing, the total number of units which need to be
16 demolished and the total number which would need to be
17 provided as replacements could all be made evident at the
18 outset and would need to be planning work to be rationally
19 carried out; and then a site could be located which would
20 appropriately accommodate the number of units which need
21 to be built.

22 Q Mr. Rabin, didn't you testify on direct
23 examination that demolished housing units should be re-
24 placed on a one-by-one basis?

25 A I didn't say one-by-one. I said one for one.

1 Q Okay.

2 A The distinction is immense.

3 Q All right. Let's change it, would you
4 also say then that demolished housing units should be
5 replaced on a 28 for 28 basis?

6 A Certainly.

7 Q Okay. We've got 28 housing units most
8 of which are in the area of Hartford Road, the decision is
9 made to -- they should be demolished; and my question now
10 is the same question that I asked you before, should the
11 Township of Mount Laurel build the new replacement housing
12 on Hartford Road at or near the site of the demolished
13 housing units or should they build them in some other area
14 of the Town?

15 A That would have to depend on a study of what the
16 needs were of the people. What the conditions are in
17 Hartford Road and if the supporting facilities which are
18 necessary to provide standard housing are not at present
19 available in the Hartford Road area, then possibly they
20 should be built somewhere else; but you see, the Town would
21 need to decide whether that housing should be built where
22 supporting facilities and services are or whether the ser-
23 vices which would enable the new housing to be standard
24 housing should be provided in that area. It's not possible
25 for me, absent the conduct of such a study, to give an ans-

1 ~~swer to~~ where those things should be located.

2 Q Mr. Rabin, I posed this question to
3 you as a man who came into this courtroom this morning
4 and represented that you were the man who made precisely
5 the kind of study that you say is necessary to make that
6 determination. You told us before the recreation facil-
7 ities were. You told us where the water and sewer facil-
8 ities were. You told us where the fire houses were and
9 you told us just about everything that a person would need
10 to know to answer that question. You're the man that made
11 the study?

12 THE COURT: Suppose we ask a question,
13 Mr. Patton, instead of indulging in rhetoric.

14 A Mr. Patton, I made no such site location study
15 for the appropriate site for replacement housing for those
16 units which have been demolished in Mount Laurel. I never
17 represented myself as having made such a study. Such a
18 study needs to be undertaken but as I indicated, such a
19 study would include some of the decisions which the Town-
20 ship must make in making a choice between areas that are
21 now served by various facilities and the need to provide
22 those facilities where they do not now exist.

23 Q Okay. In helping the Township, Mr.
24 Rabin, in answering the question of whether to build the
25 28 new replacement housing units on Hartford Road, aside

1 from any other area we first have to answer the question
2 of whether we are going to build them on Hartford Road.
3 What other studies should the Township make?

4 A Well, the Township might, for example, determine
5 after speaking to some of the people involved that instead
6 of providing them with a house somewhere, that they might
7 subsidize them in an apartment in Cantenbury, or somewhere
8 else, there are so many ways.

9 Q Okay.

10 A You know in which those units could be replaced
11 on a one for one basis it does not literally mean construct-
12 ing a unit while many of those people might be tenants, for
13 example, and who might want a rental unit somewhere, the
14 kinds of studies which need to be undertaken have not been
15 done by me and they apparently from my search, have not
16 been done by the Township of Mount Laurel.

17 Q Now, you mentioned as a possibility
18 existing rental units in Cantenbury?

19 A Or elsewhere.

20 Q Well, I thought you were talking about
21 new replacement housing on a one for one or 28 for 28
22 basis. So, I thought you were talking about new housing
23 units and not existing housing units. Did I misunderstand
24 you?

25 A You certainly did.

1 Q Okay. Then, tell me the difference
2 between new housing units and existing housing units?

3 A Mr. Patton --

4 Q In your example.

5 A -- Mr. Patton, if the house, if the unit in which
6 someone lives is replaced by another safe sanitary and
7 standard unit in which to live, how can there conceivably
8 be a difference.

9 Q Because there is a reduction in the
10 housing stock which was your criticism on direct examina-
11 tion.

12 A Well, but you have the opportunity in the form
13 of the Township to simply take off the new stock that's
14 being produced by developers, a unit and setting it aside
15 for a family home you are displacing, you're replacing on
16 a one for one basis in the same way.

17 Q Oh, you're talking then about new con-
18 struction that is in the process of being built?

19 A Mr. Patton, if an apartment unit becomes vacant,
20 it's age is of little relevance to its utility as a place
21 to live and whether the developer of Cantenbury built
22 it yesterday or in 1972 is of absolutely no consequence.

23 Q If it is of absolutely no consequence
24 whether we use new construction or existing construction
25 then why did you criticize the demolition of 28 existing

1 housing units as having the fact of reducing total housing
2 stock?

3 A Because the municipality of Mount Laurel did not
4 replace any single one of those units either by new construc-
5 tion or by an existing unit.

6 Q If someone was moved from a demolished
7 unit on Hartford Road into an existing unit, be it single
8 family or multi-family that had been in existence for five
9 years, it is not the result of the demolition to reduce the
10 total stock of housing units in Mount Laurel, notwithstand-
11 ing the fact?

12 A Not the total stock of housing units available to
13 low income families. You're making another unit available
14 by whatever means through subsidy or whatever means you
15 use.

16 Q All right.

17 A You're making another unit available, you have
18 not reduced the housing supply to low income families, if
19 in fact you are doing that.

20 Q With that caveat I accept that.

21 Now, whether we do it with new construction or
22 whether we do it with existing units, for how long -- well,
23 let's break it down into single family and rental units.

24 Are we going to do it with single family -- I'm
25 sorry. Strike that.

1 We've got to the point where we have demolished
2 the 28 units and we've got to the point where the Town-
3 ship of Mount Laurel with its public funds are going to
4 provide replacement housing.

5 Okay. Now, are they going to do it single family?

6 A Once again, we are talking on air. The people
7 who are being displaced somehow need to be cosulted in
8 this matter. It's not a determination which you and I can
9 sit here and make. There is the need to find out whether
10 people want rental housing or sales housing or whether
11 they can afford or are other ways capable because of their
12 age or infirmity of maintaining a separate house. There
13 is just a great deal of information which we do not have
14 before us.

15 Q Well, I put it --

16 A About which we seem to be speculating.

17 Q Go ahead, speculate. Let's furnish
18 that information by way of hypotheticals.

19 Let's assume that each of the 28 family units in
20 1970 in dollars have incomes of \$10,000 or less. Let's
21 further assume that half of the 28 would like to live in a
22 single family house and let's assume that the other half
23 of the 28 households would prefer to live in some kind of
24 multi-family accommodations; and let's assume that that
25 is their wishes after having been consulted by the Township

1 of Mount Laurel.

2 A All right. And providing that some additional
3 determinations have been made about the feasibility of
4 meeting those requests, that is, about the reasonableness
5 of their desires, yes, then I would think that that's the
6 way it should be done.

7 Q Okay. Now, let's now narrow our dis-
8 cussion to the 14 single family replacement units. Are
9 you suggesting that the Township of Mount Laurel purchase
10 a site for 14 new single replacement units?

11 A Well, there are various mechanisms under which
12 that could be done. It could be done as you say, the
13 Township may decide out of the --

14 Q You said the Township had to do this?

15 A Out of its generosity to fund this, out of
16 general funds and another way it might do it would be to
17 encourage the establishment of some kind of non-profit
18 group which might use something like two thirty-five
19 funds which writes down mortgages, the actual techniques
20 would depend on the decisions made by the municipality.

21 Q Well now, your answers confuse me
22 because before you said that the monies for these 28
23 replacement units were going to come from the Town's
24 general revenues because it was the obligation of the
25 Town as the entity which demolished the building to fur-
nish the replacement unit?

1 A Mr. Patton --

2 Q Now, you are saying maybe the job --

3 THE COURT: Just a minute, gentlemen,
4 please.

5 Q I'm sorry.

6 A I'm sorry.

7 THE COURT: I must ask you, Mr. Rabin,
8 wait until counsel finishes his question.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: And the reporter certainly
11 can't get a record when you both are talking at
12 once.

13 BY MR. PATTON:

14 Q I'm confused as to whether your testi-
15 mony is that it's the financial obligation of the Township
16 from general funds to provide replacement housing or
17 whether it's the obligation of the State or Federal govern-
18 ment through various subsidy programs to provide the replace-
19 ment housing?

20 A Mr. Patton, once again, you've substituted a word.
21 You've substituted would for could. I said earlier that
22 the Town could as they funded other improvements. I say
23 general revenues or they could, if they choose, seek
24 funds that would enable them to do this from some outside
25 source.

1 Q Okay.

2 A I did not suggest that their hands were tied
3 with respect to some inflexible way which they had to do
4 this.

5 Q All right. Let's assume then that the
6 Township, after due deliberation makes the decision that
7 they simply don't want to use local general revenue funds
8 to provide for these 28 replacement units.

9 Do you have any criticism to make of such a
10 decision, is it a proper decision?

11 A If that decision is accompanied by the decision
12 to demolish those houses and evict the people I would say
13 it's an improper position.

14 Q Then, we go back to the general revenue
15 funds. Then they would have to use the general revenue
16 funds?

17 A They would have to make a choice. I don't know
18 what they would have to.

19 Q Okay.

20 A There are several alternatives.

21 Q We assume they are going to demolish.
22 We assume they are going to demolish. Once that decision
23 is made then they have to use the general revenue funds?

24 A Again, that's not a conclusion that I have any
25 information that would enable me to reach that.

1 Q Well, if the Township of Mount Laurel
2 -- I'm sorry, am I correct in understanding your testimony
3 that once the decision is made to demolish by the Town,
4 that it is the Town's financial responsibility from general
5 revenue funds to provide replacement housing?

6 A It's the Town's responsibility to provide replace-
7 ment housing was the way I characterized it. May I reply?

8 Q Didn't you, when I asked you the ques-
9 tion of where they were going to get the money, didn't you
10 tell me they were going to get the money from the same
11 sources that they got money to pave roads, etc.?

12 A I said, they could, Mr. Patton, get the money
13 from those same sources. I'm not saying, now saying it
14 for the third or possibly the fourth time, I don't know
15 that I can say that more clearly and I am trying to be
16 responsive to the questions you're asking, but it seems
17 that I'm being asked the same question over and over.

18 Q Well, if you use the word the Town
19 could do this if they wanted and yet at the same time you
20 say if the Town decided not to that it would be an improper
21 decision, aren't you really saying they have to?

22 A All I'm saying is relocate those people.

23 Q Pardon me?

24 A The Town has to relocate.

25 Q That's what we are talking about?

1 A Yes.

2 Q With the 28 replacement units; and
3 how are they going to do it if they don't get the funds
4 from general revenues?

5 A That's a problem the town has to face.

6 Q Well, you're a planner and you advised
7 Camden and you went over to England and had a lot of ex-
8 perience advising towns in England and then you came back
9 here and you worked four years as a housing consultant; I
10 ask you the question as a planner, if the Township of Mount
11 Laurel is faced with this problem according to your logic,
12 doesn't the Town have to do it out of general revenue funds?

13 A No --

14 MR. BISGAIER: Excuse me, Mr. Rabin.

15 I object, the fact that this question
16 has been asked several times. The witness has
17 repeatedly said the Town could take advantage
18 of available State and Federal programs in alter-
19 native of using their own general revenue and
20 I don't think we have gotten far past that state-
21 ment which is made about ten minutes ago.

22 THE COURT: Isn't that so and what the
23 witness has just said seems to me to put the
24 period on the answer. He said where the money
25 comes from is the Township's responsibility. I,

1 that's a paraphrase of course, I'm not directly
2 quoting the words of the witness.

3 Q Right. My only problem is then if
4 you assume that funds could come from State and Federal
5 sources rather than out of municipal general revenues, then
6 it wouldn't necessarily be improper for a Town to decide
7 not to use local municipal revenues, would it?

8 A The only thing that would be improper as I
9 indicated would be for the Town to decide not to relocate
10 the people who were being displaced.

11 Q Okay. So, you offer then as a second
12 alternative source of funds two thirty-five and two thirty-
13 six funds?

14 A Two thirty-six is a program which no longer
15 exists.

16 Q Two thirty-six doesn't exist any more.
17 Okay.

18 What about two thirty-five?

19 A There are funds available under the two thirty-
20 five program which had been impounded by President Nixon
21 and which have since been released by President Carter and
22 when those funds are exhausted the program will no longer
23 be in existence either.

24 Q Okay. Now, if we can't turn the two
25 thirty-six funds, you don't hold out much hope of obtaining

1 the money through two thirty-five funds?

2 A I didn't say that.

3 Q Well. All right. I don't want to
4 characterize. Are two thirty-five monies available today
5 so that --

6 A For the construction --

7 Q -- fourteen single family units could
8 be constructed?

9 A For the construction of single family sales
10 housing, yes.

11 Q Now, the two thirty-five monies that
12 you referred to apply to single family housing, don't they?

13 A Yes.

14 Q And the purpose of those two thirty-five
15 monies is to reduce the mortgage payments; isn't that correct?

16 A That is correct.

17 Q Two thirty-five monies have nothing
18 to do with down payments, do they?

19 A No.

20 Q Now, assuming then that the 28 house-
21 holds that have been displaced in the Springville area are
22 incomes of \$10,000 or less; and further assuming that after
23 we examine the particular economics, it so appears that none
24 of those 28 households with incomes of \$10,000 or less can
25 afford single family housing even with the availability of

1 two thirty-five monies to reduce the mortgage, then what
2 do we do?

3 A Mr. Patton, I noted that condition ten minutes
4 ago when you asked me about the preferences, I said at that
5 time that provided that subsequent studies revealed that
6 the preferences addressed were feasible then they should be
7 done.

8 Q Okay.

9 A As the people preferred and now you ask me what
10 do we do when it's not feasible.

11 Q That is right.

12 A Well, when it's not feasible, you do what's
13 feasible.

14 Q Okay. So, we have eliminated single
15 family units. Let's now move to multi-family apartment
16 complexes?

17 A Why? Well, excuse me. I'm not asking questions.

18 Q That is right.

19 A Forgive me.

20 Q Okay. Assume now we eliminate the
21 construction of two thirty-five units because it's econom-
22 ically not feasible for those 28 household units or 14 of
23 the 28 household units.

24 What are the prospects now for multi-family accom-
25

1 modations and where are we going to get the money?

2 A Well, I don't know why we leap immediately to
3 multi-family accommodations, rental housing can also be
4 provided in single family accommodations.

5 Q Yes. I'm sorry.

6 A So that the form of the housing is not limited
7 in that way. Well, the Township to establish a housing
8 authority or as I indicated earlier, the Township could
9 encourage and insist and assist in the formation of non-
10 profit groups. It could underwrite some of the housing
11 costs of such groups by assuming the financial obligations
12 for much of the infrastructure which would bring down the
13 cost of such housing. There's just a variety of ways in
14 which the Township, given a willingness and a desire to do
15 so, could bring about the production of housing which
16 low income people could afford.

17 Q Let's go down that list, then. What
18 is the establishment of a housing authority going to do
19 for giving housing units to the 28 households that have
20 been displaced by demolition?

21 A Housing authorities, assuming that the people
22 who were displaced qualified, could construct public hous-
23 ing.

24 Q Oh. Okay.

25 A And provide housing in that way.

1 Q Now, if a local housing authority
2 constructs public housing, would I be correct in assuming
3 that they obtain the money to construct public housing from
4 local municipal revenue funds?

5 A No.

6 Q Where would they get the money to
7 construct local housing -- this kind of housing?

8 A From the Federal government.

9 Q From the Federal government?

10 A That is right.

11 Q Okay. What program, what specific
12 Federal program is going to give a local housing authority
13 money to construct this kind of housing?

14 A I can't identify the section of the housing act
15 or the program by number, but funds are available for the
16 construction of public housing.

17 Q For public housing?

18 A That is correct.

19 Q Okay. So then, isn't it your sugges-
20 tion then that when, if you assume the accuracy of the hypo-
21 theticals, what you're saying then is that the Town has
22 an obligation to establish a local housing authority to make
23 application for Federal funds to construct public housing?

24 A Mr. Patton, I said nothing even resembling that.

25 Q You didn't?

1 A You said let's go down the possibilities.

2 Q Okay.

3 A And I listed it as a possibility.

4 Q Okay. Okay. What's the next one,
5 but that was a possibility?

6 A That is a possibility.

7 Q Oh. What's the next one.

8 A And I hasten to add that the housing constructed
9 under the auspices of a housing authority might well be
10 townhouses or other forms of housing not conventionally
11 associated with public housing.

12 Another possibility is that the town participate
13 in the housing and community development act and use funds
14 to substantially reduce costs on behalf of a non-profit
15 developer. They could acquire sites, they could provide
16 all of the infrastructure to such a site substantially
17 reducing the cost of housing and enabling the house then
18 to be provided by someone else.

19 Q What's your next possibility?

20 A Those are the two principal ones. Borrowing,
21 of course, the generous use of general revenue of the
22 municipality.

23 Q Now, in terms of the actual, are you
24 familiar and maybe you aren't, are you familiar with whether
25 or not the Federal government has the monies in terms of

1 its allocation and distribution system to take care of
2 these 28 households that were displaced?

3 A I would say in a general way I know that there
4 are funds available under a number of programs. Whether --

5 Q Talking about public housing?

6 A Public housing. Housing and community develop-
7 ment funds.

8 Q That's the second area. First, let's
9 talk about building public housing in Mount Laurel for the
10 28 displaced housing.

11 A Funds are available under both of those programs.

12 Q Okay. And you're confident that Mount
13 Laurel could obtain those funds?

14 A Given its willingness to comply with whatever the
15 legal requirements are to be a recipient of those funds, I
16 would see no obstacle.

17 Q And -- and you are also confident that
18 the funds are available under the community development
19 act to obtain those funds simply by asking for them?

20 A Mount Laurel would have to join, in this instance,
21 either in the county's participation in the community
22 development act or to file directly with H.U.D. as an
23 individual municipality. It could go either way. I was
24 present in the courtroom when it was testified by the county
25 director of the housing and community development program

1 that the Township has each year it was invited to do so,
2 refused to participate and every indication at the time
3 was given that funds are in fact, and would in fact, be
4 available to the Township should it choose.

5 Q Those are housing community development
6 funds, are they not?

7 A That is correct.

8 Q And were you present when the gentleman
9 from the Burlington County Planning Board went over the
10 instances of how those funds have been used?

11 A Yes.

12 Q Do you remember any instance in which
13 a Town used housing community development funds in Burling-
14 ton County to, A, buy land for lower-moderate income housing
15 and in addition to that, to provide the infrastructure for
16 low-moderate income housing --

17 MR. BISGAIER: Your Honor, this may be
18 a test of Mr. Rabin's recollection, but I think
19 the record on that speaks for itself. I person-
20 ally do believe there was such testimony.

21 In any event it's in evidence now what
22 those applications were about for each of the
23 three years and the evidence, the records in
24 evidence now would reflect the specific activi-
25 ties that were undertaken each year in the county

1 program.

2 THE COURT: Wasn't that Mr. Bishop's
3 testimony?

4 MR. BISGAIER: Yes, Your Honor, it was.

5 In any event, all I'm saying here,
6 the record speaks for itself on that and I don't
7 understand the need to continue --

8 THE COURT: Perhaps it's better to let
9 that record speak for itself, Mr. Patton, than
10 to tax this witness with recollection on it even
11 though he may have been in the courtroom when
12 Mr. Bishop testified.

13 BY MR. PATTON:

14 Q I want to make one further assumption,
15 Mr. Rabin.

16 I want you to assume the Township of Mount Laurel
17 despite the best of efforts cannot obtain Federal funds
18 for public housing and that despite the best of efforts,
19 Mount Laurel can't obtain community development funds for
20 the purpose of land and for infrastructure improvements,
21 okay? Based on that hypothetical, what then does Mount
22 Laurel do about the 28 households?

23 A It does the same thing that it would have done
24 if it had been able to get money from one of those two
25 other sources.

1 Q What's that?

2 A Provide replacement housing or don't displace
3 the families.

4 Q Assuming Federal funds aren't available,
5 then we go back to local general revenue funds?

6 A That is correct.

7 Q Okay. And then you're saying the de-
8 cision is, if you're going to demolish you better use
9 general revenue funds to replace and if you don't want to
10 use general revenue funds to replace, then you better not
11 demolish?

12 A Unless there is a threat of clear threat to health
13 and safety.

14 Q Okay. Now, let's assume that each of
15 these 28 structures that were scheduled for demolition --
16 scheduled to be demolished were significantly dilapidated
17 in a number of features that pose a threat to health and
18 safety either by lack of planning facilities or leaky roof
19 or stopped up plumbing, or what have you, what does the
20 Township do then?

21 A The Township finds some means of relocating the
22 people whom it displaces, either temporarily while it
23 identifies the resources necessary to make more permanent
24 arrangements or initially on a permanent basis.

25 Q So then you are saying, given that

1 hypothetical, the Township then must use general revenue
2 funds?

3 A There is, if I understand your question, some
4 have the probing implication that there must be some cir-
5 cumstances under which the welfare of these people is less
6 important than the decision by the Township to accommodate
7 their needs.

8 Q I'm not trying to draw a value judg-
9 ment, I'm just trying to draw a value judgment, I'm just
10 trying to --

11 A Well, the value judgment is implicit.

12 Q I don't want you to read value judgments
13 into my questions, Mr. Rabin.

14 This is cross-examination and I'm only interested
15 in eliciting the logical conclusions from your direct
16 examination testimony and I don't want you to imply that I,
17 myself, in my questions have made any implicit value judg-
18 ments. I'm interested in your value judgments because the
19 court isn't going to judge this case on my value judgments.

20 MR. BISGAIER: Your Honor, interesting
21 I suppose to find out Mr. Rabin's position on
22 these matters in terms of these value judgments
23 and the State of New Jersey and the eviction law
24 and the relocation law as essentially enunciated
25 the very principal witness is enunciating the

1 cannon should not be any demolition or eviction
2 without adequate housing planning, that's the
3 law of this State right now and I think we may
4 now be somewhat beyond. In any event, the scope
5 of direct examination and the witness wasn't
6 called as an expert on the subsidy programs and
7 the housing programs. I thought we had dealt
8 with that with Mr. Abeles.

9 THE COURT: That, of course is true,
10 Mr. Bisgaier, but I think we may be getting in
11 a philosophical argument which isn't adding too
12 much to information. I think the witness has
13 made his position -- made his philosophical as
14 well as his expert position abundantly clear.

15 He has stated what he conceives to be
16 the responsibility of the Township for providing
17 replacement housing whether that is, whether the
18 Township is required to do that may be a matter
19 of law which may have to be argued and as to
20 which the Court may have to decide authority
21 which the Court will have to seriously consider;
22 but where are we getting now, Mr. Patton, as to
23 questioning?

24 MR. PATTON: I believe I'm almost
25 through.

1 THE COURT: As to the witness's
2 really been made quite clear.

3 MR. PATTON: Yeah. I think I'm prac-
4 tically through with this line of questioning.

5 THE COURT: Anything to be gained by
6 simply arguing with him?

7 MR. PATTON: No.

8 THE COURT: All right.

9 Proceed, sir.

10 BY MR. PATTON:

11 Q Mr. Rabin, in terms of temporary or
12 permanent relocation, could the Township of Mount Laurel
13 move one of these 28 households from a demolished unit to
14 an apartment or a unit in one of Mount Laurel P.U.D.
15 developments?

16 A I would assume that to be possible.

17 Q And is that what you are suggesting
18 by --

19 A I would assume that to be possible. It would
20 depend on the circumstances. I can see no reason why such
21 a course of action without the proper and appropriate or
22 that housing is available and no other is.

23 Q Now, you are familiar with the Hartford
24 Road area or the Springville area right now?

25 A Yes.

1 Q And you were there five or six years
2 ago and you were there this year?

3 A Yes.

4 Q Have you noticed any new houses that
5 have been built in those last five years on Hartford Road
6 in the Springville section?

7 A Yes.

8 Q And have you also noticed that a number
9 of improvements have been made to the units that existed
10 there when you first visited there back in 1971 and 1972?

11 A The number is not significant, there are a few
12 new houses.

13 Q I'm talking about improvements. We
14 already established there was new housing there.

15 What about the improvements to the existing
16 units?

17 A The areas in which the worst housing exist are
18 unchanged. Unchanged.

19 THE COURT: That hardly answers the
20 question, sir. You were asked whether you had
21 seen any improvements to units.

22 THE WITNESS: Yes, Your Honor. I
23 thought I had answered that in the affirmative.

24 Q Now, my first question was, in the
25 five or six years.

1 A Yes.

2 Q Haven't you noticed new houses on
3 Hartford Road, I thought your answer was --

4 A Yes. I said yes.

5 Q And my second question is, in the
6 five or six year period of time that has elapsed, have
7 you noticed various types and any kinds of improvements
8 made to houses that already existed there back in 1972?

9 A And I said, not in significant numbers, no.

10 Q Okay. Do you, of your own personal
11 knowledge, know why there have been improvements but not
12 significant improvements to existing houses on Hartford
13 Road?

14 A I do not.

15 Q Okay. Now, you testified that you
16 rode down Hartford Road in the Springville area and noticed
17 these, I think you called them strips?

18 A Yes.

19 Q Black strips?

20 A Long patches.

21 Q And I gather from your testimony there
22 was strip on the right side of the road and another strip
23 on the left side of the road?

24 A That's right.

25 Q And nothing in the middle?

1 A I said the road is paved. The road was paved
2 before.

3 Q Yeah.

4 A The road was patched with these long linear
5 patches which do not meet in the middle of the road.

6 Q Yeah.

7 A A foot or more.

8 Q Okay. Yeah.

9 A Apart and that leaves a rut.

10 Q Okay. Now, my question is, do you
11 know why these linear lines of patches were put down?

12 A I would assume that the conditions under them
13 may have been somewhat worse.

14 Q And so, to your knowledge, the only
15 reason that you know of why those two linear patches were
16 run down the respective sides of Hartford Road was because
17 someone found holes or defects underneath that particular
18 surface?

19 A These two patches or these two sections of
20 patches only cover a portion of Hartford Road area.

21 Q Yeah. I understand that.

22 A They don't --

23 Q I've been there, I don't know --

24 A -- they don't by any means cover it all.

25 Q Absolutely. I don't dispute that.

1 I've seen it too and my question to you is, do you know why
2 they did that?

3 A I felt I just answered.

4 Q Because of defects underneath the par-
5 ticular area that was covered, is that the reason?

6 A I believe that one of the other reasons, and I
7 don't recall where I heard this, may have, they wanted to
8 extend to the sides the width of the paved right-of-way.

9 Q Okay. So you know of two reasons why
10 they did it. One, to cover up any defects that may have
11 existed underneath; and to widen the road?

12 A Yes.

13 Q And to the best of your knowledge those
14 are the two reasons for putting down those strips?

15 A I can think of trying to recollect the table
16 which was provided by Mr. Johnson which for each year
17 listed the streets, the length of the street that was to be
18 repaved and the kind of work which was to be redone and
19 beginning about in 1974 Hartford Road appears every year
20 and is crossed out and in each case it says, resurface.

21 Now, resurface is what was done to the area of Hartford
22 both north and south of Springville. What was --

23 Q Up above?

24 A -- what was done in Springville is something else
25 which I would characterize as large scale patching.

1 Q Okay. But, you don't know any other
2 reason for doing that other than the reasons that you des-
3 cribed before?

4 A That is correct.

5 Q Okay. Now, you talked about the
6 budget for the last five years with respect to road work
7 and you came to a figure of \$881,000 worth of road work,
8 eight hundred eighty-one thousand?

9 A I believe that's correct.

10 Q Is that what you testified to?

11 A That is correct, yes.

12 Q Now, you also testified, did you not,
13 that in this period of time there was road work done on
14 Ramblewood Parkway?

15 A That is correct.

16 Q Okay. Now, of the total amount of
17 \$881,000 that was spent over the last five or seven years
18 on road work in general, do you know how much money was
19 spent on Ramblewood Parkway?

20 A \$342,658.63.

21 Q That's almost half, isn't it?

22 A That certainly is.

23 Q Okay. Now, one of your criteria
24 for road work was traffic, was it not?

25 A Yes.

1 Q And another one of your criteria
2 for road work was number of residential units?

3 A No. I said that determined the number of other
4 things.

5 Q Well --

6 A The two primary criteria for determining the
7 classification of a street would be the volume of traffic
8 and the type of traffic and then there were other deter-
9 minations related to lighting or sidewalks which would
10 result from the nature of abutting uses.

11 Q And by nature of abutting uses, didn't
12 you refer to a density and people and residences?

13 A Yes.

14 Q Okay. Now, with that criteria in
15 mind and forgetting for the moment I shouldn't say for-
16 getting, that's the wrong word. Was there anything improper
17 that you find about the decision that was made to do that
18 work on Ramblewood Parkway exclusive of the fact that maybe
19 you think some money should have been spent on Hartford
20 Road?

21 A No, Ramblewood Parkway is a major arterial
22 street.

23 Q And there is a lot of residential units
24 off of it, isn't there?

25 A I would imagine that the need to repave Ramble-

1 wood Parkway derived less from its function serving the
2 abutting residences than from its function as a through
3 cross-street.

4 Q Okay.

5 A At that point as an arterial --

6 Q But, you consider it proper to have
7 redone Ramblewood Parkway?

8 A I don't know what condition it was in before.
9 I assume it needed it and if so, as I indicated, I would
10 certainly consider it a proper job to do.

11 Q Okay. Now, you gave us a figure of
12 \$3,500 for Hartford Road?

13 A That is correct.

14 Q And I'm wondering whether that \$3,500
15 was all of Hartford Road or just that part of Hartford
16 Road which is south of Hainesport-Mt. Laurel Road?

17 A Only that part of Hartford Road which is between
18 Elbow Lane and Hainesport Road and as I indicated before,
19 only the northern portion of that road was patched.

20 Q Okay. Now, how much road money was
21 spent on Hartford Road and I think you indicated it began
22 north and working its way south?

23 A No, well, if we can put the map up there?

24 Q I have no objection.

25 A We might --

1 Q Let's put the map up.

2 A -- see the list furnished by Mr. Johnson provides
3 the road name and the individuals which mark the beginning
4 and end of the streets which were refinished.

5 Q Yeah. Now, that we have the map up
6 again my question was how much money was spent on Hartford
7 Road above this Hainesport-Mt. Laurel Road?

8 THE COURT: Pardon me, Mr. Patton,
9 which exhibit are you referring to?

10 MR. PATTON: I think it's street
11 conditions and it's P-45.

12 THE COURT: Thank you.

13 THE WITNESS: I didn't calculate that.

14 Q Oh.

15 A I don't believe I did, no.

16 Q Okay.

17 MR. PATTON: Your Honor, would it be
18 improper to suggest a --

19 THE COURT: I was just about to do the
20 same thing, Mr. Patton.

21 Let's take a short recess at this time,
22 ladies and gentlemen.

23 (Recess.)

24 CONTINUED CROSS-EXAMINATION

25 BY MR. PATTON:

1 Q Mr. Rabin, on direct examination
2 testimony you criticized the zoning designation of area
3 along Hartford Road as an R-3 area and that's half acre,
4 isn't it?

5 A 20,000 square feet.

6 Q Roughly a half acre, Mr. Rabin?

7 A Yes.

8 Q Mr. Rabin, do you have any knowledge
9 of the lot sizes of these dwellings on Hartford Road south
10 of Hainesport-Mt. Laurel Road?

11 A On a lot by lot basis, no. Only that informa-
12 tion which has been included in the housing studies which
13 have been carried out to date which point out the fact that
14 a number of them, particularly in the Cedar, Washington,
15 Locust area and in the area below that are both smaller
16 than what's allowed and that some of them are additionally
17 landlocked which creates an additional problem.

18 Q Well, let me ask you this question.
19 We are talking about the area of Hartford Road south of
20 Hainesport-Mt. Laurel to where Elbow Lane comes in?

21 A That is right.

22 Q Okay. How many housing units are on
23 that strip, so to speak?

24 A I estimate that there are about 80 remaining.
25 There were, according to Mr. Susna's study in 1969, approxi-

1 mately 100 and that corresponds proximately enough to the
2 difference which would be counted for by the demolition.

3 Q Okay.

4 A Which have taken place.

5 Q Okay. Now, of the 80 units that are
6 there today, how many are on lots of half an acre or more?

7 A I could of my own knowledge probably indicate
8 no more than 15 or 18 which are not -- that is which are
9 non-conforming.

10 Q You mean of the 80, 15 or 18 are not
11 conforming?

12 A That is, I don't know if they comprise all the
13 ones which are not, I assume from what I've read that there
14 are more; but of my own observations of the structures which
15 exist and their phasing in the Locust, Cedar, Washington
16 area and on the two streets below those, there alone are
17 about 18 dwelling units which are so closely spaced they
18 could not conceivably be even quarter acre, let alone half
19 acre lots.

20 Q So, do I understand the remainder of
21 your testimony to be with respect to the exhibit, other
22 additional units you don't know?

23 A Other than what I've read as I indicated in
24 the studies that were done, that is substantially number
25 east on the east side. On the west side, the areas are

1 quite large because the lots are extremely long as they go
2 eastward from Hartford Road. That is, you have narrow
3 frontages but extremely long lots, some of them almost a
4 thousand feet deep.

5 Q Yeah. See, I'm still confused on the
6 basis of the 80 figure, you said you know that 18 are less
7 than half acre?

8 A That is correct.

9 Q Now, do you have any definitive know-
10 ledge one way or another on the other 62?

11 A Other than what I've read, no.

12 Q All right. And I'm not sure what you
13 read now. The 1969 master plan?

14 A No. No. No. No. The housing study of the
15 Springville area.

16 Q And what did that study say with
17 respect to the remaining 62?

18 A Well, there are no precise numbers in it, so
19 I don't know.

20 Q Oh. Okay. Fine.

21 Now, do you know of where Teal Lane is?

22 A I do, yes.

23 Q Okay. That's right next to Texas
24 Avenue, isn't it?

25 A Just south of it.

1 Q Yeah. Do you know what, if any,
2 road work has been performed on Teal Avenue?

3 A Yes. As the map indicates, Texas Lane has
4 been repaved and that --

5 Q No, Teal Lane.

6 A Teal Lane, I mean. Pardon me. Has been repaved
7 and that is indicated.

8 THE COURT: Pardon me, gentlemen, how
9 do you spell that Teal, T-E-A-L?

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you.

12 BY MR. PATTON:

13 Q And do you know whether or not street
14 lights have been installed on Teal Lane?

15 A I believe they have.

16 Q And do you know if any drainage work
17 was done on Teal Lane?

18 A Yes.

19 Q That has also been done on Teal Lane,
20 storm drainage work?

21 A But would normally be done as part of the road
22 work that is in creating the run-off and the ditches on
23 the side.

24 Q Okay. Now, what is your basis for, and
25 I think this is the one of not designating the Teal Lane as

1 a street of low income residential?

2 A Only that the houses there are in better condi-
3 tion and appear not to be low income housing and so I
4 did not include that street.

5 Q That was your judgment based on a
6 visual observation of the exterior of the premises?

7 A That is correct.

8 Q Okay. You indicated that there were
9 three kinds of roads, arterial, collector and local and
10 I'm wondering --

11 A Those are the three classifications which
12 appear in the Mount Laurel plan.

13 Q Oh.

14 A I indicated that in larger more developed and
15 more complex urban areas they are frequently more division
16 than that; but the Mount Laurel plan talks about arterial,
17 collector and local streets.

18 Q What plan is that? All I want to do
19 is get the source.

20 A The master plan. This is the 1969 plan, I'm
21 not certain of the page.

22 Q I don't need the -- the 1969 Mount
23 Laurel master plan?

24 A Yes.

25 Q Okay. That was my only question. You

1 indicate that the roads in the Hunt Tract were reconstructed?

2 A That's correct according to Mr. Johnson.

3 Q Yeah. And you indicate that Ramblewood
4 Parkway was reconstructed?

5 A That is correct.

6 Q Okay. Now, do you know whether or
7 not the kind of construction work that was performed on
8 the Hunt Tract roads were the same or similar or different
9 from the type and kind of reconstruction work that was
10 performed on Ramblewood Parkway?

11 A I don't know offhand, but the description of
12 the work contained in Mr. Johnson's data would, I believe,
13 indicate the number of tons of material which were used
14 and the width and so on and it might be possible to
15 deduce from that whether the work was in fact similar.

16 Q But, you haven't to date made such a
17 deduction as to whether the type and kind of work was
18 similar?

19 A As far as deductions are concerned it would be
20 my assumption that an arterial street would probably be
21 constructed to a higher standard than a purely local street.
22 That is the roadbed which may have been put down on Ramble-
23 wood may have been of a different material or of a greater
24 thickness or have a deeper bed than that which would have
25 been put down in reconstructing the purely local streets

1 within a subdivision.

2 Q Now, in talking about recreational
3 facilities, you made reference to Dorchester Drive in
4 Cantenbury, did you not?

5 A Yes.

6 Q Okay. And I believe you testified on
7 direct examination that Dorchester Drive was built by the
8 Town?

9 A Yes.

10 Q Do you know who furnished the funds?

11 A Do I know personally who furnished the funds?

12 No.

13 Q I mean, when you say it was built by
14 the Town, are we to infer that you mean the Town funds
15 financed the construction of the recreational facility
16 there?

17 A In the, your, the exact wording in the deposition
18 of Mr. Johnson, he was asked I believe which ones were
19 built by the Town and he indicated that one, as one which
20 was built by the Town if in addition he indicated that
21 someone gave him the money or gave the Town the money, I
22 don't recollect that.

23 Q Now, you also testified that road
24 work was done in addition to the Hunt Tract in the Mason-
25 ville section and Rancocas Woods section, did you not?

1 A Yes, I did.

2 Q Okay. Now, are those areas areas of
3 low and moderate income housing?

4 A I would say that the Masonville section, an
5 area of moderate income housing and on a continual I would
6 say that the Rancocas subdivision is somewhat more affluent
7 than Masonville.

8 Q Is that part moderate income housing?

9 A I'm unable at this point to really fix on a
10 scale.

11 Q All right. What about the Hunt Tract,
12 is that lower or moderate income housing?

13 A It's a moderate income area.

14 Q Okay. Now, now you indicated with
15 respect to fire stations you offered a general planning
16 guideline that fire stations should be no more than a
17 mile and a half from a particular facility, did you not?

18 A From areas developed to suburban densities I
19 believe was the term that I used and which was the term that
20 appears also in the Mount Laurel master plan report of
21 1969.

22 Q Right. And it's from that master plan
23 report that you obtain what you refer to as their standard?

24 A Well, I also referred to nation standards in
25 seeing whether what Mount Laurel did corresponded to what

1 appears.

2 Q And that standard applies to a
3 suburban community?

4 A That is the lowest standard for a suburban
5 community according to nation standards.

6 Q Well, yeah. Would now -- I'm trying
7 to think of a town in New Jersey, are you familiar with
8 Short Hills, New Jersey, what suburban communities are
9 you familiar with?

10 A Well --

11 Q Or maybe --

12 A Might I suggest --

13 THE COURT: Gentlemen, please.

14 THE WITNESS: I'm sorry.

15 Q We both went off on the same --

16 A I'm sorry.

17 THE COURT: All right. One at a time.

18 Have you asked your question, Mr. Patton?

19 MR. PATTON: I'm, I was about to.

20 THE COURT: All right. Would you do so.

21 BY MR. PATTON:

22 Q Do you consider Mount Laurel to be a
23 suburban community?

24 A There area, as I understand it sections of Mount
25 Laurel.

1 Q Yeah.

2 A Which are developed to suburban densities.

3 Q Yeah.

4 A With the exception of the very small areas,
5 those are the areas which I have colored blue or yellow
6 depending on which map you are looking at. All of Ramble-
7 wood or Country Side or those places are what is intended
8 when the term developed, to suburban densities is used.

9 A group of 80 homes in the Springville area
10 while not following the same patterns is certainly developed
11 to suburban densities. I think I also indicated or quali-
12 fied it at the time I described the fire facilities map
13 but I have probably shown some small six or eight houses
14 which would not qualify in the fire rating definition of
15 suburban development. They are too small as groups to
16 fall into that category; but certainly every subdivision in
17 Mount Laurel qualifies as being developed to suburban
18 densities. Masonville, Friendship and the Hunt Tract and
19 Springville would qualify as being developed to suburban
20 densities.

21 Q No. I think you misunderstood my
22 question. My question was not whether you consider certain
23 sections of Mount Laurel to have been developed to subur-
24 ban densities, but whether you consider the entire Township
25 of Mount Laurel to be a suburban community?

1 A The fire code does not so classify them. If we
2 are referring to the fire code, the fire code is very
3 specific in saying that the fire station within the munici-
4 pality needs to be within a mile and a half of areas, not
5 municipalities which are developed to suburban densities.

6 Q All right. Now, I'm confused because
7 I don't know what standard. Are you referring to the
8 master plan or the fire code?

9 A I assume they are the same.

10 Q Well, I think on direct examination
11 you talked about the 1969 master plan as the source from
12 which you draw that figure?

13 A May I read the section from the master plan?

14 Q Please, yes, please do.

15 A On page 57 of the master plan under community
16 facilities and the subheading fire stations it says,
17 standards prepared by the national board of fire under-
18 writers recommend that a fire station be located within a
19 mile of a high valued commercial or industrial district
20 and one-half mile from residential districts of suburban
21 densities and within three miles of rural area.

22 Q Okay. And that master plan applies
23 to the future, does it not?

24 A As far as fire underwriting is concerned it
25 applies to the present.

1 Q Are you suggesting that a fire under-
2 writer would criticize Mount Laurel for any dwelling unit
3 that was more than a mile and a half away from a fire
4 station?

5 A It does not say dwelling unit. It says, residen-
6 tial districts of suburban densities.

7 Q All right. Residential district.

8 A Well, there is a great deal of difference, Mr.
9 Patton.

10 Q No, I can see that geographically
11 But I'll accept that term, residential district.

12 So, in other words, your testimony would be
13 that it would be very difficult to a greater or lesser
14 degree to obtain fire underwriting for any dwelling unit
15 in Springville?

16 A What I have said is that by the standard which
17 exists Springville is not adequately served. It does not
18 comply either with the standard as enunciated in the plan
19 or with the standards as enunciated by fire underwriters.

20 Q Okay. Now, my point is this: Does
21 that standard to which you just referred apply to an
22 existing developed community?

23 A It most certainly --

24 Q Or does it apply to a developing
25 community which some day anticipates that it will achieve

1 the status of a developed community?

2 A With respect to firefighting facilities it is
3 expected that a community at every stage of the development
4 will maintain itself in compliance with the standards.
5 They are not conceived of a level of protection which is to
6 be achieved at some ultimate stage in the future.

7 Q Okay. Now, what again is your defini-
8 tion of a suburban density, I thought you said six or more
9 units, but I'm not sure?

10 A No, Mr. Patton.

11 Q That's why I qualified it, I didn't
12 want to, go ahead, what's --

13 A If I begin at the beginning perhaps --

14 Q Just tell me what your definition is
15 to suburban density?

16 A By example I indicated that all of the subdivi-
17 sions within the Township would qualify as districts
18 developed to suburban densities.

19 Okay. In addition, the major overdeveloped
20 areas of the Township and they would include Masonville,
21 the Hunt Tract, Fellowship and Springville would also qual-
22 ify under the same standard.

23 Q I understand that. I just want your
24 minimum definition of density for suburban district develop-
25 ment and I mean it is 100 units, 50 units, 25 units?

1 A Density or the minimum number?

2 THE COURT: Well --

3 Q Whichever way.

4 THE COURT: What are you referring to
5 when you say suburban density, to what do you
6 mean by that?

7 THE WITNESS: Well, by example, I
8 would say I don't know what a cut-off number
9 would be, 15 houses, perhaps densities of
10 half-acre or greater, that is half-acre or
11 more per unit would qualify as suburban densi-
12 ties.

13 Q Well, what about a high density, 15
14 units on five-sixths acres?

15 A That would be more.

16 Q Okay. That's what I want. So, it's
17 your testimony that whatever 15 units exist that there
18 must be a fire station within a mile and a half of it?

19 A I cannot say that with precision that I know
20 15 units to be the cut-off.

21 Q Well --

22 A All I'm saying that I know with certainty is
23 that those large developed areas easily qualify. How small
24 they would have to get before the fire underwriter would
25 no longer characterize them as a residential district, I'm --

1 Q Well, what's your recommendation, as
2 a planner, if I wanted to build 590 units of low cost
3 housing on a 107 acre tract of land and I came to you
4 and I said, gee, the fire station is 2½ miles away, what
5 would you say to me as a planner?

6 A My recommendation as a planner would be that
7 anything which qualified as a subdivision under the sub-
8 division ordinance should be considered development to
9 suburban densities and that all of such developments
10 should be carried out within the standards required by
11 the fire underwriters.

12 Q All right. Now, what is your recommen-
13 dation as a planner for the least number of units that
14 would require firehouse?

15 A I thought I just stated that.

16 Q No, you switched over to subdivisions.
17 I want to go back to --

18 A I said that.

19 Q -- unit.

20 A I said, I thought that any number of units which
21 qualified as a subdivision would qualify as a district of
22 suburban development.

23 Q Well, I under the Mount Laurel code,
24 I believe four units or less can qualify as a minor sub-
25 division?

1 A Four or more, isn't it?

2 Q I see. It's four or less for minor
3 subdivision.

4 Now, are you suggesting that under the Mount
5 Laurel subdivision ordinance there is got to be a firehouse
6 within a mile and a half of a four unit or less minor
7 subdivision?

8 A I'm suggesting that where a subdivision is to be
9 undertaken that in a planning point of view it should be
10 built within those areas.

11 Q Okay. Now, you also said that there
12 was a requirement about fire hydrants at 600 foot intervals
13 and you found that, correct me if I'm wrong, in the sub-
14 division ordinance, did you not?

15 A That is correct.

16 Q Okay. Now, that subdivision ordinance
17 applies to new constructions, does it not?

18 A That is correct.

19 Q Okay. That subdivision ordinance
20 doesn't apply to the Springville area, does it?

21 A The standards should apply.

22 Q Well, I thought you said that the sub-
23 division ordinance applied to new construction and not to
24 existing?

25 A Mr. Patton, as a planner, it's my understanding

1 that the standards exist in the subdivision ordinance be-
2 cause it's been determined that they provide the level
3 of protection which is necessary for housing at a given
4 level --

5 Q Okay.

6 A -- of development. Again, as a planner, if those
7 standards are valid, then there is no planning reason why
8 the standards themselves, should not be applied to all
9 such development within a municipality.

10 Q Okay. Now, the point you were a
11 planner in the City of Camden, weren't you?

12 A That is correct.

13 Q And when you came into the City of
14 Camden in 1959 most, if not all of Camden, had already
15 been built up?

16 A That is correct.

17 Q Under different standards and no
18 standards?

19 A Under varying standards.

20 Q Right. And you as a planner in 1959
21 really couldn't do much about planning backwards, could
22 you, because it was all done?

23 A But one of the determinations --

24 Q Answer my question.

25 A Well, but what was done, your question -- would

1 you repeat it, please?

2 THE COURT: Repeat the question
3 please, Madam Reporter.

4 MR. PATTON: Yeah.

5 THE REPORTER: "Question: Right. And
6 you as a planner in 1959 really couldn't do much
7 about planning backwards, could you because it
8 was all done?"

9 A No attempt was made to plan backwards.

10 Q Because it's physically impossible to
11 do it in many respects, isn't it?

12 A I'm not sure I understand what the term itself
13 means, planning.

14 Q Let me give you an example.

15 A Something one does for the future.

16 Q Suppose you as a planner go into a
17 community and you give council your best advice, that we
18 shouldn't build any big high-rises like the kind of high-
19 rises that existed in St. Louis, the Prudit Igo (phonetical)
20 for any number of reasons and the council says to you,
21 Mr. Rabin, you're right, for all the reasons that you
22 have stated we are not going to build high-rises of the
23 type and kind that existed in St. Louis, but lo and behold
24 you find out that 20 years before you ever came to Camden
25 that there are already high-rises, nothing you could do

1 about it, is there?

2 A That's not true.

3 Q Well, what could you do about it?

4 A Well, for one thing, they tore down Prudit Igo.

5 Q That's true.

6 A Something very specific was done about it, but
7 with respect to municipal facilities, one of the basic
8 tasks of the planner and what my basic task in Camden
9 was to identify what the deficiencies were which had been
10 created by the development which you describe as having
11 taken place either according to no standards or by some
12 varying range of past standards.

13 It is precisely that comparison which is made
14 here. What is simply done is to illustrate what there
15 is in the way of existing development which fails to meet
16 an existing reasonable standard for fire protection.

17 Q Okay. Now, isn't it true, Mr. Rabin,
18 that the 100 or 80 units on Hartford Road in Springville
19 were built, a, before Mount Laurel ever had a zoning
20 ordinance and, b, before Mount Laurel ever had a land
21 subdivision ordinance?

22 A That's true.

23 Q Okay. And wouldn't you venture to
24 say that if there were a Mount Laurel Zoning Ordinance
25 and there was a Mount Laurel Land Subdivision Ordinance

1 in existence at the time when Hartford Road was developed
2 that there is a very good chance it never would have been
3 developed to begin with?

4 A I have no conceivable way of knowing that
5 would be true or not.

6 Q Well, let's use the example of water
7 and sewer.

8 I believe you recommended during your direct
9 examination that water and sewer facilities be extended
10 to the Springville section, did you not?

11 A Yes, I did.

12 Q Okay. Now, do you know how far away
13 from the Springville section water and sewer facilities
14 are at the present time?

15 A I have not measured the extent to which those
16 facilities have been installed in the Larchmont development,
17 in the blue area just south of Route 38 between Hartford
18 Road and Ark Road, there is already occupied developed
19 in Larchmont to which water has been extended and at the
20 eastern edge -- may I step down?

21 Q Yes, please. I want to see where you
22 are pointing to.

23 (The witness leaves the witness stand.)

24 A Fire hydrants already extend down this road as
25 far as here.

1 Q Okay.

2 A This portion of Larchmont is under construction
3 and this portion of Larchmont is under construction and in
4 connection with that water lines are being extended into
5 those areas.

6 Q And the developer is doing that, isn't
7 he?

8 A That is correct.

9 Q The developer of Larchmont?

10 A That is right.

11 Q But, Springville was never development
12 was it, in the sense that Larchmont is a development and
13 in the sense Ramblewood is a development?

14 A In the sense it was a subdivision, no.

15 Q Okay. Now, those water and sewer
16 extensions that you just referred to on the map were being
17 put there by the developers, weren't they?

18 A That's true.

19 (The witness resumes the witness stand.)

20 Q Okay. Nevertheless, you say they
21 should be extended into Springville; is that correct?

22 A That is correct.

23 Q And who do you want to do that?

24 A The Township.

25 Q Out of general revenue funds?

1 A Out of whatever funds it chooses to use in order
2 to do that.

3 Q Okay. Now, if you were around let's --
4 use 1945 and I'm not sure of that date, and I'm sure you're
5 not either, and you were a planner and you were in Mount
6 Laurel and you saw those houses going up on Hartford Road
7 and you knew that water and sewer facilities were miles
8 away, would you recommend the construction of those units
9 then?

10 A In the face of the absence of facilities,
11 probably not.

12 Q Yes, sir. Okay. But, nevertheless
13 in the face of the absence of those facilities that sec-
14 tion came into existence, did it not?

15 A It certainly did.

16 Q Okay. And that's why they call it a
17 non-conforming use today, don't they?

18 A I don't understand that to be the case.

19 Q Well, you talked about the land --
20 the zoning, the Mount Laurel zoning which made it an R-3
21 zone?

22 A yes.

23 Q And you said at least 18 units can't
24 conform to that?

25 A Yes.

1 Q Okay. Now, the first Mount Laurel
2 zoning was back in 1954, was it not?

3 A Yes.

4 Q Okay. So that meant that at least
5 18 of those units had to be in existence before 1954, is
6 that right?

7 A That's true.

8 Q Okay. And at least those 18 units
9 had to be in existence before the first land subdivision
10 ordinance in the entire city of Mount Laurel; is that
11 right?

12 A That's true.

13 Q Okay. And that Springville was in
14 existence at a time when the Mount Laurel population was
15 2,000 or less, was it not?

16 A That's true.

17 Q And today Mount Laurel has \$14,000
18 people, right?

19 A Probably more.

20 Q All of which came in the last 20
21 or 27 years; isn't that correct?

22 A Most of which.

23 Q Okay. Now, you referred to some vari-
24 ances that were granted and you specifically referred to
25 a tool and die factory, did you not?

1 A Yes.

2 Q And that's on Hartford Road, isn't
3 it?

4 A No.

5 Q Where is that?

6 A That doesn't exist. The variance was granted
7 for the use on Texas Avenue, there is a dilapidated
8 house at present on --

9 Q Oh, I see. I meant to --

10 A -- on the site where that variance had been
11 granted.

12 Q I meant to refer to the machine shop
13 and the storm window place on Hartford Road?

14 A Yes. Those are on Hartford Road.

15 Q How long have they existed?

16 A Both have come into being since the trial.

17 Q Okay.

18 A In 1972.

19 Q Do you know who applied for the vari-
20 ance?

21 A In the case of the storm window place?

22 Q Yeah.

23 A I do not know.

24 Q Okay.

25 A In the case of the machine shop, it is my under-

1 standing that that building was vacant for some ten
2 years and the machine shop operator was permitted to
3 open a machine shop there in spite of the provision in
4 the Mount Laurel zoning code which provides that a non-
5 conforming use which is discontinued for more than a year
6 shall not be reestablished.

7 Q Okay. Now, who granted, so you're
8 saying, the machine shop operator applied for the variance?

9 A No, he applied for no variance. Nothing was
10 required of him as far as I know.

11 Q Who grants variances?

12 A The zoning board.

13 Q Okay. And now -- were -- is it your
14 testimony that the zoning board granted three variances
15 but the other one exists without any official action?

16 A That is my impression.

17 Q Okay. With respect to those other
18 three variances, then, you're saying, they were granted
19 by the zoning board?

20 A I would assume that to be the case.

21 Q Would you assume they also examined
22 the positive and the negative criteria that zoning boards
23 are supposed to apply when they grant variances?

24 A I do not know that to be the case.

25 Q You don't know?

1 A No.

2 Q So, you don't know whether the zoning
3 board came to the conclusion that the positive effects of
4 such a variance would outweigh the negative effects?

5 A No, I only stated my view that those were in-
6 compatible disruptive uses in a residential area. It's
7 clear that the zoning board arrived at other conclusions.

8 Q But, you don't know the basis upon
9 which the zoning board arrived at those other conclusions,
10 do you?

11 A I do not, no.

12 Q You don't know whether or not the
13 zoning board attached any conditions to those variances,
14 do you?

15 A I do not.

16 Q Okay. Now, with respect to paving
17 and lighting and water and sewer extensions and fire
18 protection and safe access, you're asking for an expendi-
19 ture of municipal funds, are you not?

20 A I'm asking for an expenditure of what is
21 necessary in order to provide those facilities.

22 Q Now, what happens if after calcula-
23 tion is made, it is determined that the expenditure that
24 is necessary to make the corrections, that you suggest
25 exceed the five percent cap?

1 MR. BISCAIER: Your Honor, I'm sorry --

2 THE COURT: I don't understand the
3 question, Mr. Patton.

4 MR. PATTON: I'm sorry. I thought you
5 were familiar with the concept of a five percent
6 cap. The Legislature at least this is my under-
7 standing, has recently enacted a law of about
8 a year and a half standing imposing a ceiling on
9 municipal budget increases in a yearly basis of
10 five percent.

11 MR. BISGAIER: Your Honor, my objec-
12 tion to that is first of all, he asked the wit-
13 ness for a legal conclusion.

14 Second of all, the witness has not
15 testified that the only source of funds for
16 the services would be general revenue from the
17 municipality.

18 THE COURT: Isn't that correct, Mr.
19 Patton? Doesn't that assume something which is
20 not necessarily, cannot necessarily be assumed?

21 MR. PATTON: Well, I didn't mean to
22 ask, I thought that he was familiar with the
23 five percent cap law. Now, if the witness is
24 going to say that if the five percent cap is
25 reached on the basis and the making of these

1 improvements, then he's going to go to other
2 sources, fine. I just want to find out his
3 position percentage-wise when confronted by
4 the cap law.

5 THE COURT: Well, it isn't, isn't
6 that rather speculative, Mr. Patton? How could
7 this witness possibly answer that question with-
8 out knowing every single item that goes into
9 the Township budget?

10 MR. PATTON: I think the only way he
11 could answer the question, Your Honor, would be
12 to say in view of the existent five percent cap
13 law, then the only -- that once that cap is
14 reached in making the additional expenditures
15 then we have to go to State or Federal funds.
16 That's all I want him to say.

17 THE COURT: Well, you may ask him that
18 question. He may answer it if he knows.

19 BY MR. PATTON:

20 Q Assuming the existence of a five per-
21 cent cap law to be as I previously defined it and assuming
22 the Town undertook to make the various improvements that
23 you've suggested and they reached the five percent cap
24 point, where then, without, you know -- having the necessary
25 resources to make all of those improvements, then where do

1 we go in terms of funds, generally?

2 A Well, there are several alternatives. One
3 alternative might be to defer expenditures on what from
4 my observation have been extremely low priority improvements
5 from a planning point of view. When streets there serve
6 a single family are paved and lit, it would clearly seem
7 that if you're dealing with a requirement which puts a
8 limit on expenditures in the first place, to look at that
9 kind of expenditure and to first eliminate from the budget
10 all of those lower priority items; and then, if necessary,
11 to seek funds elsewhere.

12 Q And by elsewhere, you mean State or
13 Federal government?

14 A Possibly, yes.

15 Q Well, any other source?

16 A Philanthropy.

17 Q Philanthropy? Any other source?

18 A No.

19 THE COURT: Gentlemen, it's four o'clock.
20 Are you going to be much longer with this witness,
21 Mr. Patton?

22 MR. PATTON: You know, Your Honor, I
23 don't think so, I think I might need only five
24 or ten minutes.

25 THE COURT: All right. If you can fin-

1 ish in five or ten minutes, let's proceed.

2 MR. PATTON: Famous last words, though.
3 I'm torn because I don't want him to come back
4 but I don't have that much to do. I don't know
5 what your schedule is.

6 THE COURT: The witness has been here
7 for several days and has come from a consider-
8 able distance. I would suggest you try to finish
9 your examination if possible.

10 MR. PATTON: All right.

11 BY MR. PATTON:

12 Q Rabin, you referred to the 881 Mercury
13 vapor street lights?

14 A Yes, I did. Okay, now, many of those were
15 installed on county roads, weren't they?

16 A Some of them may have been.

17 Q Okay. And notwithstanding the fact
18 they were installed on county roads, they were installed
19 by the municipality, weren't they?

20 A They were installed by the municipality, yes.

21 Q And that's because the municipality
22 has an obligation to install those vapor street lights
23 on county roads, is it not?

24 A I'm not aware of that. Again, inspection would
25 not reveal that such an obligation, if it exists, has

1 been uniformly carried out.

2 Elbow Lane which is a county road has not been
3 furnished with such lights.

4 Q And insofar as vapor street lights
5 versus incandescent filament fixtures are concerned, isn't
6 it true that the Mercury vapor street lights are being
7 installed because of a policy of public service?

8 A I have no idea.

9 Q Do you know to what extent, if any,
10 any public facilities, I mean water, sewerage, roads are
11 provided to Mount Laurel by neighboring municipalities?

12 A There is a section the the Township in the
13 northwestern corner which is furnished with water by
14 the New Jersey Water Company and the cut-off for that
15 area would be 295 and Route 73. So that that quadrant --

16 Q What about fire protection?

17 A Fire protection is furnished by Mount Laurel
18 Township.

19 Q And are you aware of any agreements
20 that exist between Mount Laurel Township and other
21 communities to provide fire protection?

22 A I am.

23 Q What agreements are you familiar with?

24 A Well, exactly, the fire department of every
25 adjacent municipality and determined that none of them

1 respond to fire calls in Mount Laurel on a first call
2 basis.

3 Q What's the second call basis?

4 A Well, that's if the Township itself, if there
5 were a major fire and the Township with its equipment
6 were unable to deal with it, it would then call on an
7 adjacent fire company. However, it was made clear that
8 if a resident of Mount Laurel were to call a fire company
9 in an adjacent municipality, that call would be referred
10 to the police department in Mount Laurel for transfer
11 to the Mount Laurel Fire Department.

12 Q So, the second call would have to
13 come from the police department?

14 A That is correct.

15 Q Okay.

16 MR. PATTON: I have no further ques-
17 tions.

18 THE COURT: Anything further, Mr. --

19 MR. BISGAIER: Two very short ques-
20 tions.

21 REDIRECT EXAMINATION

22 BY MR. BISGAIER:

23 Q I would like to clarify for the
24 record, Mr. Rabin, there was reference in Mr. Patton's
25 cross-examination to 23 units indicated on one of the ex-

1 hibits. Could you clarify whether that reference to
2 structures or units?

3 A There were 28 structures which contained 38
4 dwelling units which appears on that map.

5 Q Now, you refer to I believe the Hunt
6 Tract-Rancocas Woods and maybe one other area of possibly
7 a moderate income area. The only reason for the question
8 is that these terms being on the one hand used loosely
9 and on the other hand used quite specifically.

10 MR. PATTON: I object to his character-
11 ization on redirect examination, he's making a
12 speech.

13 MR. BISGAIER: I'm sorry. I'll with-
14 draw the question.

15 THE COURT: Very well.

16 BY MR. BISGAIER:

17 Q You used the term moderate income,
18 Mr. Rabin to refer to housing in the Hunt Tract I believe
19 -- I believe either Fellowship or Masonville and some of
20 the units in Rancocas Woods; do you have any personal
21 knowledge as to the cost of the homes in those areas or
22 the income levels of the people resident in them?

23 MR. PATTON: I object to the question
24 on the grounds that he's answered it.

25 THE COURT: He has not answered it. The

1 objection is overruled.

2 A I do not have personal knowledge of the incomes
3 of those people, no.

4 Q And when you were using the term
5 moderate income, were you then referring to the standards
6 established for income by either the State or Federal
7 government in terms of defining moderate income or were
8 you using the terms more loosely than that?

9 A I was using the term loosely. I was basing it
10 largely on the nature, condition of the housing to the
11 extent that I could characterize the loose way in which I
12 used it. I would say I would be including people who could
13 afford housing, standard housing in the private market.

14 MR. BISGAIER: I have no further ques-
15 tions, Your Honor.

16 THE COURT: Anything further, Mr.
17 Patton?

18 MR. PATTON: No, Your Honor.

19 THE COURT: Very well.

20 Thank you very much, Mr. Rabin, you may
21 step down.

22 (Witness excused.)

23 THE COURT: Ladies and gentlemen, we
24 shall recess until 9:30 tomorrow morning.

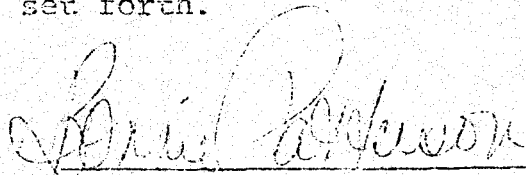
25 (Court adjourned.)

SUPERIOR COURT OF NEW JERSEY
BURLINGTON COUNTY-LAW DIVISION
DOCKET NO.: L-25741-70-P.W.

SOUTHERN BURLINGTON COUNTY,)
N.A.A.C.P., et als, :
Plaintiffs, :
v. :
TOWNSHIP OF MOUNT LAUREL,)
Defendant.)

CERTIFICATE

I, BONNIE PATTERSON, a Certified Shorthand
Reporter and Notary Public of the State of New Jersey
do hereby certify that the foregoing is a true and
accurate transcription of the stenographic notes in the
above-entitled proceedings, as taken by me on the date,
time and place hereinbefore set forth.


BONNIE PATTERSON, C.S.R.
Official Court Reporter