AMG

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AM 0001145

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO. L-23277-80 P.W.

AMG REALTY COMPANY and   :
SKYTOP LAND CORP.,

          Plaintiffs,   :

     vs.   :

TOWNSHIP OF WARREN,

         Defendant.   :   Consolidated with:
- - - - - - - - - - - -

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO. L-67820-80 P.W.

TIMBER PROPERTIES,   :

         Plaintiff,   :

     vs.   :   Civil Action

TOWNSHIP OF WARREN,   :   VOLUME II

         Defendant.   :

- - - - - - - - - - - -

Toms River, New Jersey

January 6, 1984

B E F O R E:

    HONORABLE EUGENE D. SERPENTELLI, J.S.C.

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

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    BY: JOSEPH E. MURRAY, ESQ.
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             CAROLINE WOLGAST, CSR
             Official Court Reporter

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MR. TROMBADORE: Your Honor, before we
started this morning, Your Honor called to our
attention the fact that the Court had received a
report dated January 4, 1983 from George Raymond,
a planner with the firm of Raymond, Parish, Pine
and Weiner. The Court pointed out that there
was some reference in Mr. Raymond's report to
the problem of overlapping and since there was
testimony taken in this case on that issue, the
Court wanted to get some reaction from the
planners who are involved in this case and during
the recess we had opportunity to talk with
Mr. Raymond by way of a speaker phone and there
will be some reference to this report and that
conversation in the further testimony of the
witnesses.

        For that purpose, I would offer as a joint
exhibit J-9, the report which was submitted to
the Court.

        THE COURT: All right.

        J-9 in evidence will be a letter report
dated January 4, 1983 submitted to this Court in
connection with other litigation.

        I think the record should reveal that
Mr. Raymond is the court-appointed expert in a

pending matter before the Court so that he, as

with Ms. Lerman and Mr. Caton, are, shall we say,

independent experts; not to indicate that the

experts before us are not independently minded,

but they are specifically appointed by the Court

and that in addition to discussing the concept

of overlap, we had the opportunity to discuss

with Mr. Raymond the entire conceptual approach

that has been reviewed in this case and is being

proposed to the Court as a proper method.

MR. MASTRO: Your Honor, this report is

dated January 4, 1983. I have some problem with

it.

MR. TROMBADORE: Well, it is dated

January 4, '83 and that's the way it must be

identified. It is obviously a typographical

error because it is received January 5, 1984.

THE COURT: Well, I can tell you by

personal knowledge and Mr. Raymond indicated that

the report was in the process of being typed a

few days ago and I'm sure it is a typographical

error. It is dated that date. I have in pen

changed the three to a four and we can treat it

as a report of January 4, 1984.

To the extent that all counsel were present

during the telephone conversation, as well as

all of the consultants involved, appropriate

references to other aspects of the report would

not be objectionable, I presume, as we proceed.

All right.

R I C H A R D   T H O M A S   C O P P O L A,   previously

sworn, resumes the stand and testifies further

as follows:

DIRECT EXAMINATION BY MR. MURRAY CONTINUED:

Q   Mr. Coppola, with respect to the testimony

that you gave yesterday, could you summarize the results

with respect to the so-called Coppola region and the

Coppola methodology in determining a fair share figure?

A   Yes. In summary, my report dated November 1983

allocated between 785 and 1,202 units to Warren

Township. That number is broken down as follows: In-

digenous, 43; prospective, a range of 670 to 1,046;

and surplus present, as I have termed it, in a range of

72 to 113.

A key aspect of the methodology utilized in my

fair share analysis was that the projection of

prospective low and moderate housing units within the

thirty-minute commute region was based upon a projection

of future employment growth which was thereafter

converted into numbers of households by a statewide

1   ratio .759 of number of households per number of

2   employees.

3   Q   Did you incorporate any standards of

4   vacant land or ratables?

5   A   I did utilize three factors in the allocation

6   process; none of them dealt with ratables.

7   One dealt with total employment in the region

8   in 1981; a second dealt with employment growth in the

9   region between 1972 and 1981; and a third dealt with

10 the amount of growth area in the region and each of the

11 factors, of course, was analyzed in terms of Warren

12 Township's proportionate share of those aggregate

13 numbers in each of the three factors.

14   Q   If you applied the Coppola methodology

15 to the Caton region, could you give us a figure of fair

16 share?

17 A   Yes. This is utilizing Mr. Caton's nine-county

18 region --

19   THE COURT: Before we get to that, is the

20 average of your fair share number nine hundred

21 and ninety-three and a half?

22   THE WITNESS: Actually, Your Honor, that

23 would probably be correct, but if you weighted

24 each of the three factors evenly, the number

25 becomes 937.

1   THE COURT: All right, thank you.

2   Now, take Mr. Murray's question.

3 BY MR. MURRAY:

4   Q   Do you recall the question that is pending?

5 A   Yes, I do. It's a question of did I consider my

6 methodology within Mr. Caton's nine-county region.

7   Q   Yes.

8 A   The answer is yes, and the results are as follows:

9 A total range of projected need to Warren Township of

10 between 697 dwelling units and 1,052 broken down as

11 follows --

12   THE COURT: May I have those figures again?

13   THE WITNESS: Yes, Your Honor, 697 to

14 1,052 with an 865 figure if each of the three

15 factors, of course, adjusted for the nine-county

16 region were evenly weighted.

17   The individual breakdown is as follows:

18 indigenous remain at 43, of course. The

19 prospective exhibits a range of 339 to 523; and

20 the surplus present a range of 315 to 486, with

21 one footnote to the surplus present being that

22 the calculation for the surplus present was

23 limited to an eight-county region specifically

24 not including Hunterdon County, which I don't

25 believe, Your Honor, will have any marked or

1   significant effect on the total numbers.

2   BY MR. MURRAY:

3   Q   Have you, in turn, applied the Caton

4   methodology to the Caton region?

5   A   Yes, I have.

6   Q   What conclusions did you reach there?

7   A   The conclusions are that the range of obligation

8   to Warren Township, utilizing Mr. Caton's methodology

9   as offered in his Branchburg report, and considering

10 the nine-county region, is a range of obligation to

11 Warren Township between -- I'm sorry, not between -- of

12 1,016 units broken down as follows: 235 units under

13 the heading regional present need, which includes

14 indigenous in his calculation; and 781 regional prospective

15 units.

16   I have one comment that I think might be

17 appropriate to make at this time regarding the approach

18 that Mr. Caton made.

19   Mr. Caton projects the prospective households in

20 the region on the basis of population projections which

21 are thereafter converted to number of households by

22 dividing with a number that is projected to be the

23 household size in the region on average in the year 1990.

24   First, regarding the population projections, as

25 the Court undoubtedly knows, there are two principal

1   models which are promulgated by the Department of

2   Labor and Industry. They are known as Model One, the

3   economic/demographic model, and Model Two, the demographic

4   cohort model. They are both projections of population

5   to the year 1990, but they differ significantly in

6   magnitude.

7   As an example, the economic/demographic model

8   for Somerset County projects a population from a 1980

9   total of 203,129 to a 1990 population total of 246,800,

10   a change of 43,671, which represents a 21.5 percent

11   increase over the decade.

12   On the other hand, Model Two, the demographic

13   cohort-based model, projects a decline in population in

14   Somerset County between the years 1980 and 1990 from

15   the two-o-three one twenty-nine number to 201,700, a

16   decline of some 1,429 people, or .7 percent.

17   The reason I mention this is that Mr. Caton has

18   chosen to utilize a weighted combination of both of

19   these projections specifically weighting three to one

20   the economic/demographic Model One line projection

21   versus the demographic cohort Model Two line projection.

22   This is not a criticism, but it is an observation and

23   the differences, as I will indicate, can be marked.

24   Parenthetically, Mr. Abeles, in his report for

25   the Public Advocate's Office regarding the Morris County

1   series of litigations, uses entirely the economic/

2   demographic Model One projections; whereas, in the

3   alternative, the Rutgers study utilizes entirely the

4   demographic cohort Model Two projections. And we are

5   dealing with a significant difference in the number of

6   people that is projected by the year 1990.

7   For that reason, I do feel that my use of the

8   projected jobs is a more finite projection and, indeed,

9   is correctly related to an overall theme of the Mount

10   Laurel II decision which is to relate future places

11   of residence with future places of employment.

12   But there is yet another reason: Once one has

13   a projected population figure, one must convert it to

14   households and this entails another statistical

15   exercise and another projection into the future;

16   specifically, what the household size on average will

17   be in 1990. The differences, since we are dealing with

18   large numbers of people projected, any difference in

19   the household size can have significant effects on the

20   overall projected need for housing units within the

21   defined region and, in turn, a significant effect on the

22   allocated number to any particular municipality within

23   the region.

24   It so happens that Mr. Caton has projected and

25   has determined that the 1990 household size will be

1   2.59 persons per household. This compares with

2   Mr. Abeles' projections for the same time period of

3   2.71 persons per household and, indeed, Mrs. Lerman's

4   use of a household size of 2.69.

5   Assuming Mr. Caton's population projections are

6   exactly as he has determined them to be appropriate

7   within his regional study that we are utilizing for

8   the nine-county area, but simply modifying the household

9   size and instead of using the 2.59 persons per

10   household divisor, using an average household size of

11   2.71, which was the Public Advocate number and is

12   close to the Lerman number, the end result, keeping

13   every other calculation constant in Mr. Caton's

14   methodology, is that Warren Township's fair share

15   obligation declines from 1,016 to 756.

16   This is only intended to indicate the tremendous

17   differences that can result from even the best thought

18   out projections in terms of the assumption of what will

19   be in only seven years from this time.

20   Q   In taking those overall concepts from

21   these reports, including the modification that you can

22   build into the Caton final figure, have you been able

23   to reach a conclusion which incorporates all of those

24   concepts and your discussion as given to the Court

25   yesterday as to a proposed fair share figure for Warren

1 Township?

2 A   Yes, I have. It appears to me that the number

3 appropriately to be assigned to Warren Township is in

4 the magnitude of 900 total dwelling units.

5   And the reasoning is as follows: One projection

6 that I think can be considered as reasonably appropriate,

7 considering the work done to date, is the Caton present

8 need number for 1990, which was 235 units for Warren

9 Township.

10   The question then is what about the prospective?

11 We are discussing or did discuss yesterday the idea of

12 a commuter shed for the purpose of calculating

13 prospective need to a given municipality around which

14 that particular commuter shed is drawn. That concept

15 is exactly what I achieved in my analysis and I had

16 projected, as the low end of the range, a number of

17 670 prospective units to Warren Township.

18   If one were to add the 670 to the 235, the

19 total obligation to Warren Township would be 905 low

20 and moderate income housing units.

21   I must indicate that I'm dealing with a thirty-

22 minute commuting shed as opposed to a forty-five-minute

23 commuting pattern which we did discuss yesterday, but

24 I have reflected on the changes and can offer at least

25 an opinion as to what would happen in my methodology were

1 the forty-five-minute commuter shed utilized instead of

2 the thirty-minute commuter shed and basically it's as

3 follows: As I discussed yesterday, the differences

4 in the outbounds of the forty-five-minute commuter shed

5 versus the thirty-minute commuter shed includes

6 primarily the addition of lands to the east, including

7 some of the older more urban areas, Elizabeth and Newark

8 included; lands to the north in the Morris County

9 portion of the commuter shed, including such

10 municipalities as Randolph, Denville and Boonton, as

11 well as East Hanover; and to the west certain

12 municipalities at the western edge of Hunterdon County

13 and at the southern end of Warren County, including

14 Lebanon, Union, Bethlehem and Franklin as well as others

15 in all instances.

16   I think there is a balance, relatively speaking,

17 of the types of communities that are being added and

18 while I cannot give a specific number to the Court or

19 testify that the number indeed would remain at 670, I

20 can make an observation for the Court's consideration

21 as follows: Utilizing my methodology for my thirty-

22 minute commuting region, my range of projected

23 prospective need to Warren Township was between 670 and

24 1,046 dwelling units. When I applied my methodology

25 to the Caton nine-county region, which is, of course,

1   significantly larger than the forty-five-minute

2   commuter shed, my numbers declined significantly to

3   339 to 523 prospective need.

4   Now, this, to some extent, admittedly is possibly

5   the result of the factors that I have chosen for the

6   allocation process, but I think it is evident that, at

7   least in terms of my methodology, the utility of the

8   670 prospective need figure is not unreasonable and in

9   any case I do not think would be different using the

10 forty-five-minute commute region of any magnitude of

11 significance.

12   THE COURT: Have you taken an average of

13   the three figures which you arrived at using

14   first your own analysis 937; secondly, the

15   Caton region at your methodology of allocation

16   at 865; and finally the Caton region and the

17   Caton allocation?

18   If not, would you do that?

19   THE WITNESS: Averaging the numbers 937,

20   865 and 1,016 comes to a total of 939 dwelling

21   units.

22   THE COURT: Which is within 35-34 units

23   of the amount which you found to be a fair share

24   for a township?

25   THE WITNESS: Yes, Your Honor.

BY MR. MURRAY:

Q   Would you average the Caton figure in that
and in the reduced amount of 756 --

MR. COLEY: Seven ninety-six.

MR. MURRAY: I'm sorry.

THE WITNESS: Seven fifty-six.

Taking those four numbers and averaging
them out, specifically, 937, 865, 1,016 --

MR. MURRAY: Don't take the 1,016.

THE COURT: Let's do it his way.

THE WITNESS: -- and 756, the average
becomes 894.

THE COURT: Okay.

Now, let's just do it using the three
figures, which would be the adjusted Caton
figure and the other two figures.

THE WITNESS: The average would be 853,
Your Honor.

BY MR. MURRAY:

Q   If you took the adjusted Caton figure of
853 and your --

A   You mean the adjusted figure of 756.

Q   We take the adjusted average or the
average which includes the adjusted Caton figure of 853
and we take the original average of 939 and average those

1 two, 939 and 853, what do we have?

2   THE COURT: You're averaging 853 and the

3 original 939?

4   MR. MURRAY: Yes.

5   MR. TROMBADORE: And 894.

6   THE WITNESS: Eight ninety-six, which

7 happens to be the average of all four of them.

8   THE COURT: Within two.

9   THE WITNESS: Yes.

10   MR. TROMBADORE: If you add 894 to it,

11 your average is 895.

12   THE WITNESS: As I said, I think the

13 900 figure appears to be reasonable.

14   THE COURT: At least we made it work that

15 way. I think it is clearly demonstrative of

16 two things and that is that one's approach can

17 be made to work to a number; and secondly that

18 there is no magic number.

19   I think Mr. Coppola and the consultants

20 who have followed you will agree that there is a

21 margin of debatable -- I'm going to call it

22 error, a margin, a range here of some significant

23 number, whether it's a hundred or two.

24   THE WITNESS: I would certainly agree with

25 that, Your Honor.

1   MR. MURRAY: I have no further questions

2   on this issue of fair share.

3   THE COURT: All right.

4   MR. TROMBADORE: I have no questions.

5   THE COURT: Mr. Coley.

6   MR. COLEY: I have no questions, Your

7   Honor.

8   MR. MASTRO: No questions.

9   THE COURT: Mr. Jacobs.

10   MR. JACOBS: No questions.

11   THE COURT: Anything further of this

12   witness?

13   MR. MURRAY: We are going to present, I

14   believe, Mr. Moskowitz with respect to the

15   George Raymond report and possibly Mr. Coppola

16   may have to come in on that later, if necessary,

17   but not at this time.

18   THE COURT: All right.

19   Well, they're all going to stay here. They

20   can't resist the goodies.

21   (Witness excused.)

22   THE COURT: All right, shall we take

23   Mr. Moskowitz?

24   MR. TROMBADORE: Mr. Moskowitz, please.

25   H A R V E Y S. M O S K O W I T Z, being first duly

1   sworn, testifies as follows:

2   MR. TROMBADORE: If it please the Court,

3   I would offer Mr. Moskowitz as an expert in the

4   fields of planning and zoning and would ask that

5   his qualifications be stipulated.

6   MR. MASTRO: I thought we did that.

7   THE COURT: Yes, I think we have done that

8   already. I learned this morning Mr. Moskowitz

9   was a fraternity brother of mine, which does bear

10   upon his competency, but not perhaps in this field.

11 DIRECT EXAMINATION BY MR. TROMBADORE:

12   Q   Mr. Moskowitz, you were retained in this

13 matter by the plaintiff Timber Properties, were you not?

14 A   That is correct.

15   Q   On behalf of Timber Properties, were you

16 asked to prepare a report which studied the issues of

17 region insofar as Warren Township was concerned as well

18 as the issue of Warren Township's obligation with respect

19 to providing a fair share of low and moderate income

20 housing?

21 A   That is correct.

22   Q   Now, in that report did you, in fact,

23 recommend a region based on commuter shed?

24 A   Yes, I did.

25   Q   Would you describe briefly what you did and

what that report produced in terms of a region for

Warren Township?

A   The region was developed on the basis of a

thirty-minute commuter shed. Using the same

computation methods that Mr. Coppola described, I drew

a line around the Township of Warren based on computed

or calculated travel times of fifty miles per hour on

interstates, forty miles per hour on state highways and

thirty on county roads. This permitted me to arrive at

an overall region which, as indicated in my report

dated November 7, 1983, is a region which consisted of

sixty-eight municipalities totaling 746 square miles

with a 1980 population of just over 1.3 million.

        I might add that the region was -- one of the

assumptions made with respect to it was the fact that

Route 78, which was under construction, had been

completed.

        Q   Now, is the region shown on the exhibit

which was marked as a joint exhibit J-4 along with

other regions mounted on the same exhibit?

A   Yes.

        Q   That's the one at the bottom of the easel

here?

A   It is now on the easel and it is J-4. Mine is

the one on the lower right.

1   Q   Would you describe just briefly how the

2 region which was produced by your study compared to the

3 region produced by the study of Mr. Coppola and the

4 region as produced by the study of OROSS Associates?

5 A   The studies between Mr. Coppola and myself are

6 essentially the same with one major difference. I picked

7 up communities to the east because of my assumption

8 or the premise that Route 78 was extended or was completed.

9 If you will note, Mr. Coppola's region, which was

10 immediately to the left of mine, cuts off further to

11 the west and the reason, as I say, because of the Route

12 78 extension.

13   John Chadwick's region is a forty-five-minute

14 region. It is slightly larger and more symmetrical,

15 but I might add his method of determining that region

16 was actually run -- his was based on a forty-five-minute

17 drive time and he actually ran the drive time. He sent

18 somebody out and clocked off the time at forty-five

19 miles an hour. That was his methodology.

20   Q   By the way, the joint exhibit was one that

21 was put together by OROSS Associates, was it not?

22 A   That is correct. It shows six regions, including

23 OROSS forty-five-minute drive time commuter shed;

24 Mr. Caton's Mahwah region, which was the old Region 11

25 consisting of eight northwestern counties; the Rutgers

region, which consists of the primary metropolitan

statistical area of Hunterdon, Somerset and Middlesex

plus the addition of Warren County; the Lerman region,

which consists of the south metro region; and

Mr. Coppola's and my region, which were based on

commuter sheds.

Q   Now, let me ask you this, Mr. Moskowitz:

The three regions prepared by experts other than those

involved in this case, namely, Caton, Rutgers and Lerman,

have configurations quite different from those prepared

by yourself, Mr. Coppola and Mr. Chadwick?

A   Correct.

Q   Would you describe those three regions

prepared by others and indicate whether they have a

common feature?

A   I think the common feature is their dissimilarity.

You can see when a region is based on the commuter

shed, and that's Mr. Chadwick's, Mr. Coppola's and

my own, you get, in fact, almost a symmetrical region

produced. Again, mine is somewhat distorted because

of the use -- because of the I-78 assumption.

The Rutgers region runs northwest/southeast and

it was based on the -- or, it was reproduced in the

Center for Urban Policy Research's report entitled

Mount Laurel II Challenge and Delivery of Low Cost

1   Housing and for brevity I am going to refer to that as

2   the Bruchell, B-r-u-c-h-e-l-l Report. He was the team

3   leader. So that it will be the Brucell Report. That

4   was funded, incidentally, by the League of Municipalities

5   and it was funded by the Home Builders Association.

6   Q   My question might be this then,

7   Mr. Moskowitz: Would it be correct to characterize the

8   three regions depicted on that exhibit which were done

9   by other experts as noncommuter shed regions?

10 A   Yes.

11   Q   They are, in a sense, fixed regions?

12 A   They are fixed regions. There is an element of

13 commuter with respect to the Rutgers region because

14 one of the criteria used by the federal government in

15 designating the PMSA was -- one of the factors was a

16 commuting pattern. So, there is an element of

17 computation in the Rutgers -- in the Rutgers region,

18 but by and large -- that was only one factor -- by and

19 large, Caton's and Lerman's relied less on commuter shed

20 than other factors.

21   Q   Now, would you explain why you and the

22 other experts in this case, for purposes of determining

23 fair share of low and moderate housing in Warren, went

24 to -- at least, initially went to a region based on

25 commuter shed rather than a fixed region as was arrived

1   at by Caton or Lerman or Rutgers?

2   A   Okay.   Let me make the comment with respect to

3   my region, namely, and I think all three commuter shed

4   people, if you will, attempted to come up with a fixed

5   region at least as it pertains to Warren Township.

6   In other words, we based our prospective need

7   on the commuter shed and we also based our present and

8   indigenous need on that commuter shed as well.   One

9   of the problems all of the consults have had, and

10   certainly the phone call with George Raymond and our

11   review of the Lerman report and Caton report and

12   Rutgers, is the inability to reconcile two specific

13   goals.   One is a prospective -- coming up with a

14   prospective need for housing, and the other was to come

15   up with a present need for housing.   The commuter shed

16   addresses the question of prospective need.

17   All of the scientific studies and all of the

18   literature that I have read clearly equate job location

19   with housing location.   People move to regions in order

20   to work.   It is a single-most important variable in

21   explaining why people move to specific areas.   I won't

22   get into all the literature.   I would call the Court's

23   attention to the Bruchell Report, more specifically

24   Chapter One which talks about the definition of a region

25   and his list of references at the rear of that chapter

1   beginning on page seventy and seventy-one citing the

2   various scientific and statistically reliable studies

3   by universities and other groups which conclude -- and

4   I read most of them -- conclude that journey to work

5   determines residence and hence the commuter shed becomes

6   the critical method of determining future or employment-

7   based housing. It was cited in the Mount Laurel I case.

8   It was cited in the Middlesex County case by Judge

9   Furman. Professor Norman Williams, who actually coined

10   the phrase "commuter shed," discussed it in a number

11   of articles he had written for the American Institute

12   of Planners. So, these became -- and I think Mr. Coppola,

13   Mr. Chadwick and myself felt that when you are dealing

14   with prospective share, certainly the commuter shed

15   is the only one where there is any kind of written

16   material or scientific knowledge which supports that

17   kind of region.

18   Q   Why wouldn't the same rationale hold true

19   for determining present need and present excess need?

20   A   Okay. Present need and present excess need or

21   reallocation is a -- is almost an exclusionary region.

22   What you are attempting to do there is correct present

23   imbalances. The two things you are trying to do, based

24   on the decision, is to replace dilapidated housing and/or

25   overcrowded housing and also to redistribute or

1   reallocate dilapidated housing from those areas which

2   have received too much of that housing, and these are

3   generally the core areas, the central cities, to areas

4   which have the resources to accommodate that reallocation.

5   The basic premise of the present need region is

6   to assure that you have the problem and the solution

7   in one specific area. There is no guarantee that that

8   will take place if you use a commuter shed. So, based

9   on the discussion of all three consultants or experts

10   in this case, we concluded -- and based on our

11   discussion with Mr. Raymond, Professor Raymond, this

12   morning, we concluded that you really need two specific

13   regions addressing the two specific goals.

14   One is prospective fair share and the other one

15   is present need.

16   Again, the basic premise of the present need

17   region is that the problem areas and the problems and

18   the solutions have to be included in the same region.

19   Q   Let me deal with that at this point.

20   An exhibit has been marked as a joint

21   exhibit number J-6 which Mr. Coppola described for us

22   as a present need region map. You are familiar with

23   this, are you not?

24   A   Yes. That was the one we all worked on together.

25   Q   This is a joint product of your efforts,

1   Mr. Coppola's efforts, Mr. Chadwick's efforts?

2   A   That is correct.

3   Q   And in preparing this present need region

4   map, did you take into account the factors that you have

5   just now mentioned; that is, the need to distribute

6   from urban-aid centers within the region to those areas

7   that have an imbalance based on exclusionary zoning?

8   A   Correct.

9   Q   Without repeating in any detail all the

10   various factors that were developed here by the

11   questioning of Mr. Coppola yesterday, particularly those

12   questions put to him by Judge Serpentelli, with respect

13   to what is contained, for instance, in Region Two,

14   would you agree that this map satisfactorily resolves

15   the need for distribution of present surplus housing?

16   A   Yes.

17   Q   And that it, in fact, even goes beyond

18   what was recommended by the Caton region, the Lerman

19   region with north and south metro and the Rutgers or

20   Bruchell regions?

21   A   That is correct.

22   Let me make one additional point. The Rutgers

23   region has a lot to say for them, not the least of which

24   is the fact that it is the only study that has been

25   undertaken which attempts to regionalize the entire state.

1   One of the problems I think I have had, and I don't

2   know if my colleagues had the same problem, is possibly

3   Carla Lerman's region might make sense in terms of

4   Warren or for Middlesex County for which it was prepared

5   and Phil Caton's region would make sense for Branchburg

6   for which it was prepared. There was not enough

7   thought, and obviously that wasn't their charge, so

8   there was no need for them to do that, on how it might

9   affect other counties and how you would allocate those

10   counties into specific present need regions.

11   THE COURT: If I can just interrupt on

12   that point, I might for the record indicate that

13   both Ms. Lerman and Mr. Caton have been asked to

14   supplement their reports to address that very

15   issue because the Court felt both of those matters

16   were matters which would come before the Court;

17   that unless the issue of the effect upon possible

18   other regions, or, as I call it, the dangling

19   counties, was considered, that we did not have

20   a complete report. So that we will be receiving

21   some supplemental reports.

22   THE WITNESS: And I think that when the

23   three experts in this case got together and were

24   locked into a room, that -- we weren't really

25   locked in, but essentially we were forced to come

1   to grips with that, that then it becomes another

2   factor which has to be considered.

3   So that while it constitutes some

4   compromise and there was some active discussion

5   on where, for example, Burlington belonged,

6   where Mercer might have gone, we believed that

7   the joint exhibit -- is that J-5?

8   THE COURT: J-6.

9   THE WITNESS: I'm sorry, J-6 --

10   MR. TROMBADORE: J-6.

11   THE WITNESS: -- does represent a

12   realistic division of the State of New Jersey

13   into six present need regions; that it has both

14   the problems and solutions encompassed in each

15   of the regions and, as pointed out by Mr. Coppola,

16   it reflects -- certainly, Region Four reflects

17   the Rutgers recommendations combining both

18   Monmouth and Ocean; Region Two reflects

19   Mr. Caton's recommendations with respect to

20   Branchburg and Somerset County. So, there is

21   similarity in that as well.

22   BY MR. TROMBADORE:

23   Q   Having fixed upon J-6 as an acceptable

24   fixed region or present need region delineation, what

25   then did you and Mr. Coppola, Mr. Chadwick arrive at with

1 respect to a commuter shed region which was then

2 necessary to determine prospective need?

3 A   Both Mr. Coppola and I used a thirty-minute drive

4 time. The basis of that thirty minutes was the fact

5 that the census, 1980 census, indicated that the mean

6 or average drive time of all Warren residents was about

7 twenty-eight or twenty-nine minutes, approximately

8 thirty minutes.

9   Q   This explains why you each came into the

10 case with a thirty-minute commuter shed.

11   My question now is after discussion, did

12 you arrive at a consensus with respect to what that

13 commuter shed should be and how it should be computed?

14 A   Yes, the -- we both agreed with Mr. Chadwick's

15 position that thirty minutes -- well, I think in

16 addition to Mr. Chadwick and the attorneys and the

17 judge, the thirty minutes was deemed to be too restrictive;

18 that indeed people will travel longer distances to get

19 to work. Certainly, the dispersal of employment out of

20 the metropolitan areas into the suburban areas, and

21 particularly along the interstate system, the

22 diminishment of the energy crises, the more fuel

23 efficient vehicles, does allow people to drive longer

24 distances.

25   Indeed Bruchell makes note in his report that the

1 FHA, as one of his sources -- that's the old Federal

2 Housing Administration -- talked in terms of the housing

3 region of up to one hour. So, it was the feeling, and

4 I had no problem with concurring and I think that

5 Mr. Coppola did as well, that the forty-five-minute

6 drive time was a realistic one.

7   THE COURT: Excuse me. The report of

8 either yourself or Mr. Coppola, in fact, revealed

9 that approximately twenty-five percent of the

10 Warren Township residents were, in fact,

11 commuting at least forty-five minutes?

12   THE WITNESS: That is correct. At least

13 fifty percent -- well, the mean, by its very

14 definition, meant that at least fifty percent

15 of the residents commuted more than thirty minutes.

16 So, we did pick up a significant amount.

17   THE COURT: And the total of commuting

18 forty-five minutes, as I recall, was approximately

19 eighty-five percent?

20   THE WITNESS: That is correct. Eighty-five

21 percent of the residents were included in that.

22 I don't think we came to a consensus, and you

23 are going to have to ask Mr. Chadwick, I don't

24 want to characterize any of his comments, but I'm

25 satisfied and I think Mr. Coppola is satisfied

1   that it should be a calculated statistic as

2   opposed to an actual empirical statistic and

3   the reason is that conditions vary enormously

4   by season, by day of the week, by road repair

5   or external conditions.

6   So, it becomes very difficult to determine,

7   on the basis of even several runs, as to how long

8   a forty-five minute or any drive time will give

9   you. I think realistically you'd have to

10   probably sample a number of days and a number of

11   months over a long period of time, possibly

12   a year, before coming up with what would be a

13   statistically valid average.

14   BY MR. TROMBADORE:

15   Q   So, your recommendation is a forty-five-

16   minute commuter shed based on computed time with

17   weighted speeds for county, state, interstate at thirty-

18   five, forty and fifty miles per hour?

19   A   That is correct.

20   Q   Would you agree that J-8, which is the

21   exhibit marked by Mr. Coppola, reasonably and accurately

22   describes that commuter shed for this district?

23   A   I've got to find J-8. You have it.

24   This was prepared by OROSS Associates, Mr. Chadwick,

25   so I think you are going to have to ask him. Obviously,

1   it was a calculated one. He couldn't have -- I don't

2   think he could have driven between yesterday and today

3   over that distance, so I would say that it does represent

4   -- realistically represents the forty-five-minute drive

5   time with 78 completed.

6   Q   That's my other question.

7   Both you and Mr. Coppola agree that in

8   the preparation of the commuter shed map, based on

9   forty-five-minute computed time, includes the assumption

10   that Interstate 78 is completed from Warren Township

11   to the east?

12   A   Yes. The missing segment through the reservation

13   is under construction now and is based on a completed

14   mode.

15   THE COURT: Do you have any knowledge of

16   the projected completion date?

17   THE WITNESS: Nineteen eighty-five, Your

18   Honor.

19   THE COURT: Which would relate, for the

20   purposes of this litigation, how to the expected

21   housing?

22   In other words, do we expect that the

23   housing will be underway, completed or --

24   THE WITNESS: It would be nice if it were

25   underway by 1985. I think the possibility exists

1   that it might be underway by 1985.

2   BY MR. TROMBADORE:

3   Q   So that the road would be there when

4   people actually come into these units that we are talking

5   about?

6   A   That is correct, or at least a portion of the

7   units.

8   Q   Now, having reached at least a consensus

9   on the need for commuter shed approach to determining

10   prospective need, it was recognized, was it not, that

11   then you are going to require a separate commuter shed

12   for each community which is addressed?

13   A   That is correct.

14   Q   You do not have a fixed region in the

15   sense that you can map it once and for all?

16   A   That's true.

17   Q   And you do not have a fixed region in

18   terms of the presumptive validity that might be given

19   to that region once the matter is litigated and a region

20   is fixed in a particular case?

21   A   Correct.

22   Q   Would you agree, however, that using that

23   approach, you would have a fixed methodology which might

24   merit some presumptive validity?

25   A   Absolutely. That was the -- yes. The answer to

1   the question is yes.

2   Q   Now, the question has been raised, and

3   to some extent it has been addressed, of overlap. When

4   you have these separate distinct regions being

5   determined for each community addressed, the regions

6   will, in fact, overlap, will they not?

7   A   Yes, they will.

8   Well, that's not correct, because --

9   Q   Let me put the question this way: The

10   physical boundaries of the region will obviously step

11   over each other as you move the region out going from

12   one community to the next community?

13   A   The answer to the question is no, because one

14   of the key assumptions that we're making is that that

15   region ceases to exist after you've computed the

16   specific prospective fair share for a given municipality.

17   So, there is no overlap because you only have one

18   commuting region per municipality in actual practice

19   because of the way you calculated it.

20   Indeed, two adjacent municipalities, particularly

21   if they're small, might very well be coterminus, but

22   from a theoretical point of view, once you come up with

23   a fair share allocation to a given municipality, then

24   that region is -- it's like that region then no longer

25   exists for any other purpose period.

1   Q   The issue is put, I think rather

2   significantly, in Mr. Raymond's report to this Court

3   dated January 4th.

4   A   Right.

5   Q   He raises this concern and he illustrates

6   it by a chart which he attached to his report. Do you

7   have a copy of that there?

8   A   Yes, I do.

9   Q   The chart illustrates two regions, Region

10   One and Region Two, and it sets forth the projected

11   prospective need for each of those regions, one being

12   twenty-five thousand, the second being fifty thousand,

13   and it shows a physical overlap of the two regions?

14   A   Yes.

15   Q   The overlap consisting of County A, which

16   falls in both Region One and Region Two, and he makes

17   the comment that there is an overlap and that you will,

18   in effect, get a distorted number of fair share units

19   in these two regions because, in effect, you would

20   count County A twice?

21   A   Right.

22   Q   Thereby coming up with five thousand more

23   units than you would otherwise have?

24   A   Yes.

25   Q   Now, that was discussed with Mr. Raymond

1   this morning, was it not?

2   A   That is correct.

3   Q   You and the others in this case had an

4   opportunity, through speaker phone, to talk to

5   Mr. Raymond about that very thing?

6   A   Yes.

7   Q   Would you give your response to the

8   criticism first and indicate then the reaction of

9   Mr. Raymond once you exposed your rationale to him?

10   THE COURT: Just for the record, let me

11   indicate that the general area of Mr. Raymond's

12   concern, in addition to the diagrams to which

13   Mr. Trombadore has referred, is item number six

14   on page three which continues to page four of

15   Mr. Raymond's letter previously marked in

16   evidence as J-9 and the diagram is on an

17   unnumbered page immediately following.

18   All right.

19   THE WITNESS: Fine.

20   Let me preface my response, and I'll be

21   just as brief as I can, by pointing out that

22   despite everybody's goal of coming up with a

23   presumptive region for a prospective need fair

24   share, what you had up till now is the number

25   of experts, I think there are six of them that

1   I'm aware of, have -- well, you can include

2   Licoro and Blum and Carl Hinz, as many as eight --

3   have attempted to come up with a valid region,

4   but indeed for each municipality it is a

5   different region. So that nobody has agreed

6   on a specific set of regions with the exception

7   of the Bruchell Report which, as I say, did it

8   for the entire state.

9   What has hung everybody up is the fact

10   that there seems to be a need to come up with

11   a prospective figure for a fair share region

12   as if that were the magical number that we were

13   all seeking.

14   Richard Coppola two days ago, when we

15   started talking about this, was the one who

16   alerted us, I think, and pointed out that that's

17   merely a step in a process and the process is

18   to come up with a prospective fair share number

19   for each municipality and in order to do so,

20   what you have to do is construct a region for

21   that municipality, come up with a regional

22   figure for that municipality, apply a model,

23   we talked about that, as to what would be an

24   appropriate model to, in fact, come up with a

25   figure for the local municipality. Once you come

1   up with that figure, that regional number, that

2   prospective regional number is meaningless and

3   if it is meaningless, it can't be used for any

4   other region simply because we have shifted the

5   focus because we are using a commuter shed.

6   So, there cannot be an overlap with

7   respect to that because the regions do not --

8   because the regions cease to exist once the

9   municipal -- once the local prospective share

10   figure has been calculated and computed.

11   I guess the analogy that I saw as most

12   fitting, in an entirely different field, is you

13   use scaffolding to erect a building or a

14   structure. Once the building or structure is

15   completed, you take down that scaffolding. You

16   can then reassemble it on another building. You

17   don't have to keep the scaffolding up on the

18   first building. It has no value or no use anymore.

19   And once you overcome the thing that hung

20   everybody up, namely, that you had to come up

21   with a prospective number which then became

22   immortalized, when you focused on what we had

23   really after was the number for the municipality,

24   then the region became just a method to achieve

25   that.

1   THE COURT: Mr. Moskowitz, let me just

2   ask for those people who might get hung up on

3   the issue of there being only one region or

4   with respect to this presumptive validity

5   question, could it not just as easily be said

6   if the method that you have devised could start

7   off with the creation of a region in accordance

8   with those defined on the map and that with

9   respect to any individual municipality, you are

10   merely making an adjustment with respect to

11   prospective fair share by using the commuter

12   shed in order to more accurately represent

13   their fair share?

14   THE WITNESS: Exactly.

15   THE COURT: And therefore, as you make

16   adjustment for vacancy levels or for loss from

17   the housing inventory or, as Mr. Coppola has

18   indicated, as you could adjust based upon

19   prospective or expected projected household

20   size, this adjustment, with respect to prospective

21   fair share, is made for purposes of most

22   accurately reflecting it and to do that you are

23   creating a commuter shed?

24   THE WITNESS: That's exactly it, Your

25   Honor, and what that does by the commuter shed --

1   I am referring to J-6 -- if we recognize that

2   this is our present need region as reflected

3   here --

4   THE COURT: You are pointing to Region

5   Two?

6   THE WITNESS: Pointing to Region Two,

7   we also recognize the reality that somebody

8   working in Bergen County is not going to live

9   in Hunterdon County and what we attempt to do

10 is we are not too worried about the boundaries

11 of this because the commuter shed, in a sense,

12 rides independently of that, although for the

13 most part, it will flow -- with the exception

14 of fringe areas, it will probably flow for any

15 given municipality within Region Two, but then

16 it takes up the adjustment that the Supreme

17 Court talked about, namely, that there may have

18 to be adjustment on the fringes.

19   THE COURT: So, we can call it a region

20 with an adjusted factor for prospective fair

21 share?

22   THE WITNESS: Exactly.

23   THE COURT: I think we are terribly hung

24 up on the terminology and perhaps the fact is

25 that the Court didn't specifically address the

1   possibility that we might use a geographical

2   area for adjustment purposes which one might

3   call a second region.

4   All right, go ahead.

5   BY MR. TROMBADORE:

6   Q   Just to illustrate the point a bit more

7   by reference to the chart prepared by Mr. Raymond,

8   would you agree that the problem which is inherent in

9   his proposition is that he starts with a fixed need

10   for a given region?

11   A   Exactly.

12   Q   And when you relate that fixed need to

13   prospective need, it's unrealistic unless it constitutes

14   the aggregate of the individual community need?

15   A   Yes. I think you're raising the other key point.

16   In other words, what everybody has attempted to

17   do up to now is to come up with a regional figure and

18   then allocate it to the individual municipality and,

19   of course, if you do that, then you need a fixed region

20   in order to avoid the overlap that Mr. Raymond talked

21   about.

22   And I certainly agree with him, but you can

23   construct a regional need by aggregating individual

24   assignments as well. In other words, once you used the

25   commuter shed and pinpointed the need for each

1   municipality by means of the commuter shed, and if you

2   wanted to construct any other kind of region -- in

3   fact, if you wanted to plug it back into the present

4   need region, you already have developed the individual

5   municipal figures and you can then allocate -- you can

6   then total those up into what might be Region Two in

7   the present need, but that's a method working from the

8   bottom up, so to speak, to come up with a total figure.

9   Q   Your recommendation then, specifically

10 with respect to region, is that you endorse this

11 concept of fixed region for present need with a separate

12 methodology for computing prospective need?

13 A   I think it's an excellent reconciliation of

14 two conflicting -- it was impossible to bring together,

15 at least in my mind, and I think in every other

16 expert's as well, hence the reason why you came up

17 with eight different experts and eight different regions.

18   So, I think what this does, it recognizes it

19 can't be brought together, at least for the present,

20 and you just recognize that and work from that basis.

21   Q   Now, the corollary of your conclusion

22 then, with respect to commuter shed for purposes of

23 determining fair share of prospective need, is that you

24 need a methodology for that determination?

25 A   Correct.

1   Q   You initially made a fair share

2 computation of the prospective need based on methodology

3 which you would use?

4 A   Yes.

5   THE COURT: Before we get to that, has

6 Mr. Moskowitz directly answered the question as

7 to whether he believes this method will result

8 in overlap or not result in overlap?

9   MR. TROMBADORE: I think so.

10   THE WITNESS: Yes.

11   THE COURT: We were starting on to it

12 and I don't know whether --

13   Q   Well, be specific. Do you think it will?

14 A   Not only do I think, it will, very definitely.

15 It is impossible to have any overlap with this method

16 because essentially the use of the regional prospective

17 figure falls once you finish with the specific

18 municipality. That region no longer exists except as

19 it pertains to a specific municipality.

20   In our discussion with George Raymond he agreed.

21 He said that once -- specifically agreed with the fact

22 that no overlap takes place when you create the

23 commuter shed for each municipality and are no longer

24 interested at that point in a presumptively valid figure

25 for a specific region.

1   Q   There is another question that has to be

2 addressed though in this, is there not? If you move

3 away from a predetermined need for prospective share

4 in a region, a fixed region, and then look to the

5 specific municipalities within that region, you may get

6 a number which is either higher or lower than what the

7 predetermined need figure might have been for that

8 region?

9 A   I don't know if that's correct. Everybody seems

10 to think so, but if it's a valid figure based on an

11 accepted model -- model is a fancy way of saying

12 formula. When you have a Ph.D., you can use the word

13 "model" instead of formula -- an acceptable model to

14 reallocate the figure, why would you get a larger or

15 smaller number? If it's valid for the municipality

16 based on the model, why, by adding those up, does it

17 come to some figure which is invalid?

18   The answer to the question is I don't know, but

19 I don't see why it would come higher or lower.

20   THE COURT: Let's presume from now to

21   the year 1990 when we will again be looking at

22   it on the basis of a new census, and the repose

23   that would occur today for Warren Township if

24   the matter was resolved, and assuming we resolve

25   all of the other communities today, would that

1   excess or deficiency be of such a nature as to

2   disturb you, assuming there would be one?

3   THE WITNESS: No, not at all.

4   THE COURT: Why not?

5   THE WITNESS: Because, one, you couldn't

6   build that many houses. The construction has

7   to still depend on the market. If interest rates

8   go up two more points, no matter what we do

9   here, you are not going to see any housing

10   built, for example, or if we go into, you know,

11   hopefully not, a recessionary period, housing

12   production will drop. If interest rates drop,

13   there is an extremely -- there is a considerable

14   pent up demand for housing, but even in the

15   best of years, as Mr. Coppola I think quite

16   specifically pointed out, we have never achieved

17   what the goals of -- what we perceive the goals

18   of Mount Laurel.

19   We could not build, even at a low goal,

20   all of that housing out in six years, so we are

21   never going to achieve the high end by reality

22   and the low end, I think, because of the start-up

23   time and the process of getting approvals you

24   don't have in every municipality involved, you

25   couldn't go to that either.

1   THE COURT: I asked Mr. Coppola this

2 question and would you share the view that based

3 upon the Caton report, we are talking about

4 approximately a hundred thirty thousand units

5 present and prospective to the year 1990 which

6 would mean, based upon a four to one ratio,

7 approximately 650,000 units. Do you see any

8 reasonable possibility of building that number

9 of units in that period of time?

10   THE WITNESS: That's, I think, a ten-year

11 period?

12   THE COURT: Well, the projection by

13 Mr. Caton was to 1990.

14   THE WITNESS: Six-year period, seven-year

15 period. That's 90,000 new multi-family units

16 a year. In the last three years we have built

17 approximately -- we built approximately 10,000,

18 so he projects nine times the number that we

19 built. Even using a 40,000 average, of which

20 half are multi-family, you are talking about

21 four and a half times. It can't be done.

22   THE COURT: So, for in the aggregate of

23 our fair share, utilizing this method by as much

24 as twenty-thirty percent --

25   THE WITNESS: Two hundred-three hundred

1   percent, Your Honor, and you still wouldn't reach

2   it.

3   BY MR. TROMBADORE:

4   Q   Go back to the question then with respect

5   to the need for a methodology for allocation of

6   prospective need once you have fixed a forty-five-minute

7   commuter shed as the basis for that.

8   What methodology did you come up with?

9   A   Okay. I don't think there is a single

10   methodology which purports to be the best way to do it.

11   Richard Coppola pointed out one of the problems that

12   he had with projecting population and dividing the

13   population by household size. One is how are you going

14   to project what model to use to project the population?

15   And incidentally, model one, which was discussed

16   and which Caton weighted three times that of model two,

17   model one uses another formula, another model, in

18   coming up with the changes due to economic conditions.

19   Model one and model two both have two factors. The

20   first is an economic change.

21   In other words, population increase as a result

22   of new job creation and natural increases. That means

23   birth over death minus migration. So, what you end up

24   with is the components of change.

25   Model one, the real problem with model one is that

1   the economic changes or the population increase because

2   of job changes, job changes within the state, new

3   jobs coming in, old jobs, old factories closing down,

4   was done on a theoretical basis.

5   Model two, which also has economics and natural

6   increase, was done on the basis of a projection of

7   what took place from 1970 to 1980 and why most people

8   favor model two is because no matter how you slice it,

9   what will happen in the future, the past is still the

10   best test of what might probably -- what probably will

11   happen in the future. It's a much surer, less

12   sophisticated way of doing it.

13   Now, Richard, I think, pointed out, and quite

14   correctly, as you are going to project population, so

15   there is an error in what you choose and how to choose

16   the projected population, you are going to project

17   household size that may change. For the last three

18   years there has been a reduction in household formation.

19   Because of economic conditions, the kids are staying

20   home. They don't get charged rent, the food is free,

21   relatively. When new housing is built, when jobs become

22   better, the economic picture becomes better. There

23   will be an increase in household formation. At least,

24   this is what's happened in the past.

25   So, you are dealing with a number of unknown

1   variables when you project population. This doesn't

2   make it wrong, it just makes it more prone to error.

3   What Rutgers did in CUPR, they took the cohort

4   age, cohorts zero to five, six to ten years of age,

5   projected those into the future, and they can do it

6   with sophisticated computer programs, and then, using

7   standard tables, they have a household formation rate.

8   In other words, if you're twenty-five to thirty

9   years of age, there is a seventy percent chance of

10   forming a household over the next several years. That's

11   how they came up with a household figure.

12   What I did, and I think Richard and I think

13   John Chadwick did it as well, was I projected jobs and

14   I did it on the basis of the job formation, job changes

15   between 1970 to 1980. That included recession years

16   as well as expansion years and I said there will be

17   so many new jobs created through the year 1990 to 1995

18   to the year 1980. There are problems with that because

19   I have no knowledge of what will take place from an

20   economic point of view.

21   And then I used a household-to-jobs ratio.

22   Richard used, I think, 7.79. I used a little bit higher

23   one. What that says, some households have more than

24   one wage earner. If you factor in the retired people,

25   you still come out with a higher than one wage earner per

1   household and come up with a household figure, a

2   projected household figure.

3   So, I say population divided by family size can

4   give you a figure. New job creation divided by jobs-to-

5   household ratio can give you a figure. Somebody said

6   why not take household formation over the past ten years

7   and project that into the future to come up with it,

8   and I say absolutely, if you can justify it, and I

9   think you can, and if you factor in enough ifs, ands

10 and buts, I think that does provide you with a method.

11   I think the point I'm making is that there is

12 not one single way of doing it. Certainly, Mount Laurel

13 talks about employment and housing and the more direct

14 way you can equate those, I think the better off you

15 are, certainly in terms of carrying out the essence of

16 what Mount Laurel II is all about.

17   Q   Given the variety of methods that are

18 available, the specific method that you used for

19 purposes of computing prospective fair share in this

20 case was employment growth?

21 A   Yes.

22   Q   You did not use vacant land as one of the

23 factors?

24 A   No. What you are now dealing with is coming up

25 with the commuter shed total picture, so you wouldn't come

1 up with -- you wouldn't use vacant land. You wouldn't

2 use any of those other factors.

3   Q   You wouldn't use ratables, for instance?

4 A   That deals with the model to allocate on a local

5 basis.

6   Q   Those were used by Caton?

7 A   Okay. No. What happened is that once you come

8 up with a regional number -- let's assume in Caton's

9 case it was 90,000 for his region. For our commuter

10 shed it was something different. But, anyway, you come

11 up with a prospective fair share figure.

12   Now, you have got to reallocate that figure down

13 to what each municipality's fair share is, and again

14 there is not a single method which makes sense, although

15 I believe there is a consensus in our discussion with

16 Raymond and our -- and his report which clearly suggests

17 that it should again be related to employment in some

18 way, either employment growth or percentage of employment.

19   Now, I have seen Mal Kessler's report for

20 Norwood, which is in Bergen County and not within the

21 province of this Court. He used vacant land, he used

22 population and he used employment growth. What they

23 did, and just as Caton used vacant developable land,

24 employment growth and --

25   Q   Ratable?

A   -- and ratable, what they did is took a percentage

of all the -- percentage of the municipalities of the

total regional figure, added them together -- and,

incidentally, statistically you can't do that, but I

won't bring that up now. You have got to convert them

in Z scores it's called. It's like adding francs,

yen and dollars and saying you got something else.

But, anyway, there is a way of doing that, but

nevertheless, since everybody is being painted with the

same brush, so to speak, it works. The problem we had

is that vacant developable land uses 1972 data and it's

twelve years old and in a period when we probably

doubled our development, if not more.

Just to give you an example, Morris Township had

approximately 3,000 vacant developable areas in 1972 --

3,000 vacant developable acres in 1972 and last year

that figure was something like eight hundred. So, it's

almost a seventy-five percent -- it's almost one-quarter

of what existed.

Now, somebody again might argue that well, if

it's changed for your municipality, it changed for the

region, and that's true, but nevertheless it's still

twelve-year old data. The problem I had, and Raymond

had the same problem with employment growth and non-

residential ratables, it measures the same thing. By and

large, it measures the same thing. It seems you get

jobs only when you get factories or offices built and

that's reflected in the ratable. So, it really is a

misleading statistic.

Q   Without spending a great deal of time on

the actual computations, I wonder if you would review

with us then at this point the fair share computations

which you did for Warren Township using your

methodology and your thirty-minute commuter shed and

then compare that to the fair share figures which you

arrived at using the methodology of other experts who

were involved in the subject.

A   My figures were higher. We are talking about

just the fair share, not the indigenous need?

Q   Just prospective.

A   Prospective need, and my figures were higher

as follows: I used the thirty-minute commuter shed.

I indicated a Warren Township's need of -- let me just

get that.

In my report it was -- well, it came out to

fourteen hundred -- between fourteen hundred and eight

and twenty-nine hundred and seventy-six.

Q   What did you compute for present need and

indigenous, or were they one and the same?

A   Three hundred eighty.

1   Q   Does that include the indigenous?

2 A   Yes, it's indigenous and reallocation and that

3 was based on a financial component.

4   Q   Would you comment on that and the use of

5 financial need for purposes of determining present

6 housing need?

7 A   Let me just make a comment with respect to the

8 prospective need.

9   All right, I will answer your question.

10   Q   And then we will go back to that.

11 A   Okay. I believe from the very beginning that

12 financial need was an element in indigenous and present

13 need. It was the present need portion of the

14 indigenous equation, and I did that because I read the

15 Mount Laurel II decision in which the court specifically

16 addressed Mount Laurel's attempt to provide for that

17 and they use a fiscal need as one of the elements.

18   I found out from unnamed attorneys that I shouldn't

19 read too much into decisions if I think I've got a

20 better way, and those attorneys have to remain nameless,

21 obviously, but, in fact, just because the court quoted

22 Mount Laurel's method doesn't necessarily mean they

23 supported it or, obviously, didn't reject it because it

24 would have been so stated in the decision.

25   But, I think, given the entire thrust of Mount

1   Laurel II, which is communities have practiced

2   exclusionary zoning and have adopted ordinances which

3   have cost-generating features in them and which prevent

4   people of lower income from moving into the communities,

5   that the houses haven't been built.

6   Consequently, if they wanted to move into the

7   municipality, obviously they would have had to pay a

8   larger percentage of their income for housing.

9   Consequently, I said that particular part is the present

10   need share that the people had to extend themselves. I

11   recognized there are problems with that.

12   The first of all is that people lie. When you

13   talk about money, you can count, depending on how they

14   feel that morning or whether they think you're going

15   to turn it over to IRS or to the tax assessor, they're

16   either going to understate or overstate. Just as an

17   aside, in Cranford, one of my towns, when we purchase

18   property for municipal purposes, we send a tax assessor

19   out to negotiate. So the people don't know whether

20   to argue what a valuable piece of property it is or

21   whether it's such a miserable piece of property that it

22   isn't worth anything, knowing that he is going to set

23   the price.

24   So, what happens is that people do not necessarily

25   give you an accurate figure.

1   Q   Excuse me.

2   Mr. Coppola gave a number of reasons why

3   he did not use financial need in this computation.

4   A   Okay.

5   Q   And you are right now reviewing some of

6   these same reasons.

7   A   There's others, too.

8   Q   And there are those in addition to that.

9   Now, there was also some discussion of

10   this subject with Mr. Raymond this morning --

11   A   Yes.

12   Q   -- was there not?

13   A   Yes. Let me give you that, but let me point out

14   one other reason why nobody has touched on yet.

15   The financial survey was a sample survey. It

16   was a three percent sample. In other words, they didn't

17   ask everybody in the census form, they only asked three

18   people out of the total number to come up with the

19   figures, so there is a built-in error and it's computable,

20   but nevertheless there is an error when you are dealing

21   with sample data. So, that's another point.

22   The point that George Raymond made, and he's

23   quite correct, is that when you talk about -- let me

24   make one other comment because it relates to this -- is

25   that very often people by choice are willing to pay more,

1   pay a higher percentage of their income for housing

2   than the norm, in this case twenty-five percent, because

3   that is their value system and it isn't that they're

4   hurting, but this is, in fact, what is important to

5   them.

6   George Raymond's, I think, most important point,

7   I think, is when you use a financial element in coming

8   up with present share, you get an astronomical figure

9   and, you know, you get up to three hundred eighty in

10   this case and one of the towns I think turned out to

11   be six hundred sixty. So, what he says, you can never

12   ever meet that particular requirement and it doesn't

13   make sense to use it if it's unattainable.

14   I am not sure that's entirely correct. I still

15   somehow feel financial capability or the financial

16   element has to be built in. What we have decided,

17   however, and I went along with it because I think when

18   it's based on a much surer kind of thing and it's

19   capable of being addressed by new construction, because

20   that's another element in the decision, the question of

21   financial ability might very well be an income policy,

22   a rent voucher system, subsidies for rent. In other

23   words, it can be done other than by housing construction.

24   The method that we used as part of the indigenous share

25   was the reallocation of present need.

1   Mrs. Lerman had a formula. Caton had a formula.

2 They took the housing from the central areas based on

3 the percentage of the entire region and reallocated it

4 to municipalities within growth areas and so that, in

5 other words, if a region had five percent of its

6 housing as the dilapidated and a city had sixteen

7 percent and a town had one percent, that town being

8 in the growth area against -- based on what Mount Laurel

9 specifically said, is that that town, with only one

10 percent dilapidated housing, would have to build --

11 wouldn't have to dilapidate another four percent,

12 obviously, but would have to build additional housing

13 up to four percent of their total housing need in order

14 to equalize the total figure to five percent, which

15 was the region's number, and that's why you need a

16 fixed region, by the way.

17   Q   For present need?

18 A   For present need, because there is the danger

19 of overlap there. You need that in order to make that

20 kind of allocation.

21   THE COURT: That is then the formula which

22 you have arrived at for allocating fair share

23 present need?

24   THE WITNESS: Yes.

25   THE COURT: The differential in the existing

1   municipality between that and the region as to

2   the present dilapidated housing?

3   THE WITNESS: Correct.

4   BY MR. TROMBADORE:

5   Q   And based on your original computations

6   then, you determined a fair share allocation for Warren

7   Township of prospective need of something from fourteen

8   hundred and eight to twenty-nine hundred and seventy-six

9   units?

10   A   That's correct.

11   Q   And on present, three hundred eighty units?

12   A   That is correct.

13   THE COURT: That's in addition. Is that

14   right?

15   THE WITNESS: Yes.

16   BY MR. TROMBADORE:

17   Q   In addition?

18   A   In addition.

19   Q   Now, you also computed that fair share

20   using the Caton region as opposed to the commuter shed

21   which you had prepared?

22   A   Right.

23   Q   Could you tell us what the fair share

24   computation was using your methodology and the Caton

25   region?

A   I have to find it.

Let me point out why there is a difference. The difference is that because my model used future employment growth, there were two factors which I used which gave me that fairly large swing. One was the possibility of Chubb coming in with another seventeen hundred jobs in the township and the possibility that AT&T would, over the next six-year period -- actually, it was more than that. It was a ten-year period -- would come in with three thousand new jobs.

So, you're talking about doubling, if you will, a number of jobs and hence the reason for that fairly high figure.

I think it is certainly defensable, but it certainly takes advantage, from my client's point of view, of all the breaks. We took all the breaks on this one, which I don't think there is anything wrong with. What we did is we took Mr. Caton's figure model and applied it to the region and I think, as Mr. Coppola pointed out, we came up with a figure of 781 prospective and 235 present for a total of 1,016.

Q   Mr. Moskowitz, I'm not going to ask you to go through all of the computations that were done in your conferences with Mr. Chadwick and Mr. Coppola.

Let me simply ask you this question: It's

been recommended by Mr. Coppola, after a number of

comparisons made, that this Court approve, as Warren

Township's fair share of low and moderate income

housing both for present need and prospective need,

some 900 units. I think he mentioned the figure

nine hundred and five and then there was another figure

of nine hundred and eight.

Are you satisfied, having gone through

these computations, your own, Mr. Chadwick's,

Mr. Coppola's, the computations based on using

methodology of not only Mr. Caton, but Lerman, that

that figure represents a reasonable fair share

allocation for Warren Township?

A   Yes, it does.

THE COURT: All right.

I have a telephone motion at twelve-thirty

in another matter. We are going to have to

recess.

Do I understand, Mr. Moskowitz, that

with respect to the prospective fair share, that

there is a consensus that the methodology for

calculating that should be based upon employment

growth as a principal factor?

THE WITNESS: Yes.

THE COURT: And that you and Mr. Coppola,

1   Mr. Chadwick, have essentially discounted the

2   use of ratables for vacant land?

3   THE WITNESS: I think -- I don't speak for

4   myself. I think Coppola agreed and I think

5   Mr. Chadwick, although he will be on, and I think

6   George Raymond also in his report to the Court

7   presented in evidence pointed out the problem of

8   using both of those.

9   THE COURT: Do you think that there should

10   be any weighting of present employment percentage

11   and then projected employment growth?

12   THE WITNESS: I have to think about that

13   and give you that answer after lunch.

14   THE COURT: All right, fine. That's a good

15   place to stop.

16   (Recess.)

17   *   *   *   *

18

19   I, CAROLINE WOLGAST, a Certified Shorthand

20   Reporter of the State of New Jersey, do certify that the

21   foregoing is a true and accurate transcript of my

22   stenographic notes in the within matter.

23   _Caroline Wolgast_

24   CAROLINE WOLGAST, CSR

25   DATED: _Jan. 9, 1984_