

AM - Howells v. For Hills

10/25/83

Transcript of Proceedings

P 103

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : SOMERSET COUNTY
DOCKET NO. L-73360-80

ALOIS HAUEIS, ERNA HAUEIS,,
JOHN OCHS and PRISCILLA
OCHS,

Civil Action

Plaintiffs, :

Transcript of
Proceedings

-vs-

THE BOROUGH OF FAR HILLS,
THE PLANNING BOARD OF
FAR HILLS, and THE MAYOR
OF FAR HILLS,

Defendants. :

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OCT 24 1983

HON. DAVID G. LUCAS

Somerset County Courthouse
Somerville, New Jersey

October 25, 1983

B E F O R E:

THE HONORABLE DAVID G. LUCAS, J.S.C.

TRANSCRIPT ORDERED BY:

J. ALBERT MASTRO, ESQ.

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

MESSRS. VOGEL & CHAIT
BY: HERBERT A. VOGEL, ESQ.,
Attorneys for the Plaintiffs.

J. ALBERT MASTRO, ESQ.,
Attorney for the Defendant
Planning Board of Far Hills.

Loretta Holecx Duardo
Certified Shorthand Reporter
11 Jill Court
Middlesex, New Jersey 08846

1 (Whereupon, the following commenced
2 at 11:39 a.m.)

3 MR. VOGEL: Judge, going through my
4 file I somehow ended up with three exhibits,
5 and I don't know why. I am probably in some
6 kind of breach of something, but I'll try to
7 clear my soul here.

8 I have what looks like P-6, P-7, and
9 P-10. Are you missing any of the exhibits?
10 I don't even know if they were in evidence and
11 maybe they were just marked for identification.

12 THE COURT CLERK: They were for identi-
13 fication.

14 THE COURT: They are marked only for
15 identification.

16 MR. VOGEL: Okay.

17 THE COURT: Thank you. Later, perhaps
18 individually or collectively, you might want to
19 check out with the clerk the correctness of
20 your individual list as compared with hers.

21 I normally have such list, and I'm
22 sure that someplace in here it can be found;
23 but this has been away from us and then came
24 back, and the system may be somewhat changed.

25 The first thing I would ask you to do,

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please, is enter your appearances on the record.

MR. VOGEL: Herbert A. Vogel of Vogel and Chait on behalf of the plaintiff.

MR. MASTRO: J. Albert Mastro, attorney for defendant Planning Board of Far Hills.

Your Honor, I think I might state that by letter dated October 7 of this year, Robert K. Hornby, who was representing the other defendants, had informed the Court that because of financial constraints he would not be participating in the trial aspect on resumption of this trial, and that I would proceed to represent all defendants during the hearing.

THE COURT: I'm looking at that letter dated October 7, 1983.

You have no objection to this procedure, do you, Mr. Vogel?

MR. VOGEL: None whatsoever, your Honor.

MR. MASTRO: Your Honor, I might note that Mr. Hornby's letter doesn't suggest that he's withdrawing from the case or that any substitution of attorney is required, since he will be participating in any conferences that may take place; however, he is withdrawing

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1 from the trial aspect within the parameters
2 I've just indicated.

3 THE COURT: And you will be representing
4 his interest in the matter?

5 MR. MASTRO: Indeed, yes, your Honor.

6 THE COURT: All right. I responded to
7 Mr. Hornby by letter dated October 13, 1983.
8 A copy sent to each of you.

9 I told him that the procedure he
10 suggested was satisfactory to me and that I
11 would proceed on the assumption that he would
12 not appear at the resumption of trial on
13 October 24, 1983.

14 All right. Now, gentlemen, I think
15 that given the history of this matter and our
16 participation in it, we ought to make the
17 record clear; and I ^{/don't} mean that in any extended
18 fashion.

19 We began a trial in December of 1982,
20 and we did so on the common assumption that
21 among the issues involved was the application
22 of what was commonly known as Mount Laurel I.
23 We proceeded to try that case through Thursday,
24 January the 20th, 1983, and my notes for that
25 day contain a cryptic housekeeping.

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"Break at 12:30 p.m. Mount Laurel II opinion due on Thursday, January 20, 1983." That was a Thursday, as I indicated.

We met on Monday, January 24, and I made a comment on the record about the implication of Mount Laurel II and our need for time. We continued with the trial; and we had the direct, we finished the cross, the redirect, and recross of Mr. Earl.

At the conclusion of that day we adjourned without date. We set up a conference for Monday, February the 7th at 1:30 p.m.

Before we broke Mr. Vogel indicated that he was contemplating three rebuttal witnesses, Mr. Ochs, Mr. Dresdner, and Mr. Zimmerman. He noted that our trial had begun on December the 8th; and then making reference to what is now called Mount Laurel II, said that his clients don't want a whole new case.

Mr. Mastro had a response to that as did Mr. Hornby. The consensus was that we needed time to read and try to understand the implications of Mount Laurel II.

Thereafter, I had discussions with the assignment judge about the matter. He in turn

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1 had discussions with the Chief Justice.

2 It appeared to be advisable to wait
3 for some directive from the Supreme Court.
4 We awaited the appointment of the three judges
5 whom the opinion contemplated would be appointed.
6 They were appointed.

7 We were directed to send the file to
8 one of them, Judge Serpentelli. The matter was
9 sent to Judge Serpentelli.

10 Counsel then were in direct contact
11 with Judge Serpentelli. Counsel then were in
12 direct contact with Judge Serpentelli. Judge
13 Serpentelli wrote a letter dated July 5, 1983
14 addressed to Mr. Vogel, Mr. Hornby and Mr.
15 Mastro which begins:

16 "Gentlemen: This will confirm our
17 telephone conversation of Friday, July 1, 1983
18 based upon my review of the above reference
19 file and my report to the Chief Justice.

20 "Chief Justice directed that the file
21 be returned to Judge Lucas for the completion
22 of the trial. Upon finishing the trial Judge
23 Lucas shall make findings of fact and
24 recommended findings of law."

25 And then he goes on with more of the

1 same. He directed Mr. Vogel to draft an
2 order in conformity with the letter, send
3 copies of the letter to me and Judge Diana
4 and to others.

5 Then Mr. Vogel did draft an order.
6 Judge Serpentelli signed it on July 25, 1983,
7 and it has six ²¹⁰optive provisions.

8 The first being that the matter is
9 remanded to me for completion of trial; that
10 upon completion of trial I should make findings
11 of facts and recommended findings of law; that
12 counsel should have the opportunity within the
13 time set by me to request any modifications
14 or supplementation of the findings of fact,
15 but should not address to me any arguments as
16 to recommended findings of law; that upon
17 completion of this whole procedure, I should
18 forward my findings of the fact, the recommenda-
19 tions of law with the entire file to Judge
20 Serpentelli for the purpose of rendering a
21 final order or judgment in the cause.

22 Further, that before he, that is,
23 Judge Serpentelli, rendered his final decision,
24 counsel would be given an opportunity to
25 supplement the file with the submission of

1 post-trial brief, memoranda, oral argument
2 and, if requested, the presentation of testimony
3 that Judge Serpentelli might deem appropriate
4 or necessary for his purpose.

5 And then finally he incorporated by
6 reference to the letter dated July 5 from
7 himself to the attorneys of record, which
8 letter specified his intent with respect to
9 the order. It is pursuant to that, then, that
10 we have resumed the trial.

11 So the record is clear as to how we
12 got here, at least in its grossest aspect,
13 Mr. Vogel, perhaps at this point you would want
14 to spell out on the record what your under-
15 standing is as to what we are to try, how we
16 are to try it and our discussion about a
17 truncated trial, if you like, a determination
18 of whether or not the parcel in question is
19 or is not within the growth area as shown on
20 the plan, and the reasonableness of that
21 delineation, and the reasonableness of the
22 inclusion of the parcel within that delineation
23 and however else you understand our agreement
24 or our common understanding to be.

25 All right, sir?

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1 MR. VOGEL: Thank you, your Honor.

2 May it please the Court, your Honor, I must
3 say after all these months I am pleased to be
4 back here trying this case before you. I know
5 that Mr. Mastro shares that pleasure with me.
6 I also will be pleased when this case is
7 finally concluded.

8 THE COURT: No more so than Mr. Haueis
9 and the Borough of Far Hills.

10 MR. VOGEL: My clients are feeling the
11 pain of a very, very lengthy and protracted
12 and expensive lawsuit, and that's a burden on
13 everyone, I know that.

14 In recognizing what our responsibilities
15 were to complete this case with the special
16 issues that Mount Laurel II defined, Mr. Mastro
17 and I, as lawyers, have on a number of occasions
18 discussed these issues, how they should be
19 formulated and perhaps how this case might be
20 expedited.

21 We felt that the first critical issue
22 that the Court must decide is the location of
23 the State Development Guide Plan; a growth
24 area line relative to Far Hills itself as
25 a community as the growth area within Far Hills

1 or not within Far Hills and, secondly, relative
2 to this property owned by the plaintiffs, Ochs
3 and Haueis, that issue was dealt with in the
4 first case, your Honor, and we believe testimony
5 is already in evidence, P-17. Yes, it is in
6 evidence.

7 But the importance of the location of
8 that line has been highlighted by the Mount
9 Laurel decision, trying to avoid all the diffi-
10 culties of the six criteria, and now we have
11 a rather precise and definite map and plan where
12 growth should be and should not be that is in-
13 corporated into Mount Laurel II.

14 We have agreed, with the assistance of
15 the Court, in conferring with the Court, that
16 it might be advisable to try the issue of the
17 growth area pertinent to this property and to
18 bifurcate the rest of the Mount Laurel II issues;
19 to hold them off, so to speak, and see where
20 we get with the conclusion of that trial of
21 the location of the growth area.

22 As a part of this bifurcated portion
23 of the case it is also appropriate, and I think
24 the Court, Mr. Mastro and I all agree, to
25 determine whether or not the location of that

1 line of the growth area is one which is
2 arbitrary and capricious or one which is in
3 error or one which ought to remain where it
4 is.

5 And I use the words "arbitrary" and
6 "capricious," your Honor. I intentionally
7 left out the word "reasonable," because on
8 rereading Mount Laurel II, and everytime you
9 read the case you find out at least a half
10 a dozen new things that you missed the first
11 time. I was surprised to note the narrowness
12 with which the supreme court affords all
13 parties in the trial courts the option of
14 dealing with whether or not that line ought to
15 be moved. Whether it is -- and I presumed
16 the first time I read that, the test was, is
17 the location of that growth area line reason-
18 able or unreasonable.

19 But that is not what the court has
20 said. The test seems to be whether or not
21 the growth area line is arbitrary and capricious.
22 Whatever we make out of that, we will make
23 out of that; but that's the second issue.

24 The third issue I think is one which
25 is interrelated with the second, and that is

1 that it really relates to where the line is and
2 where it ought to be and where it ought not to
3 be. I think there ought to be some focus on
4 whether or not, given the growth area of Far
5 Hills, whether or not this property is suitable
6 for higher-density housing, including some
7 portion of Mount Laurel housing, or whether some
8 other areas in the growth area are more suitable;
9 and I think that that will help the Court to
10 determine whether the line has been set in a
11 place which is arbitrary or not arbitrary.

12 So, I believe these are the issues before
13 the Court on this bifurcated portion of the
14 remainder of the case, and we are prepared to
15 go forward.

16 Mr. Zimmerman is back here with some
17 old exhibits and some new ones to help the Court,
18 and we hope that we can define these issues
19 for you.

20 THE COURT: All right, sir.

21 Mr. Mastro, you have heard Mr. Vogel's
22 understanding of what brings us together on
23 this clearing morning. Are you in accord, or
24 do you have a different version?

25 MR. MASTRO: Substantially I am in accord,

1 that we are going to focus upon the growth
2 area as it affects the Borough of Far Hills;
3 and of that issue, a judicial determination
4 as to that issue because I feel that the
5 future posture of the case, as far as both
6 parties are concerned, may take a different
7 direction depending upon how that issue is
8 decided. It seems only sensible to me that time-
9 wise and expense-wise it is logical to have
10 that issue determined first.

11 Judge, I want to make one refinement
12 as to the issue of the growth area line.
13 Mr. Vogel speaks in terms of whether or not
14 the line is arbitrary and capricious. It seems
15 to me that assumption, whether it's reasonable;
16 Aside from that, I think a distinction has to
17 be made between whether or not the Court should
18 determine if this line is arbitrary or capri-
19 cious or whether the Court should be determining
20 a refinement of that line. Because I think,
21 as you read Mount Laurel, it speaks in terms
22 of the growth area as it is applied throughout
23 the state, indicating at least what the D.C.A.
24 felt was the area in which development would
25 take place.

1 It was conceptual in nature. We are
2 not going to dispute that there is a Clinton
3 corridor, nor are we going to dispute that
4 there is a north-south leg of that corridor.
5 I think Mr. Zimmerman is going to agree with
6 that which was intended to encompass the 202-
7 206 area; and, particularly, what is taking
8 place in Bedminster at the present time.

9 Now, it seems to me that if we were
10 attacking that north-south designation, true,
11 the burden is on us to show it's arbitrary,
12 the growth area, as so indicated on the State
13 Development Guide Plan, is arbitrary or
14 capricious.

15 We are not doing that. What our
16 position is is more a refinement of that line
17 because now we are coming down to the nuts
18 and bolts of how to translate the conceptual
19 aspect of the State Development Guide Plan
20 into reality. So, I would urge the Court to
21 keep in mind: Are we talking about moving
22 this growth area, or are we talking about a
23 refinement of this growth area?

24 Judge, with that contribution, I
25 think we are about ready to proceed with

1 testimony.

2 THE COURT: All right.

3 Now, I think one other thing ought to
4 be said, and that is that both of you know I
5 have been maintaining contact with Judge
6 Serpentelli and that I intend to make and keep
7 contact with Judge Serpentelli. I will tell
8 you when I do that.

9 If there is any question about it, I
10 trust I will be direct and exhibit candor with
11 what it is we talk about as we go through
12 this part of this trial; and that is not that
13 he and I might simply gossip about things like
14 last night's football score, but it is be-
15 cause he has taken on, by virtue of an order
16 of the Chief Justice what I think is an
17 onerous burden, as Judge Skillman and their
18 third counterpart.

19 One of the things that struck me
20 about the opinion on whatever reading of it
21 I did, was the supreme court's insistence
22 that there be a consistency in application
23 and to avoid having some three hundred plus
24 superior court judges in the state making
25 determinations as to the growth area, or what

1 is and is not included in it, in kindling
2 the resolution. The hope is that with only
3 three, Judge Serpentelli, Skillman, and the
4 third, that there will be a consistency of
5 approach. And that consistency of approach,
6 I believe, given the tenure of the opinion,
7 is going to be overseen and supervised by
8 the supreme court and both in its administrative
9 guise and in its judicial guise, if you like,
10 both in suggestions to trial judges and in
11 the administrative fashion and in its reso-
12 lution of cases on appeal.

13 And again, my understanding there is
14 that the supreme court will be taking these
15 cases from those three judges, will be hearing
16 and resolving them with some expedition in
17 order that ground rules be laid for all of us;
18 the lawyers who work in this area, the munici-
19 palities who must deal with the problems in
20 the area and the judges before whom these cases
21 will come.

22 So, the short of it is that I will be
23 maintaining with Judge Serpentelli some contact
24 as we go through the trial of this matter.
25 You understand that if either of you has an

1 exception to that or what I have told you,
2 obviously, you can put that on the record;
3 but this is the way I intend to proceed.

4 Given the nature of the order to which
5 I am subject, I will do that which I have
6 been directed to do, as I understand the order.
7 As I understand it ultimately, the musing back
8 to him for resolution of the question. I will
9 try to keep it within those parameters, and
10 you understand that.

11 All right. With that then, if there
12 is nothing further on this score, where we
13 were and how we got here and what we're about,
14 then I think we are ready to take up with the
15 presentation of Mr. Vogel.

16 MR. VOGEL: Your Honor, I would like
17 to call David Zimmerman back to the stand.
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1 P. DAVID ZIMMERMAN, sworn.

2
3 DIRECT EXAMINATION

4 BY MR. VOGEL:

5 THE COURT: Now, gentlemen, one other
6 thing in terms of housekeeping. We want to
7 be sure that all the exhibits are out and
8 that they are available. There are some here
9 in the jury area. I don't know that they are
10 in sequence. I trust they are.

11 The table to your left will have the
12 list of exhibits in the front. You can see it.
13 We have then broken down the exhibits into
14 several categories, and they are divided,
15 depending upon whether they are defendants,
16 plaintiffs, or joint exhibits. They too, I
17 believe, are in order.

18 Now, I'm sure, given this time period,
19 that there will be some difficulty in locating
20 some of these things, perhaps due to lack of
21 familiarity with them or it ordinarily will
22 be that some things have been misplaced;
23 that is, someone has gone through them and
24 given them a different sequence. I trust not,
25 but if we bear with each other, I see no

1 problem on that score.

2 Okay, Mr. Vogel, proceed.

3 MR. VOGEL: Thank you, your Honor.

4 BY MR. VOGEL:

5 Q Mr. Zimmerman, it has been many months
6 since you have been on the stand in this case, and
7 while your credentials and expertise have been set
8 forth before the Court, I would like to ask just a
9 few questions about any further credentials you may
10 have particularly relative to Mount Laurel II type
11 issues.

12 First of all, are you familiar with the
13 Mount Laurel II decision?

14 A Yes, I am.

15 Q You have read the totality of that
16 decision?

17 A I would submit to the Court that I have
18 read that many times.

19 Q As a housing, planning and zoning
20 expert, have you been a participant, and are you at
21 the present time a participant in any other Mount
22 Laurel II litigation?

23 A Yes, I am.

24 Q And can you tell the Court in which
25 cases?

1 MR. MASTRO: Judge, let me object
2 to this. Now, I don't want to be an ob-
3 structionist, because we have gone through
4 this problem in the past, but how is any
5 of this relevant?

6 I stipulate, and Mr. Zimmerman has
7 qualified as a planner before this Court,
8 how any of this testimony is going to contrib-
9 ute to any issue in this case.

10 MR. VOGEL: Well, I would say that
11 we are now on issues which are precise
12 Mount Laurel II type issues, and a planner's
13 particular expertise and the evolution of
14 his thinking processes and his work in the
15 field with these issues, I think, are important
16 to be before the Court.

17 I think that it is never satisfactory
18 to an attorney presenting an important expert
19 witness, to have his credentials simply
20 stipulated to. They ought to be of record,
21 particularly with this record that may well
22 be reviewed.

23 MR. MASTRO: I think, your Honor --

24 THE COURT: I don't think that's
25 Mr. Mastro's objection. Go ahead, sir.

1 MR. MASTRO: I believe, as far as
2 Mr. Zimmerman's credentials, we went through
3 that thoroughly, as your Honor recalls. Now,
4 what difference does it make if Mr. Zimmerman
5 has been in Mount Laurel II litigation.
6 Mr. Vogel has, and I have. I don't see that
7 that has any impact or will contribute any-
8 thing to what your Honor has to decide.

9 THE COURT: All right. I don't know
10 where we are going with it. I can agree
11 with you that Mr. Zimmerman previously
12 qualified as a professional planner and as
13 an expert in the area of planning.

14 I can see relevance in it only if it
15 were suggested that Mr. Zimmerman had in some
16 fasion, to use the word "employed" here
17 earlier, "truncated" his experience with Mount
18 Laurel II; that is, he was an expert under
19 Mount Laurel I and has done nothing since.
20 Perhaps he has been in Europe vacationing
21 since last January and hasn't had time to
22 come back to the realities of planning and
23 reading things like Mount Laurel II and,
24 thus, lacks any exposure to it.

25 I suppose, without belaboring it,

1 one could have delicate ear surgery where you
2 have the surgeon get up on the stand and say,
3 "I know. We used to do that by X technique,"
4 and, "I was an expert in X technique."

5 "But, Doctor, did you know that two
6 years ago there was a development known as
7 Y technique, and that is now being utilized
8 by all the ear surgeons?"

9 "I don't know anything about Y.
10 I'm an expert on X, and I don't believe in
11 those guys who are trying Y. I think that
12 they all will be proved wrong, and I won't
13 be around when they are proved wrong," and
14 that kind of thing. And I'm using a gross
15 example.

16 I think some explanation within bounds
17 is permissible; that he had read Mount Laurel,
18 that he had consulted with the municipalities
19 or the municipalities which are facing Mount
20 Laurel decisions, that kind of thing. But I
21 don't want to get into the names of cases,
22 before what judges they are involved, that
23 kind of thing. I don't think that's pertinent.

24 Now, within those parameters, if
25 you like some limited exposition of how he

1 has retained his familiarity with the law of
2 planning, zoning, and its application in
3 Mount Laurel II --

4 MR. VOGEL: Thank you. I will be very
5 brief on this.

6

7 BY MR. VOGEL:

8 Q Mr. Zimmerman, are you a consultant
9 to municipalities in any currently pending Mount Laurel
10 cases?

11 A Yes, I am.

12 Q And have you in fact performed studies
13 and submitted reports regarding the Mount Laurel II
14 issues of, for example, regional need, growth area
15 and fair share for municipalities?

16 A Yes, I have.

17 Q And in fact are you not the common
18 planning witness for some twelve municipalities in
19 Morris County, developing a Mount Laurel challenge
20 by the Public Advocate?

21 A Yes, I am.

22 Q And you have been retained since Mount
23 Laurel II to continue your work on that case, is that
24 so?

25 A That's correct.

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Tape 3

1 Q And have you submitted a report
2 under the Mount Laurel II standards on that case?

3 A Yes, I did.

4 Q Mr. Zimmerman, are you also performing
5 services on behalf of a municipality that has received
6 an order to comply or judgment to comply with Mount
7 Laurel II after the conclusion of litigation?

8 A Yes, that's correct.

9 Q In what county is that municipality
10 located in?

11 A That municipality is located in Bergen County.

12 Q You might give the name of the
13 municipality.

14 A That's Mahwah Township.

15 Q And what type of functions are you
16 performing in that manner?

17 A I have been retained by the municipality to
18 aid them in the implementation of a court order
19 regarding low and moderate-income housing for that
20 municipality.

21 Q Was that a court order under the
22 Mount Laurel II requirements?

23 A That's correct.

24 Q Mr. Zimmerman, I believe you testified
25 previously you're a planning consultant for a number

1 of municipalities.

2 A That's correct.

3 Q Are you doing studies for those
4 municipalities in terms of Mount Laurel II responsi-
5 bilities?

6 A That's correct.

7 Q Are you also, on behalf of the
8 municipalities for whom you are the regular planning
9 consultant, are you preparing reports defending them
10 in any Mount Laurel litigation?

11 A I have undertaken studies and I have prepared
12 reports and submitted those reports and made
13 recommendations to the municipalities I represent
14 pertinent to the issues raised by the Mount Laurel II
15 decision.

16 Q Those issues, as I said before, just
17 to make sure, they do cover regional need, the growth
18 area and fair-share allocation?

19 A That's correct.

20 Q Thank you, Mr. Zimmerman.

21 MR. VOGEL: That's all I have on
22 credentials. If you want to cross on that --

23 MR. MASTRO: I will reserve my cross-
24 examination on any questions I might have
25 with regard to credentials when I cross-examine.

Zimmerman - direct

1 THE COURT: All right. You wil
2 include those in your cross-examination

3 MR. MASTRO: Yes.

4 THE COURT: All right, sir.

5

6 DIRECT EXAMINATION (CONTINUING)

7 BY MR. VOGEL:

8 Q Mr. Zimmerman, there may well be some
9 deja vu in this testimony.

10 I bring you back to exhibit P-17, if I remember P-17
11 the number correctly, and show it to you. Do you
12 recall that exhibit?

13 A Yes, I do.

14 THE COURT: And the number again,
15 sir?

16 MR. VOGEL: P-17, your Honor.

17 Q Can you describe that exhibit?

18 Let me just ask you this. Did you have this
19 exhibit prepared under your direction?

20 A That's correct.

21 Q Will you describe what the exhibit
22 shows.

23 A It shows first a portion of the Borough of
24 Far Hills.

25 THE COURT: Mr. Vogel, I'm going to

1 make a suggestion to you, if you don't mind,
2 that we move that back on the easel and
3 give Mr. Zimmerman the --

4 MR. VOGEL: Good idea.

5 THE COURT: -- pleasure, and let him
6 do the testifying from closeup so that all
7 of us understand exactly what it is that he
8 is delineating. Do you mind, sir?

9 THE WITNESS: No. That's quite
10 appropriate.

11 Q Just let me direct your attention
12 first to the various legends of the map. There seem
13 to be two of them.

14 A The legend shows two classifications. The
15 first classification dealing with growth area and
16 the second is limited growth area; that is, the colored
17 lines depict the growth area as designated and con-
18 tained in the State Development Guide Plan Map of
19 Somerset County.

20 That line has been imposed upon the Borough
21 of Far Hills to show precisely where it lies relative
22 to the various landmarks, properties, roads and
23 boundary of the borough.

24 Q All right. And the cross-hatched
25 orange lines, that shows the growth area. Is that

QA

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1 correct?

2 A That's correct. The line, that is, the solid
3 orange line, running approximately north and south
4 is the limit of the growth area in Far Hills.

5 The diagonal lines or the horizontal lines
6 show the entirety of the growth area as it is located
7 in Far Hills.

8 The uncolored portion of the map shows that
9 area in the State Development Guide Plan which is
10 designated "limited growth area."

11 Q All right.

12 Mr. Zimmerman, can you point out to the Court
13 the Far Hills Village?

14 A The Far Hills Village is shown approximately
15 as a triangular area lying wholly within the growth
16 area. It is bounded on the east and northeast by
17 the railroad, and on the west by the north branch
18 of the Raritan River, and on the south by Route 22 --
19 I'm sorry, Route 202.

20 Q And the village is within the growth
21 area?

22 A As I read the map, the entirety of the village
23 is in the growth area.

24 Q Mr. Zimmerman, do you recall the
25 location of the PQ, that is, the property owned by

1 the plaintiffs Ochs and Haueis?

2 A Yes, I do.

3 Q Can you point that out to the Court?

4 A That property is located in an area I am
5 depicting bounded by Route 202 on the south, Sunnybranch
6 Road approximately on the east, a property line on
7 the north going over it to the railroad, and then along
8 the side of the railroad back down to Route 202.

9 It is approximately nineteen, twenty acres
10 in size and is approximately triangular in shape.

11 Q Would it mar the map too much, P-17.
12 too much, if you marked in some kind of color, some
13 kind of color other than orange, the outlines of the
14 PQ; and then mark "PQ" in the center of the property?

15 All right. You have used the color red for
16 what purpose?

17 A The color red shows the outline of the
18 property in question.

P.Q.

19 Q And you have marked "PQ." That marking
20 is not within the site, correct?

21 A No. I have a line with a dot which shows
22 that the property in red is the PQ property.

23 Q Where is the State Development Guide
24 Plan growth area line? Where is that shown on the
25 map relative to the PQ?

1 A The State Development Guide Plan line cuts
2 through the property in question. I would estimate
3 maybe sixty percent of the property is in the growth
4 area and forty percent of the property, or the eastern
5 section of the property, is in the limited growth
6 area.

*SDGP
line
cuts
property*

7 Q Well, we will get back to that I am
8 sure later. There is one other line that goes through
9 the premises in question, and that is a dotted line
10 that appears to be parallel to the longest side of
11 the triangle.

12 Can you tell the Court what that dotted line
13 represents?

14 A That is a hundred-foot-wide power and light
15 right of way or easement on the property.

16 Q All right. That does not delineate
17 the property line, is that correct?

18 A No, it is not. The property in its entirety
19 as owned by Ochs and Haueis goes out to the railroad
20 and includes the power and light easement.

21 Q And the long side of the property
22 which you described as roughly triangular, that is
23 the western side that abuts the railroad. Is that
24 correct?

25 A That's correct. It goes right up to the

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railroad.

Q Did I ask you what are the other roadways that abut the property?

A You have in the front or the south portion Route 202. On the east portion, Sunnybranch Road, and the property is a corner piece of property having frontage on those two streets or roads.

Q Mr. Zimmerman, I'm going to ask you a few foundation questions first. Are you familiar with the State Development Guide Plan?

A Yes, I am.

Q Are you familiar with that portion of the State Development Guide Plan, the map that covers Somerset County?

A Yes, I am.

Q By the way, what page is that within the State Development Guide Plan?

A As I recall, it is Page 133.

MR. VOGEL: Is the plan in evidence? I'm sure it is. I'm looking for the exhibit number of the State Development Guide Plan. I don't think the totality was in evidence before, as I recall, your Honor. There were excerpts from it.

THE COURT: I don't know if this is it

1 or not.

2 MR. VOGEL: I will get back to that.

3 MR. MASTRO: No. It is J-24, isn't it?

4 MR. VOGEL: Yes, it is J-24.

5 THE COURT: State Development Guide
6 Plan, Pages 133, 21, 22, and 23. That's what
7 we have marked.

8 MR. VOGEL: All right. Thank you.

9
10 BY MR. VOGEL:

11 Q I show you J-24 and particularly
12 direct your attention to Page 133 of the State
13 Development Guide Plan.

14 Are you familiar with that portion of the
15 State Development Guide Plan?

16 A Yes, I am.

17 Q In your opinion, Mr. Zimmerman, does
18 the location of the growth area on P-17 reasonably
19 depict the growth area line as shown on the State
20 Development Guide Plan, particularly Page 133 thereof?

21 A Yes, it does.

22 Q I'm going to ask that question in another
23 way.

24 Do you believe, Mr. Zimmerman, that the growth
25 area line on P-17 is as accurate as anyone can reasonably

Zimmerman - direct

1 make it utilizing the State Development Guide
2 as the base data?

3 MR. MASTRO: Judge, let me obj
4 to that question for this reason. I am not
5 sure I understand fully what Mr. Vogel's
6 question encompasses. Is he referring to --

7 MR. VOGEL: I will withdraw that
8 question.

9 MR. MASTRO: Or rephrase it.

10 MR. VOGEL: I will withdraw it.

11 THE COURT: Question withdrawn.

12 Q We will get back to this, Mr. Zimmer-
13 man. I'm going to ask you to take a look at exhibit
14 D-9 in evidence, and ask if you recall that exhibit D-9
15 in the case?

16 A I do recall it. It was an exhibit introduced
17 by the planning expert for the municipality, Mr. Alan
18 Dresdner.

19 Q Do you recall on exhibit D-9 what this
20 black dashed line represents?

21 A That line shows the eastern boundary of the
22 growth area.

23 Q Excuse me, let me take it and put it
24 up here next to P-17, all right?

25 THE COURT: Gentlemen, while we are

1 looking at that, will we get to a place
2 where perhaps we can stand another easel
3 so that you can do the kind of comparing
4 you're doing now? If so, over lunch we
5 will try to reach out and see what we can
6 find.

7 MR. VOGEL: I'm not sure that that
8 will be necessary.

9 THE COURT: Will you check it out
10 and see if one of the others might have an
11 easel that we can use for a couple of days?
12 At least we will have it available.

13 Go ahead.

14 BY MR. VOGEL:

15 Q Did you answer whether or not you
16 recalled what that dashed line was?

17 A My recollection is that that dashed line
18 represents the eastern boundary of the growth area
19 as depicted on the map in the State Development Guide
20 Plan.

21 Q Can you identify the premises in
22 question on exhibit D-9?

23 A Yes.

24 Q Can you tell the Court where that
25 black dashed line goes through the premises in question?

1 A The premises in question is outlined by a
2 dash-dot line. It circumscribes an area which, in
3 my opinion, is exactly the same as I have done and
4 labeled "PQ" on the earlier exhibit.

5 The growth-area line cuts through the middle
6 of the property in question at approximately the same,
7 if not exactly the same fashion that was depicted
8 on the earlier exhibit. My opinion is that these
9 lines cut through the property in the same way.

10 Q Thank you.

11 Mr. Zimmerman, I will ask the question, but
12 I don't know that we will get the answer before lunch;
13 but will you describe to the Court the manner in
14 which you developed that orange line on exhibit P-17?

15 THE COURT: All right. Let Mr. Zimmer-
16 man sit on that over the lunch hour, and I
17 will meet you back here about 1:30.

18 MR. VOGEL: Thank you, Judge.

19 (Whereupon, the court recessed at
20 12:33 p.m.)
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A F T E R N O O NS E S S I O N

P. D A V I D Z I M M E R M A N, resumes
the witness stand.

THE COURT: All right. Good afternoon.

THE WITNESS: Good afternoon.

THE COURT: I think we ought to make
it apparent on the record now that due to
Mr. Mastro's required presence at a statewide
conference of magistrates, and after discussion
with the assignment clerk on the adviseability
of keeping Mr. Mastro here as opposed to his
attending that conference; and the suggestion
then I would be well-advised to free Mr. Mastro
for attendance at that meeting, and after
further discussion with Mr. Mastro about that
subject, the bottom line is that he will not
be here tomorrow for purposes of his suit; and
if he is not at the beach, he will be at the
conference.

So, we will pick it up again on Monday
morning, understood?

MR. MASTRO: I think the record should

1 be clear, your Honor, that there is no choice
2 in the matter because, obviously, if I had a
3 choice I would be here.

4 THE COURT: And if the weather were
5 nice, I would question all of it. Shall we
6 proceed?

7 MR. VOGEL: Yes, sir.

8

9 DIRECT EXAMINATION (CONTINUING)

10 BY MR. VOGEL:

11 Q Mr. Zimmerman, before we broke for
12 lunch I asked you to describe to the Court how you
13 prepared exhibit P-17. And, in particular, how did
14 you locate the State Development Guide Plan growth
15 area line from the State Development Guide Plan Map,
16 which is a much smaller scale, onto P-17 which is a
17 much larger scale?

18 A I essentially have two maps to work with.
19 The first map, which you see before you entitled --
20 the portion of Far Hills which shows the State
21 Development Guide Plan, is basically what I would
22 call a base map of the Borough of Far Hills; and that
23 map was prepared utilizing the tax maps of the borough
24 as a source.

25 Q That's P-17?

1 A That's correct. That map, obviously when
2 it was originally prepared, showed lot lines, streets,
3 and other pertinent information; but did not show
4 the State Development Guide Plan designations such
5 as growth area, limited growth area, et cetera.

6 The second map that was available to myself,
7 as well as everyone else, is the State Development
8 Guide Plan, which is exhibit J-24. And, as I indicated
9 earlier, on Page 133 there is a map entitled, "Map XXIII,
10 Somerset County State Development Guide Plan," which
11 is also reproduced in the Mount Laurel II decision;
12 and it is contained in the appendix of that decision,
13 and I assume is made a part thereof.

14 Q Incidentally, have you visually
15 compared both that map in the Mount Laurel decision
16 of Somerset County and the map, exhibit J-24, at
17 Page 133?

18 A Yes, I have.

19 Q And what conclusions have you reached?

20 A They appear to be the same to me.

21 Q And indeed from the text of the Mount
22 Laurel decision is it not clear that the supreme court
23 was copying or incorporating by reference the individual
24 county maps from the State Development Guide Plan,
25 including the Somerset County Map?

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A Yes. That's my understanding of exactly what they did.

Q All right.

A The State Development Guide Plan Map does have the counties shown in toto. It does show, as part of Somerset County, the Borough of Far Hills --

Q Excuse me. Let me interrupt you, Mr. Zimmerman. I wonder if you could give to Judge Lucas that Page 133 from exhibit J-24 so he could have it before him. I know that you have other copies of that same map.

THE COURT: Fine. I was looking at the copy in the appendix to the opinion at Page 371, the small version to which you made reference.

THE WITNESS: Yes, sir.

THE COURT: All right, fine then.

I have before me the exhibit J-24. Go ahead.

A The map of Somerset County does show the boundaries. It does show the boundaries of the Borough of Far Hills. A quick or even a studied look of the boundaries of the Borough of Far Hills show it to be comparable to other maps prepared and promulgated by the municipality itself, as being similar to what is shown in the State Development

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Guide Plan.

The map does have a north arrow. It has a scale. And as such, one can utilize the scale, the illustration, the facts represented on the maps, to measure the area and the dimensions of the growth area in Far Hills; and transfer that information onto the map we see before us, which is titled, the portion of Far Hills Borough, exhibit P-17.

*transferred
D-24 to
P-17*

Q All right. Now, in fact, is that what you did? You transferred the information?

A Yes, that's precisely what I did. I measured the distance shown on the State Development Guide Plan Map between the boundary of Far Hills and Bedminster to the growth area line on the southern portion of Far Hills. And I did the same between the northern-most point or northern area, measured the distance on the growth plan map contained in the State Development Guide Plan, between the growth area line and the boundary of Far Hills.

And I had to landmark or use scaling landmarks, as they are referred to in the profession; and using that, having established those two points then, one could connect them more or less and make other references as one goes along the boundary of Far Hills and measures off the distance between the boundary

1 and the growth area line to determine the exact
2 extent of curvature or inflection of that line.

3 Q And in fact, is that what you did?

4 A Yes, sir.

5 Q Now, let me ask you some very simple
6 questions about that.

7 Did you use a scale-measuring device of some
8 sort?

9 A Yes, I did.

10 Q And what type of device did you use?

11 A The scale that I used is referred to as an
12 engineers scale.

13 I scaled off the distances from the State
14 Development Guide Plan Map, and then made the
15 appropriate conversion to the scale of P-17 and
16 transferred that information, as I previously described,
17 onto P-17.

18 Q Let's take the State Development
19 Guide Plan Map. I know that that is pretty small
20 scale, although everything is relative in life,
21 although it is not as small as the ones in the supreme
22 court decision, that Judge Lucas had before him; but
23 in looking at that scale, Mr. Zimmerman, did you also
24 use a magnifying glass to enlarge the scale?

25 A Yes, I did.

1 MR. MASTRO: Judge, I would prefer
2 the questions to --

3 THE COURT: You prefer what, sir?

4 MR. MASTRO: In the interest of time
5 I don't mind him generally leading, but I
6 would prefer the witness to indicate what he
7 did.

8 THE COURT: I will sustain the
9 objection.

10 BY MR. VOGEL:

11 Q All right. Mr. Zimmerman, can you
12 describe precisely what scale you used on the
13 engineers scaling device? Do you have the scale here
14 in the courtroom?

15 A Yes, I do.

16 Q Would you take that scale out?

17 While you are at your briefcase, Mr. Zimmerman,
18 will you take out any other instruments that you may
19 have used?

20 All right. First, would you describe the
21 scale that you used?

22 A As I indicated earlier, I used a scale which
23 is called an engineers scale, which I have in my
24 hand at the present time.

25 It has scales marked off in one inch, divided

Tape 4

1 into tenths. One inch equals fifty feet, forty feet,
2 thirty feet, and sixty feet as opposed to an architect's
3 scale which would divide things into three-quarters
4 scale or quarter-inch scale. It is a different type
5 of measurement than what I have here.

6 Q Of the various scales on that ruler,
7 which one did you actually utilize to measure the
8 distance on the State Development Guide Plan between
9 the municipal boundary and the growth area line?

10 A The one-inch. What you might normally refer
11 to as the tenths scale or ^{where} the one-inch represents
12 truly one inch.

13 Q One inch, and there are how many
14 dividers within that inch on that scale?

15 A Ten. So, each part of that inch is divided
16 into tenths.

17 Q Mr. Zimmerman, why don't you tell the
18 Court exactly how you determined the scaling from
19 the State Development Guide Plan over to P-17. The
20 Court already knows in general how you did it, but
21 with the precise numbers.

22 THE COURT: Are you going to do some
23 math for us, some transcribing of these figures
24 or formula? If you are, we will put a sheet
25 up there.

1 THE WITNESS: I think it could be
2 handled verbally.

3 THE COURT: If you wish, but there is
4 an easel and there is a sheet and you can
5 show your calculations.

6 MR. VOGEL: I think the calculations
7 on the easel would be fine.

8 THE COURT: Do you have any problems
9 with that?

10 THE WITNESS: No.

11 THE COURT: Mrs. Naismith, I see you've
12 got another easel. Thank you.

13 John, do you want to move that to the
14 side? Thank you.

15 BY MR. VOGEL:

16 Q First, will you take out the State
17 Development Guide Plan Page 133, the scale which you
18 have described and any other physical instruments
19 that you may have used in the process?

20 A So equipped.

21 Q And what is that instrument in your
22 left hand?

23 A This is a magnifying glass.

24 Q All right. Will you show the Court
25 and verbally describe what you did?

1 A As I indicated, I sought to determine the
2 distance from the southwestern point of the borough
3 directly east to the growth area line; and that
4 distance, if you scale it off and use a magnifying
5 glass, it's approximately .07 or .075 parts of an
6 inch.

7 Q All right. Was your answer .075 parts
8 of an inch, or was it as you have it up on the board?

9 A That's about right, I think.

10 Q So it is somewhere in the range of
11 .07 or .075 parts of an inch. All right.

12 Just for clarification purposes, Mr. Zimmerman,
13 in terms of your scaling ruler, does that mean it is
14 a little bit less than a divider?

15 As I recall, the scale ruler had ten divisions
16 within each inch.

17 A That's correct.

18 Q And this is about seven-tenths of one
19 of those divisions?

20 A That's correct. It is less than one-tenth of
21 an inch.

22 Q Can you see those divisions without
23 the magnifying glass?

24 A Yes, you can.

25 Q And are they further clarified with

1 the magnifying glass?

2 A Yes.

3 MR. VOGEL: Would your Honor like to
4 see that?

5 THE COURT: No. I will accept the
6 testimony of the witness.

7 MR. VOGEL: Okay.

8 THE COURT: You are going to be cross-
9 examined on it, and I see no reason for me to
10 go through the mechanics of it.

11 A Given the scale of the map on Page 133 in
12 the State Development Guide Plan, that equates to a
13 distance of approximately eleven hundred to eleven
14 hundred ninety feet.

15 Q So --

16 A So, we now have the distance at the southern
17 portion of the municipality between the boundary
18 and the growth area line. There is a --

19 Q All right.

20 A -- scale to this map and --

21 Q Let me slow you down a bit. So,
22 after having ascertained the distance from the
23 municipal boundary line, the southern boundary line;
24 and, I guess, that is the southeast, sorry, south-
25 westerly boundary line?

1 A Yes.

2 Q The distance between the southwesterly
3 corner of the Borough of Far Hills in the State
4 Development Plan Map over to the growth area line is
5 between eleven hundred and eleven hundred ninety feet.
6 What did you then do with that number and that distance?

7 A Then I scaled off that distance, given the
8 scale of this map; that is, the map entitled the
9 portion of Far Hills Borough.

10 Q P-17?

11 A P-17.

12 Q All right.

13 So, you scaled from the southwesterly corner
14 of Far Hills over what would be eleven hundred to
15 eleven hundred and ninety feet, approximately?

16 A Right.

17 Q Then what did you do?

18 A Then I marked that out on the map.

19 Q In other words, you marked that point
20 out on the map?

21 A Yes, sir.

22 Q All right.

23 A Then I sought to again refer to the map in
24 the State Development Guide Plan and visually compare
25 where that line was positioned on this State Development

1 Q Mr. Zimmerman, after completing that
2 process and finding that point on the southerly
3 boundary line of Far Hills where you concluded the
4 State Development Guide Plan growth area line crossed
5 it, what did you do next?

6 A I repeated the same procedure at the north-
7 western portion of the borough, measuring the distance
8 from the boundary line to the west to the growth area
9 line, and determining what that distance was in the
10 State Development Guide Plan, working out the distance,
11 and plotting that on the portion of the Far Hills
12 Borough Map and marking that out; and, again, visually
13 double-checking my measurements.

14 Q All right.

15 Now, when you say that you visually double-
16 checked your measurements --

17 A Yes.

18 Q -- will you verbally describe how
19 you did that? What is it about the shape of the
20 northerly boundary line of Far Hills at that point
21 that you used as a reference to visually check your
22 scaling process?

23 A Well, there is a trough or valley that is
24 rather clearly evident with the northern boundary line,
25 and the State Development Guide Plan shows that trough,

1 and it is approximately in the middle of that trough.

2 It is approximately a little, maybe somewhat
3 to the left or somewhat to the west of that mid-point,
4 but I think visually you have to make that check
5 just to check yourself and make sure that you're in
6 the ball park with the line.

7 Q Were you satisfied by your visual
8 checking of your scaled measurements, that is, you
9 say you were in the ball park, for the point on the
10 northerly line where the State Development Guide Plan
11 growth area line passes through?

12 A Yes.

13 Q You mention, Mr. Zimmerman, that if
14 you just look at the State Development Guide Plan
15 Map and the northerly line, that the growth area line
16 seems to bisect that trough about in the middle; and
17 I note that your orange line on P-17 bisects that
18 trough more to the west.

19 A That's correct.

20 Q By putting that line slightly to the
21 west of the middle of the trough, are you making the
22 growth area actually smaller within Far Hills?

23 A It comes out a smidgeon smaller than maybe
24 another planner measuring on another day might come
25 up with.

1 Q A little bit larger?

2 A A little bit larger.

3 Q All right.

4 At this point you have described that you
5 have the point on the southerly boundary line, where
6 the growth area line bisects the municipal boundary,
7 and that point on the northerly boundary line.

8 What did you do from there?

9 A Then you make similar measurements along
10 the western boundary of the borough to establish
11 the line through the middle of the borough, perhaps
12 a measurement where the boundary line changes from
13 being a straight line to following the path of the
14 river, pick out some landmark that is clearly
15 identifiable on both maps.

16 Q And in fact, did you do that?

17 A Yes.

18 Q And in doing that and taking the
19 point at the southerly and the northerly boundary
20 line, what did you do with respect to establishing
21 the growth area line?

22 A Then you check the points and end up with
23 a line that would show the growth area as in
24 relationship to roads, properties, the subject
25 property Sunnybranch Road, for example, Route 202,

1 the railroad station and all these other identifiable
2 items in Far Hills.

3 Q In fact, is that what you did?

4 A Yes.

5 Q You checked the line between the points
6 that you have established?

7 A Yes, sir.

8 Q Mr. Zimmerman, are you satisfied,
9 having gone through that scaling process, having
10 checked the scale not only with the precise engineers
11 scale ruler, but also the use of a magnifying glass
12 with the scale ruler in the State Development Guide
13 Plan Map, that you have ascertained the location of
14 the State Development Guide Plan line and transferred
15 that location onto P-17 as accurately as that can be
16 done?

17 A Yes.

18 Q Are you further satisfied or do you
19 have an opinion as to whether or not, having gone
20 through that process, that the line on P-17 is a
21 reasonably accurate representation of the line of
22 the location of the area line as it appears to
23 the State Development Guide Plan?

24 A Yes, I think it is. I think there is, and I
25 have indicated this earlier, going to be a plus or

1 minus to any efforts by anyone in translating the
2 line from the State Development Guide Plan Map to
3 a map of a different scale; and within those boundaries,
4 those limits, those plus or minus limits, I think I
5 have accurately and reasonably depicted the growth
6 area line as it lies in Far Hills.

7 Q Can you give the Court some idea of
8 the plus or minus? Do you have a sense of that?

9 A Well, I would say a hundred feet, maybe fifty
10 feet, on either side of the line. Even then, you
11 know, it might be sixty feet, might be forty feet,
12 but I think that's the ball park we are talking about.

13 Q As a result of that effort, did you
14 reach a conclusion with respect to whether or not
15 any portion of the subject premises is located in
16 the growth area as of the State Development Guide
17 Plan?

18 A Yes, I did. I was convinced that about sixty
19 percent of the property in question lies within the
20 growth area designation.

21 Q Mr. Zimmerman, subsequently to pre-
22 paring P-17, have you taken any other steps to cross-
23 check the conclusions that you reached with respect
24 to the location of the State Development Guide Plan
25 growth area line within Far Hills and particularly

1 relative to the property in question?

2 A Yes.

3 Q And will you describe generally what
4 other cross-check steps or methodology you took?

5 A I again went back to the Somerset County map
6 as contained in the State Development Guide Plan
7 Page 133, marked off the area more or less depicted
8 by the Borough of Far Hills; and I had that portion
9 of the map enlarged photographically to the same
10 scale as the map contained in the Borough Master Plan.

11 MR. VOGEL: I think we should pause
12 and get the Borough Master Plan before the
13 Court.

14 Now I can go back and look for my
15 list here. Let's see.

16 THE COURT: '77 Master Plan is J-6.

17 MR. VOGEL: Yes, 1977 Master Plan
18 marked J-6. That's correct, your Honor.

19 THE COURT: You can't find it in there?

20 MR. VOGEL: There is some question
21 about locating J-6, your Honor. I have a
22 copy of the Master Plan.

23 MRS. NAISMITH: Here it is.

24 THE COURT: Here we go.

25 Q I just want to show you J-6 in evidence,

1 Mr. Zimmerman. Can you describe what that is?

2 A That is a master plan of the Borough of Far
3 Hills dated December, 1977.

4 Q And is that the map to which you
5 referred a moment ago in your testimony?

6 A Yes.

7 Q And I notice that on J-6 there is a
8 portion outlined in red with a red asterisk in the
9 middle. Can you describe what that represents, sir?

10 A That red line shows the property in question.

11 Q All right.

12 Now, I think that you were describing your
13 approach to cross-checking your scaling-off metho-
14 dology; and I'm not quite sure, did you say what
15 process you used?

16 A What I did was to take the State Development
17 Guide Plan Map and have that portion of the map which
18 showed Far Hills enlarged, and I enlarged it at the
19 same scale as the map shown on the master plan.

20 Q How did you do that? How did you know
21 what scale to tell the enlarging -- whoever enlarges
22 maps for you?

23 A Well, there are firms and businesses that do
24 that type of work.

25 Q What instructions did you give to them?

1 How did you know how big to make your scale?

2 A Well, the Far Hills Borough is 1.4 inches
3 in from top to bottom in the State Development Guide
4 Plan.

5 Q In other words, you measured the
6 length --

7 A I measured it off, yes.

8 Q -- from the top to bottom of Far Hills
9 as shown on the State Development Guide Plan --

10 A Yes, sir.

11 Q -- as 1.4 inches. What did you
12 measure next?

13 A I measured the length of Far Hills Borough
14 top to bottom on this plan, which is approximately --

15 Q When you say this plan, please tell
16 what it is.

17 A This is the map shown on the master plan.

18 Q That's J-6, correct?

19 A J-6, yes.

20 Q How long was that?

21 A Fifteen inches.

22 Q Then what did you do?

Tape 5

23 A I instructed the photographic studio to
24 enlarge the small map or small illustration of Far Hills
25 Borough in the State Development Guide Plan to

Zimmerman - direct

1 fifteen inches so it would correspond in scale
2 the map shown on J-6.

3 Q So you blew it up so that Fa
4 as shown in the State Development Guide Plan
5 fifteen inches long?

6 A That's correct.

7 Q All right. Then what did you do with
8 that?

9 A Then again I had --

10 Q Excuse me. Do you have that here,
11 that enlargement?

12 A Yes, I do.

13 Q All right. Can you show that to the
14 Court?

15 MR. VOGEL: All right. Your Honor,
16 the witness has a Beaverboard with what
17 appears to be a map underneath it and some
18 tissue paper with drawings on top of it. May
19 I have that marked for identification?

20 THE COURT: All right. What is the
21 next number plaintiffs exhibit?

22 THE COURT CLERK: Plaintiffs exhibit?

23 MR. VOGEL: Yes.

24 THE COURT CLERK: P-32.

25 THE COURT: What would be the best way

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to identify them, Mr. Zimmerman?

THE WITNESS: State Development Guide
Plan enlargement.

MR. MASTRO: What was that?

THE COURT: P-32.

THE COURT CLERK: P-32.

MR. VOGEL: That's right.

THE COURT CLERK: P-32 for identification.

(Whereupon, the State Development Guide
Plan enlargement was received and marked P-32
for identification.)

BY MR. VOGEL:

Q Mr. Zimmerman, I show you P-32 --

A It is upside down.

Q Pardon me?

A It is upside down.

Q I show you P-32 for identification
and ask if you can describe to the Court that which is
underneath the top sheet.

A Okay. The top sheet can flip back if that
would be helpful. But in any event, the illustration
shows --

Q Maybe that ought to be done. If you
can just flip back the top sheet.

MR. MASTRO: Judge, before the Court

1 admits any testimony in regard to this
2 exhibit, may I examine it?

3 THE COURT: Of course.

4 MR. MASTRO: And I may have a voir dire.

5 MR. VOGEL: Remember, I haven't offered
6 it in evidence yet, your Honor.

7 MR. MASTRO: I understand that, your
8 Honor, but there is going to be testimony in
9 regard to this exhibit or very close to that
10 point.

11 THE COURT: We will allow you to conduct
12 a voir dire. First, I assume that you have
13 not seen what is marked as P-32. I will now
14 afford Mr. Mastro an opportunity to examine
15 it.

16 If you would like, we have a box. We
17 can use that the same way we can use an x-ray
18 and get the same result, if you want to.

19 MR. VOGEL: The record should note
20 that I gave my adversary the negative. This
21 is not a medical case.

22 MR. MASTRO: Let me ask a question
23 or two, Mr. Zimmerman.

24 MR. VOGEL: I don't object to a voir
25 dire; but at this juncture, I haven't asked

1 that the document be admitted into evidence
2 yet.

3 THE COURT: No. That's true.

4 MR. VOGEL: I think that the foundation
5 questions that I intend to ask of my witness,
6 I think I ought to be permitted first, your
7 Honor.

8 THE COURT: Yes.

9 MR. MASTRO: All right. Foundation
10 questions, I have no problem with that.

11 THE COURT: And you have seen the
12 exhibit. Now, we will go to the foundation
13 questions; and then before you start eliciting
14 testimony as to it, there then I will permit
15 Mr. Mastro to go through his voir dire.

16 MR. MASTRO: I assumed, your Honor,
17 perhaps mistakenly, that Mr. Vogel was going
18 directly into the testimony. I apologize to
19 him if he was going into foundation questions.
20 Counsellor.

21 MR. VOGEL: Thank you, adversary.

22 BY MR. VOGEL:

23 Q Mr. Zimmerman, you described the length
24 of Far Hills from north to south as shown on the
25 Municipal Master Plan Map. Is that correct?

1 A Yes, sir.

2 Q And you described that as fifteen
3 inches?

4 A Yes, sir.

5 Q Would you scale it off right now and
6 just check that measurement?

7 A It's still fifteen inches.

8 Q All right. Mr. Zimmerman, you also
9 testified that you instructed whoever made photo
10 enlargements for you to photograph a portion of the
11 State Development Guide Plan and to enlarge it so
12 that the Borough of Far Hills from the State Develop-
13 ment Guide Plan is approximately fifteen inches long,
14 similar to the Municipal Master Plan Map. Is that
15 correct?

16 A That's correct.

17 Q Will you please measure Far Hills
18 as shown on P-32 for identification?

19 A It is approximately fifteen inches.

20 Q All right.

21 Mr. Zimmerman, do you conclude that from the
22 measurement of the Municipal Master Plan Map and the
23 blowup photo from the State Development Guide Plan,
24 that indeed the Borough of Far Hills is at approxi-
25 mately the same scale on both maps?

1 A Yes, sir.

2 THE COURT: When we say both maps now,
3 we are talking about J-24, which is the State
4 Development Guide Plan Map, and P-32, the
5 enlargement?

6 MR. VOGEL: Correct, enlargement of
7 a section of Page 133 of the State Development
8 Guide Plan.

9 THE COURT: All right.

10 Q Mr. Zimmerman, can you ascertain from
11 the configuration of Far Hills as shown on P-32
12 that it appears to have the same configuration as
13 Far Hills does on the Municipal Master Plan Map?

14 A It has approximately the same configuration
15 as shown on the Borough Master Plan Map.

16 Q Can you locate the growth area from
17 the State Development Guide Plan Map as shown on the
18 enlargement?

19 A The growth area, as shown on the enlargement,
20 is depicted by the heavy black lines running horizont-
21 ally across an area outlined also by heavy black line.

22 Q Is that growth area shown as going
23 through a portion of Far Hills?

24 A The growth area is shown as containing a
25 portion of the western area of Far Hills.

1 Q All right. In your opinion, Mr. Zimmer-
2 man, does the photo enlargement portion of exhibit
3 P-32 for identification represent a fair enlargement
4 of the State Development Guide Plan Map or that portion
5 thereof that encompasses Far Hills, comparable in
6 scale to the Municipal Master Plan Map --

7 A Yes.

8 Q -- of the borough?

9 A Yes.

10 MR. VOGEL: I now offer that portion
11 of P-32 into evidence, your Honor. Only the
12 photo enlargement part.

13 THE COURT: At this point, Mr. Mastro
14 wants to conduct a voir dire.

15 MR. MASTRO: Do we have J-24 out
16 somewhere?

17 THE COURT: J what?

18 MR. MASTRO: J-24.

19 THE COURT: Right here, sir.

20

21 VOIR DIRE EXAMINATION

22 BY MR. MASTRO:

23 Q Mr. Zimmerman, would you look at
24 Page 133 of J-24 which shows the State Development
25 Guide Plan Map as it affects Somerset County.

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Is that a reproduction of some other map?

A I don't understand the question.

Q Is there an original from which this map was taken?

MR. VOGEL: Objection. I don't know what relevance that question has to do with whether or not this photo enlargement should be admitted into evidence.

THE COURT: I'm not so sure I understand either, but I'm going to permit it just for that reason: so we can find out where we are going.

A Not to the best of my information.

Q As far as you know, the only depiction of the State Development Guide Plan Map as it affects Somerset County appears on J-24 at Page 133?

A That's correct.

Q Do I understand, Mr. Zimmerman, that you had Page 133 reproduced by some professional outside of your office?

A That's correct.

Q Is this a separate firm?

A Yes.

Q Could you identify the firm?

A It's called Trukmann's, T-r-u-k-m-a-n-n.

1 Q Where is that firm located?

2 A Located in Morristown.

3 Q What does that firm do?

4 A They do a variety of reproduction, duplicating
5 and blueprinting activities.

6 Q You are satisfied, as you testified
7 earlier, that Trukmann merely enlarged Page 133 on
8 J-24 and projected that on what is now P-32?

9 A Yes.

10 Q Do you happen to know, Mr. Zimmerman,
11 what type of device was utilized in the enlargement
12 process?

13 A It was done photographically using cameras.
14 As far as the brand of the camera, I don't know.

15 MR. MASTRO: Those are the only
16 questions, your Honor.

17 THE COURT: All right.

18 MR. MASTRO: Any comment I may have
19 will go to the weight of that document.

20 THE COURT: You made a proffer, P-32?

21 MR. VOGEL: Yes, your Honor.

22 THE COURT: Is there any objection to
23 it?

24 MR. MASTRO: I'm sorry, Judge?

25 THE COURT: There was a proffer made of

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P-32, the enlargement.

MR. MASTRO: No. I have no objection.

THE COURT: Okay, P-32 in Evidence.

THE COURT CLERK: P-32 in Evidence.

MR. VOGEL: Your Honor, do you want to mark the photo enlargement as P-32A and mark the cover sheet upon which Mr. Zimmerman did some work as P-32B?

THE COURT: I will leave that to you. We have got the face sheet, obviously, marked as P-32, that which you are holding.

Now, can you detach the cover?

THE WITNESS: Yes, you can detach it if you so care to.

MR. VOGEL: They belong together.

THE COURT: Well, let us make it P-32A. Do you understand what we are doing with this, Mr. Mastro?

MR. MASTRO: I understand, Judge, but I don't know if it's wise. If the overlay was intended to relate --

THE COURT: Well, do you want to give the overlay another number, P-33?

MR. VOGEL: That would be fine.

The sticker is already on this overlay, Judge.

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THE COURT: The sticker is on the overlay?

MR. VOGEL: Yes.

THE COURT: Well, make it P-32 and P-32A.

MR. MASTRO: That makes more sense, Judge.

MR. VOGEL: So, the photo enlargement will be P-32A, and the overlay will be P-32.

THE COURT CLERK: P-32 and P-32A in evidence.

(Whereupon, the State Development Guide Plan enlargement overlay was received and marked P-32 in evidence.)

(Whereupon, the State Development Guide Plan enlargement was received and marked P-32A in evidence.)

BY MR. VOGEL (CONTINUING):

Q Mr. Zimmerman, after having obtained an enlargement of the State Development Guide Plan map portion represented by Far Hills and some surrounding area on P-32A, what did you do next?

A I took a piece of tracing paper and placed it upon the map of Exhibit J-6. That is the Master Plan Map.

1 The idea was since this map shows the subject
2 property, shows the roads and Interstate 287, 202,
3 Route 512, road to Liberty Corner --

4 Q The railroad?

5 A -- the railroad, that that information can
6 be traced on a piece of onionskin tracing paper.

7 Since the two maps are now at the same scale,
8 the tracing paper then could be affixed to the State
9 Development Guide Plan map; and we would then be able
10 to ascertain where the growth area line is relative
11 to these landmarks and roads and properties.

12 Q All right. In fact, is that what you
13 did?

14 A That's exactly what I did.

15 Q Referring now to P-32 -- First of
16 all, what you have described as onionskin --

17 A It's called onionskin tracing paper.

18 Q And it's a tanish color --

19 A That's correct.

20 Q -- tracing paper. Okay.

21 I see that there are some lines depicted on
22 P-32?

23 A That's correct.

24 Q Did you put those lines on that paper?

25 A Yes, I did.

1 Q And you obtained those lines from
2 what source?

3 A From the Master Plan Existing Land Use Map
4 shown on exhibit J-6 for the master plan of Far Hills.

5 Q Would you come up here to the exhibit
6 P-32 and describe --

7 First of all, I note that you have in light
8 pencil put some lines on the map. Can you tell the
9 Court what that represents?

10 A They are light pencil lines. These are the
11 boundaries lines of the Borough of Far Hills.

12 The heavier lines are the railroad, Route 202,
13 Sunnybranch Road, I-287, and the road to Liberty
14 Corner.

15 Also the subject property is shown outlined
16 in black and colored in green.

17 Q How did you know the boundary lines
18 of the premises in question?

19 A Well, the property lines are shown on the
20 Master Plan Map.

21 As indicated before, the boundary line of the
22 subject property is outlined in red on the Master Plan
23 Map. So, that information was traced on the tracing
24 paper, and then the tracing paper merely overlaid
25 onto the enlargement of the State Development Guide

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Plan map.

Q So that having the same scale from
the Municipal Master Plan and the blowup of the
State Development Guide Plan, you put the overlay
on top of the State Development Guide Plan enlargement.
Is that correct?

A Yes.

Q What do you deduce from all of that,
Mr. Zimmerman, in terms of particularly the location
of the State Development Guide Plan growth area line
relative first to Far Hills?

A Well, two things. One, that there is an
area of Far Hills that is depicted as growth area;
and indeed second, that a portion of the subject
property lies within the growth area designation.

Q All right.

Now, Mr. Zimmerman, let us take the second
conclusion that you just gave.

Can you give the Court an indication of
approximately what percentage of the property lies
within the growth area as shown from the photo
enlargement methodology?

THE COURT: Wait a minute. Go ahead.

A According to the photo enlargement methodology,
a somewhat greater percentage of the subject property

1 lies within the growth area than I indicated earlier.

2 You may recall that on Exhibit P-17 I estimated
3 that approximately sixty percent of the property in
4 question was in the growth area. This enlargement
5 map shows that there may be upwards of seventy-five
6 percent of the growth area -- or seventy-five percent
7 of the property is in the growth area.

8 Q Mr. Zimmerman, I'm going to ask you
9 this.

10 The methodology that you have used, the scaling
11 from the smaller scale State Development Guide Plan
12 map to the larger scale map, P-17, and the photo
13 enlargement that you have just been through, are those
14 standard techniques used by planners to perform the
15 functions that you have been performing?

16 A Yes, they are.

17 Q Do you consider them to be reasonable
18 and reliable techniques for what you have been doing?

19 A Yes, I do. I think that we have two methods
20 to make a determination as to whether the property
21 in question lies within the growth area.

22 I think I undertook to perform both of those
23 methods or techniques with the most reasonable amount
24 of care that I could; and I think that the results
25 are substantially similar, if not identical.

Tape 6

1 Q By the way, I see that by enlarging
2 the photograph of the State Development Guide Plan
3 from a scale where Far Hills was 1.4 inches to 15
4 inches, the line designated as the growth area has
5 gotten a lot fatter.

6 What you indicate as the totality of that
7 line, does that split the property? Even though
8 the line has gotten much wider, does it still split
9 the plaintiffs' property?

10 A Yes. If you take any portion of that line,
11 the property is still within the growth area.
12 That is, if you take the outer portion of the line
13 and use that as your boundary, obviously almost all
14 the property is in the growth area.

15 If you take the middle of the line, a sub-
16 stantial portion of the property is in the growth
17 area; and if you take the entire line, approximately
18 fifty percent of the property is in the growth area.

19 So, whatever portion or whatever part of
20 that line you want to utilize, you will still end up
21 with the same conclusion.

22 Q Based upon the photo enlargement
23 technique that you have employed, have you reached
24 a conclusion as to whether or not the State Development
25 Guide Plan growth area, as depicted on P-17, is an

1 accurate representation of the line as it bisects
2 the property in question?

3 A I think it is.

4 Q And is it a reasonably accurate
5 representation of the growth area line as it bisects
6 the Borough of Far Hills?

7 A Yes, I think it is.

8 Q Mr. Zimmerman, I want to ask you
9 some other questions now in a slightly different
10 vein.

11 Subsequent to the first phase of the trial
12 way back in January of this year, did you personally
13 visit the Department of Community Affairs to obtain
14 the most recent and most up-to-date copy of the State
15 Development Guide Plan?

16 A Yes, I did.

17 Q When did you last visit the Department
18 of Community Affairs on that mission?

19 A Well, as a matter of record, it was Friday,
20 which would be October 22.

21 Q This past Friday?

22 A Yes.

23 Q Friday of last week?

24 A Yes.

25 Q And did you obtain an official copy

not
vain

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1 of the State Development Guide Plan?

2 A Yes, I did.

3 Q Do you have that copy with you?

4 A Yes, I do.

5 MR. VOGEL: Can we have that marked
6 for identification?

7 THE COURT: Yes, sir.

8 THE COURT CLERK: P-33, State
9 Development Guide Plan.

10 THE COURT: P-33?

11 THE COURT CLERK: Yes.

12 (Whereupon, the State Development
13 Guide Plan was received and marked P-33 for
14 identification.)

15 BY MR. VOGEL:

16 Q I show you P-33 and ask you does the
17 cover of that plan have a copy or a facsimile of
18 the seal of the State of New Jersey thereon?

19 A Yes, it does.

20 Q What are the words on the cover of
21 the plan?

22 A "State Development Guide Plan, New Jersey
23 Department of Community Affairs, Division of State
24 and Regional Planning. May, 1980."

25 Q And where did you get it, what

1 department?

2 A I obtained this from the Department of
3 Community Affairs.

4 Correction. The date Friday was October 21,
5 not the 22nd. Sorry.

6 THE COURT: What's the date on that
7 revision, May of 1980?

8 THE WITNESS: May of 1980.

9 BY MR. VOGEL:

10 Q Mr. Zimmerman, have you looked at
11 Page 133 of P-33?

12 A Yes, I have.

13 Q And what does Page 133 have on it?

14 A Map XXIII, entitled, "Somerset County State
15 Development Guide Plan."

16 Q Have you compared that with the map
17 that you were referring to previously as the State
18 Development Guide Plan Map for Morris County -- Sorry,
19 for Somerset County?

20 A Yes.

21 Q And how does it compare?

22 A It is exactly the same.

23 Q Did you compare that map with the one
24 that is appended to and made a part of the Supreme
25 Court's decision in Mount Laurel II?

1 A Yes, I did. Again, it is exactly the same.

2 Q Is that the same map or a copy of
3 the same map from which you had the photo enlarge-
4 ments made on P-32?

5 A Yes, it is.

6 Q Did you find any changes whatsoever
7 in the State Development Guide Plan map, which is
8 now marked for identification as P-33, from those
9 which are in evidence in this trial and which you
10 have seen previously?

11 A No.

12 MR. VOGEL: I offer this in evidence,
13 your Honor.

14 THE COURT: Show it to counsel.

15 MR. MASTRO: I have one question,
16 your Honor.

17 THE COURT: Of course.

18 MR. MASTRO: Did you pay a fee for
19 this?

20 THE WITNESS: Yes, I did.

21 MR. MASTRO: That's all.

22 MR. VOGEL: How much?

23 THE WITNESS: Three dollars.

24 MR. MASTRO: I have no objection.

25 THE COURT CLERK: P-33 in evidence.

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(Whereupon, the State Development Guide Plan was received and marked P-33 in evidence.)

BY MR. VOGEL:

Q Mr. Zimmerman, when you were in Trenton on Friday of last week, did you inquire or request as to whether or not there were any officially-approved enlargements of the State Development Guide Plan map either for the State of New Jersey as a whole or for Somerset County?

A Yes, I did.

Q And what did you ascertain?

A There aren't any.

MR. VOGEL: Your Honor, I don't know if you want to take a break. It's three o'clock.

THE COURT: Yes, I have some other business.

MR. MASTRO: Do you want us to move our material, Judge?

THE COURT: It is reasonably safe.

All right.

(Whereupon, a recess was taken at 3:03 p.m.)

(Whereupon, court resumed at 3:31 p.m.)

THE COURT: Off the record.

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1 (Whereupon, a discussion was held
2 off the record.)

3 THE COURT: Let us go back on the
4 record on this.

5
6 DIRECT EXAMINATION (CONTINUING)

7 BY MR. VOGEL:

8 Q Mr. Zimmerman, have you had occasion
9 to compare D-9 in evidence and, particularly, the
10 growth area line of the State Development Guide Plan
11 as it crosses through the premises in question,
12 to the State Development Guide Plan line as shown
13 on P-32?

14 A Yes, I have.

15 Q And what do you conclude by the
16 comparison of those two exhibits?

17 A They are reasonably the same.

18 Q Mr. Zimmerman, have you considered
19 as a planner with a planner's expertise in map work
20 and things like that, what would happen with the
21 State Development Guide Plan line, as it is relative
22 to the property in question, if the line were moved,
23 let's say, a few hundred feet? Let's say two hundred
24 feet to the east on the southerly boundary line,
25 that is, this way (indicating) and, perhaps, two hundred

1 feet to the west on the northerly boundary line
2 or vice versa?

3 A It would not have any -- it would not change
4 my conclusion that the subject property is within,
5 in part, within the growth area designation.

6 Q Why is that?

7 A Because what there is, as the Court may see,
8 a slight difference between the growth area line on
9 the map prepared by Mr. Dresdner, D-9, and the map
10 prepared by myself marked P-17.

11 Essentially what the difference is, is
12 that there is a slight rotation of the line where
13 it is shown on D-9 in the direction I'm indicating
14 with this pointer; and it is rotated slightly on
15 the other exhibits.

16 The effect, however, for the subject property
17 is negligible because the line is rotating around
18 the center of town, the village area and the subject
19 property.

20 So, you might have the line in the north a
21 little bit more to the east, the line to the south
22 a little bit more to the west or vice versa, but
23 the impact upon the subject property or the property
24 in question is negligible. It's still in the growth
25 area.

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Q I think you probably should stay up there, Mr. Zimmerman.

Have you compared the growth area of the State Development Guide Plan as it encompasses the Far Hills Village and the premises in question and, particularly, as shown on P-32, because we have not had that marked into evidence, and the growth area of the Somerset County Master Plan as shown on your exhibit P-16?

THE COURT: Do you understand his last question?

MR. MASTRO: I don't want to object, but I would like Mr. Vogel to refine the question. I'm sure he meant --

THE COURT: It had a lot of parts.

MR. MASTRO: Yes.

MR. VOGEL: Judge, why don't I try to ask it again.

MR. MASTRO: Rephrase it.

THE COURT: Go ahead.

BY MR. VOGEL:

Q Mr. Zimmerman, would you compare the growth area as shown on the State Development Guide Plan enlargement, photo enlargement of exhibit P-32, to the growth area as shown on the Somerset

County Master Plan as depicted in Exhibit P-16?

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MR. MASTRO: I think the question should incorporate rural settlement or -- I'm sorry, residential.

THE COURT: You are asking him to compare P-32 and P-16?

MR. VOGEL: I'll ask the question differently. I'll withdraw that question, your Honor.

BY MR. VOGEL:

Q Mr. Zimmerman, I refer you to exhibit P-16.

First of all, do you recall that exhibit?

A Yes, I do.

Q And what is it?

A It is an exhibit which shows a portion of Far Hills upon which is superimposed designations from the Somerset County Master Plan.

It shows three categories of land use. The uncolored area is "rural settlement," basically low density; "village neighborhood," colored in light green, encompasses the village area of Far Hills --

Q Did you say light green or yellow?

A Yellow, encompassing the village area, plus the property in question and other properties in and

1 around Sunnybranch Road.

2 The densities, as I recall, were five to fifteen
3 units per acre in the master plan.

4 Then the third category was, "Open space,"
5 which is shown on this map as corresponding to the
6 stream and river, corridors, plus other areas in the
7 north part of Far Hills which are characterized by
8 steep slopes.

9 Q Now, the highest density areas in
10 terms of housing on the Somerset County Master Plan,
11 is what designation?

12 A "Village neighborhood."

13 Q As a planner, given the fact as you
14 have just testified, that the County Master Plan
15 calls for densities of five to fifteen units per acre
16 in those village neighborhoods, would you character-
17 ize that --

18 How would you compare that to the growth
19 areas as shown on the State Development Guide Plan?

20 A Well, the areas that -- there is a substantial
21 amount of area that is contained both in the growth
22 area on the State Development Guide Plan and the
23 "village neighborhood" designation on the County
24 Master Plan.

25 Obviously, all of the village is contained in

1 both plans.

2 The upper northern extension of the village --

3 Q Excuse me. I wasn't quite as sharply
4 focused on that question as I should have been.

5 First, I wanted to know how would you compare
6 the two in terms of their contemplation for develop-
7 ment, intensity of development?

8 A Well, they both envision the growth area in
9 the State Development Guide Plan as where the State
10 recommends additional growth in terms of housing,
11 commercial developments, shops and stores, industry,
12 whatever is appropriate within the area; but that is
13 the area that the State has classified as absorbing
14 the growth that we are going to be involved in in
15 the next coming years.

16 Q And in terms of housing density?

17 A To tell you the truth, I don't recall.

18 Q In a general way?

19 A I don't recall if there was a specific number,
20 but that would be the area that would receive the
21 density higher than of limited growth area, and it
22 would absorb higher types of densities.

23 Q So, in terms of housing density,
24 general categories, in what way would you say the
25 "village neighborhood" on the County Master plan and

1 the growth area of the State Development Guide Plan
2 are similar or dissimilar?

3 A Well, as you may recall, the village section
4 of Far Hills is developed according to two-zone
5 categories or two densities.

6 One home on five thousand square feet, or
7 one home on nine thousand square feet; which would
8 mean it's a density of five units per acre to
9 approximately nine units, yes, nine units per acre.
10 That is the scale of density that one presently finds
11 in the village.

12 I think it's reasonable to assume that that
13 scale of density would be reasonable for expansion
14 of the village as depicted by this State Development
15 Guide Plan growth area.

16 Q Do you know, Mr. Zimmerman, whether
17 or not those persons in the State Department of
18 Community Affairs that put together the State
19 Development Guide Plan and depicted the growth areas
20 in Somerset County, whether they took into account
21 or consulted with the officials of Somerset County,
22 particularly their planning people?

23 A Yes, they did.

24 MR. MASTRO: I object to that, your
25 Honor, unless there is a foundation.

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MR. VOGEL: I asked him if he knew.

THE COURT: No, how he knew.

Do you have some knowledge about some consultation between those different bodies?

THE WITNESS: Yes, I do.

THE COURT: All right.

BY MR. VOGEL:

Q And can you tell the Court the basis of that knowledge?

A Two-fold. One is the wording contained in the State Development Guide Plan, and second is my own interviewing of persons who prepared the State Development Guide Plan.

Q Does that include Mr. Ginman?

A Yes, sir.

Q What is it in the wording of the State Development Guide Plan that provided that information to you?

A First, in the preface to the State Development Guide Plan --

Q Excuse me, I just want to go back one step.

What is the date of the State Development Guide Plan?

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A 1980.

Q What is the date of the Somerset County Master Plan?

A As I recall, it's 1970; but let me check to be sure.

Yes, 1970.

Q So, from those dates, what do you conclude with respect to whether or not the County Master Plan, as available --

Was it physically in existence at the time the State Development Guide Plan was being developed?

A Yes, it was.

Q Now, I had asked you what is there in the text of the State Development Guide Plan which would indicate to you that they took into account information from the county planning officials of Somerset County?

A The preface to the State Development Guide Plan indicates -- in fact, indeed it's subtitled, "Preparation of the State Development Guide Plan," and it indicates --

Q What page are you reading from?

A It's the first page of text, which actually doesn't have a page number, but it's entitled, "Preface," and immediately precedes lower case one.

1 At that point, the plan indicates that the
2 preliminary draft to the guide plan was started
3 in 1977, with copies sent to all state agencies,
4 regional and county planning agencies or municipi-
5 palities, and in public libraries; additional copies
6 were made available to the general public on request.

7 Of the three thousand copies printed, all
8 have been distributed.

9 A brochure outlining the major elements of
10 the plan was also produced and widely distributed.

11 In addition, the staff of the Division of
12 Planning have participated in over eighty presenta-
13 tions and discussions with a variety of civic and
14 interest groups and public agencies in all parts
15 of the state.

16 Moreover, state agencies with land-use
17 responsibilities were surveyed to obtain information
18 for incorporating in future plan revisions.

19 Lastly, the plan indicates that this present
20 document builds on the preliminary draft and
21 consultation discussions, presentations and confer-
22 ences held on the plan since it was published in
23 1977.

24 Further on in the plan there is a section
25 that deals specifically with Somerset County. The

1 map is contained on Page 133, but there is text on
2 Page 132.

3 Q What does that text indicate?

4 A I quote from the text: "Somerset County
5 has been partially suburbanized, but still has
6 extensive open space and agricultural areas. County
7 planning policies suggest various centers where
8 future development would be appropriate. Emphasis
9 is placed on the conservation of large tracts of
10 open space and agricultural lands, as well as
11 protection of surface and subsurface water quality.
12 Economic activities are encouraged to cluster in
13 areas served by transportation facilities, including
14 highways."

15 I think that the plan says in two sections
16 that county planning policy was part of the process
17 for the preparation of the State Development Guide
18 Plan and that the earlier preliminary drafts of the
19 plan were submitted to the county planning board
20 agencies for their review and discussions; and,
21 lastly, as I indicated, that I did interview Mr. Gin-
22 man on this point.

23 He indicated --

24 MR. MASTRO: I object to that.

25 Besides, Mr. Ginman --

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THE COURT: You propose to call

Mr. Ginman?

MR. VOGEL: I would say, subject to any clarification or change in that, Mr. Ginman will be here for further cross-examination.

This is an expert's investigation upon which he bases conclusions; and, frequently, that gets involved in interviewing people.

THE COURT: On its face, it's obvious hearsay --

MR. VOGEL: I think that --

THE COURT: -- what Ginman said to him. There is an exception apparently --

MR. VOGEL: -- dealing with --

THE COURT: -- with experts --

MR. VOGEL: Yes.

THE COURT: -- who predicate their testimony even on the opinions of others.

MR. MASTRO: Your Honor, I think his testimony is unnecessary in view of the fact that Mr. Ginman is going to testify.

THE COURT: I will sustain it on the basis that he has discussed it with him,

1 and that's the source of his conclusion.

2 BY MR. VOGEL:

3 Q Based upon discussions, without
4 saying what they were, and based upon your reading
5 of the text and your view of the two plans themselves,
6 do you have an opinion as to whether or not this
7 State Development Guide Plan itself and those who
8 developed that plan took into account the County Master
9 Plan?

10 A Yes, my opinion is that they did.

11 Q As a planner, what situation do you
12 attribute to the comparison of the growth area in
13 the State Development Guide Plan and the village
14 neighborhood in the County Master Plan?

15 A Well, I think there are several items of
16 situation.

17 One, that there is substantial conformance
18 between the plans in what the two plans recommend
19 for their respective areas of Far Hills. That is,
20 both plans recommend that there is a portion of
21 Far Hills which should sustain growth; and, indeed,
22 both plans recommend the enlargement of the village
23 area of Far Hills to accommodate growth, and part
24 of this growth would be housing.

25 Also, the process undertaken by the State

1 Development Guide Plan people and as explained in
2 the preface and as expanded on in these sections
3 specifically dealing with Somerset County, indicates
4 to me that they were involved in a logical, rational
5 process that is perfectly acceptable as a planning
6 process; and it was not an arbitrary or capricious
7 endeavor by the Division of State and Regional
8 Planning and that, as such, the location of the
9 growth area is the result of a well-reasoned planning
10 process.

11 And the result of that process is a growth
12 area demarcation which is substantially consistent
13 with plans of another agency and this one county
14 which, in some respects, is even closer to the needs,
15 wishes and desires of communities in the state.

16 Q You mean in this county?

17 A In Somerset County, yes.

18 Q Mr. Zimmerman, just to again refer
19 to exhibit D-9, prepared by the planner on behalf
20 of the defendant. You have already identified the
21 eastern boundary line of the growth corridor in the
22 State Development Guide Plan.

23 Do you see depicted on that map the boundary
24 line of the village neighborhood on the Somerset
25 County Master Plan?

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A Yes, the exhibit D-9 shows the outline of the village neighborhood, which was promulgated by the county, in addition to the eastern boundary of the growth area as promulgated in the State Development Guide Plan.

Q And the village neighborhood, does that encompass all of the premises in question --

A The village neighborhood does encompass the entirety of the property in question.

Q -- as shown on exhibit D-9?

A Yes, sir.

Q And it is the same conclusion that you reached on exhibit P-16?

A Yes.

Q So that all exhibits in this case from both the plaintiff and defendant indicate that the premises in question, along with the Far Hills Village, are included within the village neighborhood as defined and depicted on the Somerset County Master Plan?

A That's correct.

Q Actually there is very little difference. There is virtually no significant difference between P-16, D-9 and P-17.

Isn't that correct, Mr. Zimmerman?

1 A I would say that that certainly is correct;
2 and, in particular, as those exhibits refer to the
3 property in question. The degree of conformity is
4 striking.

5 Q And P-32 introduced today, with
6 respect to the growth area of the State Development
7 Guide Plan, is likewise consistent with those exhibits?

8 A Yes, the enlargement. The photographic
9 enlargement of the State Development Guide Plan map
10 only serves to reconfirm and depict what is shown
11 on the other exhibits.

12 Q Mr. Zimmerman, have you also prepared
13 one other exhibit for the Court showing the growth
14 area, the State Development Guide Plan growth area,
15 as it goes through Far Hills and also beyond what
16 I would call the Route 206 corridor? You may call it
17 something else.

18 A Yes.

19 Q Can you -- I'll withdraw that question.
20 I show you this exhibit and ask if you -- first of
21 all, have you prepared it?

22 A Yes.

23 Q Can you describe what is in the exhibit?

24 A Yes. I obtained a copy of the Somerset County
25 Map. That map is divided into two sections, the

Zimmerman - direct

1 northern section is Somerset County and the so
2 section; pretty much Route 22 and areas to the
3 are depicted on one map, and Somerville and a
4 to the south on the other map.

5 The map before the Court shows the northern
6 portion of Somerset County which, obviously, would
7 include Bridgewater, Bedminster, Far Hills,
8 Bernardsville, et cetera.

9 MR. VOGEL: All right.

10 Before we go on, I'm going to ask
11 that this exhibit be marked for identifica-
12 tion.

13 THE COURT: P-34.

14 MR. MASTRO: What are we going to
15 call that, Judge?

16 MR. VOGEL: Northern portion of
17 Somerset County.

18 THE COURT: What is the thing itself?

19 THE WITNESS: No. It's a map I
20 obtained from the county planning board.

21 MR. VOGEL: It is a regular road map
22 of Somerset County.

23 THE COURT: And you have overlaid
24 something on it?

25 MR. VOGEL: With the State Development

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Guide Plan area overlay?

THE WITNESS: Yes.

THE COURT: All right. County map
with overlay.

(Whereupon, a road map of Somerset
County with overlay was received and marked
P-34 for Identification.)

BY MR. VOGEL:

Q Now, referring to P-34. You have
already described the underportion thereof as the
northern portion of Somerset County.

Will you describe what the overlay is?

A The overlay is the growth area as shown in
this color.

Q What color?

A Red.

MR. MASTRO: Red?

THE WITNESS: Green, I'm sorry.
I'm color-blind, so I mix up colors.

THE COURT: Green?

THE WITNESS: Yes. The green hori-
zontal lines show the growth area as
depicted in the State Development Guide Plan
transferred to the scale of the Somerset County

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map.

BY MR. VOGEL:

Q Now, with respect to the portion of the growth area that bisects or crosses part of Far Hills, what do you call that growth area? Is there a name for it?

A Well, the plan refers to it as the 202 corridor. That is, looking at the state as a whole --

Q Is it 202 or 206?

A It's 202-206. It refers to both of them actually.

There is what is called the Clinton corridor; that is, taking Route 22 out to the west. And there is a growth area that continues out into Hunterdon County to Clinton, which would include Bridgewater.

Then there is 202-206; and as you continue further to the north, the 202 corridor, which would encompass Bridgewater, Pluckemin, Far Hills, up to Gladstone and Peapack.

So, this is a spur or a corridor recognizing the importance of existing settlement or villages or areas like Bridgewater or Far Hills or Peapack-Gladstone and the transportation routes, railroad, highways, roads, et cetera.

Q And in what way does this overlay --

1 what situation does it have in terms of your
2 assessment that the growth area line through Far Hills
3 is, what did you say, a reasonable planning decision?

4 A Well, this illustration puts the growth area
5 in Far Hills in a larger context. So, you can see
6 ~~that the village area, which I'm pointing out with~~
7 ~~the pointer, is part of a larger area of Somerset~~
8 ~~County which has been designated as growth area.~~

9 That designation is based upon certain
10 factors which, again, I think are evident from an
11 examination of this map; wherein the transportation
12 routes such as 202, 206 running north-south, a
13 portion of 202 running east-west, Route 206 continuing
14 north, Route 512 connecting Far Hills and Peapack-
15 Gladstone, plus the railroad, the railroad stations
16 and the fact that you have existing higher density
17 settlements within this area.

18 Lastly, you do have areas for expansion in
19 this area, which is precisely what the growth area
20 designation is all about.

21 Q Do you believe that that particular
22 corridor, the 202-206 corridor, which encompasses
23 the Far Hills Village and some enlargement thereof,
24 including the PO, is a reasonable designation of the
25 growth area corridor?

1 A I think it is. I think the State Development
2 Guide Plan on Page 55 discusses this corridor.

3 It talks about, for example, quoting,
4 "Interstate 78 and Routes 22 and 202 provide east-
5 west access through the corridor. Interstate Route 287
6 and Route 202 link the corridor with locations to
7 the north and south."

8 Further, the plan talks about rail transporta-
9 tion and, specifically, again quoting, "Conrail
10 service on the Gladstone branch of the former Erie-
11 Lackawanna Railroad also provides railroad access
12 to a small portion of the northeastern tip of the
13 corridor."

14 So, I think the plan specifically makes
15 reference to the transportation routes in this
16 corridor, both highway and rail. There doesn't seem
17 to be -- it seems rather clear, both from what's
18 on the map and what's in the narration, as to what
19 they're talking about.

20 Q And do you think that designation
21 of that growth area corridor is reasonable?

22 A Yes, I do.

23 MR. VOGEL: Okay.

24 Your Honor, I think this is as good
25 a place to break.

Tape 8

1 THE COURT: All right.

2 Do you have any objection to that,
3 Mr. Mastro?

4 MR. MASTRO: No.

5 MR. VOGEL: I would just like to
6 offer that one exhibit in evidence.

7 THE COURT: Which one?

8 MR. VOGEL: P-34.

9 THE COURT: P-34. Do you want to
10 conduct a voir dire first?

11 MR. MASTRO: I have a question or two,
12 your Honor.

13 THE COURT: Well, do you want to
14 pick it up on Monday, or do you want to do it
15 now?

16 MR. MASTRO: Let us do it on Monday.
17 Perhaps, as I think about it, I will have
18 more questions.

19 THE COURT: All right. We are in
20 recess then. You gentlemen know what the
21 schedule is, and we will resume on Monday,
22 which is the 31st, at nine o'clock or as
23 soon thereafter as we can.

24 (Whereupon, court recessed at 4:06 p.m.)

25 ***

C E R T I F I C A T E

I, LORETTA HOLECZ DUARDO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability and knowledge.


Loretta Holecz Duardo
Certified Shorthand Reporter

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