

AM - Hauis, v. Far Hills

11/7/83

Stenographic Transcript of non-jury
trial

P 117

AM000~~2~~95S

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

1
2
3 ALOIS HAUEIS, et al, :

4 Plaintiff, :

STENOGRAPHIC
TRANSCRIPT OF:

5 vs. :

NON-JURY TRIAL

6 BOROUGH OF FAR HILLS, :

7 Defendant. :

8 -----X

9 Date: November 7, 1983

10 Place: Somerset County Courthouse
Somerville, New Jersey

11
12 B E F O R E:

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

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

15 HERBERT VOGEL, ESQ.,
16 Attorney for the Plaintiff.

17 J. ALBERT MASTRO, ESQ.,
18 Attorney for the Defendant.

RECEIVED
AT CHAMBERS

NOV 16 1983

HON. DAVID G. LUCAS

19 PATRICIA BRILL, C.S.R.
20 Official Court Reporter
21 Somerset County Courthouse
22 Somerville, New Jersey
23
24
25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS

CROSS

RE CROSS

RICHARD GINMAN

By: Mr. Mastro (continued)
Mr. Vogel

2
85

112

1 M O R N I N G S E S S I O N :

2
3 THE COURT: All right. Let's go off the
4 record.

5 (Whereupon a discussion was held off
6 the record.)

7 THE COURT: All right, Mr. Ginman.

8
9 R I C H A R D G I N M A N, previously Sworn.

10
11 CONTINUED CROSS-EXAMINATION BY

12 MR. MASTRO:

13 THE COURT: Go ahead.

14 MR. MASTRO: Are we ready?

15 THE COURT: We're ready.

16 Q Mr. Ginman, I think we agreed on
17 Wednesday that the boundary lines of the growth area on
18 the State Development Guide Plan Map were broad,
19 general and conceptual; is that true, sir?

20 A I'm trying to pick up my thoughts from where
21 we were last week. I'm not sure I used those exact
22 words.

23 Q Let me rephrase the question.

24 A All right.

25 Q Would you agree that the boundary

1 lines of the growth area on the SDGP are indeed broad,
2 generalized and conceptual?

3 A Well, in a sense that they are conceptual, they
4 describe the extent of an area for growth by describing
5 in this particular instance the Route 206 corridor.

6 Q Let me, perhaps, raise the question
7 somewhat differently.

8 If we look at P-32A and if we were to take the
9 growth area along the 206 corridor and magnify it, as
10 was done on this exhibit, it would show that growth
11 corridor, would the boundary lines be precise in terms
12 of distinguishing between different types of areas,
13 or would they be in somewhat of a gray area requiring
14 site specific adjustment?

15 A I think I had stated previously that there was
16 no intent to be site specific in a sense of describing
17 properties included within a line or properties
18 excluded from a line.

19 Q Can we focus on the question? Let me
20 rephrase it a little more clearly.

21 When it comes to a question of land use in
22 particular and utilization of the boundary lines of
23 the State Development Guide Plan Map, do those boundary
24 lines require adjustment in order to accurately reflect
25 land use policy?

1 Let me just revise the question to reflect --
2 do they require site specific adjustment at the local
3 level?

4 A I think I understood the question better when
5 you phrased it previously. Let me try and answer it.

6 Q Go ahead.

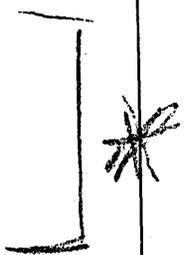
7 A And let's see if that describes it.

8 The term "land use" --

9 THE COURT: Will you keep your voice
10 up, please, sir?

11 A The term "land use" implies, at least in my
12 judgment, the description of very accurate kinds of
13 land uses.

14 The description of the growth area in the
15 State Development Guide Plan was intended to reflect
16 general growth patterns and not land use patterns.



17 As an illustration of land use, I would think
18 of a description of, let's say, an area for garden
19 apartments, an area for industrial development, an
20 area for parks, an area for a stream corridor, etcetera;
21 all of which could be included within a broad designation
22 of a growth area.

23 Q And if I understand what you're saying,
24 the State Development Guide Plan boundary lines were
25 never intended to distinguish between the categories

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

1 you just indicated?

2 A That's true, land use categories.

3 Q And would you agree with me that if
4 indeed we were to take the growth corridor, 206 growth
5 corridor, and magnified and laid over a base, municipal
6 base that is site specific, that adjustments would be
7 required at the local level as far as different uses
8 are concerned, land uses are concerned?

9 A Yes.

10 Q And, incidentally, that is not only
11 intended, but that was the express objective of the
12 State Development Guide; was it not?

13 A Yes.

14 MR. MASTRO: Do we have the Guide,
15 your Honor, somewhere? Let's see. That would
16 be P-33.

17 THE COURT: P-33?

18 MR. MASTRO: Yes.

19 Q Do you have a copy of the State
20 Development Guide Plan, Mr.Ginman --

21 THE COURT: I have a copy. Let him
22 use P-33.

23 Q If we take a look at --

24 MR. VOGEL: Excuse me, your Honor.
25 Somehow that copy that's in evidence is my

1 copy. Mr. Zimmerman has his. So I don't have
2 a copy, and I know Mr. Mastro has another one,
3 if I can either look at the exhibit or the --

4 MR. MASTRO: Let's see.

5 MR. VOGEL: Thanks.

6 Q If we look at Page 44, Mr. Ginman --
7 and I'm focusing on the growth area. If we look in
8 the northeast, we see the growth area in Bergen County
9 that runs along the Hudson River, and as you go south,
10 eventually, we reach Jersey City, Newark Bay, then we
11 follow the outline of Staten Island and come to our
12 old friend, the Raritan River, and eventually lining
13 up with the coastal zone, is that a fair description?

14 A Yes.

15 Q All right. And if we look at the
16 westerly boundary of the State, the growth area,
17 starting with the central corridor in the Trenton area,
18 moving south into the Burlington corridor, the Camden
19 area, still along the Delaware and eventually at the
20 South Jersey corridor, is that a fair description of
21 what the map indicates?

22 A Yes.

23 Q And would you take a look at Page 49
24 of the Guide, Mr. Ginman, at the top of the page where
25 it indicates: "It should be emphasized that the growth

1 area designation does not imply that only growth
2 supported investments will be made within this area
3 or that the development of environmentally sensitive
4 lands is encouraged" -- and the second sentence is:
5 "Land acquisition for recreation and resource conserva-
6 tion, as well as local controls protecting flood plains,
7 steeply sloped areas, wetlands, agricultural uses and
8 forested areas constitute valid components of the
9 kinds of land use patterns which should characterize
10 such growth area."

11 Now, could you tell me, sir, what factors would
12 a planner look at to determine whether a particular area
13 designated growth is suitable for that purpose?

14 THE COURT: I didn't hear the last
15 part of the question. Let the Reporter read
16 back just the last part loud and clear.

17 (Whereupon the following was read
18 back by the Reporter:

19 "Now, could you tell me, sir, what
20 factors would a planner look at to determine
21 whether a particular area designated growth
22 is suitable for that purpose?")

23 THE COURT: Do you understand the
24 question?

25 THE WITNESS: Yes, I understand the

1 question.

2 You're asking me to put myself in
3 the position of a local planner?

4 Q Or any local planner, yes, please.

5 MR. VOGEL: For the record, I'll object
6 to --

7 THE COURT: Yes?

8 MR. VOGEL: To that. I think
9 Mr. Ginman has made it very clear indeed
10 that there was a revelation to all of us
11 that there's a three-to-one ratio in which the
12 State Development Guide Plan was developed
13 with more lands than was needed for growth,
14 recognizing that there were environmentally
15 sensitive lands and lands suitable for develop-
16 ment, and the ultimate choices on that were up
17 to the county planning board and its planning
18 and then the local planning board.

19 I don't think it's fair to put
20 Mr. Ginman in the position to change his hat
21 around and say that now you're a local planner,
22 and why don't you do some local planning?
23 That isn't how the State Development Guide
24 Plan was developed.

25 I think it's an inappropriate question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Mastro?

MR. MASTRO: Your Honor, I am not asking Mr. Ginman to be a local planner, but the State Development Guide Plan acknowledges that there are areas within the growth area that are not suitable for development, and we just read a portion of that cautionary approach.

I think it's a perfectly proper question, what would a planner consider when he's evaluating --

THE COURT: What planner?

MR. MASTRO: A local planner. What would a local planner consider in determining whether a particular growth area is suitable for that purpose, what factors would he consider?

THE COURT: Well, I'll let him answer the question, but it strikes me that each of you has had a local planner here who has outlined what he considered important, Mr. Dresdner and Mr. Zimmerman.

I assume that what he might well do is repeat what is spelled out in the first paragraph on Page 49. Do you want him to be more specific than that?

1 MR. MASTRO: If he can answer that
2 question.

3 THE COURT: Can you answer the
4 question in any capacity other than that which
5 is spelled out on Page 49?

6 THE WITNESS: I haven't given it an
7 awful lot of thought. I know we've had a
8 great deal of conversations between planners
9 at various levels about what constitutes
10 suitable criteria for growth and development,
11 and consequently the reverse of that, what
12 factors might preclude development, and
13 these are not easily resolve issues.

14 For example, many discussions have
15 taken place about areas draining into a
16 reservoir or a proposed reservoir, and our
17 conversations with the Department of Environ-
18 mental Protection say that it doesn't necessarily
19 mean that lands have to be protected from
20 development, but perhaps strategies as to how
21 to properly develop the lands might mitigate
22 the harmful effects of such development.

23 There are arguments on both sides of
24 that question. Similarly, in the area of
25 growth, one might argue that, well, we have

1 to have a suitable capacity in our infra-
2 structure, or an illustration might be that
3 the sewer system might have to be in place and
4 might also have to have an existing capacity
5 in the system. Yet, if one would look at all
6 the sewer systems in the State, one might that,
7 well, there isn't that much capacity and many
8 of the communities -- I think there are over
9 200 communities waiting in line for assistance
10 from the State or the Federal Government to
11 expand their sewer plans. If we took that
12 attitude, we may never see any future growth
13 and development.

14 I think there are -- there is a lot of
15 opportunity for professional differences of
16 opinion and discussion in the area of what con-
17 stitutes proper factors that would either
18 encourage or preclude growth.

19 All I can say is that we're aware of
20 those. We had hoped that many of those issues
21 would be resolved in a dialogue at the proper
22 forums at the local level, county level and
23 to the extent that the State and Federal
24 Government assist to include those levels as
25 well.

1 I don't have a precise answer for you.

2 Q Mr. Ginman, would it appear reasonable
3 and logical for the local planner, when evaluating the
4 appropriateness of the location of a growth area or any
5 adjustments that may be required in that growth area,
6 to consider such things as growth trends, land use,
7 roadways, rivers, property lines, things of that nature?

8 A They would certainly be appropriate, yes.

9 Q Now, we just outlined some areas in
10 the growth area along the Hudson and along the Delaware.

11 Are there areas along either of those two major
12 rivers that are not suitable for growth?

13 MR. VOGEL: Objection.

14 A I don't --

15 THE COURT: Where are we going with that?

16 MR. VOGEL: Exploring the Hudson and
17 Delaware. --

18 THE COURT: I sustain the objection. I
19 think it's outside the scope of the direct. We're
20 going to get into an area that isn't going to
21 be worth the time or the exploration under
22 Evidence Rule 4.

23 I'll sustain the objection.

24 MR. MASTRO: All right. Let me rephrase
25 it, your Honor, and I don't intend to explore

1 what's up along the Hudson or along the Delaware,
2 except to question Mr. Ginman as to a process
3 of adjustment of the growth area to accommodate
4 some rather obvious conditions that require
5 that adjustment.

6 Let me rephrase the question.

7 THE COURT: All right.

8 Q Are there not areas on the outer
9 periphery of the growth area that -- and using the
10 areas we outlined as an example -- that require adjust-
11 ment for very obvious reasons?

12 For example, the Palisades up in the Bergen
13 County area.

14 MR. VOGEL: Objection, your Honor.

15 Again, I would object to the example. If we're
16 going to get to the area in question, this may
17 be appropriate questioning, but the Palisades
18 is not the area in question.

19 THE COURT: If we're going somewhere
20 that I can see some relevance, fine, Mr. Mastro,
21 I'm willing to permit it. But why should we
22 begin exploration of adjustments on the
23 Palisades?

24 MR. MASTRO: Your Honor, I'm merely
25 exploring this process, not a particular area.

1 I'm using the Palisades as an example or the
2 Delaware as an example.

3 THE COURT: All right.

4 MR. MASTRO: That's the sole purpose for
5 this particular question.

6 THE COURT: I'm going to sustain the
7 objection then. It's too broad.

8 MR. MASTRO: Let me try this one, Judge.

9 Q Mr. Ginman, as we come south of Bergen
10 County and approach the Raritan Bay, we find the
11 Raritan River running generally east and west across
12 Middlesex County, eventually becoming divorced or
13 married, depending upon the direction, and splitting
14 into the North Branch and the South Branch.

15 Do you agree with my description of --

16 A Yes.

17 MR. VOGEL: Objection, your Honor.
18 Objection to the relevance of that question.

19 THE COURT: I don't know. I'm going
20 to allow that, and we're going to see where
21 Mr. Mastro is going with it. All right.

22 MR. MASTRO: That was merely a
23 foundation question.

24 THE COURT: All right, sir.

25 Q Now, Mr. Ginman --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Do you remember the biblical admonition not to build a house on sand?

Q The Raritan, as it goes through Middlesex, is entirely within the growth area, is it not, or substantially within the growth area?

A I believe so, yes.

Q Would not the banks of the Raritan River in some areas be a measure of protection from growth?

MR. VOGEL: Your Honor, I just want to focus in on the basis for this objection.

The issues before the Court are: Where is the growth area line as it travels through Far Hills, if it does travel through Far Hills, and where is that line relative to the property, number one; and, number two, whether or not that line was drawn in an arbitrary and capricious manner.

THE COURT: Or an erroneous one.

MR. VOGEL: Or an erroneous one, and erroneous being defined by "arbitrary" and "capricious". That's what we're here in this phase of the trial attempting to explore.

This witness is called for the very express reason because he was in charge of

1 developing that plan on that map, and I think
2 the focus ought to be on the issues here, not
3 some general seminar on how one develops a
4 State Development Guide Plan.

5 MR. MASTRO: Judge, that is --

6 MR. VOGEL: So I object to the reasona-
7 bleness -- to the relevancy of the question.

8 THE COURT: All right. Mr. Mastro?

9 MR. MASTRO: That is not the sole
10 issue involved. The issue is much broader,
11 and I don't doubt, as Mr. Ginman testifies in
12 these cases, it will demonstrate that a question
13 arises, and an important one, on how one applies
14 the growth area to particular circumstances,
15 the application of the growth area.

16 Mr. Vogel indicates, well, we're here
17 to determine whether the boundary lines are
18 arbitrary and capricious or in error. I don't
19 think that's the full purpose. I think one
20 of the objectives here is to determine whether,
21 indeed, a growth area requires some refinement
22 or readjustments.

23 Now, that's something, I think, a
24 little beyond being arbitrary, capricious or
25 in error.

1 As I indicated earlier --

2 MR. VOGEL: Your Honor --

3 MR. MASTRO: If I might finish --

4 MR. VOGEL: Yes, sorry.

5 MR. MASTRO: When we started -- or
6 resumed this trial, that there's a distinction
7 between what the Court indicated in Mt. Laurel II
8 and our position in wanting to refine growth
9 areas; particularly, when you're dealing with
10 the periphery of such a growth area, and I
11 think this will be done throughout the State
12 as these cases arise, your Honor, and I think
13 it's perfectly appropriate.

14 MR. VOGEL: If I may, your Honor --

15 THE COURT: Yes.

16 MR. VOGEL: The standards laid down
17 by the Supreme Court is not whether or not
18 the line must be refined in a particular area,
19 but whether that line was, in fact, drawn in
20 error.

21 So I think Mr. Mastro is not correct
22 on the issue of refinement. I think that is
23 irrelevant to the issue before this Court.

24 MR. MASTRO: Your Honor, I don't have
25 a case -- a copy of Judge Serpentelli's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

decision in Colts Neck.

THE COURT: I gave you a copy.

MR. MASTRO: I know. I don't have it with me.

THE COURT: Let me see if I have another one.

MR. MASTRO: May I take a look at that?

THE COURT: Do you want to take a look at that?

MR. MASTRO: Please. Thank you.

Your Honor, Judge Serpentelli indicated on Page 5 of his decision -- I'm quoting some of his language:

"The concept maps of the SDGP, by admission of their authors, consist of 'broad, generalized areas without site specific detail or precise boundaries'" -- and he refers to the portion of the SDGP. "The Court noted in Mt. Laurel II with respect to the plan:

"While it does not purport to draw its lines so finely as to delineate actual municipal boundaries or specific parcels of land, the concept map, through the County maps, makes it quite clear how every

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

municipality in the State should be classified'."

Your Honor, I think the Court in Mt. Laurel II and thus far -- one of the Mt. Laurel Judges is acknowledging that we aren't talking about precise boundaries, and I think that during a hearing of this nature, we should explore the extent to which the boundaries are vague and the methodology of adjustment of those boundaries. I think it's not only proper, but it's almost necessary to do that.

THE COURT: Do you want to be heard from?

MR. MASTRO: Pardon me, your Honor?

THE COURT: Do you want to be heard any further, Mr. Vogel?

MR. VOGEL: I don't know that the statement from Judge Serpentelli's opinion in any way alters the statement of the Supreme Court on Page 241.

"The first exception recognizes the possibility of errors on the part of the planning group that prepared the State Development Guide Plan."

PERKINS CO. PATENTERS N.J. 07002 - FORM 1046

1 We're here in this juncture of cross-
2 examination, I presume, exploring whether or
3 not an error was committed, and the Court
4 goes on to talk about that the error must be
5 one which is drawn in an arbitrary and
6 capricious manner. Beyond that, I think the
7 questions are irrelevant.

8 MR. MASTRO: Judge, of course, that's
9 one dimension, your Honor, but, certainly, as
10 I try to demonstrate through my questioning,
11 when you come to a growth area that runs
12 along a river, for example, when you get down
13 to land use, you refine that growth area or
14 that boundary, and, indeed, if a river runs
15 through a growth area, such as the Raritan,
16 again, you refine that growth area according
17 to environmental constraints that may exist.

18 This only makes common sense, your
19 Honor, and I don't think when we employ that
20 methodology we're saying that the growth areas
21 designated on the State Development Guide Plan
22 Map are incorrect or that they are arbitrary and
23 capricious.

24 I will say this, if we construe them
25 literally, given those circumstances, then they

1 do become arbitrary and capricious, but that's
2 only because subjectively we're misconstruing
3 their intention or their objective.

4 MR. VOGEL: Your Honor --

5 Q Would you agree with that argument --

6 THE COURT: I think the problem there
7 is a confusion with the objectives. You have
8 the State Development Guide Plan in a broad
9 sense which has outlined growth as opposed to
10 limited growth, given the other two categories.
11 All right. And they have said in their plan
12 and the Court has said that it was not intended
13 to be site specific. It could not be thus
14 drawn.

15 Mr. Ginman has explained both the
16 policy and the practical reasons which would
17 make that impractical.

18 Now, as I read Mt. Laurel, on Page
19 240 -- again, we go back -- on its face, it
20 appeared that the line embraced a part of the
21 Borough of Far Hills, and it also appeared
22 the line -- and the line is one which includes
23 the growth area embracing part of the subject
24 matter -- embraced the parts in question, which
25 also was in the growth area.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Now, looking at the language on Page
240:

"Any party in Mt. Laurel litigation seeking a ruling that varies the locus of the Mt. Laurel obligation from the SDGP growth areas will have to prove one of the following:
(1) Accepting the premises of the SDGP" -- which has been outlined here -- "the conclusion that the municipality includes any growth area" -- which I thought was all agreed upon -- "or as much growth area as is shown on the concept map" -- and, certainly, some growth area is shown.

Now, we get to the critical language:

"That conclusion then is arbitrary and capricious, or, alternatively, the conclusion that the municipality does not contain any growth area whatsoever is arbitrary and capricious." And the burden of proving that is on a person who seeks to be accepted.

On Page 241:

"The first exception recognizes the possibilities of errors on the part of the planning group that prepared the SDGP. No Trial Court should, however, simply substitute

its judgment for the State's planners' under that exception. Not only must the evidence show that the conclusion and the classification were arbitrary and capricious, but a party challenging the characterization must contend with the obvious fact that lines must be drawn somewhere and that merely to show that one municipality containing a growth area is remarkably similar to a neighboring one that includes no 'growth area' is not enough. The party" -- meaning the one who makes the attack -- "must show that it was arbitrary and capricious not to place the line somewhere else."

And that would appear to be where we are, and we're trying to keep this case within those parameters.

Now, I don't know why then it becomes important that we examine the area of the Raritan Bay or the Raritan River.

MR. MASTRO: Your Honor, I have no real quarrel with what the Supreme Court said in Mt. Laurel II.

I think when we apply it to the matter before your Honor, what they're saying is if

1 the municipality were to indicate that the 206
2 corridor is incorrect, then we fall within the
3 scope of what you just indicated. We are not
4 saying that.

5 Mr. Ginman has indicated last week
6 what the objective of the 206 corridor was,
7 what was placed there. I'm not saying that.
8 I am saying when you run along -- when you
9 consider the boundaries and refine them --
10 that's why I mention the Hudson and the
11 Delaware -- there are areas that require adjust-
12 ment, and you would vary the growth area
13 boundary line when you're dealing with land
14 use. You're dealing with site specific details.

15 I don't think that was what the Supreme
16 Court was saying, but I think, certainly, what
17 I'm suggesting, my approach, is perfectly valid.
18 I think it only makes sense to do that, and I
19 think that's what Judge Serpentelli was saying,
20 that these lines are not that refined --

21 THE COURT: Well, you and I have a
22 difference of what Judge Serpentelli is saying.
23 All right?

24 If I read him on Page 5, and in that
25 first full paragraph that you made reference to

1 -- all right? First he puts aside the
2 Defendant's position in his first sentence, and
3 then he gives his reasons:

4 "The concept maps of the SDGP, by
5 admission of their authors, consist of 'broad,
6 generalized areas without site specific detail
7 or precise boundaries'."

8 Then he makes a reference in the next
9 sentence:

10 "The Court noted in Mt. Laurel II with
11 respect to the plan: 'While it does not purport
12 to draw its lines so finely as to delineate
13 actual municipal boundaries or specific parcels
14 of land, the concept map, through the County
15 maps, makes it quite clear how every
16 municipality in the State should be classified'."

17 And, if anything, that statement seems
18 to appear to be supportive. I don't think
19 he's using it in any kind of contradiction of
20 what was said by the Court in Mt. Laurel.

21 MR. MASTRO: Your Honor, to merely
22 emphasize what I'm saying, if we had a growth
23 area -- say we had a municipal boundary in
24 black and we'll put a river there. All right?
25 We had a growth area that ran something like

1 this (indicating).

2 THE COURT: Yes?

3 MR. MASTRO: And I've drawn in red --
4 what I'm saying is that when you come to site
5 specific details, you would make some adjustment
6 of the periphery, the boundary lines, and
7 examine site specific details.

8 THE COURT: Who would do it?

9 MR. MASTRO: Pardon me?

10 THE COURT: Who would do it?

11 MR. MASTRO: At the local level,
12 the local planner would do that.

13 MR. VOGEL: Your Honor --

14 THE COURT: In terms of land use.

15 MR. MASTRO: Of course.

16 MR. VOGEL: We have no difference
17 with that. Mr. Ginman, I'm sure, has no
18 difference with that. He said they have put
19 in growth areas three times the amount of land
20 that would be needed for the population
21 projection through the year 2000.

22 For the very reasons that there are
23 some environmentally sensitive lands, there
24 are some flood plains and steep slopes, and
25 there are some areas in the growth area which

1 will not be zoned and cannot feasibly be zoned
2 for high density use --

3 THE COURT: If I understand --

4 MR. VOGEL: Far different than changing
5 the boundary line --

6 THE COURT: If I understand what the
7 Court is saying to us -- and I may not under-
8 stand -- he's saying that given your example,
9 facially, what is included in the red, having
10 been drawn by the State Development Guide Plan,
11 giving the background in which that plan was
12 arrived at facially, incorporates the growth
13 area. All right. It is not to be disturbed.
14 We are to assume that what is within the growth
15 area is within the growth area, and the burden
16 is on the one -- all right? Who says he should
17 not be included or incorporated to give those
18 reasons why he should be excepted, and those
19 reasons would be: A. He was erroneously
20 included; B. The designation of him within
21 the area was an arbitrary one; C. It was
22 capriciously arrived at.

23 This is my understanding, and this is
24 the burden, it strikes me, that any -- that
25 the municipality, if it's included or any part of

1 it is included, bears. It must show how
2 A, was erroneously included; B, was arbitrarily
3 included; or, C, was capriciously included.

4 Do we have any disputes about that?

5 MR. MASTRO: Yes, we do.

6 Your Honor, I don't think the Supreme
7 Court intended to apply the State Development
8 Guide Plan that mechanistically. I don't think
9 they intended that at all.

10 I think they left the parties to
11 explore in detail that if, indeed, a line
12 should be adjusted in a particular area, they're
13 afraid to do that, and it seems to me that in
14 a case such as this, if that portion of the
15 red that was to the east of the river included
16 flood plain, that logically that line should be
17 construed as running along the river.

18 THE COURT: Well, I suggest then,
19 without answering you -- I don't mean to be put
20 in a position to answer you. Your position
21 would then have to be that the eastern boundary
22 was drawn erroneously, that no planner, local,
23 County or State, could have put that boundary
24 line where he did knowing: A. It was in a
25 river basin; B. That it was a sensitive area

1 from an ecological or environmental basis;
2 C. There was no development there for -- or
3 no development had ever been contemplated for
4 the area so that a reasonable person looking
5 at it could say -- or we could agree -- some
6 mistake had to be made when you put that in the
7 growth area, or -- I hate to use some examples
8 that will get me in trouble, but somebody had
9 to have something else in mind when he was
10 drawing that line and put it where he did,
11 because reason would support it and it's in the
12 absence of reason that it becomes arbitrarily
13 drawn or capriciously drawn.

14 But if there are predicates for
15 supporting it, then it is not arbitrary and it
16 is not capricious. That would be my analysis.

17 MR. VOGEL: If I could be heard for
18 just a moment --

19 MR. MASTRO: Sure.

20 MR. VOGEL: First of all, I absolutely
21 agree, on behalf of the Plaintiff, your Honor's
22 analysis just given, and, secondly, I ask to
23 remind the Court that the Supreme Court in
24 Mt. Laurel II was struggling with the notion
25 that all the litigation in Mt. Laurel I focused

1 at great length upon the sixth criteria for
2 developing municipalities and the tremendous
3 difficulty of applying that criteria, and the
4 Court picked a standard to determine where
5 growth should take place, and they picked a
6 standard of rigidity, simplicity, and wanted
7 that standard applied, unless these very
8 extraordinary exceptions occurred; namely,
9 an error or if a change in circumstances
10 occurred.

11 THE COURT: That would be two and
12 three.

13 MR. VOGEL: Right. But the error --
14 and even the words "arbitrary" and
15 "capricious" -- my reading of the opinion --
16 actually define the standard for error, and
17 they are all tied in with that one exception.

18 The Court did not seek to have a lengthy
19 and extensive litigation on the nuances of
20 adjustment or refinement of the line. That
21 was not the purpose of the Court. The Court
22 wanted some simplicity and some certainty in
23 this area so people could get on with the real
24 issue of Mt. Laurel, the housing-type issues,
25 and not fight about this line, and they picked

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the State Development Guide Plan.

We're here to determine right now whether or not there was an error in putting that line where it was, as defined by the Court, and I don't think we should wander far afield from that. I don't think it's relevant to wander at all afield from that narrow issue.

THE COURT: I'm going to sustain the objection, Mr. Mastro.

We'll take a break for five minutes and we'll get back to this.

(Whereupon a short recess was taken.)

THE COURT: All right. Ready to resume?

MR. MASTRO: Yes, your Honor.

Q Mr. Ginman, is it reasonable to conclude that when there are environmentally sensitive areas located along the periphery of a growth boundary line that are, indeed, not suitable for development that that boundary line should be adjusted at the local level accordingly?

MR. VOGEL: Your Honor, I would object to the question because, as I understand Mr. Ginman's testimony, the growth area boundary line is one thing for State planners, and at the local level we have a different kind

1 of planning and zoning process and that is by
2 local master plans and zoning ordinances.

3 So I would say that the local officials
4 can't be called upon to change the State
5 Development Guide Plan growth area; only that
6 they do their zoning within the --

7 THE COURT: Context.

8 Mr. Mastro?

9 MR. MASTRO: Judge, I think the State
10 Development Guide Plan anticipates this
11 process will take place, that you will need
12 these adjustments and that the boundary lines
13 can be adjusted accordingly. I think it's a
14 perfectly proper question.

15 THE COURT: You're suggesting that a
16 local municipality can redo the line shown on
17 the State Development Guide Plan?

18 MR. MASTRO: No, your Honor, I'm not
19 suggesting that it literally be redrawn, but
20 that when it's applied to the local level, it
21 takes a different alignment through the
22 process of adjustment.

23 THE COURT: I didn't understand that.

24 MR. MASTRO: Judge, I don't think we
25 ought to dwell on what the Supreme Court meant

1 when it said: Where these lines go is where
2 they stay. I think we ought to leave that
3 argument as a legal issue to be determined.

4 THE COURT: I have to. The Supreme
5 Court has said it and they don't want me, as I
6 get it, to use a colloquial expression, fussing
7 with the plan. All right? They have said to
8 the other three Judges who have been selected,
9 essentially, there's the plan, there's a kind of
10 presumptive validity to the plan. We are not
11 going to say -- and they use a language -- all
12 right? That it is the only thing, the only
13 way, the only -- let me get the language out,
14 Page 239 of the opinion:

15 "We have decided not to make the SDGP
16 the absolute determinant of the locus of the
17 Mt. Laurel obligation."

18 And then they talk about their
19 reluctance to give a conclusive effect.

20 "Given the circumstances, we deem it
21 prudent to allow parties to attempt to persuade
22 the Trial Court, in a particular case, that the
23 SDGP should not determine whether the Mt. Laurel
24 doctrine applies to the particular municipality
25 involved in the case. While we believe important

1 policy consideration is involved in our
2 decision" -- meaning the Supreme Court decision
3 -- "not to make a conclusive, we think it even
4 more important to point out that it will be the
5 unusual case that concludes the locus of the
6 Mt. Laurel obligation is different from that
7 found in the SDGP. Subject to those cases" --
8 all right? "We hold that henceforth only those
9 municipalities containing 'growth areas' as
10 shown on the concept map shall be subject to the
11 Mt. Laurel prospective need obligation."

12 That, to me, is pretty strong language
13 from the Court. All right? And while they
14 don't make it, as they say, the absolute
15 determinant, I used a phrase before, there is
16 a presumption almost, which attaches to the
17 inclusion of the area within the growth area
18 subject to attack.

19 I can't put that aside and not be
20 mindful of it. I'm bound by that decision,
21 as will be the other three Judges, and they are.

22 Let me say something else, and
23 perhaps I'm going too far with this.

24 It may be a matter of dispute among
25 lawyers and scholars and researchers as to the

1 use of the State Development Guide Plan by the
2 Court, for the purpose for which it was
3 employed, and it may come to pass, and in our
4 time, that the Court will refine the plan, seek
5 an adjustment of it or move away from it. All
6 right?

7 MR. MASTRO: Yes.

8 THE COURT: And we have no problems
9 with that.

10 But even as all of us, the Trial Bar,
11 the Trial Bench, had to deal with Mt. Laurel
12 I -- all right? The developing municipality,
13 the sixth criteria, we now have this as our
14 standard. We are not in a position, it strikes
15 me -- certainly, I'm not, as a Trial Judge --
16 to come ahead now and start attacking the
17 Court, undercutting the Court or anything else
18 in terms of what the Court has chosen as the
19 barometer by which we live. The Court has made
20 that determination and in the system we will
21 live with that until the scholars, the Bar,
22 the Trial Bench, other Appellate Courts,
23 perhaps, convince our Supreme Court that they
24 ought to move off that position, refine it or
25 do something else. This is what we live with.

1 So, when you suggest to me that perhaps they
2 ought not to be literally adhering to it or
3 too literally adhering to it, I'm telling you
4 that this is what I've got and I have to live
5 with it, and this is the way I understand it.
6 I may misunderstand it, of course, and you're
7 aware of that, and I am, and that's where we
8 are.

9 MR. MASTRO: Judge, I understand what
10 you're saying. What I'm saying is I don't
11 agree with what you're saying. I'm saying that
12 the Guide Plan was never intended to be applied
13 literally.

14 May I suggest, your Honor, if you're
15 going to uphold the objection to my question,
16 that it -- that you do so and allow the witness
17 to answer it just to complete the record and
18 so Mr. Ginman, perhaps, will be spared
19 appearances in the future.

20 MR. VOGEL: What does that mean? I
21 mean, I would -- I would oppose -- I make an
22 objection. The Court rules on it -- and we
23 live with whatever consequences flows therefrom --

24 THE COURT: In effect, going your
25 way, to allow an exploration, to me, is

1 inappropriate and we will just use up the time
2 and the record, and that with some notion that
3 perhaps someday in some place somebody will say,
4 well, luck has held you too tightly in rein.
5 He shouldn't have done it, and I don't propose
6 to do it. Sorry.

7 MR. MASTRO: It would simply allow me
8 to make the record and, perhaps, save everyone
9 a lot of time in the future.

10 THE COURT: If you have a specific
11 question and it's going it's going someplace
12 and you tell me where it's going, I will deal
13 with those questions as they arise. But I'm
14 not going to have some kind of carte blanche,
15 that we explore an area which, to me, is outside
16 or not necessary of exploration.

17 MR. MASTRO: I ask the question --

18 THE COURT: And we'll deal with the
19 question on an individual basis.

20 Go ahead.

21 MR. MASTRO: What's your ruling on the
22 last question I asked?

23 THE COURT: I sustained the objection.

24 Q Mr. Ginman, let me try this question
25 and see how far we get.

1 If the growth area boundary line were not
2 adjusted at the local level to take into consideration
3 environmental constraints or similar factors indicating
4 that it would not be appropriate to develop along its
5 periphery --

6 THE COURT: Do you understand the
7 question?

8 MR. MASTRO: So far. I didn't quite
9 finish the question.

10 Q If this adjustment is not made at the
11 local level, would the application of the growth area
12 and specifically that boundary line where the adjustment
13 is not made then be considered to be arbitrary and
14 capricious as so applied?

15 THE COURT: From whose viewpoint?

16 MR. MASTRO: I want to make sure --

17 THE COURT: I said from whose viewpoint?

18 MR. MASTRO: Oh. From the viewpoint
19 of the State Development Guide Plan, its intent
20 and its objectives.

21 MR. VOGEL: Objection. First, I don't
22 understand the question, but if I did understand
23 the question, I would object on similar grounds
24 that I've articulated before.

25 There is implicit in the question a

1 pursuit of suggestion that local planning and
2 zoning processes are just or modify the line
3 of the State Development Guide Plan, and I
4 think that that's not based upon the testimony
5 that this witness has given. That line does
6 not change, the State Development Guide Plan
7 line.

8 What local zoners and planners do is
9 something different. They zone within the
10 line. They zone outside the line. They
11 perform their zoning function. They do not
12 have any power to effect that line one way or
13 the other.

14 THE COURT: Mr. Mastro, I'm inclined
15 to agree with Counsel insofar as your question
16 suggests, a power in the municipality -- all
17 right? To modify the line, and I don't know the
18 authority for that. The line is there. The
19 line has been established. The bases for the
20 line have been established.

21 Now, the line was erroneously drawn,
22 capriciously drawn or arbitrarily drawn. This
23 in no way precludes the municipality in the
24 exercise of zoning power of zoning within its
25 own boundary.

1 As I recall the zoning law, it must do
2 so consistent with the zoning in its contiguous
3 or neighboring communities, but I don't know
4 the power it has to alter a line drawn on a
5 State Master Plan or a State Development Guide
6 Plan anymore than a municipality could alter the
7 line drawn on a County map or a --

8 MR. MASTRO: No. I'm not suggesting
9 that, your Honor.

10 The thrust of my question is whether
11 there are -- strike that. The thrust of my
12 question is this, your Honor: If you were to
13 apply the State Development Guide boundary
14 lines literally under all circumstances without
15 some allowance, some adjustment for concerns
16 expressed in the guide as applied to sensitive
17 areas, for example, that that application of
18 the line would then become -- or be construed
19 as an error or be construed as arbitrary and
20 capricious.

21 MR. VOGEL: Is that the question?

22 MR. MASTRO: That's my argument.

23 Do you understand what I'm saying,
24 your Honor?

25 MR. VOGEL: Well, in response to that,

1 if I may, your Honor, the issue is not the
2 literal application of that line to every acre
3 of ground within the growth area, because,
4 as we have learned from this witness, this
5 line was drawn in an area in which it was
6 anticipated that two-thirds of the property
7 would never be used for development or growth
8 purposes.

9 So I think it misstates Mr. Ginman's
10 testimony of the purpose of the line. The
11 line presupposes that a municipality is going
12 to do the very things that Mr. Mastro would
13 like this witness to say, that the line is in
14 error because it hasn't taken these things into
15 account.

16 The local zoners and local planners are
17 going to look at the mountains and look at the
18 flood plain along the rivers and presumably zone
19 with that refining eye. That doesn't mean this
20 map was drawn in error or that the State
21 Development Guide Plan line was drawn in error.

22 MR. MASTRO: Let me get back --

23 THE COURT: I don't think the intention
24 of this was to preempt local zoning. The Court
25 said as such.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Let me put it to you a little differently, Mr. Mastro, as we knock this around here, to get a better understanding.

The line is drawn as it is, and there's a certain similarity between what you've drawn and the Borough of Far Hills. All right? Now, the Borough of Far Hills see the Master State Development Guide Plan. It knows where the line is drawn. It knows it has sensitive areas, say, along the river, things like that. Is there something that keeps it from zoning appropriately? I don't understand the Guide Plan to do that or to preempt local zoning or future zoning at all.

What it has said, more broadly, is this is the growth area and that's all it is. All right? And not meaning that you can't zone within that. As you say, this is an example of home rule, if you like, or zoning power given to you by the Constitution to zone within that area because you are familiar with the particular problem in the area.

Now, if you zone it, as you -- because it is sensitive, and all the reasons are given, and then what happens is a developer comes in

1 later, and then, I think, you're back to where
2 you are here. You'll be put in a position of
3 sustaining it. All right? Despite the line,
4 and you will have to sustain it given the
5 local peculiarities of the tract. You will still
6 have the other thing facing you. The line was
7 drawn, and the line has some presumptive
8 validity, and we want to go in and put a brick
9 factory in a flood plain. All right?

10 MR. MASTRO: All right. Your Honor --

11 THE COURT: The same situation then,
12 I suggest, almost what we have now, except now
13 the thing is there and is in place.

14 MR. MASTRO: Can I just sharpen this
15 issue a little more?

16 THE COURT: Yes.

17 MR. MASTRO: If the area, which I have
18 colored in red, in municipality B is totally in
19 the flood fringe area or flood plain and subject
20 to periodic flood, assuming that area in red is
21 unsuitable for development by any standard --

22 THE COURT: Everybody could agree on it.

23 MR. MASTRO: By any standard, it's
24 unsuitable.

25 THE COURT: Including the State planner.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mr. Ginman, are you willing to end this consensus?

THE WITNESS: Yes.

MR. MASTRO: Now, my question to Mr. Ginman is: Given those circumstances at the local level, would that line, if construed literally, as including a portion of municipality B in the growth area, then be considered either in error, arbitrary or capricious when applied to municipality B? That's my question.

MR. VOGEL: Well --

THE COURT: Or could it be?

Do you see what we're saying -- or he's saying, Mr. Ginman?

MR. VOGEL: I would -- okay. Your Honor, I object for a different reason.

THE COURT: Yes?

MR. VOGEL: The question is really a hypothetical question.

THE COURT: Of course it is.

MR. VOGEL: It presupposes certain facts which are not in this case, and when we -- when we deal with hypothetical questions, the Rules of Evidence are very clear, the

1 foundation of the facts for the hypothetical
2 must be in the record of the case, I believe --

3 THE COURT: But they can under either
4 side's view of the facts, all right? And he
5 may not accept for a hypothetical your facts.

6 MR. MASTRO: And, your Honor, this is
7 not hypothetical in that sense. It's hypothe-
8 tical for purposes of determining how to apply
9 the State Development Guideline, growth area
10 boundary lines, and this is only an example.
11 That's all. I'm not referring it to any
12 particular municipality, not yet, anyway.

13 MR. VOGEL: My objection is, your
14 Honor, we're not dealing with, again, a general
15 form of how the State Development Guide Plan was
16 drawn, how the lines should be refined. We're
17 dealing with a precise area. We're here on a
18 specific case dealing with a line, where it is,
19 and whether it was drawn in error, and to get
20 hypothetical questions or theoretical questions
21 not related to the facts of this case, I suggest,
22 your Honor, ought to be left to forms at the
23 legal municipality or some other place and not
24 in this litigation.

25 THE COURT: I'm not moved by that,

1 Mr. Vogel. I don't want hypotheticals to get
2 in here and areas which we're not going to
3 explore.

4 But, Mr. Mastro, is this leading us to
5 where you want to go?

6 MR. MASTRO: Of course.

7 THE COURT: Are you getting this witness
8 to a place where you're trying to get this
9 witness to go, where if you show him what the
10 facts are in a given area -- all right?

11 MR. MASTRO: Yes.

12 THE COURT: Even though he was the
13 head of the bureau that drew it, he could in
14 good conscience and fairness say: If we had
15 known Facts A, B, C, D, E and F, the probabili-
16 ties are that, being reasonable persons, we
17 would not have drawn the line where we did?
18 From which you then argue that, all right, A,
19 the line was drawn erroneously or it was drawn
20 without sufficient consideration or without
21 knowledge of the facts, whatever bases?

22 If that's where you're going, I'll per-
23 mit the question, but I'm not going to allow
24 the broad exploration.

25 MR. MASTRO: And it's pretty obvious

1 where I'm going.

2 Q Can you answer that question,
3 Mr. Ginman?

4 A Well, if the question is -- this is a hypothetical
5 question, which doesn't include a lot of facts. I
6 don't know where there is located --

7 Q I'm trying to simplify it as much as I
8 can.

9 A I understand.

10 Let me try and answer the question.

11 Q Go ahead.

12 A As I understand it, this is a hypothetical
13 municipality. You haven't told me what the degree of
14 urbanization is, the degree of the pressure of the
15 growth that might be surrounding this area. You haven't
16 given me a lot of facts.

17 So I don't know that just because that land is
18 subject to flooding that it would be an inappropriate
19 line. There are a lot of rivers in this State that
20 are urbanized, and the idea of somehow suggesting that
21 growth does not occur alongside of riverbanks would
22 ignore Manhattan Island.

23 And there are some people, I suggest, who
24 might like to ignore it.

25 Go ahead.

1 Q What factors would you consider as
2 indicative that an application of that growth line
3 for development purposes in municipality B would be
4 inappropriate? You indicated growth pressures. What --

5 A I think I stated those in the report, and I
6 think we gave those in evidence once before. I have to
7 find the page.

8 I think -- the criteria listed on Page 47.

9 Q What page was that?

10 A Forty-seven.

11 THE COURT: Forty-seven.

12 A Shall I restate them again?

13 THE COURT: It's not necessary, unless
14 Counsel wants it.

15 MR. MASTRO: No, it's not necessary,
16 your Honor.

17 Q Mr. Ginman, let me ask you this: Was
18 the State Development Guide Plan intended to duplicate
19 other levels of planning?

20 A No.

21 Q And, indeed, such things as conservation
22 areas, as they are reflected on the concept map, are
23 only those of statewide significance. Is that --

24 A That's correct.

25 Q Now, that is not to suggest, is it,

1 that there aren't other areas that are just as important
2 or less than statewide significance that require
3 attention?

4 A That's true.

5 Q Does not the plan seek to protect flood
6 plains, steep slopes, stream corridors?

7 A Yes, that's stated on Page 49 in the first
8 paragraph.

9 Q Is that, also, restated -- would you
10 turn to Page 69?

11 A Page 60?

12 Q Sixty-nine.

13 A Sorry.

14 Q Second paragraph.

15 A Yes.

16 Q Are prime agricultural lands important,
17 requiring protection within the parameters of the State
18 Development Guide Plan?

19 A Yes.

20 Q Now, Mr. Ginman, there are, are there
21 not, critical environmental factors less than statewide
22 significance which do not appear mapped on the State
23 Development Guide Plan; is that not so?

24 A That's correct.

25 MR. VOGEL: I'm sorry, your Honor. I

1 missed the question.

2 THE COURT: We'll have the Reporter
3 read back the last question loud and clear.

4 (Whereupon the following question was
5 read back by the Reporter:

6 "Question: Now, Mr. Ginman, there
7 are, are there not, critical environmental
8 factors less than statewide significance which
9 do not appear mapped on the State Development
10 Guide Plan; is that not so?")

11 MR. VOGEL: Thank you very much.

12 Q If we might turn to Page 88, Mr. Ginman,
13 there are a variety of subject matters indicated on
14 that page and the following page which local planning
15 should address; is that true, sir?

16 A That's correct.

17 Q And the first one is related to flood-
18 ways and the State Development Guide Plan indicates
19 restricting development in those areas. Is that an
20 important factor?

21 A Yes, but I want --

22 MR. VOGEL: Well --

23 A I just want to qualify the previous answer.

24 I think I said -- the word was "municipalities,"
25 and the previous sentence qualifies that somewhat and it

1 includes State as well as counties. State municipalities
2 and counties should be concerned about all of these
3 areas.

4 Q All right, sir.

5 A And the question was: It does reflect strict
6 development in accordance with the Flood Plains Act
7 of 1972.

8 Q Mr. Ginman, can you see J-6 from where
9 you're seated? Perhaps not too clearly?

10 A I can see the map.

11 THE COURT: Let him work from there.

12 Put it on the desk in front of him.

13 MR. MASTRO: Well, I want --

14 MR. VOGEL: I also have a copy of J-6,
15 myself. I can follow you.

16 Q Okay. Mr. Ginman, J-6 is, essentially,
17 the existing Far Hills Master Plan, or at least until
18 recently revised, but indicating -- and I think you can
19 see the north branch of the Raritan outlining
20 municipality, oh, on the top half -- at least the top
21 half of the municipality.

22 Do you see that, sir?

23 A Yes.

24 Q All right. Now, do you also see,
25 relating the dot as shown on the map to the legend,

1 floodway and flood fringe areas along the westerly
2 side of the Borough to the east of the river? Would
3 that be an area which was being addressed in this
4 first standard on Page 88?

5 A Well, it's a designation on a map. I don't
6 know what the -- what that designation calls for in
7 the Master Plan. It would presume some knowledge of
8 what the whole management program is on my part, and I
9 really don't know what Far Hills plans are.

10 I'll acknowledge that there's a designation
11 and the designation is floodway and flood fringe area,
12 but I don't know what that means on the Master Plan.

13 Q Would you look at the second category
14 on Page 88, which makes reference to maintaining buffers
15 along banks of streams?

16 A Yes. I'll acknowledge that Page 88 refers to
17 that, yes.

18 Q Could you apply that to the north
19 branch Raritan, and, particularly, Far Hills, if you're
20 able to?

21 A The question is what does Far Hills --

22 MR. VOGEL: Well --

23 A Purport to do with this?

24 MR. VOGEL: If the question isn't clear,
25 I ask it be rephrased.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MASTRO: Let me rephrase the question.

Q Would it be a worthy objective and within the parameter of the second subject matter on Page 88 to maintain a buffer along the banks of the Raritan as it appears on the westerly boundary of Far Hills?

A If you're asking me to make a conclusion about the adequacy of the Far Hills Master Plan in regard to the Master Plan --

Q I'm not, sir.

A Then what are you asking me?

Q The question was, would it be appropriate to maintain buffers along the north branch of the Raritan, at least that westerly portion along the border of Far Hills?

MR. VOGEL: Objection, because I think the question isn't clear. Appropriate for what purposes? Local zoning, local Master Plan, County Master Plan, State Development Guide Plan?

MR. MASTRO: Within the parameters of the second subject matter on Page 88 --

THE COURT: That is to avoid accelerated sedimentation from bank erosion.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

1 Do you know anything about accelerated
2 sedimentation from bank erosion along the --

3 THE WITNESS: I'm not familiar with
4 the specification of Far Hills and the north
5 branch or the Raritan at that location, and if
6 you're asking me is it an adequate designation,
7 I don't know.

8 Q A third subject matter makes reference
9 to controlling development in areas of high groundwater
10 table.

11 A Yes.

12 Q Does that deal primarily -- or does
13 that relate primarily to development where you have
14 septic systems?

15 A Well, it could refer to anything, not necessarily
16 septic systems.

17 Q Could you expand on what you mean by
18 that? What else would it refer to?

19 A You could have high run-off from very large
20 surface parking areas that emit some kind of pollutants,
21 industrial washings.

22 Q How about if you had residential
23 development with sanitary sewers in a high groundwater
24 table area, would that adequately address that concern?

25 A I don't know. I think you're giving me a

1 hypothetical situation that, really, without studying
2 this in depth, I really feel reluctant to give an
3 answer.

4 Q What else would you need to know to
5 answer that question, what other ingredients?

6 A Well, I'm not here as an expert witness to give
7 you an answer on specifics about planning. I'm here
8 to testify on the basics of the State Development
9 Guide Plan, and I would like to confine my remarks to
10 that.

11 Q Well, all right.

12 Mr. Ginman, I don't mean to project you in the
13 role of a municipal planner, but one of the concerns --
14 the third concern on Page 88 is strictly control
15 development in areas of high groundwater table. I'd
16 like to relate that to residential development.

17 What was intended by that standard or that
18 guide?

19 MR. VOGEL: Objection, your Honor. If
20 I understand the question, Mr. Mastro says he'd
21 like to relate that standard to residential
22 development and what was intended by that
23 standard. I think the issue is -- the issue
24 is the line and whether the line was drawn in
25 error.

1 THE COURT: We'll get over that.

2 MR. VOGEL: And does that standard --
3 you know, what is the relationship of that
4 standard, not to what a local planning and
5 zoning, when they engage in that process,
6 whether they should or should not consider the
7 high water table or these other factors.

8 The witness has already said they ought
9 to consider a whole host of factors.

10 The question is the State Development
11 Guide Plan and its line, and Mr. Mastro wants
12 to ask him how does that standard apply to
13 that line, and if that line is in error after
14 considering the high groundwater growth area,
15 fine. I wouldn't object to that inquiry. That
16 deals with what the case is about at this
17 posture.

18 THE COURT: Mr. Mastro, where are we
19 going with the question? The criteria spelled
20 out on Page 88 have to be viewed, do they not,
21 in terms of what is said on Page 86 of
22 Conservation and the last paragraph on Page 1
23 of 87, which he's testified to, that in
24 addition to the large resource areas of state-
25 wide significance, there are critical

1 environmental features of lesser size which
2 also should be protected throughout the State.

3 You then asked him about that from
4 a municipal planning board point of view, and,
5 you recall, he corrected it to say that the
6 State Development Guide Plan in that paragraph
7 indicates that this concern should be broader
8 and would involve the Department of
9 Environmental Protection and municipalities and
10 counties.

11 Then there's a broad statement at the
12 top of Page 88:

13 "Such planning" --- all relating back
14 to what is said on Page 86, Conservation --
15 "should incorporate, where appropriate, guide-
16 lines" -- and then it gives examples.

17 Fair enough?

18 MR. MASTRO: Yes.

19 THE COURT: Now, what is the specific
20 relevance of your question to that broad
21 guideline?

22 MR. MASTRO: Your Honor, this is
23 a foundation for ultimately applying these
24 guidelines to Far Hills. It's seeking the
25 objective of these guidelines, as articulated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

on Page 88.

THE COURT: Yes.

MR. MASTRO: Of course, I'm not relating them to Far Hills specifically at this time. I'm trying to outline parameters of these guidelines at the present time: What did it encompass? What was intended by the particular guideline?

THE COURT: Would you read back to me, please, the last question?

(Whereupon the following question was read back by the Reporter:

"Question: Mr. Ginman, I don't mean to project you in the role of a municipal planner, but one of my concerns -- the third concern on Page 88 is strictly control development in areas of high groundwater table. I'd like to relate that to residential development.

"What was intended by that standard or that guide?")

THE COURT: Could you be any more specific with respect to that than is spelled out on the page?

THE WITNESS: Every one of these

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

criteria or, I guess, general descriptions were intended to suggest or to lead municipal and county planners to look at these factors more critically and more -- and in more specificity, something that we were not equipped to do at the State level. There are a variety of ways these factors can be interpreted, and I would not want to limit any municipality in how they would treat these particular problems.

MR. MASTRO: I think, your Honor, I asked one question in regard to sanitary sewers and residential developments, and I think Mr. Ginman indicated that he was unable to respond to that question, unless there is additional information.

MR. VOGEL: I don't believe there's a question pending.

THE COURT: There isn't any.

MR. VOGEL: And I would object to an observation. I mean, I would suggest that a question be asked --

THE COURT: Let's go to the next question, please.

Q One of the guidelines indicates

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

1 restricting development and other activities which
2 would affect the ecological balance of fresh water
3 or tidal wetlands.

4 Can you tell me anything more about the
5 ecological balance of fresh water, what was intended
6 by that guideline?

7 A Other than acknowledge it's a concern of the
8 Department of Environmental Protection?

9 Q Yes.

10 A No.

11 Q In the last guideline on that page,
12 you make reference to discouraging -- or the Guide
13 Plan makes reference to discouraging development on
14 steep slope of 12 percent or greater.

15 Why was that standard utilized, the twelve-
16 percent standard, or what was the basis for it?

17 A We discussed a number of numerical limitations,
18 and I believe there was a range generally discussed
19 between ten and 15, and we elected to use twelve as a
20 reasonable -- let's say the range of recommendations
21 we've gotten was between ten and 15, and we selected
22 twelve as a compromise.

23 Q Mr. Ginman, are you at all familiar
24 with the Upper Raritan Watershed, the area encompassed
25 by the Upper Raritan Watershed?

1 A I know roughly where it is, yes.

2 Q And would that be a -- one of the
3 areas falling within these guidelines on Page 88?

4 A You mean does it have all these attributes?

5 Q No. Is it one of the concerns addressed
6 on Page 88?

7 A The criteria on Page 88 are to be applied state-
8 wide. So it would fall at any area within the State
9 which would be addressed by these guidelines.

10 Q Mr. Ginman, earlier in your testimony,
11 you indicated that the 206 growth corridor did not
12 exist in the first draft; is that correct?

13 A That's correct.

14 Q Mr. Ginman, can you tell me --

15 THE COURT: What are you showing him
16 now?

17 MR. MASTRO: I'm referring to P-34,
18 your Honor.

19 THE COURT: P-34?

20 MR. MASTRO: Yes.

21 Q Can you tell me the approximate
22 alignment of the growth area in the first draft as
23 it related to what was subsequently the 206 corridor
24 on P-34?

25 A It was primarily limited to the interchange

1 of 287 and 78. It did not extend beyond that inter-
2 change.

3 Q North of the interchange --

4 A North of the interchange.

5 Q All right, sir, and at some point it
6 was determined that the 206 corridor should be included,
7 as you indicated in your earlier testimony.

8 Was that related in any way to the Alan Deane
9 litigation?

10 A It was just one of many factors. I mean we
11 were aware of that. Realizing that the first draft
12 began in the mid seventies, I guess we were using
13 information dating from about early 1970, 1975, that
14 period. The draft was published in '77.

15 In that time, apparently, a lot of factors
16 started to develop, and one of those was the Alan Deane
17 litigation.

18 Q And referring to D-17, I think you
19 mention City Federal in the Pluckemin area; did you
20 not?

21 A I didn't --

22 Q You did not?

23 A I did not mention that before.

24 Q Certainly, Alan Deane was one of the
25 factors --

1 A Yes.

2 Q AT&T Long Lines?

3 A Yes.

4 Q Another factor.

5 And proceeding northwest, the Beneficial
6 Management?

7 A Yes.

8 Q Mr. Ginman, I'm going to ask you a
9 question and in the process I will make reference to
10 D-9, which will be to your right, and Exhibit P-15,
11 appearing to your left on the respective easels.

12 If we were to assume these facts, Mr. Ginman,
13 and we're relating the question to the Borough of
14 Far Hills particularly, that the north branch of the
15 Raritan River flows in a general southerly direction,
16 bordering the westerly portion of Far Hills, and at
17 its westerly boundary divides the Borough of Far Hills
18 from Bedminster Township to its west, then intersects
19 with a municipal boundary line along the southerly --
20 traveling south and being the westerly portion of the
21 municipal boundary line, then eventually intersecting
22 with, at the bottom of the Borough, running in
23 generally east-west direction, Route 206; also assuming
24 that there are no interchanges within the Borough of
25 Far Hills; assume further as you look at D-9 that there

1 are undeveloped lands along the Raritan to the north-
2 west of what is designated as -- and commonly known
3 as the village area, which in its northerly portion
4 belongs to the Upper Raritan Watershed and the southerly
5 portion belonging to the municipality, the Borough of
6 Far Hills; also assume, Mr. Ginman, that generally
7 the State Development Guide Plan growth area is
8 delineated, as indicated on D-9, running in a north-
9 south direction and in its path intersects the property
10 in question, which you may recognize is outlined in
11 red -- do you see that, sir?

12 A Yes, I can see it.

13 Q Also assume, Mr. Ginman, that the
14 village of Far Hills -- or the village area of Far
15 Hills is bounded on the east by the railroad tracks
16 -- and I'm pointing to P-15 at the moment -- on its east,
17 202 on its south and what is known as Peapack-Far Hills
18 Road along its westerly boundary and a portion of the
19 village appears to the north of P-15 and west of
20 Peapack-Far Hills Road, encompassing approximately 80
21 to 85 dwelling units, that the village area is separated
22 from neighboring Bedminster to its west by municipally
23 held lands along the branch of the Raritan and by the
24 Raritan itself, probably the east side of the north
25 branch of the Raritan River; if you can relate,

1 Mr. Ginman, D-9 and P-15 to P-17, you see the portion --
2 or the westerly portion of the Borough of Far Hills
3 outlined by the Raritan and its westerly boundary pro-
4 ceeding to the south; also assume that that extends
5 into a range of the -- a ridge of the Watchung
6 Mountains.

7 Do you see that, sir? And I'm referring to
8 D-17 at the moment.

9 A I can see that, yes.

10 Q And that the intersection of 287 and
11 78 is as appears on D-17 and lies to the west of the
12 alignment of the Raritan River municipal boundary and
13 the ridge of the Watchung -- a ridge of the Watchung
14 Mountains and, indeed, City Federal -- or proposed City
15 Federal, Alan Deane Complex, AT&T Complex and
16 Beneficial Management all lie to the west of either
17 the Raritan River as it flows south bordering Far
18 Hills, the municipal boundary -- the westerly
19 municipal boundary extended into the Watchung Range
20 -- assume that, sir; assume, Mr. Ginman, that the
21 Borough of Far Hills has approximately 7,800 people,
22 residents, about one-third, 250 or so, live within
23 the village area and that the -- let's assume -- also,
24 I'm asking you to assume that the village area, as
25 well as the PQ adjacent to it, are in a high water table

1 area --

2 MR. VOGEL: Can I have that last
3 assumption read back?

4 THE COURT: The high water table.

5 (Whereupon the following was read back
6 by the Reporter:

7 "Also, I'm asking you to assume that
8 the village area, as well as the PQ adjacent to
9 it, are in a high water table area "--")

10 THE COURT: All right.

11 Q Zero to three-and-a-half feet; assume,
12 also, Mr. Ginman, that, looking at D-9 with the first
13 overlay, within the broken areas outlined on D-9, there
14 exist steep slopes to the northern portion of the growth
15 area, twelve percent or greater, and the southerly
16 portion of the growth area, flood hazard areas outlined
17 in blue on the first overlay to D-9, and that there
18 are prime agricultural soils hatched in green, as
19 shown on the first overlay to D-9, and on the
20 second overlay to D-9, which is designated D-10, again
21 reflecting the steep slope areas, the northern portion
22 of the growth area and southerly, indicating seasonally
23 high groundwater hatched in blue, and you can see those
24 areas outlined on the map; assume further, Mr. Ginman,
25 that the balance of Far Hills is generally low density

1 residential, dominated by ten-acre/one-family residential
2 zoning, and that looking at D-10 there is another
3 tributary to the Raritan known as Mine Brook (phonetics)
4 which flows westerly, generally in an east-west
5 direction; assume further that the population of the
6 Borough of Far Hills hasn't changed significantly.
7 Its land area is approximately 4.9 square miles, and
8 the only non-residential activity within the Borough
9 is located on P-15 along Route 202, which is a mini-
10 shopping mall of services, primarily drugstore, maybe
11 one or more attorneys to serve primarily the whole
12 needs, and the only significant activity is a hardware/
13 fuel oil -- it used to be a coal yard that has been in
14 the Borough of Far Hills for many, many years, but
15 aside from non-residential ratables or activity designed
16 to meet local needs, and no major non-residential
17 ratables within the Borough nor is the Borough zoned for
18 that purpose, has not sought, nor attracted, any
19 various kinds of ratables; and you can assume further
20 that the Borough of Far Hills is bisected by, more or
21 less, Route 202, generally paralleling 287 as it swings
22 through the Borough of Far Hills, and 202 intersects
23 to the west with 206 which proceeds in a north-south
24 direction and within the 206 corridor; assume further
25 that the Borough of Far Hills has a minimal infrastructure,

1 what I had pointed out in the way of roadway patterns,
2 a railroad that runs, as you see it -- I believe it's
3 Conrail now. It used to be the Erie Lackawanna, known
4 as the Gladstone branch, dead ends in neighboring
5 Gladstone, running into Bernardsville and winding its
6 way through Summit and into Hoboken eventually --

7 MR. MASTRO: Your Honor, can I have
8 just a second to look at my notes?

9 THE COURT: Of course.

10 (Whereupon a discussion is held off
11 the record.)

12 Q Also, Mr. Ginman, assume that the only
13 sanitary sewers in the Borough service the village and
14 they connect with Bedminster, which has a plant -- I
15 believe it was constructed by Long Lines; that there
16 is an agreement between the Borough of Far Hills and
17 Bedminster allotting a certain capacity to the Borough
18 of Far Hills and the Borough of Far Hills is at that
19 capacity at the present time; also, assume there is
20 utility water serving the village area; outside of
21 the village no sewers and no utility water readily
22 accessible; also assume, Mr. Ginman, that the employment
23 within the Borough of Far Hills hasn't changed
24 significantly within the past ten years or so; if you
25 would look at P-14, Mr. Ginman, which I will put

1 alongside of D-9, I think you can mentally fix the
2 approximate alignment of the growth area by comparing
3 the two maps running through the Borough of Far Hills,
4 and assume that the growth area includes developed
5 ten-acre lots running alongside Sunny Branch -- both
6 sides of Sunny Branch Road, as indicated, to the north
7 of Route 202, and as one proceeds to the south --

8 MR. MASTRO: Can I see the list?

9 THE COURT CLERK: Yes.

10 MR. MASTRO: Can we have D-19?

11 Q And I'm going to show you D-19,
12 Mr. Ginman, which is entitled Critical Land Areas.
13 It's also identified as Plate No. 5, which was a portion
14 of the facilities plan implementing a 208 study and
15 related to waste water treatment; but if you'll look at
16 that and, if you can, would look at P-14, as we
17 proceed south from Route 202 and staying within the
18 growth area, there is a portion of land which was --
19 or is a part of Long Lines and, by agreement, was
20 designated open space in perpetuity, and I think it's
21 more clearly shown on Plate 5 than any of the maps --
22 any of the exhibits I have on the easels --

23 MR. VOGEL: I'm reluctant to interrupt

24 Counsel in this question, which has gone on

25 now for what appears to be a half hour. I

1 believe that this is nothing more than a
2 factual summation of the total case as perceived
3 by Counsel for the Defendant.

4 I think that it is so far beyond the
5 bounds of what a hypothetical question is,
6 should be, is intended by the Rules of Court,
7 that it should not be allowed.

8 MR. MASTRO: I didn't finish the
9 question.

10 MR. VOGEL: That's correct, and I am
11 reluctant to interrupt, but we've gone on for a
12 half an hour now with a question that still
13 goes on, and I think that it is appropriate
14 at this point to interject. No witness could
15 possibly, no matter how bright, how able, how
16 talented -- and I see that the witness is
17 smiling -- no witness could possibly remember
18 all of those facts at one time, assimilate
19 them together and give a planning answer. I
20 think it's beyond the bounds.

21 I have other objections to the question,
22 but, certainly, on that basis, I think that
23 the question ought to be stricken, and that if
24 there are hypotheticals to specific items, they
25 ought to be dealt with one at a time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Do you want to make a response?

MR. MASTRO: I didn't finish with my question, your Honor. May I finish the question first?

THE COURT: Do you want to make a response to his objection?

MR. MASTRO: All I'd like to say, your Honor, is Mr. Vogel has been objecting, as I've been posing these questions, since they weren't related to the Borough of Far Hills, and now this question, although long and necessarily so, is specifically related to the Borough of Far Hills, and, hopefully, if I can finish it, we'll address the State Development Guide Plan.

I think it precisely overcomes the many objections he's made previously --

THE COURT: I assume you're addressing a hypothetical to the witness with an ultimate question, and I'll permit it as respects its several parts and their complexity, and I leave that to the acumen of Counsel, given the assumed abilities, retention qualities, etcetera, of the witness.

1 All of us play this game in the legal
2 profession in terms of hypothetical questions,
3 and how much our experts ever really retain is
4 dependent on a number of variables, some of
5 which are suggested here, and I leave that to
6 Mr. Mastro. It is his hypothetical. I'll let
7 him proceed.

8 Q And, Mr. Ginman, as we -- I think I
9 was on the property designated by AT&T and Bedminster
10 for open space in perpetuity, which then blends into
11 a steep slope area as it exists within the southerly
12 portion of the growth line on Far Hills.

13 Now, the question, Mr. Ginman, is: Given the
14 facts as I've outlined them to you -- or I'm asking you
15 to accept what I've outlined to you as facts --

16 THE COURT: Would you help him, John,
17 please?

18 Q In the context of what I've indicated
19 and assuming that the only developable parcel along
20 the periphery of the growth area line is a portion of
21 the property in question, consisting of a total of 19
22 acres, would it be arbitrary and capricious to construe
23 the growth line literally as it appears to intersect
24 the Borough of Far Hills in the context of my question?

25 MR. VOGEL: Finished?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MASTRO: Yes.

MR. VOGEL: Objection.

THE COURT: All right. Grounds?

MR. VOGEL: Your Honor, I have already objected on the ground one which I reiterate, but leave.

In the alternative, I object on ground two, and that is that the hypothetical question is too broad, but when he gets to specifics, if it is intended to do that, it should include an accurate statement of the facts that are assumed or that the witness is asked to assume as being so.

Number one, the hypothetical question omitted certain critical facts, including assuming what the County Master Plan said about this area, because, after all, Mr. Ginman has quite clearly said that he met with the County planners, considered the County Master Plan, considered their viewpoints. The witness has also said that they took into account the Tri-State Regional Plan that was left out of the hypothetical question. The question should have included the Tri-State Regional Plan.

There are a number of other factors.

1 For example, although there was a brief
2 reference to 202 and 206, it was fleeting by
3 another -- other matters emphasized greater.

4 When it came to Interstate 287 and
5 78, he assumed that there is no interchange in
6 Far Hills, which is, of course, true, but the
7 witness was not asked to assume how close the
8 Borough of Far Hills and the village of Far
9 Hills is to the interchanges of 78 and 287.
10 Again, they are very critical factors.

11 There were a number of assumptions
12 which simply are not accurate. A statement
13 by Mr. Mastro -- the last one, I think, was
14 to assume that the PQ is the only developable
15 piece of property. There's been a lot of testi-
16 mony -- in the growth area. There's been a
17 lot of testimony about property right in the
18 village, that the PQ is the most suitable
19 piece of property for development, the most
20 likely piece of property for development.
21 Indeed, Mr. Dresdner himself said there's five
22 or six isolated pieces within the village
23 itself that are suitable for development.

24 So Mr. Mastro's own witness has said
25 that, and I don't believe there was extensive

1 testimony of all the lands in the corridor all
2 the way down to the southern end of Far Hills
3 from the northern end of Far Hills.

4 I could go on, your Honor, but I think
5 the point is that this is a hypothetical that
6 represented and reflected Mr. Mastro's view of
7 the case. While I respect his right to have
8 that view of the case, we're asking this witness
9 to assume these massive numbers of facts and
10 certain other critical facts that Mr. Mastro
11 does not believe are critical, but the Plaintiff
12 believes are critical.

13 Indeed, this witness has testified --
14 utmost importance, including the County Master
15 Plan. He's not even asked to think about that.
16 He's asked to note that there's been very
17 little growth in the community. I wonder if
18 he was asked to note that there's been very
19 little growth in the community because the
20 ten-acre zoning wouldn't allow that growth.

21 He's been asked to note that there is
22 very little change in employment over the
23 last decade, and, again, I wonder if he's been
24 asked to note that the zoning didn't allow
25 employment beyond the village, and that, in

1 fact, in the communities, the Somerset Hills
2 communities immediately surrounding, there's
3 been an enormous increase in employment, increase
4 that is adjacent to or very nearby to this
5 community.

6 These are all critical facts that
7 Mr. Mastro has somehow left out of this total
8 equation. He wants this witness to balance
9 that equation with a very, very one-sided view
10 of what are the relevant facts in this case,
11 and I submit to you, your Honor, that, A, the
12 question is too long, and, B, he's left out
13 facts too critical for the question to be fair
14 or meaningful, and I ask that the question be
15 rejected by the Court.

16 MR. MASTRO: Your Honor --

17 THE COURT: Yes?

18 MR. MASTRO: Most of what Mr. Vogel
19 made reference to is a dispute as to some of
20 the facts.

21 I will amend my question to include
22 the impact of the County Master Plan, which
23 does, indeed, have a village neighborhood
24 designation which swings from Bedminster into
25 Far Hills, and, again --

1 THE COURT: It includes all of it,
2 does it not, within the broken line?

3 MR. MASTRO: Yes, within the broken
4 line.

5 THE COURT: Yes.

6 MR. MASTRO: And, again, conceptual.

7 Outside of that village neighborhood
8 is rural settlement, low growth, and I believe
9 it's open space up in the north in the heavily
10 sloped areas on the County Master Plan.

11 We can assume those facts. Throw in
12 the State Development Guide Plan, if you can,
13 I have no strong feelings either way.

14 I purposely left out the interchanges,
15 your Honor, because there's a dispute as to the
16 ability to get to those interchanges on adequate
17 or overtaxed roads, highways --

18 MR. VOGEL: I don't recall that dispute
19 from the testimony. There was a dispute as to
20 how long it took to drive --

21 THE COURT: It was five to ten minutes
22 from the village of Far Hills, and someone
23 said 15, as I recall. But I suggest that
24 person hasn't driven the road recently. All
25 right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MASTRO: But I have no problem with Mr. Ginman accepting that there is an interchange, Mt. Airy Road and 287.

THE COURT: They're there.

MR. MASTRO: We have a road map, your Honor. That would show.

THE COURT: I don't think it's of that significance. I know of no hypothetical, and I've seldom heard one, that suits opposing Counsel. The day that one is drafted will be a high-water mark, no pun intended.

But given that, it is Counsel's version of the facts as he thinks they have been established. Is it put unfair? I think not. It may be that we have other problems with it, but from that viewpoint, I don't think it's an unfair portrayal of the facts. Certainly, this witness is aware of the existence of the County Master Plan, the Tri-State Regional Plan. He has testified as to his meeting with -- personally and through others who were his agents, with the municipal County officials in this County, and I would assume that would be in the background of any answer he'd give.

My problem with your question is in

1 a much more limited way, Mr. Mastro. Your con-
2 cluding language in your question was phrased
3 as follows: Now, accepting all these facts
4 and, further, that the only developable piece
5 in the Borough, included limited growth area,
6 is in the parcel in question; you then said
7 would it be arbitrary or capricious to construe
8 the growth line literally as it intersects
9 Far Hills, and I don't think the construction
10 of a growth line, as such, is an appropriate
11 way of phrasing it.

12 If we look at the language of the
13 opinion, the one who objects has to prove the
14 conclusion that the municipality concludes
15 any growth area or as much growth area as is
16 shown on the map is arbitrary and capricious.
17 I suggest that the ultimate language ought to
18 be phrased in that way as opposed to a
19 construction of the growth line literally.
20 All right? The test is phrased in the case.

21 Let's take a few minutes, and we'll
22 come back.

23 (Whereupon a short recess is taken.)

24 THE COURT: Mr. Mastro, I indicated
25 to you my problem with your question, and I

1 suggest to you that the question be phrased in
2 terms of the opinion and the question phrased
3 in terms of whether to construe the growth line
4 literally is arbitrary and capricious is not
5 the test.

6 MR. MASTRO: All right. Your Honor,
7 for the purposes of even anticipating that I
8 may convince someone that my approach is
9 perhaps -- has some merit, has some validity,
10 I wanted to ask the question in, perhaps, three
11 ways, and I will ask it in terms of the
12 decision, as you've suggested, but I would like
13 to ask it in terms -- in terms I indicated,
14 because I feel, as a matter of law, that the
15 Supreme Court never intended that growth
16 boundary lines should not be refined.

17 THE COURT: Say that again. You never
18 intended --

19 MR. MASTRO: Never intended that those
20 growth boundary lines could not be refined.

21 THE COURT: Could not be --

22 MR. MASTRO: Refined, and I think the
23 Court acknowledged, as a matter of fact, and
24 I think Judge Serpentelli acknowledged that
25 these lines are subject to refinement.

1 I wanted to ask the question in terms
2 of refinement first.

3 THE COURT: Well, in terms of the
4 language you've used -- all right? As I
5 understand that language, I'm going to find it
6 objectionable, and I won't permit the question
7 to be answered. I suggest you phrase it in
8 another way. If that's erroneous, someone
9 will tell me that one day, and it won't be the
10 first time.

11 MR. MASTRO: All right.

12 Q Mr. Ginman, I will rephrase the last
13 portion of that question as follows:

14 Accepting what I indicated to you earlier in
15 the question as facts, would the growth line as it
16 intersects the Borough of Far Hills then be considered
17 in that context to be arbitrary and capricious?

18 A Taking all of those -- taking all of those
19 factors --

20 THE COURT: And accepting the premises
21 of the State Development Guide Plan.

22 A Would the line as drawn in 1980 be arbitrary and
23 capricious?

24 Q As it affects the Borough of Far Hills.

25 A I don't believe so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Could you explain that answer to me?

A Well, you asked me to sort all of those factors and review them again, and I concluded that based on our original judgment, that the line was a reasonably drawn line.

I think what you're asking is to somehow mix in local land use decisions, which I would be the first to acknowledge. Local land use decisions might be different within the context of the Guide Plan.

But I think the designation of a growth area, that this corridor reflects, was an originally sound idea. But to suggest that somehow it isn't and that Far Hills is not part of it, I just -- I don't think I can conclude that.

But I could conclude that Far Hills might, within that area, do a lot of different things as far as protecting its environment and providing for development. That's certainly evident in the information presented.

Q That was a third aspect of my question, should adjustments be made at the local level to accommodate the circumstances I outlined to you?

MR. VOGEL: I'm going to object because that is not the relevant inquiry.

THE COURT: Again, it assumes the

*Wear glasses
re: D's
argument*

1 ability of the municipality to adjust or make
2 different the line as shown in the plan, and
3 it is implicit in the question, but I'll
4 sustain the objection on that ground.

5 MR. MASTRO: All right. Let me
6 rephrase the question to indicate --

7 Q Forget the line, Mr. Ginman.

8 Should adjustments be made at the local level
9 for the circumstances I outlined insofar as permitting
10 development in that portion of the growth area of
11 Far Hills?

12 MR. VOGEL: Well, just for the
13 record, your Honor, I'll object again because
14 I think it's not relevant to the inquiry of
15 where is the location of the line and was the
16 line in error.

17 But Mr. Ginman has already given
18 testimony on this subject of local zoning and
19 its interrelationship. So I really don't care
20 if he answers it, even though I think it's
21 irrelevant.

22 THE COURT: Can you answer the question,
23 sir?

24 THE WITNESS: Yes. I think the
25 municipality has a responsibility to adjust

1 lines regarding its land use decisions and
2 confine itself to the responsibilities it
3 has commensurate with the facts available,
4 whether they be growth inducing or environ-
5 mentally protective types of information.

6 Q Mr. Ginman, one other thing.

7 If you were aware of all the facts I indicated
8 to you, and I requested you to accept at the time the
9 growth line was prepared, would it be reasonable to
10 conclude that that line should have, more or less,
11 followed the north branch of the Raritan River as it
12 intersected the Borough of Far Hills -- and I'm making
13 reference to D-17 at the moment, the second overlay --
14 follow the north branch of the Raritan River and the
15 westerly municipal boundary and run along the ridge
16 of the Watchung Mountains --

17 MR. VOGEL: Objection, your Honor.

18 The witness has already testified that given
19 all the facts set forth in the hypothetical,
20 he felt that the line was not arbitrarily
21 or capriciously drawn or drawn in error.

22 Now, having reached that conclusion,
23 now Mr. Mastro is saying, well, given the same
24 facts -- and he reiterates a few of the facts,
25 and he's now saying should the line be drawn

1 somewhere else. He's already testified as
2 to the standard in the Supreme Court decision,
3 that the line was not drawn arbitrarily and
4 capriciously, and I think that's the end of
5 the inquiries.

6 THE COURT: Mr. Mastro?

7 MR. MASTRO: Judge, I didn't under-
8 stand Mr. Ginman to say what was posed in this
9 particular question. I'm assuming, in the
10 process of drawing the boundary lines, the
11 DCA certainly addressed matters of statewide
12 concern. I've outlined the series of matters
13 that are of local concern --

14 THE COURT: Those which exist.

15 MR. MASTRO: I think -- I think I'll
16 withdraw the question, because I think
17 Mr. Ginman is going to tell me that plan was
18 never intended to do that.

19 THE COURT: Question withdrawn.

20 MR. MASTRO: That's all I have.

21 THE COURT: Cross-examine.

22 MR. VOGEL: Thank you, your Honor.
23
24
25

1 CROSS-EXAMINATION BY

2 MR. VOGEL:

3 Q Mr. Ginman, a moment ago you said to
4 Mr. Mastro that local zoning decisions should be made
5 to, as I recall it, protect the environment and to
6 accommodate development within the growth area.

7 Did I get you correctly?

8 A That's a reasonable paraphrase, yes.

9 Q Can you elaborate on the meaning that
10 you have behind that statement? What did you mean by
11 that?

12 A Well, I think throughout the plan we refer to
13 the need for that -- the growth areas -- the growth
14 area designations, and, for that matter, other
15 designations within the Guide Plan were construed to
16 be broad representations of State policy, that within
17 each we would expect and anticipate that municipalities
18 would so construct their Land Use Plans, their
19 development ordinances, their zoning ordinances in
20 such a fashion as to take cognizance of peculiar local
21 circumstances, either affording development or in some
22 cases restricting development, but that the net policies
23 of both would be similar.

24 In other words, generally reflecting growth
25 and that we could sustain that, and State policy

*Expectation
of
local
government*

1 with infrastructure investment would continue in those
2 directions.

3 Q We all, I'm sure, learned a lot of
4 interesting things from your testimony. One was that
5 this -- the State Development Guide Plan was funded by
6 H.U.D. in a 701 program.

7 A That's correct.

8 Q And what was -- can you summarize the
9 purposes of why H.U.D., the Federal Government's Housing
10 Administration -- what objectives they were trying to
11 achieve relative to housing within their 701 program?

12 A Well, since its inception, that section, 701
13 of the Housing Act of '54 as amended, has undergone
14 continual refinement and redirection and change, and
15 each year there was an annual program design required.
16 In other words, H.U.D. would put forth a series of
17 broad objectives that they would hope to accomplish in
18 any one year and each state would design a program that
19 might include a whole series of activities to try to
20 reflect those Federal objectives.

21 I can't recall precisely when or exactly what
22 date, but one of those -- one of those years we were
23 required to produce a housing element and that was
24 produced separately from the Guide Plan, and that
25 housing element consisted of literally a statement of all

1 of the states' activities in a housing direction, and
2 to the extent that housing is a component of broad
3 state land use planning, it was also included as part
4 of a State Master Plan, in this case a State Development
5 Guide Plan.

6 Q Is it now -- now, this housing component
7 that you refer to, is that the housing allocation plan
8 that was developed? Is that what you're referring to?

9 A No. That was something designed specifically
10 as a response to an executive order prepared by the
11 Governor. It's the Governor's executive order No. 35,
12 and then it was followed by another executive order
13 after the first draft was prepared called executive
14 order No. 46. But all of those -- that plan and its
15 resultant allocations were rescinded by executive order
16 by the current administration. So they no longer exist.

17 Q Mr. Ginman -- sorry.

18 A The housing element I was speaking of was a
19 separate document that literally summarized in one
20 report all of the efforts that the State was making in
21 housing, specifically emphasizing housing assistance
22 programs like the efforts of the Housing Finance Agency
23 and the Mortgage Finance Agency and --

24 Q Did that housing study -- I take it
25 that was undertaken by the Division of Planning?

1 A That's correct.

2 Q And you were director at the time that
3 study was going on?

4 A Yes.

5 Q Did that study occur about the same
6 time that you were working on -- or your division was
7 working on the State Development Guide Plan?

8 A Yes, it was part and parcel of the H.U.D.
9 requirements.

10 Generally speaking, what was required was a
11 land use element and a housing element, and we proposed
12 to do the housing element separately because its focus
13 was more on program and the land use was more on policy.

14 Q Was the land use element what we are
15 calling the State Development Guide Plan?

16 A Yes.

17 Q And the housing element was the
18 separate but parallel study?

19 A Yes. I might add that the same requirements
20 were also required of any recipients that we were sub-
21 contracting with at the municipal level.

22 So if they were preparing a municipal Master
23 Plan, the same requirements applied.

24 Q And in funding the State Development
25 Guide Plan, was the funding a recognition of the

1 interrelationship between the housing element and the
2 land use element funding by H.U.D.?

3 MR. MASTRO: Your Honor, let me
4 object.

5 Q Do you want to try that again?

6 THE COURT: Hold on. There's an
7 objection.

8 Yes, Mr. Mastro --

9 MR. VOGEL: I'll withdraw the question.

10 THE COURT: Question withdrawn.

11 MR. VOGEL: And try it again.

12 Q Let me go over to something else.

13 The housing allocation plan that was -- that
14 you mentioned a moment ago pursuant to executive
15 order No. 35, was this a study that was being under-
16 taken at about the same time that the State Development
17 Guide Plan was being worked on?

18 A Yes.

19 Q And was there any overlapping in the
20 planning functions of the two?

21 A There were two distinct staff involved. One
22 was the Guide Plan which was carried on by the Bureau
23 of Statewide Planning, and the Bureau of Urban Planning
24 produced the housing allocation.

25 Q And was there any coordination of those

1 two functions?

2 A We would like to think so.

3 Q And did each of those functions, at
4 least at the coordinating level, which may have been
5 at the top, at your level, was there a taking into
6 account of the work and the studies of each of these
7 staffs?

8 MR. MASTRO: Let me object to that
9 question.

10 Did you finish the question?

11 MR. VOGEL: Yes.

12 MR. MASTRO: I want to object to the
13 question on the grounds of relevancy. There's
14 been a housing allocation report which has
15 been rescinded.

16 THE COURT: Pardon?

17 MR. MASTRO: It's been rescinded.

18 THE COURT: Yes?

19 MR. MASTRO: Number one, it's no longer
20 viable; and, number, two, it has no relationship
21 to the growth lines which we're attempting to
22 litigate at the present time.

23 THE COURT: Where are we, Mr. Vogel?

24 MR. VOGEL: Your Honor, there has been
25 some testimony by Mr. Dresdner who is not with

1 us at the moment and some further cross-
2 examination by Mr. Mastro of Mr. Ginman to
3 establish that the State Development Guide
4 Plan only had as its focus those places in the
5 State of New Jersey where the State's capital
6 funding would be spent, and I want to demonstrate
7 through these questions that while capital
8 funding was certainly one issue of concern of
9 the State Development Guide Plan, there's a
10 broader focus and a broader concern that does
11 relate to housing relative to the State
12 Development Guide Plan.

13 So, in that context, I think it is
14 relevant. I mean the fact --

15 THE COURT: I don't know how far we're
16 going to go in this or how much time. There's
17 no question that Mt. Laurel II has its predicate
18 housing.

19 MR. MASTRO: No question about it.

20 THE COURT: There can't be any dispute
21 among us about that. The Chief Justice's
22 language in describing what has occurred since
23 Mt. Laurel I couldn't be read by anyone who
24 didn't perceive its sharpness. All right?
25 Sharpness in several ways: One, the failure to

1 achieve that which had been raised to a
2 constitutional base in Mt. Laurel I; all right?
3 The inability of the executive to do anything
4 in the area, and the failure of the Legislature
5 to do anything in the area, leaving to the
6 Court -- all right? That it would do something
7 in the area in terms of the protection of a
8 constitutional right; i.e., a reasonable
9 opportunity for housing, and this is the
10 mechanism as I get the theory of the case,
11 by which that housing, in effect, will be
12 achieved. All right? But the focus of the
13 Court is the protection of what it says is a
14 constitutional right, and that's what we're
15 dealing with.

16 Absent that, the Court would have little
17 interest, it strikes me, perhaps, in the State
18 Development Guide Plan, and it might be dealing
19 with a completely different context.

20 MR. VOGEL: Maybe I can ask the question
21 more directly, your Honor.

22 THE COURT: Yes, please do, without
23 our getting into this thicket any further.

24 Q Given what was going on in your
25 division at the time, Mr. Ginman, various studies, did

1 the State Development Guide Plan have as one of its
2 focuses appropriate growth areas in the State for needed
3 housing?

4 A Housing was one of the components we were
5 interested in, yes.

6 Q Mr. Ginman, in drawing the line -- the
7 206 corridor line and particularly as it went through
8 the Borough of Far Hills and particularly as it
9 encompassed the slightly enlarged area of the Far
10 Hills village, I want to ask you if the Plan took into
11 account a number of factors, the growth area:

12 First of all, did you take into account the
13 Somerset County Master Plan?

14 A If not directly, certainly the policies as
15 expressed by the County Planning Board staff.

16 Q And did you take into account the
17 Tri-State Regional Plan?

18 A Yes.

19 Q You testified that there were meetings
20 with County officials; is that so?

21 A Yes.

22 Q And did you take into account the
23 input of the County Plan officials with respect to the
24 development of the 206 corridor?

25 A Yes.

1 Q And the location of the corridor lines
 2 as ultimately shown on the State Development Guide
 3 Plan, did the establishment of that corridor line take
 4 into account the input of the County officials?

5 A Yes.

6 Q You testified that the original 1977
 7 proposed State Development Guide Plan did not include
 8 a 206 corridor; is that so?

9 A That's correct.

10 Q By the time 1980 rolled around, you
 11 did have a 206 corridor. Did any of the County officials
 12 urge that a growth corridor be established for Route 206?

13 A Well, I don't know if the proper phrase would
 14 be, "urge". In our technical discussion --

15 Q All right.

16 A It was --

17 Q Is that subject --

18 A The development phenomenon that was going on
 19 in this area was recognized, and we discussed it and
 20 concluded that based on the discussions that we --
 21 that this corridor can't really be ignored.

22 Q When you say we discussed it, you
 23 mean --

24 A With the County staff.

25 Q With the County staff and your staff?

*Reasons for
 job
 program
 Capital
 construction*

1 A Yes.

2 Q Did that -- did those discussions
3 include you personally?

4 A On at least -- at least two occasions it did,
5 and there were several other conversations as well.

6 Q Did the Route 206 corridor include the
7 major developments, commercial developments such as the
8 two AT&T facilities, one at Basking Ridge, the other
9 in Bedminster?

10 A I forgot even exactly the date of construction
11 of these, but these were certainly evident on at least --
12 we were aware of those.

13 Q Did the Route 206 corridor take into
14 account the villages along Route 206 and how those
15 villages were treated on the Master County Plan Map?

16 A Again, I'm not sure of the date of publication
17 of the County Master Plan Map and I have to plead a
18 little bit of uncertainty about whether we reviewed
19 that map, but --

20 Q Assume --

21 A But I certainly was aware of the existence of
22 the villages and certainly was aware of, at least,
23 the policy direction that the County Planning Board
24 staff was going.

25 I cannot say that I actually witnessed or

continued
98

1 compared a County Master Plan Map at the time.

2 Q Assuming, if you will -- we have a lot
3 of hypotheticals here -- that the County Master Plan
4 and its map were developed somewhere around 1970. Is
5 it your recollection that the proposal for higher
6 density developments around those villages, slightly
7 enlarging those villages, is a factor which the County
8 proposed that you take into account in developing the
9 Route 206 corridor?

10 MR. MASTRO: I want to object to
11 that question, your Honor, on these grounds:

12 Mr. Vogel is asking a question that
13 certainly was addressed and treated in the
14 Somerset County Master Plan; namely, the
15 texture of villages and prospects for future
16 growth. Mr. Vogel has phrased his question in
17 such a manner as to suggest that the growth
18 area of the State Development Guide Plan anti-
19 cipated that these villages would grow, and I
20 think the question is misleading and unfair.

21 THE COURT: Let's have it read back.

22 All right?

23 MR. VOGEL: I could rephrase it.

24 THE COURT: Rephrase it. Question
25 withdrawn.

1 Q Mr. Ginman, do you recall whether or
2 not the location of the villages within the 206 corridor,
3 Pluckemin, Far Hills, Bedminster, Peapack and Gladstone
4 -- did they have any significance or impact on the
5 development of the corridor line, the growth corridor
6 line?

7 A Well, they were one of many factors we reviewed.

8 Q Did the growth corridor also take into
9 account the location of Route 206 itself?

10 A Yes.

11 Q Did the growth corridor also take into
12 account the location of Route 202?

13 A Yes.

14 Q Did the growth corridor take into
15 account that particularly in Peapack-Gladstone and in
16 Far Hills that the railroad line and the railroad
17 station is within those two communities in the growth
18 area?

19 A Yes.

20 Q Did the growth corridor take into
21 account the proximity of the Route 206 corridor to the
22 interchanges of 287 and I-78?

23 A Yes.

24 Q Did the growth corridor take into
25 account the location of major industries that we've

1 mentioned before within that -- what ultimately
2 became the 206 corridor?

3 A Yes.

4 Q Mr. Ginman, we have referred to Page
5 47 of the State Development Guide Plan and the factors
6 enumerated on that page -- or the criteria for
7 delineating a growth corridor.

8 Are you familiar with those factors?

9 A Yes.

10 Q Did you, being in charge of the Division
11 of Planning, the director of the Division of Planning,
12 and in developing the State Development Guide Plan
13 growth corridors and in particular the 206 corridor,
14 did you, first of all, take into account those
15 criteria?

16 A Yes.

17 Q Did you balance those criteria?

18 Let me try to elaborate on that question.

19 When I say did you balance those criteria,
20 in taking into account those criteria, did you go down
21 the line one at a time and determine rigidly if criteria
22 one was fully met, criteria two, or did you somehow
23 look at each of these criteria and determine to what
24 extent they were met, what extent they may not have
25 been met, or less met and balance it all out and come

Criteria

1 to a conclusion?

2 A These conclusions were based pretty much on a
3 judgmental basis.

4 Perhaps your latter illustration is better than
5 the former. There was not rigid scientific analyses
6 that went through an evaluation of each criteria and the
7 degree to which each one met that criteria. It was
8 not that rigid.

9 Q So that, for example, if there were
10 some environmentally sensitive lands within the growth
11 area that wouldn't automatically change the nature of
12 the growth area?

13 A No.

14 Q And with respect to criteria number one,
15 location within or adjacent to major population and/or
16 employment centers, on that criteria was there any kind
17 of a balancing, whether they -- the growth area was
18 near major population centers or near employment
19 centers?

20 A Yes.

21 Q Could you summarize, Mr. Ginman, in
22 your own words, without me setting the facts, as you
23 did it as the director of the Division of Planning --
24 can you tell us why the Route 202 corridor was extended
25 from the 1977 plan up that corridor and why it included

1 any portion of the Borough of Far Hills?

2 MR. MASTRO: Your Honor, I object to
3 the -- at least the first part of that
4 question because Mr. Ginman has said
5 repeatedly, acknowledged what was happening
6 in the area, AT&T Long Lines, Alan Deane in
7 Bedminster, Beneficial Management. I think
8 he's responded to that question several times,
9 as a matter of fact.

10 THE COURT: Redundant. I'll sustain
11 the objection.

12 MR. VOGEL: I'll withdraw the question,
13 your Honor.

14 Q When you indicated a moment ago that
15 the inclusion of certain environmentally sensitive
16 lands in a growth area would not necessarily require
17 the change of the growth area line, do you recall that
18 answer?

19 A Yes.

20 Q Did you, in fact, Mr. Ginman, set the
21 growth area large enough so that it would accommodate
22 things like lands that were unsuitable for development?

23 A Yes.

24 Q And that ratio, as I recall your
25 testimony, was three-to-one?

1 A Yes.

2 Q Approximately tripled the amount of
3 land you thought would be necessary to accommodate
4 the development in order to take into account all of
5 the problems of environmental sensitivity, open space,
6 etcetera?

7 A Yes. That three-to-one ratio, not necessarily
8 at each municipal or county level.

9 Q All right. So it varies within certain
10 growth areas?

11 A Yes.

12 Q In some growth areas it might be a
13 little greater and in some it might be lesser.

14 A In urban counties, it's very difficult to find
15 sufficient land area for the kind of growth anticipated.

16 Q Yes. Among the factors that -- a moment
17 ago I was asking you whether you took into account
18 various factors.

19 Did you take into account the fact that within
20 the Far Hills village there exists sewer, public sewer
21 and public water facilities?

22 A Specifically for that Borough? We have a map
23 and we analyzed the extent of sewer lines and water
24 service areas throughout the State.

25 Again, we didn't sit down and look at the

1 village of Far Hills specifically.

2 Q But considering criteria number two,
3 location within or in proximity to existing major
4 water supply and sewer service areas --

5 A We did use that factor, yes.

6 Q And if, in fact, there are public
7 sewers and public water within the built-up village
8 of Far Hills, do you consider it of significance that
9 the growth area encompassed that village as well as
10 areas adjacent thereto?

11 MR. MASTRO: I object to that question,
12 your Honor.

13 THE COURT: Let me have it read back.

14 (Whereupon the following question was
15 read back by the Reporter:

16 "Question: And, in fact, there are
17 public sewers and public water within the
18 built-up village of Far Hills, do you consider
19 it of significance that the growth area
20 encompassed that village as well as areas
21 adjacent thereto?"

22 THE COURT: His testimony was he hadn't
23 considered Far Hills in terms of sewerage
24 specifically.

25 MR. VOGEL: I'm asking him that

1 assuming that there are public sewers and public
2 water within the village of Far Hills, the
3 developed village of Far Hills --

4 THE COURT: Yes.

5 MR. VOGEL: For purposes of establishing
6 a growth area, do you consider it reasonable
7 that the growth area should have encompassed
8 areas surrounding the Far Hills village which
9 are adjacent to the built-up sewer and water
10 portions of the village?

11 MR. MASTRO: I object to that, your
12 Honor. Mr. Ginman indicated, if I understand
13 what he said, that they didn't consider that
14 factor as it specifically relates to the
15 Borough of Far Hills.

16 MR. VOGEL: I don't know that he said --

17 THE COURT: And your question is too
18 broad. You're asking him in terms of area
19 around the village. Really, your concern is
20 only in one; is it not?

21 MR. VOGEL: Right.

22 THE COURT: I'll sustain the objection.

23 Q Mr. Ginman, given the fact that the
24 Far Hills village does have sewer and water facilities,
25 public sewer and water facilities at this time, and given

1 the fact that the growth area encompasses the village
2 and lands surrounding the village, do you consider
3 that criteria number two on Page 47 has been met?
4 And that criteria reads: Location within or in
5 proximity to existing major water supply and sewer
6 service areas.

7 MR. MASTRO: I object, your Honor. I
8 think criteria two, if I understand what
9 Mr. Ginman has indicated, is related to the
10 word "sewer" in a much larger context, and,
11 secondly, if you attempt to apply that to the
12 Borough of Far Hills, then it seems to me that
13 Mr. Vogel has to examine water table, pollution
14 levels and a host of other factors.

15 MR. VOGEL: Your Honor, I'm just asking --

16 THE COURT: Yes, I'll permit it.

17 Did you make a specific reference of
18 Far Hills to criteria number two?

19 THE WITNESS: No.

20 MR. VOGEL: Was the Court's question --

21 THE COURT: Did he make a specific
22 reference to criteria two to Far Hills.

23 MR. VOGEL: All right.

24 Q Now, assuming hypothetically that there
25 are public sewers, public water system within the

1 built-up village of Far Hills, is it your -- do you have
2 an opinion as to whether or not the areas adjacent to
3 and surrounding the village would comply with criteria
4 number two on Page 47?

5 MR. MASTRO: I object --

6 THE COURT: I don't know if he knows
7 anything about that.

8 MR. MASTRO: I object, your Honor.

9 MR. VOGEL: Let me -- go ahead.

10 THE COURT: Let me hear the objection.

11 MR. MASTRO: Mr. Vogel's question is
12 related to a hypothetical that is intended
13 to draw inferences regarding Far Hills, and
14 I think the State Development Guide Plan, and,
15 perhaps, -- and I'm sure Mr. Ginman is very
16 much aware that the installation of water and
17 sewers may be put in place for a variety of
18 reasons; for example, Federal grants. The
19 first thing they look at is the nature and
20 severity of a problem. If there were a problem
21 in this area, then Mr. Vogel's question doesn't
22 make sense. Would you exacerbate that problem
23 by putting more development in a substandard
24 area?

25 Mr. Ginman, it seems to me, would need

1 a lot more information before he could
2 respond to a question of that nature.

3 MR. VOGEL: Your Honor, the question
4 deals with a specific criteria of the State
5 Development Guide Plan. The facts are given in
6 hypothetical form, and there's been ample
7 testimony in the record to support that there
8 are sewers and water within the village.

9 The question is whether the land around
10 the village, limited to that criteria, met that
11 criteria.

12 THE COURT: He's told you he hasn't made
13 reference to a specific map of Far Hills.

14 MR. VOGEL: That's right. I'm asking
15 him whether or not -- whether he made reference
16 or not, or whether he recalls it or not. I'm
17 asking him, given that fact, does that support
18 the determination --

19 Maybe I'll ask the question differently.
20 I'll withdraw that question and try it once
21 again.

22 Q Mr. Ginman, knowing that you have
23 established the growth area, the Route 206 corridor
24 growth area, knowing that Far Hills and particularly
25 the village area of Far Hills is within the growth area,

1 as well as certain surrounding properties, and assuming
2 that the village area of Far Hills does have public
3 sewers and public water, is it your opinion that the
4 criteria number two of the State Development Guide
5 Plan for growth areas has been satisfied by that factor?

6 MR. MASTRO: I object to that question,
7 your Honor, and as a matter of fact, as I'm
8 thinking about it, I'm looking at Page 103 of
9 the Guide, and another thing Mr. Ginman would
10 have to know is whether what was done was done
11 with a Federal subsidy or a Federal grant,
12 because on Page 103 of the Guide it indicates
13 that --

14 MR. VOGEL: I think Mr. Mastro is now --

15 MR. MASTRO: Let me finish my objection.

16 THE COURT: Let him finish.

17 MR. VOGEL: I want to read the whole
18 plan. I don't think we're focusing on whether
19 the question is objectionable.

20 THE COURT: Let him finish the question.

21 MR. MASTRO: The Guide makes reference
22 to Federal grant regulations and indicates a
23 criteria for Federal grants to bond public
24 sewers, first of which is severity and pollution
25 problem.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Now, Mr. Vogel's question mentioned nothing about high groundwater table, and I told Mr. Ginman earlier in my hypothetical that it was a high groundwater table.

THE COURT: He's not asking him a hypothetical question, as I get it.

Are you?

MR. VOGEL: No.

THE COURT: He's asked to give facts in his statement, for example, of an existing water supply and existing sewer area within the village. Would the delineation as it is shown on the State Development Guide Plan of the growth area meet criteria number two, to wit: Location within or in proximity to existing major water supply and sewer service.

Can you answer?

THE WITNESS: Well, I feel reluctant to get into the specifics of the village since we tended to look at this as a corridor, as an entity, and it's difficult to separate out specific segments of it and say does this meet this criteria or that criteria.

That's why I've been trying to emphasize that we looked at the whole -- well, from the

1 interchange up to Gladstone.

2 Q You did take into account that in that
3 growth area there were certain sewer -- public sewer
4 and water systems?

5 A Yes.

6 Q And that was a factor that was
7 important to you; was it not?

8 A Yes.

9 THE COURT: We're going to adjourn,
10 gentlemen.

11 MR. VOGEL: I might be able to finish
12 this witness in two, three minutes, if I can
13 look through my notes --

14 THE COURT: Mr. Mastro, do you have any
15 questions?

16 MR. VOGEL: Then he won't have to come
17 back on Wednesday.

18 THE COURT: Let's ask Mr. Mastro.

19 MR. MASTRO: I don't want Mr. Ginman
20 to come back -- if Mr. Vogel can finish that
21 much, I may have one question.

22 THE COURT: All right. Let's go and
23 see if we can do it.

24 MR. VOGEL: Can I have just a minute,
25 Judge? I'll try to leave out anything that isn't

1 absolutely essential.

2 Q Mr. Ginman, during your meetings with
3 the County, were there local officials present, or during
4 your staff's meetings with the County officials?

5 A There may have been. I occasionally -- occasionally,
6 I think there are a couple of meetings where the staff
7 may have had County Planning Board members and may
8 also have been local officials. I just don't know.

9 But I mean it was not -- not that I can recall
10 -- around table session where municipal officials
11 were invited to participate, but they may have
12 inadvertently been part of the discussions.

13 Q And do you -- you did testify to the
14 fact that you felt that the County officials were
15 reflecting the concerns of their constituent
16 municipalities, I think is how you phrased it. Do
17 you recall that?

18 A We had hoped that they would. I don't know
19 that that was, in fact, the case.

20 Q But you were satisfied that the County,
21 in working with your staff and setting this 206
22 growth corridor, that the County concerns were met
23 within that corridor as you ultimately developed it?

24 A That would be my interpretation. I'm not
25 sure -- we've had many discussions with the County.

1 I assume we met their concerns.

2 Q Thank you.

3 THE COURT: Mr. Mastro?

4 MR. MASTRO: Yes, your Honor, just --

5 I see I have two notes here.

6
7 RE-CROSS-EXAMINATION BY

8 MR. MASTRO:

9 Q One question that occurred to me,
10 Mr. Ginman, Mr. Vogel had asked you about various
11 factors you considered in outlining the 206 growth
12 corridor, including railroad stations.

13 I note, and we reviewed this earlier, that
14 the railroad station in Far Hills is outside the
15 growth corridor. Do you recall that?

16 A Yes.

17 Q And was that considered at all or
18 discussed?

19 A Well, if I'm not mistaken, it's literally within
20 a hundred feet of the line.

21 Q Is that all you recall about it?

22 A I don't see it as being critical, at least in
23 that respect.

24 Q All right. Mr. Vogel had asked you
25 if there were some environmentally sensitive areas and

1 would that have changed the growth line. I think
2 you responded no.

3 A That's correct.

4 Q Do you recall that?

5 A Yes.

6 Q Suppose there were significant
7 environmental -- environmentally sensitive areas
8 which together with open public land and already
9 developed areas constituted 90 percent of an area within
10 the growth line, would that have changed the line?

11 MR. VOGEL: I would object to that
12 question, your Honor.

13 First of all, I don't believe that the
14 question is correct. It has facts that are
15 correct.

16 Secondly, I think that Mr. Mastro in
17 his lengthy hypothetical question, went down
18 the line on all of the areas, and with
19 specificity and while I complained about it
20 being too long, at least it was accurate in
21 reflecting all those various and sundry maps,
22 and the witness has already answered that --

23 THE COURT: Where are we going?

24 MR. MASTRO: I have my notes. "If
25 there were some environmentally sensitive

1 areas, that would not change the growth line."

2 I think the response was in the
3 affirmative.

4 THE COURT: You were talking about
5 local, as I understood it.

6 MR. MASTRO: Yes.

7 THE COURT: Critical environmental
8 areas; right? Would that defeat the
9 delineation of the growth area?

10 MR. MASTRO: Right, and Mr. Ginman said
11 no.

12 THE COURT: No.

13 MR. MASTRO: Now, I expanded that
14 question to approach 90 percent, including
15 environmental -- environmentally sensitive
16 areas, plus public lands or those not
17 available for development, as well as
18 developed lands. Would that have changed the
19 growth line?

20 THE COURT: All of that was included
21 in the original hypothetical you posed, I
22 suggest, and the question is simply redundant.

23 I'll sustain the objection.

24 Is that it?

25 MR. VOGEL: I have no further

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

questions.

THE COURT: All right.

MR. MASTRO: Thank you, Mr. Ginman.

THE COURT: Thank you very much.

THE WITNESS: I don't have to come
back?

THE COURT: We appreciate the fact
that it's been an inconvenience to you.

THE WITNESS: I'm glad to help.

(Whereupon adjourned for the day.)

* * *

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALOIS HAUEIS, et al, :
Plaintiff, :
vs. :
BOROUGH OF FAR HILLS, :
Defendant. :
-----x

C E R T I F I C A T E

I, PATRICIA BRILL, C.S.R. #974, one
of the Official Court Reporters in and for the State
of New Jersey, certify that the foregoing is a true
and accurate transcript of my original stenographic
notes to the best of my knowledge and ability.

Patricia Brill

PATRICIA BRILL, C.S.R.

Dated: November 15, 1983

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